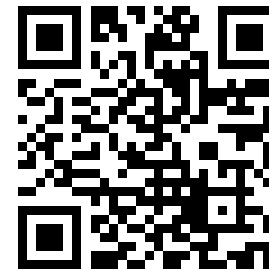

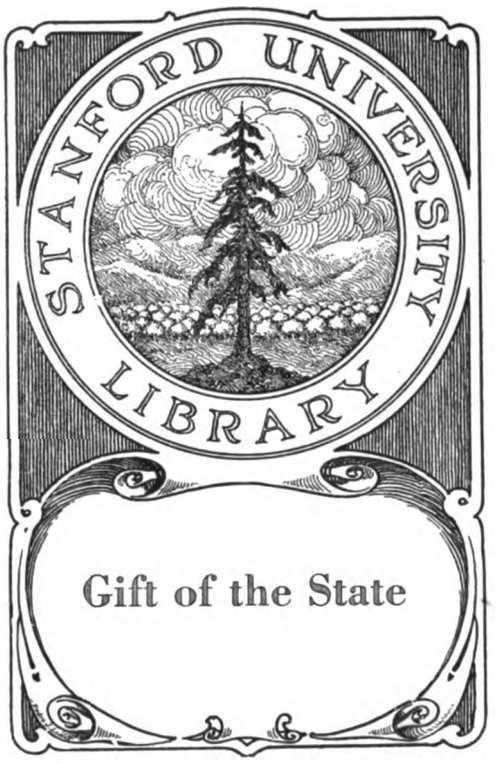

DEBATES AND PROCEEDINGS

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF CALIFORNIA,

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

E. B. WILLIS AND P. [illegible]TOCKTON,

OFFICIAL ST[illegible]

STATE OFFICE, [illegible]

cause a printed schedule of such rates and fares to be properly framed and hung in a conspicuous place at every railroad depot and every railroad station in the State.

"SEC. 14. The Railroad Commissioners shall perform all duties in relation to the railroads, other than those prescribed in the last two sections, as may be required of them by law."

MR. WHITE. All that I wished to do was to show that I gave them absolute power; and that they were to arrange the fares and freights as in their judgment should be fair and just. Now, is it common sense for this scribbler to write down that Leland Stanford would be willing to put that power into the hands of any three men in this State? I regard it as the silliest nonsense and the most malicious sort of lying that could be got up.

MR. HUESTIS. I move that ... ution resolve itself into Committee of the Whole.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. President: I rise to a question of privilege. This is a matter of no very great importance, perhaps, but I take two exceptions to this publication. The first is, that it insinuates that the whole Committee on Corporations, in advocating this scheme, have been in the interest of the Central Pacific Railroad Company. Now, sir, it seems to me that the daily denunciations of the press in the interest and pay of the corporations, notoriously so of the Central Pacific Railroad Company, should have protected us from any such imputation. The principal organ here has denounced us as Communists, and has given virus to it by saying that we are Communists as bad as Jesus Christ and the Supreme Court of the United States. [Laughter.] Well, now, it seems to me that that should have been sufficient to have demonstrated to the writer of this article that none of us had been *stowed* away in the pigeon-holes of the Central Pacific Railroad Company.

Again, sir, the writer is entirely mistaken when he assumes to say that the magnates of the Central Pacific Railroad Company desire this Commission, because they believe they can control it. Now, sir, that is a mistake, because they made an experiment on three Commissioners which proved disastrous. I have it from authority which I believe, that a certain railroad agent, or assumed railroad agent, approached one of the former three Commissioners with a proposition. He happened to be a man of honor, who had borne his country's flag on many a field. He was indignant to an extent amounting to a towering passion, and he made an appeal to the code—not to the Civil Code, not to the Penal Code, not to the code that obtains among railroads—but to the code which did obtain among gentlemen once. The officers of the railroad at once declared that the party who had approached this gentleman had done it without their authority, and they disowned him. Of course that stopped it. But the railroad took its revenge. When the Legislature met, through its conduit pipe it run into the Legislature the Hart bill. It repealed the law under which the then existing Commission had been carried on, and of course wiped out the Commission. And they substituted for it, and carried through the Legislature, by means which I need not reiterate, a proposition to have one Commissioner. It seems that they came to the conclusion that while they could not manage three, that one, as the Irishmen say, might be very convenient, and, therefore, they displaced the three Commissioners and took the one. It was given out that the Governor would veto the Hart bill, and it was believed by a great many people, but when he came to act on the matter his patriotism got the better of him, and he signed it. That was the end of that matter.

So, then, I say that the Central Pacific Railroad Company does not desire three Commissioners; that they desire either one, or the Legislature. That is what they want; and the accomplished author of this letter is laboring under a delusion. Nor is that all. Even if it were possible for them to buy up the three Commissioners—which they have not been able to do yet—or experiment, the people could fall back and elect three others who have been under fire and come out unscathed; so I do not think we are in so much danger as the writer seems to think, of the three Commissioners. There is another thing in this matter—and I say here, that if the writer of this letter was not above suspicion—I would believe that he had been *stowed*, and that this attack was a weak device of the enemy. There is another matter in connection with this, since they have seen proper to provoke this attack upon us, which I may as well mention. Two or three years ago, the North American Review published an article which stated that the railroads no longer purchased votes in detail, but that when they wanted a Senator, they elected him—advanced cash enough to elect him—and that then they owned him during his term. The Central Pacific Railroad Company seems to have profited by that suggestion. They seem of late to have elected the Senator, and to have put a collar on him, with "Central Pacific Railroad Company" written upon it, so that if he got lost, or strayed, he could be recaptured and returned to his lawful owner. I am told here, by members of the last Legislature, that when the Hart bill was before the Legislature, he reappeared here and did his best to carry the Hart bill through. Therefore, it is, I say, that the learned author of this letter is barking up the wrong tree. He does not understand his business fully, and whatever may have been his purpose, he is mistaken altogether in his facts—if he has any facts—or in his conjectures; and he does not pretend that they are anything more than conjectures. It seems to me, in fact, that he had been dreaming, and it was nothing more than a feat of somnambulism which dictated this letter.

MR. HUESTIS. I renew my motion.

MR. O'DONNELL. I rise to a question of privilege. I rise to a question of privilege. I have a right here on this floor.

THE CHAIR. Does the gentleman withdraw his motion?

MR. HUESTIS. No, I will take the ruling of the Chair.

THE CHAIR. You are not in order, Mr. O'Donnell.

MR. SCHELL. It seems to me that the gentleman has a right to be heard on a question of privilege. I move that he be allowed to go on.

MR. O'DONNELL. It won't take two minutes.

MR. HUESTIS. If the house desires to hear it I have no objection.

THE CHAIR. Doctor, go on.

MR. O'DONNELL.

MR. O'DONNELL. Mr. President: I rise to a question of privilege as a member of this body, and respectfully request my colleagues to give me their attention. Every man familiar with parliamentary rules knows that members of the State and National Legislature can be called to account for words spoken in debate. In other words, so long as they act in accordance with their sworn duty as members of the legislative department of the government, they will be defended and protected. In the discharge of my duty as a delegate I gave offense to the managers of a vulgar newspaper called the *Chronicle*. I differed from that newspaper on the law of libel. I voted for a measure which I deemed essential to the protection of society from the attacks of professional libelers. In this step I acted in concert with some of the most honored members of this body, and for the exercise of my right and privilege I have been vilified by the paper which I confess ought to be nameless among honorable men. I shall at the proper time appeal to the Courts and endeavor to aid the authorities in their endeavors to bring these men to justice. I do not think them worthy of the notice of this body. I do not think that any of the gentlemen whom this mongrel paper has slandered ask the passage of any resolution, nor do they require any vindication. All I ask now is the privilege of assuring every member of this body that the charges published against me in this nameless sheet are utterly false and without foundation, and I pledge myself that in due time I will cram the libel down the throats of the infernal libelers. I thank you kindly for your attention.

CHINESE IMMIGRATION.

MR. HUESTIS. Mr. President: Now, if there is no other gentleman who wishes to rise to a question of privilege, I move that the Convention resolve itself into Committee of the Whole, Mr. Larkin in the chair, on the question of the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the first section.

THE SECRETARY read:

SECTION 1. The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary.

MR. BROWN. I move its adoption.

MR. AYERS. Mr. Chairman: I believe it was understood that the debate should exhaust itself. The debate has taken the range of the entire article.

THE CHAIRMAN. If there be no objection to section one——

MR. GRACE. It seems to me that the debate has exhausted itself. I don't see as there are any speakers here. The section is good enough.

THE CHAIRMAN. If there are no amendments to section one the Secretary will read section two.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I wish to point out what in my judgment is a little error in the first section, and I was in hopes that the Chairman of the committee would be here this evening, as I had a short conversation with him upon that point. It is in the fifth and sixth lines of the first section of the report, and I hope that this will not be passed so that it cannot be taken up again. I am not ready to offer an amendment, but I suggest that the words, "invalids afflicted with contagious or infectious diseases," means altogether too much. It means more, I believe, than the committee themselves intended to convey, because they may mean such diseases as are contagious or infectious, but may inflict any people, and they certainly do not wish to have the police power of this State invoked for the purpose of excluding them simply upon that ground. Now, the section should certainly be modified so as to reach only the point aimed at. It is not intended that if a person have the smallpox, or anything of that kind that may be contagious, that for that reason we would send them out of the State. Yet this is broad enough to cover that. Now, the section should be amended so that it would mean exactly what the committee, I think, had in their minds when the section was framed. I hope that there will be no action taken, but that it can still be amended. There is discussion to be had, and it should be had now, but allow the Chairman, as I know it is in his mind, an opportunity to perfect the section as he desires. I would move that we do not pass any section to-night in any way so that it cannot be called up again in the regular way.

MR. STUART. I second the motion.

THE CHAIRMAN. It is moved and seconded that the section be temporarily passed.

MR. FREUD. Mr. Chairman: I hope no such proceeding will be adopted. The Chairman will have an opportunity, when it comes up in Convention, to amend it as he may deem fit. I think we can go on with our usual business with propriety.

MR. AYERS. I send up an amendment to section one.

THE SECRETARY read:

"Strike out all after the word 'shall,' in the first line, to and including the word 'and,' in the second line."

MR. AYERS. The object of that amendment is to make the enactment of such laws and the exercise of such powers mandatory.

MR. STUART. I suppose the whole article is open to discussion.

THE CHAIRMAN. It is all under consideration.

SPEECH OF MR. STUART.

MR. STUART. I have been a patient listener in this Convention, and have not been on the floor since its first organization—over two months ago. I have heard what was said with a great deal of instruction—sometimes; and sometimes with disgust and disappointment. I have been, during my life, in California nearly thirty years. During the thirty years that I have been here I have been a cultivator of the soil. I have made my living, raised and educated a large family through the cultivation of the soil. I have employed hundreds and hundreds of men. I have never been in the political arena; it is distasteful to me, and consequently I know little of the political movements, and of the management, and the plans that are used in the State for self-preference. I do not know whether I shall get through to-night with what I want to say, or not. I am somewhat unprepared and unaccustomed to public speaking. I will only make a few remarks, and then prepare myself for some future day on this article a little better.

Sir, I am opposed to all these sections from number one to number eight. They are not proper to be placed in any Constitution of the United States, let alone ours. It is in direct conflict with the Constitution of the United States and the treaty-making power. It is a boyish action for us to admit either one or the whole of these articles to be engrafted in our organic law. It would be the laughing-stock of the world, a disgrace to the State, a movement toward secession, and a disregard of the constitutional laws of the United States. I am not prepared to be one of the advocates of, or one of the silent listeners here and have it pass. I believe, sir, it is in conflict with article six of the Constitution of the United States, which says:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

That is sufficient for me, sir. That is sufficient for any intelligent gentleman in this body to reflect upon before he will take up a hotch potch, you may call it, or a set of articles of that character, that is neither one act or another, that belongs to a Constitution. It looks to me like the act of a ward political meeting, for the purpose of catching votes, or like some of the acts of this Convention in that behalf. I do not desire to reflect upon any gentleman, or the course of any gentleman's procedure here; neither do I desire to make an unparliamentary remark.

MR. O'DONNELL. You say you have employed hundreds of men; have you not employed hundreds of Chinamen?

MR. STUART. I have, sir, thousands of them, and hundreds of white men and thousands of white men, too.

MR. O'DONNELL. I thought so.

MR. STUART. That is what I am coming to now. There is not a man in California in my profession, that of farming, but what employs, directly or indirectly, the Chinaman. The Chinaman becomes your cook, the Chinaman becomes your servant, he becomes your hewer of wood and drawer of water, even in the City of San Francisco. The Chinaman has been, for the last twelve or fourteen years, a hobby-horse for all political parties to pass their resolutions on and make their platforms. Before that, it was the honest contraband in the fence. The honest contraband and the Democratic party came hand and hand into every campaign until, finally, the question was ended in blood and war. The honest contraband now is never heard of, but the Chinaman is in the fence in his stead. The Chinaman is now used by both parties, or by all the parties, if there be more than two—I believe there are three parties now. One party, which is probably like other eruptions of that character, may throw something upon the surface that may remain there. There are a good many elected by this Workingmen's party, young men that I delight to know, men of talent, of character, of responsibility, and I hope they will succeed as politicians, I hope they will succeed as men, but I hope they will not lay themselves up in this Convention for the purpose of future promotion, for future renown. Here is the place to make it without regard to their political party, without regard to who will be Governor, or who will be the Judges, or who will be the next representatives in our Legislature and in our Congress. These things, sir, are what I am astonished at. This thing is what I have listened to for months with a great deal of calmness and a great deal of interest. These are matters which the gentlemen who are foremost in their aspirations probably know better than I do what their motives are. I do not intend to impugn them.

But let me go back a little further. In eighteen hundred and fifty, I believe it was, in San Francisco, there was a celebration of the admission of California into the Union. I think it was October fourteenth; the State was admitted on September ninth. At that time, sir, if I am not mistaken, the Chinamen, few as they were, were admitted to a post of honor, and they followed the officers of the State and city in the parade. From that time down to the war, every movement of our government and every movement of our State, was to induce the Chinaman to come here and to capture the oriental trade. There were treaties made, first by force, by Porter, for he went with the navy, next by peace, and next by Mr. Burlingame, who was at one time in the Congress of the United States. The Burlingame treaty admitted, and has since admitted, the Chinaman to our country as free probably as any other treaty that has been made among the nations. That power lies in the government. There have been steamboats between here and China subsidized, and there have been other connections made and railroads built since. The Chinese have been the laborers of this coast for almost twenty years. White men we have plenty of here; and, sir, I will go further. If I was a member of a Constitutional Convention of the United States, I would raise my voice and put in an article there to repeal the naturalization laws. We have over forty million of inhabitants now, of Americans—foreign and native born. We have too many. We have thousands and tens of thousands of white men traveling this State and the United States, voluntary idlers—*not* involuntary. We have a class of so-called white laborers that never have worked, never intend to work, and never will work. I do not desire to go into details on that subject now. I desire more especially to have this article passed over until the Chairman of the committee comes in here so that he can explain them to me. Looking at it as a juror, it looks like a perfect hotch potch—nothing in it. There is not a section in the report that should be put into any school book, let alone the Constitution of the State. It is all very pretty to talk about, and the speech of my friend, the Colonel from Los Angeles, Colonel Ayers, was all very beautiful, handsomely arranged, beautifully delivered, and it almost, as Agrippa said to Paul, converted me. Also, my young friend to the right, Mr. Freud, just from his college days. He was eloquent, but there was no pith in it. It was a little as if we were upon a jury and some lawyer was prosecuting a Chinaman for some act he had done. Unfortunately our friend from Los Angeles quoted all his authorities from the minority report of the different Judges.

MR. AYERS. Not all of them.

MR. STUART. Well, most of them, I took notice. He also quoted very lengthily from Roger Taney. I remember when Taney made another decision. Do you know what became of it? I remember his Dred Scott decision. I think that was the first political case that was ever decided in the United States, and I remember what that led to, and I think you do. I want to steer clear of all that kind of Constitution making here; I want none of those things to be thrown up to us when we are out, by the Courts, or by the United States Courts and these attorneys—that we are a set of school boys, here as a debating society, getting in things not competent to a Constitution, and things that would not be fit to put into a common school book. I will say, for one on this floor, that I am in favor of holding America for Americans—that Americans shall rule America. I have no confidence in this wave of discontent, as you call it; I have no confidence in anything that may be thrown on top. It is only intellect that will tell in the United States; nothing else. I will say, sir, that I believe, taking the farmers in this Convention—and I tried to find out how many there were—probably twenty—(what I mean by farmers is, men that have cultivated the land for years, men connected with farming pursuits, men who live upon farms and support themselves and families there)—I believe that a vote among them to-night, sir, would throw that report into the waste basket. They would say: "We want labor; let the Chinamen alone." Let the Government of the United States control the matter; place it in the hands where it belongs, and have none of this senseless tinkering here, as you would tinker an old tin kettle if it was leaking. I have not inflicted you before, and I do not intend to now. I am somewhat unaccustomed to this kind of business, consequently I am going to leave that to others who are better posted than myself—after awhile. Chinese immigration is injurious to the country, is it? Chinese immigration to the country has made it what it is. [Derisive laughter.] Labor has made it what it is. The labor that has been done for the last fifteen years has been the progressive labor of the State of California. It has been labor that has cleared up farms, that has planted fruit trees, that has built cities, that has done every thing except the mining, and even then, the tailings we always used to rent to Chinamen in early days. Everything has been done by this labor. There is only one class of men you can get for servants—I mean servants that will do what they are wanted to do. I believe one white man is worth two Chinamen; that one Chinaman is worth two negroes, and that one negro is worth two tramps [laughter and hisses]—that is, for labor. It is a well known fact that in all nature, both animate and inanimate, both animal and every other kind, that the weak fall under the march of the strong. That is a well settled fact in all governmental philosophy—that the weak fall under the strong. The black man has faded away, and the Chinaman takes his place as a laborer. He is for a day, and gone. The idea of the Chinaman, or the Chinese Empire, overthrowing the Anglo-Saxon race is preposterous. A hundred thousand a month scattered through the United States would not affect it in a hundred years. The growth of the United States is something, and their energy is a great deal; and it has surprised me that the laboring portion of the people of California have not captured all this floating capital of labor and rented it out to us at increased rates. That is what has been astonishing to me. No, it has not been astonishing. Almost every gentleman that ever got up, has been perfectly astonished at something. I have never been astonished. Nothing astonishes me.

One of the gentlemen from San Francisco said money never made the man. Well, that might be so, but I would like to see the man that ever made money and became very wealthy but what is a big man. I would like to see the nation that has large amounts of money and has become very rich, but has been great. That is a mistake. It fills in very well in speech; it is beautiful to the ear, and it is very well for those who are satisfied with declamation only. I will not say anything more about it now; some other time—to-morrow, may be, I will refer to it again. I would like to hear from the farmers here; the men who live by the cultivation of the soil; the producers; that class of men who form one half of the population of the United States—over twenty millions of men who feed the world. Two years of the stopping of farming—yes, one year—would starve one half of the nation to death. The

farmers have made the country wealthy; the farmers and the producers have covered every sea with the white sails of our commerce, and have gridironed the land with railroads. They have controlled the lightning and sent it over the world. The farmers and cultivators have done this. Not the consumers that my young friend thinks so necessary. They are necessary if they will labor; but the consumer should eat the bread from the sweat of his brow, like all of us have done who lived here long, like myself. For three score years I have worked all the time; I have been laborious all my life; I have done hard manual labor; I have succeeded in doing that which I laid out to do, and consequently I have no regrets if I am not called a workingman. But I tell you that I am not speaking for any party. I do not belong to any party. I was elected by a nondescript party, Non-partisan. You can call me Independent, Republican, Union, American man. What I was speaking about was not my own nomination. What I say in regard to repealing the laws of naturalization I do not wish to be understood as saying for any party. It is my own doctrine; it is not the doctrine of any party I am acting with. I have got my own ideas upon the subject, and I have got them from reading the monthly review, not from my neighbors, and not from any political friends. Now, I would like to hear some gentleman from among the farmers say something in regard to this question.

REMARKS OF MR. NOEL.

MR. NOEL. Mr. Chairman——

MR. LARUE. I would ask the gentleman if he is a farmer?

MR. NOEL. Mr. Chairman: I do not desire to make a speech on the Chinese. I simply wish to express my satisfaction with section one, and my entire dissatisfaction with all the remainder of this report. I am prepared to go in this matter, that is, to rid the State of the curse of the Chinese, just as far as we can go consistently, and I am not willing to go any farther.

[Cries of "louder."]

My lungs are weak. This section one seems to me to be justified, if I understand it, by the exercise of the police power of the State.

MR. BEERSTECHER. I believe the gentleman is an attorney at law. I would ask him whether section one confers any new powers at all; whether there is anything in section one, as presented to us for adoption, that confers any additional powers upon the Legislature, or in any way changes or alters the condition of things as they exist to-day. In other words, whether section one amounts to anything at all?

MR. NOEL. I will answer the gentleman. I believe it confers no additional power on the Legislature. I believe to-day that the Legislature has this power. But it seems to be deemed necessary that the Convention should give expression to something upon this subject, and it seemed to me to be about as harmless an expression as we can have, therefore I shall support it. [Laughter.] There is one other section, Mr. Chairman, that I do not know but I might support—section three.

MR. BEERSTECHER. That secures the unanimous support of the Independent party.

MR. NOEL. Yes. The Independent party is entirely sound upon the Chinese question. Section three provides: "No alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution." I see no objection to that, so far as I am concerned. I will support that and section one, but no more of this report.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: As a farmer who, like Mr. Stuart, has lived on a farm and raised his family and supported them out of the produce of the soil, I wish just to state at this time that I entirely dissent from his views in every particular that he has expressed them; and I will state, with regard to the farming community with which I am connected, that of the Pajaro Valley, the facts of the case. In eighteen hundred and fifty, eighteen hundred and fifty-one, eighteen hundred and fifty-two, eighteen hundred and fifty-three, and eighteen hundred and fifty-four we had plenty of white labor. There was not a Chinaman in our neighborhood. We neither had them as cooks, servants, or in workhouses. We never employed them in the harvest field, or in any other capacity whatever. So it run on for some years, and finally the Chinamen began to come in and settle in our center, in Watsonville. They crowded in there, and as they crowded in the white labor seemed to disappear. I will say for the farmers of that valley, that they universally had a great objection to employing them at all, but at the time of the harvest they would employ them to bind; and they gave them out the jobs of binding in the field because they could not find white men. Now, as to this great army of tramps which is talked about as some contagious sort of people that come around, I will tell you that my house is on the trail that was the shortest trail from the County of Santa Clara to Santa Cruz, consequently a great many white laborers came with their blankets, and I will say that I never wanted a man that these men would not turn in and work when I asked them.

In the twenty-five years I lived on that trail I never was refused by a single man, and I never even, in any way, was troubled by the tramps. When I offered them work they invariably took it. That is my experience. Even the religious papers talk about tramps, and some of them even say they ought to be seized and put into prison, at the time when the Chinamen were housed around these men's houses. They have no sympathy at all with the men going around, and say they do not want work. I do not know of any such men traveling in this State, and I have had some experience about it. Now, sir, of late years they have been determined to get rid of these Chinamen, and they have worked in every way to prevent even their binding. For years I have not employed them. My son runs the farm, and he does not employ one of them; and he finds it more profitable not to employ them. Twenty-five cents an acre is saved by using white men to bind the grain, and that is about the difference in the wages. That is the tendency among the farmers as to being rid of these Chinamen. Let the white men come; the men that will bring their families and deal with the stores and give the storekeepers some sort of show. The storekeepers and ranchers are joining in this cry against the Chinese, because they do not get any trade from them. They have no wives and children. They live upon a little rice, and they go to their own little stores to get that. Now that is the state of this case.

Can a country possibly prosper under the doctrine of Mr. Stuart? Here is a large laboring class. They can scarcely do anything else but labor for others. They are all thrown out of employment and looked upon with contempt, and a gentleman says a negro or Indian is worth two of them. If these Chinese were out of the country, these men would have a chance of working; they would settle down; they would take a few acres of ground. I wish I had at least five or six families of that kind settled on my place; let them have a few acres of land, and have them work for me in the harvest and in the Spring, and they live on the few acres of land in the meantime. We are trying to get rid of the Chinese in any possible way we can. We do not mistreat them. I cannot have any sympathy with the ideas expressed by my fellow farmer, because I know and see that the country is held back by these people.

Mr. Chairman, I did not intend to speak on this question at all, but Mr. Stuart appealed to the farmers, and I was astonished at the doctrine entirely in favor of these men running over the country. A short time ago some men proposed to buy four or five ranches down towards Santa Barbara or Los Angeles somewhere. They had it all planned out to put a couple of hundred Chinamen on there with cattle. They had it all planned out on paper, and it made a splendid speculation. They were getting a large capital subscribed in San Francisco, and they were going to do this until, upon consulting with some friends, they were told: "Do not do it; the people will go down there and clean it out, if it costs every one of them their lives. They will rise up." And through very fear these men did not do this thing. Now, if we are to preach that kind of doctrine, there would be no fear, and California would be absorbed by these men. It is all nonsense to say that that kind of vassals can come here and do not drive men out of the country. There was no difficulty in getting white hired girls some ten years ago. These men in San Francisco tell us that white girls do not come here at all now because they know that these Chinamen are in every house. Is this a wholesome state of affairs? These laboring girls used to come here and finally became the wives of good men. Now they do not come here at all; they go west, or somewhere where there are no Chinamen. I trust that there are very few farmers that hold the views of Mr. Stuart. I hope so, for the honor of that glorious profession of farming, which I have always gloried in. When I left it for a time, I could not keep away from it, and there I am still. [Applause.]

THE CHAIRMAN. Order! Order!

MR. STUART. Mr. Chairman: A year ago last Summer about twenty or thirty white men came up near my place. I went down with others to employ them. I wanted fifteen, I think; another wanted ten or twelve, and so on; and we took them all. After a little they inquired: "How much will you give?" "A dollar a day and board." They wanted a dollar and a half. We gave them until Monday morning to make up their minds, otherwise we would get other help. Nobody came. They did not want work. They would sooner go to San Francisco afoot; sooner go back to their beer. It is always my rule to buy an extra amount of beef and deal it out piece by piece to these tramps that come along. We have got to feed them. I would employ them if they would work for me. But I have always found myself the loser. It is not necessary for me to tell the gentleman this. If he has been a farmer twenty-five years he knows it. Speaking of the girls; it has not been the case for ten years that you could get a good one that would stay and work. I have paid high prices. I have paid them as high as eighty dollars a month, and found them; sixty dollars a month, and found them, when I lived in San Francisco. I have paid forty dollars a month—nothing less than that. Take them up to the ranch, where they could not hear the bell ring along the railroad line, and they get sick in a week or ten days and go away.

MR. BEERSTECHER. I would ask the gentleman if he considers one dollar a day and board fair wages?

MR. STUART. It is fair wages. You can get them East for twelve and fifteen dollars a month—that is half a dollar a day.

MR. BEERSTECHER. I don't wonder that they do not work for you.

MR. WHITE. Wages in the Pajaro Valley are two dollars a day, and always have been, so far as I know.

[Applause and confusion.]

THE CHAIRMAN. The house will keep order.

MR. INMAN. I would like to know if this is a political meeting?

THE CHAIRMAN. The Sergeant-at-Arms will keep order in the lobby.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. Chairman: I must confess that I have listened to this general tirade with indignation. Who are tramps? There are just as good men as any on this floor tramps in California. We were all tramps in forty-nine, will the gentleman remember that? Many gentlemen here, forty-niners—I am a forty-niner myself, have tramped in this State, in the mines. We were all tramps then and carried our blankets on our backs, and have seen an honorable and honest workingmen as there are in God's world tramping in this State in search of work and could not find it. I venture to say that the gentleman is an employer of Chinese.

MR. STUART. Yes.

MR. O'SULLIVAN. Yes; I knew it the first words that fell from his lips; that he had such a hatred of his white fellow man——

MR. STUART. No; I employ white men too.

THE CHAIRMAN. Keep order!

MR. O'SULLIVAN. When they can get cheap and nasty Chinese labor then they despise their white fellow man. But society in California is to blame for the tramps. Society is to blame; and society will be to blame if this infernal Chinese curse is not got rid of. It will be to blame for a terrible revolution in this State. The gentleman would like to change the naturalization laws if he was in a Constitutional Convention of the United States. He talked about his native Americanism. Well, I was not aware that the gentleman was an Indian. I believe they are the only true native Americans. I am an American, thank God! An American by adoption; born in Ireland; and am proud of being an American. I have fought under the stars and stripes, and was willing to go and fight and will always be when this country is in danger. Men are not asked where they were born when defenders are wanted for the American flag; they are not asked where they were born. The naturalization laws of the United States are open to them and they always will be, thank God; for men of the narrow views of Mr. Stuart are few and far between amongst true Americans, thank God for it. He talks about working. I have worked every day of my life in California for thirty years; for three years mining with pick and shovel, and I was a tramp then in Calaveras and Tuolumne Counties—a tramp with blankets, pick and shovel on my back. I have tramped since in the State as a journeyman printer. I have tramped from Los Angeles to San Francisco, and I am as good as that gentleman. I have tramped, and there are just as good men as any citizen of the United States, native born Americans too, poor unfortunate men that cannot get a day's work to do because the Chinaman is preferred—the infamous, dirty, Chinese cheap labor is preferred. He boasted of his working, and said he thought he could claim to be a workingman. That was probably intended as a fling at the Workingmen's delegates here; but I can assure the gentleman that we are all workers—I am, with both hands and brain—and I have always earned an honest living in California, thank God. And so have my fellow delegates of the Workingmen's party here.

REMARKS OF MR. LINDOW.

MR. LINDOW. Mr. Chairman: I am a mechanic, and a tailor by trade. I am not ashamed of it, at all. I left the bench to sit here and make a Constitution. That is my intention. We are talking about the Chinese. I never have employed a Chinaman, and I never will as long as I can wear a boot on my foot. I always employ white men, and I always made headway. My way was when I commenced to work—our standard was to go ahead. Now the gentlemen make their expressions of tramps. That is easy enough to be done. I got a young gentleman now working for me only nineteen years of age. If I so cut down his wages and give him a dollar a day, if he don't want to go to work for that of course he will go as a tramp, because he is able to make more than a dollar a day, and I could go and put a Chinaman in his place what will do the work just as well. It is the white men that makes the tramps. The Chinaman is not to blame. He came here and looked for work, but it was the workingman what looked at the dollar business, too, and which I don't call just as much as nothing at all; not for white men. Where shall he get his clothes from? I want the gentleman to answer that question, if he can live for a dollar a day. I lived fifteen years in the City of San Francisco. I know the whole constituency of the non-partisan, and the way they were elected, and I am certain that the gentleman tramped on the platform with his feet, because it was in Platt's Hall, and they said: "This time we mean it; there is something to be done for you in the Constitution, and we can put a clause in there not to let Chinese come any more." But the people was so often deceived before, as Colonel Barnes said, that they would not believe the non-partisans. Now here we get it right away, and the gentleman goes back on the people for doing something. Where there is a chance to do something for the people he goes back on it. That is not the idea of the workingman. We will fight, and we will have something in the Constitution that will rid this Chinese curse from this shore. And we will put a clause in the Constitution for to not let them come any more. Our children will be relieved of it. I thank God—for the most part I fight for them—that we will succeed and get a clause in the Constitution so that they will be relieved. For that reason I think, coming here as workingmen, we must do our duty and not go to work and say that they are tramps. I cannot see what the tramps are. If he has got no means of support he must go tramping. Who has built up the State of California anyhow? Who has built up the City of San Francisco? Was it the Chinese? I ask any gentleman on this floor if it was the Chinese what brought the City of San Francisco to that what it is to-day? If them Chinamen had been in this State there would not be a City of San Francisco to be seen, grown up in that short time. But suppose it has grown, it is only the workingmen has built it up. Men got little savings of five hundred dollars put in real estate, and got a home for three thousand dollars, or three thousand five hundred dollars, and paid for it in installments in ten years. That is what has built the city up. But the Chinamen were put in their places. So wages were cut down to four dollars, and three dollars, and two dollars a day. Many workmen paid on real estate there for five or six years, living in their own houses, but he could not work and pay the installments, and his property was sold, and he and his family runs around the street. That is what the Chinamen bring in here. That is the good they do. You can buy property cheaper now than you could five or six years ago. Men that paid thirty thousand dollars for their property, now you can have it for ten thousand dollars, because it won't be worth anything twenty years from now if this immigration is not stopped. You can have a whole fifty vara lot for the taxes you are willing to pay. That is the prosperity of Chinese. Now, Mr. President, I am willing to quit now for to-night, because I will get an opportunity some other time. Somebody else will spring up so soon as I go off.

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. Chairman: Assertions have been made here that I, as a foreign-born citizen, protest against. I will challenge any man to discuss that question upon the great principles of republicanism, which are liberty, equality, and fraternity, on the principles of Christianity and the principles of humanity. Now, sir, on the principle of liberty. The Constitution of the State of California, section one and section two, declare that we have an inalienable right to defend our lives and liberty; consequently if our life is in danger our liberty is also. Whether our life is at stake by a tiger, or whether it is at stake by starvation, it is always at stake, and will not be any safer for it. We possess the right to defend our life, and if we do not, our liberty is speedily gone. Certainly a man is free to do good or evil, but whether he does good or evil he has to meet the consequences of his acts. The very moment he does an evil he destroys his liberty. All these things are necessary. Then follows the punishment which is to bring him back to the paths of virtue, justice, and truth. Therefore, as Chinese immigration is an evil it tends to destroy liberty; and in the pure name of liberty I oppose Chinese immigration. Now, sir, on the principle of equality I will oppose it. When I say equality, I do not mean the size of the man. I do not speak of his economy, or his religion, but the reciprocity of duties as well as rights. Now, gentlemen, can any government exist—can any society or nation exist, in which every citizen has not some amount of duties to perform? No duties without rights, no rights without duties, is the great maxim upon which repose all human society. Equality of rights, equality of duties. But do the Chinese perform the same duties as any other foreigner—as it is always thrown in the face of foreigners? Does the Chinaman perform that same duty that these other foreigners do? I deny the assertion that performing the same duties they cannot claim the same rights, and therefore on the ground of equality I oppose Chinese immigration.

Christianity, fraternity, and humanity; these three great walls which have been thrown often at the face of the opponents of Chinese immigration. It is for humanity's sake, and the sake of the Christian faith, that I say to these men, and to all those who bring them here, and those who employ them, do not tramp upon our liberties, upon our rights. Let us be men. Let us be women. Do not try to bring us to despair. Respect us, if you want us to respect you. Do not try to starve us, if you do not want to be starved. Listen to the voice of reason. Hear the people's cry. Watch the popular wave which is rising every moment. Read the history of the past, and learn from it lessons of prudence and wisdom. Some revolution will teach us charity and forbearance. Yes, I would be charitable, and I am, but when I look about me and see my comrades in misery and their families destitute, can my heart for a moment forget that this misery has been brought upon them by the presence of these Mongolians. I ask myself, whether, in order to be charitable to the Chinese, I must let my neighbor starve and die of hunger? No! There is a reason that forces every man to take this stand. It is a stern fact and we have to meet it boldly; it moves slowly and surely, but it has already produced and shown its effect last Winter. According to the laws of nature there is no effect without a cause. We now see the cause—the Chinese—and the effect will soon produce itself. Starvation stares us in the face, and with it degradation and crime. Why, Mr. Chairman, did our forefathers give their lives so freely for this land which they have sprinkled with their blood? And are we, in this very century, going to submit to an aristocracy of blood? To men who have lost all sense of justice, all sense of Christianity, and all sense of humanity? Who, for the sake of furthering their own views, are willing to starve their fellow men. Blind they must be if they cannot see that their crime will bring its punishment. Do they not think that one day they may be called to answer to these very people for their crime? They know their time will come, but I am afraid it will be too late. Let us meet this question fairly and honestly. Let us take the responsibility that rests upon us; and, after having done what is right, then let the minority be responsible for what we have done. [Applause.]

THE CHAIRMAN. The Sergeant-at-Arms will keep order.

MR. WICKES. I will be brief in the remarks I shall make. I know that the best part of our time has already been dissipated. I now move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

MR. BEERSTECHER. Mr. President: I move we adjourn.

Carried.

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

SEVENTY-FOURTH DAY.

SACRAMENTO, Tuesday, December 10th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Barnes,	Beerstecher,
Ayers,	Barry,	Belcher,
Barbour,	Barton,	Bell,

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

ABSENT.

Berry,	Fawcett,	O'Sullivan,
Biggs,	Hager,	Reynolds,
Casserly,	Martin, of Alameda,	Shafter,
Cross,	McConnell,	Smith, of Santa Clara,
Dudley, of San Joaquin,	McFarland,	Sweasey.
Eagon,		

LEAVE OF ABSENCE.

Leave of absence for one day was granted Mr. O'Sullivan.

Leave of absence for two days was granted Mr. McConnell.

THE JOURNAL.

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

Carried.

PETITION FOR LIEN LAW.

MR. CONDON presented the following petition, signed by a large number of mechanics and other citizens of California, asking that a provision be made in the Constitution for a lien law:

To the President and members of the Constitutional Convention:

GENTLEMEN: The undersigned respectfully represent that the practical working of the present legislation, and decisions of Supreme Court based thereon, regarding the rights of mechanics, material-men, and laborers to a lien for their labor and material furnished, is such that those who in a measure depend upon such law for just protection fail in nearly all cases to obtain it, because of the inefficient working of said law.

Wherefore, we pray you to declare, in our organic law, the right of every mechanic, material-man, and laborer to a perfect lien on the thing whereon his labor has been expended, or for which his materials have been furnished.

Moreover, we would state that we would be satisfied with amendment number one hundred and sixty-seven, introduced by Mr. Van Dyke, on October tenth, eighteen hundred and seventy-eight, and read and referred to Committee on Miscellaneous Subjects, as follows:

"SEC. —. Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

And your petitioners will ever pray.

Referred to Committee on Miscellaneous Subjects.

MR. WELLIN presented a similar petition.

Referred to Committee on Miscellaneous Subjects.

THE BURLINGAME TREATY.

MR. DOWLING offered the following resolution:

Resolved, That a committee of three be chosen by the Convention, whose duty it shall be to proceed to Washington at once and present a memorial to the President of the United States, the Senate, and the House of Representatives, requesting an immediate modification of the Burlingame treaty, so that Congress will be enabled to enact a law prohibiting the further immigration of Chinese to the United States of America.

Resolved, That the said committee place the Chinese question in its true light before Congress, and make the necessary arguments regarding this Mongolian plague, setting forth the grievances of the Pacific States and Territories on this subject.

Resolved, That this Convention provide in the Constitution so that the expenses incident to the occasion be paid by the State.

MR. BROWN. I move that the Convention resolve itself into Committee of the Whole.

THE PRESIDENT. There is a resolution before the Convention.

MR. BEERSTECHER. I second the resolution.

MR. DOWLING. My object in offering that resolution is that a committee going from this body and interviewing the President and Senate, and laying the case as it is, in its true light, before them, would have more effect with the President of the United States and the Senate than any memorial sent them. I think the resolution is worthy the consideration of this body.

MR. CROUCH. Mr. President: I move to lay the resolution on the table.

The motion prevailed.

PUBLIC LANDS.

MR. WYATT offered the following resolution:

Resolved, First—That we, the delegates of the people of the State of California, in Convention assembled, do most respectfully instruct our Senators and request our Representatives in Congress to use their influence to have passed a law reducing the price of the public lands in this State, within the limits of any railroad grants, to one dollar and twenty-five cents per acre, and to enable bona fide settlers upon said lands to homestead one hundred and sixty acres thereof—the lands belonging to the United States Government being the refuse or third rate lands, and mostly embraced within the foothills or mountains, and in most instances much subject to drought and scarcity of water, making it necessarily expensive to improve and utilize said lands.

Resolved, Second—That we respectfully instruct our Senators and request our Representatives to use their influence to have passed a law restoring to preëmption and homestead all the lands within the limits of forfeited railroad grants in this State upon the same terms and conditions as before said grants were made.

Resolved, Third—That a copy of these resolutions be sent to each of our Senators and Representatives in Congress.

MR. LARKIN. I move the adoption of the resolution.

MR. WYATT. Just one word. The railroad grants by the Congress of the United States to the various railroads within the limits of the State of California have been made from ten to fifteen and eighteen years. Where the railroads have been completed and the grants have been made effective to the railroad companies, all the better portion of the even sections within these railroad limits have of course been either appropriated or purchased by settlers upon the grounds. There is, however, a third class land included in these grants that is yet open to preëmption and homestead settlement at the double minimum price. That is to say, that a party can preëmpt or homestead eighty acres, or buy eighty acres, at two dollars and fifty cents per acre. These lands, in consequence of the length of time they have been in the market, have been picked and culled until those now remaining in the market are not worth the double minimum at which they are holden. It is, then, with a view of putting them within the reach of any and all settlers who may desire to take them up that it is asked that the double minimum be taken off, and that they be restored to the market at the old rate of one dollar and twenty-five cents per acre. The second resolution refers to another class of lands. Many grants have been made to railroads in this State which have been forfeited upon non-user of the charter of the railroad company. They stand blocked, both in the even and odd sections, against settlement. For this reason I ask that this resolution pass, and that our Senators and Representatives be instructed to take the double minimum from these lands.

MR. VAN DYKE. Mr. President: I think the resolution probably is a very good one, but the delegates cannot understand it from hearing it read at the desk, and it should be either printed or referred. I move that it be referred to the Committee on Land and Homestead Exemptions. They can examine it, report it, and have it adopted. We cannot consider it this morning, because the delegates have not had an opportunity to examine it.

MR. WYATT. Mr. President: I suppose it would be well to have the resolution lay over until to-morrow, or next day. I am in favor of the passage of the resolution at the earliest day possible. Congress is now in session, and unless the resolution is forwarded at a very early day it will do no good at the present session of Congress. It is simply to take off the double minimum and restore the lands to the original government price of one dollar and twenty-five cents per acre, and the right of preemption and homestead to one hundred and sixty acres, instead of eighty acres. I am willing that the resolution should lie over, and be printed in the Journal, to be taken up to-morrow morning.

MR. HUESTIS. I make that motion.

MR. BLACKMER. Mr. President: I would call the gentleman's attention to the phraseology of the resolution. I see that he uses the expression "instruct our Senators and request our Representatives." Now, I think that we have no right to instruct the Senators of this State. It should be in the form of a request. I suggest that it should be fixed before it is printed.

MR. WYATT. I am willing to conform to the phraseology suggested by the gentleman.

The motion prevailed.

COMMITTEE CLERK.

MR. OVERTON offered the following resolution:

Resolved, That the sum of ten dollars be and is hereby ordered to be paid out of the funds of this Convention to J. J. Flynn, for services rendered as Clerk of the Committee on State Institutions and Public Buildings.

THE PRESIDENT. It will be referred to the Committee on Mileage and Contingent Expenses.

MR. OVERTON. The committee kept their own minutes, but this——

THE PRESIDENT. It will have to go to the committee under the rules.

CHINESE IMMIGRATION.

MR. MILLER. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment to section one.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman, and gentlemen of the Convention: It is not my desire or object to enter into a general discussion of the evils of Chinese immigration, or the Chinese presence in this State. But I deem it necessary, in order to controvert and, if possible, to meet some of the claims and the assertions of gentlemen upon this floor in relation to the right of the State to regulate the Chinese residents and the Chinese action in this State, to say a few words in reference to the law applicable to this case, as I understand the law to be. It seems to me, Mr. Chairman, that there has been too much scope, too wide a latitude allowed to the decisions that have been rendered upon the subjects touching Chinese residents and Chinese immigration in this State. With due deference to the opinions and the assertions of gentlemen upon this floor as to the power of the State to regulate this matter, I believe that the State has the power, that the State has the full power, to deal with and solve the Chinese question. I do not believe that it is necessary to have recourse to Congress. I believe, to-day, that there is a reserve power inherent in the State of California, and inherent in every sovereign State in this American Union, that has never been delegated, that has never been surrendered, that has never been robbed from the States, because, Mr. Chairman, I believe, sir, that in these latter days there has been a tendency to rob the States of their rights, and the time has come when persons who desire to see American institutions perpetuated, who desire to see the spirit that actuated the founders of this country carried out in its true intent and purposes, that they should rise up and see to the centralizing efforts at Washington.

It is conceded by all jurists, and it has been repeatedly decided, that the Federal Government was a government of delegated powers. That there were no original powers lodged in the Federal Government, but that all of the powers possessed by the General Government were those that were expressly delegated and given to it by the charter of its creation—the Constitution of the United States. Now, in the Constitution of the United States, there are just two powers lodged in the General Government, which it is claimed inhibit the State from acting upon the Chinese question, as to their immigration, or as to their residence. The first is the power of Congress to regulate commerce with foreign nations, and among the several States, and with the Indian tribes. This is found in article one, section eight, paragraph three. It is claimed that Congress has the exclusive right to regulate commerce with foreign nations, and upon this it is claimed that the State would have no power to prevent the landing of immigrants, whether they be Mongolians, or whether they be of any other race, upon the shores of a particular State. The second power is the treaty-making power, which is vested also absolutely and exclusively in Congress. Therefore it is claimed, that, first, under the right to regulate commerce; and, second, under the treaty-making power, we are debarred from acting in this matter.

I call attention to the record of Story on the Constitution, page three hundred and seventy-five, in which Mr. Story discusses the power, the scope, and the force of a treaty. Mr. Chairman, it seems to me that we have given too much sanctity to the Burlingame treaty. The people at large believe a treaty to be a component of the Constitution. They believe a treaty to be a firm law of the land; but a treaty is neither a component part of the Constitution, nor is a treaty a firm law of the land in any constitutional sense of supremacy. A treaty is a mere Act of Congress. It has no further force, and it has no further effect than an Act of Congress has. And whenever an Act of Congress is unconstitutional, if the treaty endeavors to enact the same thing, the treaty itself is unconstitutional. If the Congress of the United States endeavor to encroach upon the reserved powers of the State; if the Congress of the United States endeavor to legislate in relation to the internal concerns of the State; if they endeavor to pass upon the police regulations of a State by a mere Act of Congress, that would be unconstitutional and void. If Congress by a treaty endeavor to do the same thing, that treaty is unconstitutional and void, because a treaty has no more sanctity, no more force, and no more effect than a local Act of Congress that has only force and effect in this country. Mr. Story says, paragraph 1508: "The power 'to make treaties' is, by the Constitution, general; and of course it embraces all sorts of treaties, for peace or war; for commerce or territory; for alliance or succors; for indemnity, for injuries, or payment of debts; for the recognition and enforcement of the principles of public law; and for any other purposes which the policy or interests of independent sovereigns may dictate in their intercourse with each other. But, though the power is thus general and unrestricted, it is not to be so construed as to destroy the fundamental laws of the State. A power given by the Constitution cannot be construed to authorize a destruction of other powers given in the same instrument. It must be construed, therefore, in subordination to it; it cannot supersede or interfere with any other of its fundamental provisions. Each is equally obligatory, and of paramount authority within its scope; and no one embraces a right to annihilate any other. A treaty to change the organization of the government, or annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers, would be void; because it would destroy what it was designed merely to fulfill, the will of the people."

In a note to section eighteen hundred and forty-two of the same work, it is said that though a treaty is a law of the land, it is as much subject to repeal as any legislative act, and that any subsequent Act of Congress conflicting with it has the effect of repealing it *pro tanto*. And, Mr. Chairman, that brings me to the fact that when it is spoken of appointing an International Commission for the purpose of abrogating or modifying the existing Burlingame treaty, it is merely for the purpose of delay. Such a Commission is unnecessary, because Congress can by one Act wipe out the existing Burlingame treaty, and it is not necessary to appoint a Commission at all, because it has been repeatedly held by the Supreme Court of the United States that even where the treaty was not directly repealed, yet if any Act of Congress was passed, which was in conflict with an existing treaty, that Act of Congress vitiated the existing treaty. It being conceded, therefore, that the General Government's agreement of delegated powers, and that whatever is not expressly given to it yet remains with the States, and as a part of the reserved powers of the States, I call attention to the opinion of Mr. Justice Woodbury in the License Cases, as reported in the fifth Howard, page six hundred and twenty-nine; and I would here say to my friend, Mr. Stuart, that these opinions are not the opinions of what he said were minority Judges, but they are the opinions of the Supreme Court of the United States, rendered in eighteen hundred and forty-seven, and have never been reversed, changed, or altered. Mr. Justice Woodbury says:

"It is the undoubted and reserved power of every State here, as a political body, to decide, independent of any provisions made by Congress, though subject not to conflict with any of them when rightful, who shall compose its population, who become its residents, who its citizens, who enjoy the privileges of its laws and be entitled to their protection and favor, and what kind of business it will tolerate and protect, and no one government, or its agent or navigators, possess any right to make another State, against its consent, a penitentiary, or hospital, or poor-house farm for its wretched outcasts, or a receptacle for its poisons to health and instruments for gambling and debauchery. Indeed, this Court has deliberately said: 'We entertain no doubt whatsoever that the States, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves, and remove them from their borders, and otherwise to secure themselves against their depredations and evil example, as they certainly may do in cases of idlers, vagabonds, and paupers.'" (Prigg vs. Penn., 16 Peters, 625.)

In the same case Mr. Justice Grier used the following language:

"It has been frequently decided by this Court, 'that the powers which relate to merely municipal regulations, or what may more properly be called internal police, are not surrendered by the States, or restrained by the Constitution of the United States, and that consequently, in relation to these, the authority of the State is complete, unqualified, and conclusive.' Without attempting to define what are the peculiar subjects or limits of this power, it may safely be affirmed, that every law for the restraint and punishment of crime, for the preservation of the public peace, health, and morals, must come within this category. As subjects of legislation, they are from their very nature of primary importance. They lie at the foundation of social existence; they are for the protection of life and liberty, and necessarily compel all laws on the subjects of secondary importance, which relates only to property, convenience, or luxury, to recede, when they come in contact or collision, '*salus populi suprema lex.*'"

A State forming part of the American Union is nothing less than a family forming a part of a community, and as well might the municipal government—as well might the Board of Supervisors of San Francisco—dictate what sort of men should dwell in the families of that city as for the Congress of the United States to dictate to the State of California, or to any other State of this American Union, what sort of people should dwell within its boundaries, providing the inhabitants or citizens of that State did not desire these people to remain there. The whole social fabric is founded upon the family, and our government is founded upon the States. If you destroy the family you destroy the social fabric—you undermine and destroy civilization—and if you deny the power of the States you destroy the American Union, and you are drifting into absolutism, and you are drifting into monarchy—and I think we are going there rapidly.

"If the right to control those subjects be 'complete, unqualified, and conclusive,' in the State Legislatures, no regulations of secondary importance can supersede or restrain their operations on any ground of prerogative or supremacy. The exigencies of the social compact require that such laws be executed before and above all others."

Speaking of police regulations and internal regulations, he says:

"It is for this reason that laws which protect public health, compel mere commercial relations to submit to their control. They restrain the liberty of the passengers, they operate on the ship which is the instrument of commerce, and its officers, and even the agents of navigation. They seize the infected cargo and cast it overboard. The soldier and the sailor, though in the service of the government, are arrested, imprisoned, and punished for their offenses against society. Paupers and convicts are refused admission into the country. All these things are done, not from any power which the States assume to regulate commerce or to interfere with the regulations of Congress, but because police laws for the preservation of health, prevention of crime, and protection of the public welfare, must of necessity have a full and free operation according to the exigency which requires their interference."

I also call attention to the words of Mr. Justice McLean in the same case:

"The States, resting upon their original basis of sovereignty, subject only to the exceptions stated, exercise their powers over everything connected with their social and internal condition. A State regulates its domestic commerce, contracts, the transmission of estates, real and personal, and acts upon all internal matters which relate to its moral and political welfare. Over these subjects the Federal Government has no power. They appertain to the State sovereignty as exclusively as powers exclusively delegated appertain to the General Government."

Mr. Chairman, the decisions which are pointed out, and upon the authority of which it is stated we cannot prohibit the immigration of Chinese, and that we cannot regulate their presence among us, have never attempted to go to that extent. The trouble is this: it has been stated

that these decisions went entirely beyond their intent, entirely beyond their scope, and entirely beyond the authority that was given to them by the Courts that rendered them. The Legislature of this State has attempted to meet and to solve this problem, but in their legislation they have gone too far; they have met the Chinese immigrants while they were yet within the protection of the laws of the United States; while they were yet part and parcel of the subjects protected by that exclusive regulation of foreign commerce vested in Congress. These laws attempted to levy a tax, attempted to put a restraint upon Chinese immigration, while Chinese immigration was protected by that exclusive power vested in Congress. But neither the Supreme Court of the United States nor any other Court, State or Federal, have ever decided that the State, after the Chinese have landed within the territorial limits of the State, do not have the right to control them. The distinction is very clearly pointed out by Mr. Justice McLean in his opinion, on page five hundred and ninety-two. He says:

"The police power of a State and the foreign commercial power of Congress must stand together." There is no conflict between the two. The foreign commercial power of Congress brings the goods or persons into the harbor. It brings the goods or persons up to the dock, up to the wharf; but when the Chinaman leaves the ship, and when the goods leave the ship; when the Chinaman walks upon our streets and goes into our houses; when the goods are taken from the ship and placed into our warehouses and become the property of citizens of this State; when the Chinaman desires to become an inhabitant of this State and to dwell here, then the power of Congress ceases the moment he places his foot upon the wharf. The moment the goods are carried over the gang-plank of the ship, then the police power of the State attaches. The trouble with the legislation of this State heretofore has been that they always attempted to go on board the ships. They attempted to cross the gang-planks, and we cannot do it, because the United States law is around and about that ship as a wall, and keeps us from it. We dare not go on the gang-plank; we dare not enter the ship, because there the powers of Congress are preëminent and exclusive. But when the Mongolian leaves the ship, when he comes within the territorial limits of the State, then he is within the jurisdiction of the State, and the State has got the exclusive power over him, and Congress has got no further power at all. Mr. Justice McLean says:

"The police power of a State and the foreign commercial power of Congress must stand together." Because they can stand together. There is no conflict between the two. There is an end of the one and a commencement of the other. They do not overlap each other; and where we have erred every time in the State legislation, has been that we have gone beyond our power. "Neither of them can be so exercised as materially to affect the other. The sources and objects of these powers are exclusive, distinct, and independent, and are essential to both governments. The one operates on our foreign commerce, the other upon the internal concerns of a State. The former ceases where the foreign product becomes commingled with the other property in the State. At this point the local law attaches, and regulates it as it does other property."

That decision has never been reversed. It stands unreversed to-day, and none of the cases that have been carried to the Supreme Court at Washington have ever reversed that decision, and it is the supreme law to-day. It is clear, and the wayfaring man, though a fool, can read it. It says, again: "The one operates upon foreign intercourse, the other upon the internal concerns of a State. The former ceases when the foreign product"—be it a Chinaman or be it a bale of cotton (it makes no difference at all as regards the decision)—"becomes commingled with the other property of the State. At this point the local law attaches, and regulates it as it does other property"—or other people within the confines of the State.

Mr. Chairman, I have examined the report of the Committee on Chinese. I have examined the first section, and after the examination of that section I was not at all surprised that the Chairman of the committee could defend the section, and could state to the Convention that he was in favor of section one. Section one is not obbjectionable in any sense. Section one would not be objectionable to Colonel Bee. Section one would not be objectionable to the Chinese residents of the State of California, because section one simply means nothing at all. Section one is a mere declaration of the powers that exist and are inherent in the State, and always have existed, and always have been inherent in the State. The trouble seems to be that there is a belief that we can confer power upon ourselves; that by making a Constitution, and by having certain sentences printed in that Constitution, that we can delegate and vest powers in ourselves. Now, the Constitution is no charter of liberties at all. A Constitution, in the American sense, is a mere restriction of powers, and is no delegation, and never can be a delegation of powers. All these powers are inherent in the people, whether they be expressed or unexpressed, and the Legislature can act without any declaration of this character.

But, Mr. Chairman, I propose to vote for section one, because, at all events it will express what is the will and the wish and the opinion of the people and of the Convention. I am in favor of every section of the report, even the most ultra section. If these sections, all of them—and perhaps there are some of them that would not be constitutional—at all events, the Chinese of this State will be obliged to take these sections into the Courts and have their rights decided; and in that way the people of the State can only gain, and they will never lose, by the adoption of this report. That the absolute power to regulate the Chinese residents within the confines of this State rests with the State is inherent in the people to-day, and can be expressed by their representatives in Legislature assembled, I have no doubt; not the least. We can drive them from the confines of this State to-day, but, Mr. Chairman, I have serious doubts whether we can say to them that they cannot come here. We can say to them, "You shall not stay here." We have attempted to say, "You cannot come here;" and we have been told that we were exceeding our powers. We have never attempted to say, "You cannot stay here;" and we have never been told that if we did say that we would be exceeding our powers. I believe that we can say to the Chinese, "You cannot stay here;" and I believe we can say, "We propose to regulate you, even the short time we do allow you to stay here."

As I said in the commencement, I do not desire to speak in relation to the damaging and blighting influence of the presence of the Chinese. I merely desire to state upon this subject, that unless the Chinaman is driven from the State the white man will be obliged to leave the State. I speak for the young men. I speak for the rising generation. I speak for the men that stand here to-day and expect to stand here after many of this Convention have passed away. I ask, on behalf of the young men of this State, that they be not obliged to compete with Mongolian slave labor. A young man has no chance in this State to-day if he is a workingman. It does not matter for the opulent. It does not matter for the people that live in palaces, that wear silk dresses and diamond rings. It makes no difference to them whether their laborers be Mongolian serfs, or white free men, or white free women. But it does matter to the white free man and to the white free woman that are obliged to labor for their daily sustenance. There is not a man upon this floor to-day, Mr. Chairman, and I challenge contradiction by any gentleman here, who will say that a white man or a white woman can compete against Chinese serf labor. I do not desire, as I said, to enter into the minutiæ and into the details of the subject, but it is a well known fact, as has before been said upon this floor, that if the white man works for a dollar a day, the Chinaman can work for fifty cents; if the white man can work for fifty cents, the Chinaman will work for ten cents. We cannot compete with them. This is what has driven the boys of San Francisco into hoodlumism and the girls into houses of prostitution. It is because labor has become degraded, and labor ought not to be degraded. Labor ought to be ennobled. Wherever a mongrel and servile class are the laborers of a country, in that country labor becomes degraded in the eyes of the people; and labor to-day is looked upon by a large class of people in the State of California as being degrading and debasing. It is for the rising generation that we ask that a provision be inserted in this Constitution forever saying to the Chinaman, "Halt! Thus far and no farther! You must leave this country! You must go out! You must surrender it to the people to whom it belongs." You must give it to the young man and the young woman for their heritage if you expect to wipe out hoodlumism. If you expect to wipe out crime you must wipe out the presence of the Mongolian in our midst. I desire, at the proper time, to offer, as an additional section, the following:

"SECTION —. All persons of foreign birth, before engaging in any manner of employment on their own account, or for others, within this State, shall first procure a certificate of authority; such certificate shall be issued to any applicant of a race eligible to citizenship under the laws of the State, without cost, by any Court of record of the State. No person of foreign birth shall engage or continue in any manner of employment in this State unless possessed of such certificate; nor shall any person, copartnership, company, or corporation, directly or indirectly, employ any person of foreign birth within this State, unless such person possess such certificate. The Legislature shall provide for punishment of violations of this section. Prosecutions shall be maintainable against both employers and employés. Each day's violation shall constitute a distinct offense."

SPEECH OF MR. KLEINE.

MR. KLEINE. Mr. President, and gentlemen of the Convention: What would you think of a man that would ridicule and that would trifle at the death bed of his father, or mother, or sister? What would you think of him? You would say he is a villain, or a knave, or a fool. Any man of feeling would forbear to do so, and yet, Mr. President, yesterday I had to witness such an outrage. Mr. President, and gentlemen of this Convention, we have fifty delegates on this floor who would not be here to-day if it was not for the Chinese question, and they dare not deny this. They would not be here—perhaps some of them would be at day's work for one dollar and fifty cents per day; and yet when this question came up yesterday they went out in the lobby, and treated it with utter contempt. If this is the conduct of gentlemen I ask you to inform me of the meaning of a gentleman. I do not read it so in Webster's Dictionary. I acknowledge that I was elected as a delegate to this Convention on the Chinese question, and, gentlemen, this question is to me as solemn as the grave. I cannot trifle with it. Why? Because I see the future before me. I see this country will be overflowed by a lot of degraded Mongolian serfs. Gentlemen of the Convention, I used to live in the Southern States when the slave-owners looked upon the white man that worked as "common white trash." A feeling of superiority is manifested among these coolie employers towards their white brother that has to work for a living. Mr. President, I tell you this is a question to me as solemn as the grave. I have no heart to trifle with it. Why, I can see as plain as I see my hand before me, that this State is doomed for the white man who has to earn his bread by the sweat of his brow. Already we see that our white brothers and sisters have to go and look round for a job to work for a dollar a day.

Gentlemen, any nation that will look upon labor as degrading, that nation cannot stand. And you talk about the Burlingame treaty! The Burlingame treaty is a fraud from the beginning. I can prove this to you. When Mr. Burlingame made the treaty, the Government of China didn't hardly know nothing about it. And Mr. President, and gentlemen of this Convention, you remember that when Mr. Burlingame came back he lived only a few years. He died. He died almost in despair.

Now we look a great deal to Congress. Now, gentlemen, I tell you Congress will never do anything for us. This Mongolian invasion is a combination between capital and the churches, and you know it.

I will tell you how. I will prove this to you. The churches, both Protestant and Catholics—Protestants more than Catholics, I am sorry to say—they tell you that we will bring the Chinese coolies to this Pacific Coast and convert them to Christianity. Now, Mr. President, I will prove to you now, and to the gentlemen of this Convention, and those that hear my voice, how they have succeeded. For the last twenty-seven years—I, myself, am a resident of the State over a quarter of a century, and I know whereof I speak—for the last twenty-five years—listen—for the last twenty-five years only about one hundred and fifty out of two hundred and fifty thousand has been converted to Christianity, according to the testimony of about fifteen ministers of the State of California. I can read about this. Mr. Blakeslee, a Congregational minister, says that during his mission only about forty or fifty has been converted, and out of these fifty half of them have been instructed in China, and not a single one of these converts who have made a profession of Christianity has ever assimilated and adopted our manners in any shape or form, but they have remained the same coolies. The same degraded coolies that they were before.

What has these long-faced preachers done? They have driven our poor white men, our white boys, and white girls into hoodlumism. They have made our poor white girls what? Prostitutes! It is almost impossible for a poor white servant girl to find employment in a white family. No! The mistress of the house wants a Chinaman. She wants a Chinaman, why? He is very handy. She can say, "John, do this," and John does it, and John never says a word. He keeps quiet; only when he goes home to his shanty in Chinatown, and then he tells all about it—what he has seen, and what he has heard. There you see what the missionaries have done by importing Chinese here. Rev. Mr. Gibson went to China for the purpose of converting Chinamen. He remained there several years, but the work was so self-denying he did not remain, but came back right in the midst of Chinatown, where he gets a fine, fat salary. Christian charity always begins at home.

It is almost impossible for a white man to get work, and I assure you, Mr. President, and gentlemen of this Convention, there is not a place in the civilized world—listen!—there is not a place in the civilized world that would submit to such an outrage as the people of the Pacific Coast. There was never a government in the civilized world that would degrade its citizens to the level of the slave, only this government. And let me tell you, I am not a prophet, nor the son of a prophet, but I believe, as God is my witness, that the working classes will rise in a mass, they will not submit to such an outrage. These men that have fought your battles through the late war—you have stripped their children, you have! You take away their rights, and now what are you doing? You take their children and start them off for low, coolie, servile laborers. But would these coolies defend you when your country is in danger? Will they march to the front as our servants marched upon the late war? No! They will laugh at you; and then you may call upon the tramps that you now say one dollar a day is enough for; then you will call upon these men to defend you; but these men, remember, will not defend you. They will do their best against you, and they would do right! Now, gentlemen, perhaps some of you remember—I don't know, perhaps some of you were slave-holders in the South—they drove negroes, they bought and sold negroes. I know a few of them here. I lived in the Southern States, and I tell you the slave-holders always looked upon the white people that had to work for a living—it was a common expression—"the poor white trash." The poor white trash! That is the expression the slave-holders used to make of the white people, and that is certainly the case now with those that employ coolies. They do not care for the white man, for the poor white man, only when they are in trouble.

Now, gentlemen, let us look at it now—at the coolie question. Are they a benefit to us? I tell you they have extracted one hundred and eighty million dollars from the State of California in the last twenty years. Every dollar a Chinaman receives, ninety cents goes back to China. Now, we have forty thousand of these coolies, servile laborers, in San Francisco. That is an average of forty thousand dollars a day they draw out of circulation. Now, what would be the benefit supposing our white fellow citizens would be there. Wouldn't that remain in the State? Wouldn't our city be prosperous? But no! The white rich aristocrats and the moneyed aristocrats they want the Chinaman, and the white girls and the white boys they can go to perdition. If they only succeed in converting one Chinaman, they do not care whether ten thousand white girls and boys go to perdition.

Now, let us look at it in another light. Are the property holders benefited by it? Every China quarter in Chinatown—every property is depreciated. Chinatown to-day, in San Francisco, would be the best and healthiest part of San Francisco if it was not for these coolie slaves. All the neighborhood around there is depreciated—the property is depreciated. The Chinaman is very shrewd in one sense. He is willing to pay. He never fights against big rent at first; but as soon as he has possession of the property he dictates his own price, and he will get it for his own price all the time, for John knows that wherever he occupies a place it cannot be occupied by any intelligent race, and therefore John has in one sense a little more shrewdness than some of our white people.

Now, let us look at it in another light, gentlemen. Sir, I have listened to my young friend here who made a remark yesterday that California was a prosperous State in spite of the Chinese. Now, I differ with him, and I will show you where he is mistaken. California to-day is the most degraded and impoverished State in the Union! And I will show you why. California, I admit, is a prosperous State for the railroad kings. I admit California is a prosperous State for the bank robbers. I admit this; but California and the Pacific Coast is the most degraded place for a poor white working man to come to. If a white man has to come here let him come, and let him be on an equality with the Chinaman. I know some of these aristocrats. They were poor here once, but they remember not the day when they were poor, and they care not for their fellow white citizens. Gentlemen, I must say, with all respect to my adopted country, the Americans—some of our Americans—they are the meanest men on the face of the earth! They do not care a continental for their fellow man as long as their pockets are filled.

Now, again, I have heard men say, "Have the Chinamen not the same right as a European?" Now to compare the coolie importation with European immigration is absurd; and no man that is possessed of common sense would use—would make use of such an assertion. To compare the Caucasian—you who have been raised where we all came from—to compare them with the low Chinese coolies! No one but an insane man could make such an assertion. The European comes here, gentlemen, and does something to improve our country. He comes here with the same religion, with the same feelings, with the same principles which we possess; and we shake hands with him, and we do right. He improves the country, and he fights for the country. Over one hundred and fifty thousand souls fought under the stars and stripes that were naturalized citizens. Would one hundred and fifty thousand coolie slaves fight for you? Not much! Will they fight for you? If you think so, you must be very far back, sure. Now the coolie—I appeal to the old pioneers—I appeal to you, gentlemen, who have been pioneers of California, and you will bear witness with me that since the last twenty-eight years have you ever known any Chinaman that assimilated with us? If I told you "yes," I would tell you a lie. I have never known not one yet. I have known some of them since fifty-four, and I know them to-day, and they are the same to-day as they were in fifty-four. Are these the people we want here?

Now you are talking about the Burlingame treaty. I will tell you something about the Burlingame treaty. As I told you before, it is a fraud. Why? Because it is a one-sided treaty. How can we remedy this? Look here, what we done by an Act of Congress, approved July seventh, seventeen hundred and ninety-eight: "All treaties between France and the United States are declared null and void, and no longer obligatory on the United States." The United States could declare a treaty null and void with the French Government, but you tell me that we could not do it with China. And something else. The American citizens are not subject to the laws of China, while Chinese are subject to the laws of the United States. England has a treaty with China. What does England do? What do the colonies in Australia do? They manage these affairs, and to-day Australia is a very hot place for the Chinese. They cannot remain there because the government don't want them there. But then you say, if we break the treaty we won't get tea. Gentlemen, we got tea before we made the treaty with China. We will get all the tea we want. No nation upon earth except this would allow it. For three thousand American merchants our country is to be overflowed with slave labor. The Pacific Steamship Company, what are they doing? They have a contract with the Six Chinese Companies to bring these coolies here, and no coolie can leave this State without a certificate. He cannot go without a pass from his masters. The negro in the Southern States could never absent himself without a permit from his master or mistress, and this steamship company are not allowed to take any Chinaman back to China without he has a permit from the Six Chinese Companies.

Now, according to the testimony of all the ministers, doctors, and lawyers in San Francisco, they all testify that the Chinese are a curse; that ninety-nine out of one hundred Chinawomen are prostitutes. We have the testimony of Dr. Toland. We have the testimony of Rev. Otis Gibson. He himself testifies that ninety-nine out of one hundred Chinawomen are prostitutes; and our government knows it, and we all know it; and our fine State government in California knows it; and yet, in the face of all these witnesses, they say: "Oh, we can do nothing with it; we can do nothing with it!" Why can't they do nothing with it? Because they are owned, body and soul, by the Six Chinese Companies. And if gentlemen could see to-day the influence which these Six Chinese Companies have upon our Federal, State, city, and county officers, you would be surprised. Is it possible for human nature to go so low? And yet, this is a fact. All the witnesses have declared it so.

And now, I tell you I have no hope whatever in Congress. Congress will do nothing for us, let me tell you. We have pleaded to Congress for the last ten years, and they have said: "Wait; wait a little longer." And that is all the comfort we get; and our poor and the rising generation are condemned to an everlasting servitude. That is just the result connected with this China question. This coolie importation will never be stopped except the hardy sons of toil stop it. If they don't stop it, they have to work like the Chinaman. Don't look to Congress; don't look to the aristocrats, they don't care nothing for you. They have lost their four million of slaves and they want these serfs in their place. Remember that! They want these serfs in their place. They are not satisfied, and the Chinese are the only nation that can furnish what they want.

Therefore, gentlemen, remember I am not a prophet, nor the son of a prophet; but one fact I know, that the Chinese curse will never be cured except the people rise in a mass; and you know self-preservation is the first law of nature, and also the first law of nations. Any government that will allow a degraded race to come and degrade its citizens, such a government is not worthy of respect. Such a government is not with the people. Therefore, I say the only remedy will be, the sons of toil must rise and get rid of the coolie servitude, or else the coolies will get rid of you. There is only one thing to be done; either you must leave or the coolie must leave! [Applause.]

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: The temper of this Convention is probably against the further discussion of the social, economical, and political aspect of this question. In that sense I suppose it may be

safely said that the subject is exhausted. Better speeches and better arguments have been made by men of greater philosophical capacity upon the subject of race dissimilarities and the race conflicts which have gone on from the earliest of times. The nature of race growth and national growth, in connection with this question, I think I may safely say, has been fully considered, and the judgment of the people of the Pacific Coast has settled, undoubtedly, upon the conviction that the best of the argument is altogether in favor of the proposition that the presence of the Chinese on the Pacific Coast, in our social life, in our industrial life, and even in our political life, is detrimental. We cannot add to or strengthen that argument in this Convention, and the point now is to furnish a practical solution to the question; and the man who can now bring forward a plan which will remove one single Chinaman—yea, sir, even a sick Chinese baby—may be said to have accomplished more in the right direction than all the great mass of speeches and all the literature upon this Chinese question put together. We should endeavor here to deal with it as practical men; we should endeavor to bring out of the chaos of ideas, out of the vast amount of dissimilarity in execution, or in the method of reaching the evil, some point upon which we can all harmonize and agree—some point on which we can determine what power the State possesses, and in what manner that power shall be exercised for the purpose which all pretend to have in view, and that is, to relieve this State, and to relieve posterity on the Pacific Coast, of what is deemed to be a curse.

We profess to have at heart the future welfare as well as the present good of the people of the coast; and, therefore, sir, the discussion now ought to be restricted to the legal aspects of the questions involved. I assume that gentlemen are sincere when they admit that the presence of an alien race, with whom we cannot deal in accordance with American ideas, and in accordance with our free institutions—I assume, I say, that they are sincere when they tell us that they wish to rid the State of the curse; that they wish to do it in accordance with constitutional principles. Now, our forefathers, back to the time of the revolution, and back beyond the revolution, whenever the subject of the presence of the black man in America was brought up, and the institution of slavery was discussed, declared that it was an evil, declared that it could but have an evil effect upon the destiny of the country. Thomas Jefferson said that slavery was the sum of all evils. George Washington said that all his compatriots were anti-slavery men, and their idea and the idea of the fathers was that this was a white man's government. That, sir, is the cry of the party to which I belong to-day, and I was glad to see the Chairman of our committee reiterating that cry, which, it is true, fell into derision after Stephen A. Douglas proclaimed it; fell into certain derision on account of the sentimental view taken by many good people of the United States of the African and his deplorable condition. But it is none the less true. It is none the less strictly in accordance with the American idea that this is a white man's government; a government of Caucasians, established by white men, and for white men. Whenever we talk about treaties; whenever we talk about the comity of nations, it is understood and comprehended within that term that we mean the comity, the international law which exists among civilized and Christian nations.

When we talk about the rights enjoyed by an American citizen anywhere on the Continent of Europe, and the rights of the citizen of any of the nations of Europe upon American soil—which I am glad to know are respected—which I am glad to know are treated with greater liberality as time rolls on; it means the people of white races, and the people of a Christian country. There is no doubt of that. That was the kind of a government that our forefathers established. And all the international law and comity of nations, and the intercourse of nations which has grown up, and upon which the principles that are now recognized among civilized nations have been established, and recognized universally, has been in accordance with this theory—that a government was sought to be established upon these shores, and upon this continent, of white men—Anglo-Saxons, and those who could be brought within the great political fold, and incorporated into the great plan of our government, and merged as good citizens, and as contributors to the prosperity and the elevation of the nation. That was their idea, sir, and it never has been doubted—or never would have been except for certain complications that have arisen in this country in consequence of the existence of African slavery, and the enfranchisement of the slave, and the legislation which has arisen for the protection and the regulation of the rights of that people. It is sought now to be made use of here in California, and in Congress, for the protection of a people that Congress and the fathers never dreamed of, nor thought of, or expected upon this coast, and that is the Mongolian race. Now, we hear allusions made to the Fourteenth Amendment, the last amendments to the Constitution of the United States, and the Civil Rights bill, by those who profess to be anti-Chinese in sentiment, and yet who are continually deploring the want of any power outside of Congress. I will not trouble the Convention with authorities, but I think I may safely say that the view which I have here presented is the view taken by the Supreme Court of the United States, and established in the Slaughter House cases—that the legislation known as the Fourteenth Amendment, and the laws of Congress passed in pursuance of that amendment, had reference to the enfranchised slaves of the South; that their eye was upon that people; that they were seeking to protect them, in all that legislation; and to confer upon them the right of suffrage in what was called the anti-Kuklux legislation, and in the Civil Rights bill. And the direct intent of the law-making power was to protect the people lately enfranchised in the Southern States; and it is so distinctly affirmed in the Slaughter House cases by the Supreme Court of the United States.

Congress is three thousand miles away from the Pacific Coast. Ignorant, as may be safely said, or almost entirely ignorant of the true situation of affairs here, knowing little or nothing of that which we know from day to day by sight, by sound, yea, sir, by smell! of the effect of this alien race; knowing little or nothing about them—it never aimed any of this legislation at all at the relations which have sprung up on the Pacific Coast, and which are, *sui generis*, without precedent.

The Burlingame treaty is another stumbling block, constantly thrust in the way of those who sincerely and honestly feel that this subject is of over-shadowing importance, and that by Congress and by State power it must be regulated, and the people must be relieved. The Burlingame treaty—abundant authority can be brought in here, and books piled up here, covering every table in this room, to show that a treaty, or the provisions of a treaty, do not override a constitutional enactment by Congress, or by the States of the Union in their Constitutions, when it does not conflict with the Constitution of the United States. I am stating, sir, nearly the exact language of the great constitutional lawyer, Jeremiah Black. That, sir, has summed up the whole controversy in a nutshell. Otherwise what would be the condition of this people? What would be the condition of American government? What would become of the sovereignty, which we declare to reside in the people, if the King or Emperor of Germany and the President of the United States might meet together, and by a convention among themselves, establish an internal law of the State, or the laws that should govern the people of the United States? A most extraordinary and monstrous doctrine that would be! The Burlingame treaty, therefore, is but in the nature of a law, subject to repeal the moment it comes in conflict with the sovereign power of the States, acting within their legitimate spheres, to legislate upon a subject over which they have control. The treaty goes down, and there is no question about it. An independent and free minded people, living upon their own soil, within their own jurisdiction, making their own laws, cannot be tied hand and foot in that way, and it is idle to seek to bring to bear upon them such a monstrous doctrine as that is.

Now I come to the subject directly in hand. I do not maintain that the report of the Committee on Chinese Immigration has furnished any solution of the question, or a practical solution of the question. It is undoubtedly crude. It is undoubtedly very crude. Much of it looks undoubtedly like what would be called the legislation of the dark ages; or as some one has expressed it, Hottentot legislation. That is true. It bears that appearance. But the line of demarcation between those who say that the State can do nothing, the whole resting within the control of Congress, and those who maintain that the State does have some power, that the State does have some control in the premises, must exist somewhere, and therefore all this matter has been brought before the Convention by that report. Every single party that has put forward candidates and platforms in this State, has declared in general terms in favor of the exclusion of the Chinese, or in favor of a prohibition of their further immigration. They have declared it constantly in their platforms. It has been the hobby-horse on which, undoubtedly, they have ridden into office. In the last election, for members in this Convention, generally speaking, it was declared strongly by all, and the Workingmen adopted as their battle-cry, "The Chinese must go."

The non-partisan platform, upon which, Mr. President, you were elected, uses language like this, declaring it to be an evil, and pledging themselves to go to the verge of constitutional power. I do not know but that they were going to go out on the ragged edge a little beyond, to rid the State of the curse. What was done by the members from the country, or how they were pledged, I know not; but I assume that a majority who came up to this Convention, came up here with pledges in their mouths, made to their constituents and to the people of the State, that they would do something; that they would do whatever they could after consultation and discussion had developed a proper conception of the power of the State; they would do what they could to relieve the people of this infernal curse. Now, as practical men, the question is, first, are the members willing to keep that pledge in letter and spirit? Are they willing, if they can be convinced of the existence of the power, to go ahead and make use of that power? The first question that presents itself, sir, is this: Can anything be done in this direction by any proper amendments to the Constitution? The question is not now what view will be taken of this action east of the Rocky Mountains; the question is not what view will be taken of it in Europe, or what view will be taken of it in the Empire of China; not at all, sir. We are acting for the sovereign whose territorial lines are bounded and defined, and we must act up to our pledges without reference to their extraneous considerations at all. Nobody has to review this action which we perform here but the people of the State of California. No one has aught to say with regard to the Constitution, or the character of the Constitution we make here, except the sovereign people of the State of California, unless we make an anti-republican Constitution, and then the Congress of the United States, under the Constitution, will be authorized to interfere. But outside of that, there is no limit.

Then, sir, what power has the State, by amendments to the Constitution, to reach this question? There is the great question. There is a question which this Convention must solve. I take up section one, and I comment upon that. There is no objection to it, except simply that there is nothing in it. It is a perfectly harmless thing, and I assented to its being incorporated in the report as a member of the committee. A general declaration of the power which resides inherently in the State is contained in that section, but unfortunately it is followed up with some qualifications to which I object. I offered a section to be incorporated into the Preamble and Bill of Rights, which I understood to be satisfactory to a majority of the members, but it failed to be incorporated in there, because they doubted the propriety of inserting it in the place where I proposed it. A general declaration of the power of the State—that is, that the people of the State have the inherent sole and exclusive right of regulating their internal affairs, and the whole thereof; that they are the judges of whatever is detrimental or dangerous to the well-being of the State, and have the right to use the power of the State to prohibit and prevent it. That is a better statement, in

my opinion, of the power, than this which is contained in this first section of the report of the committee. It is a fair statement of the power. In my judgment it comprehends the whole of the general declaration of the power that resides in the people of a sovereign State. Some objection may be made to it, because it is going toward State's rights too strong. I think not so. I think it is clearly within the decisions—all the decisions upon the subject—and the line of demarcation between Federal and State authority; no restrictions upon the judgment of the people of the State. There, sir, rests the king-pin. There rests the keystone of the whole arch, and that is its ultimate resort. Who is to decide? In whom is the power of judgment lodged? That, sir, is the question. Who is to decide this question? Is it the Congress of the United States, three thousand miles away, ignorant of our situation here, that is to decide upon the internal aspects of this question—and the infernal aspects—or is it the people of the State, those who are directly affected by it? That, sir, is the great question; and I insist upon that right of judgment on the part of the people of the State over this subject-matter, and I say that it has never been denied before in Christendom. It never has been held anywhere that any free-minded and intelligent people could be compelled to tolerate a nuisance, they themselves knowing it to be a nuisance, eating out their civilization, demoralizing their youth, and sapping the foundations of their political and civil liberty, and threatening its very existence; that people could have that nuisance inflicted upon them, and maintained among them, without the power of judgment, and the power of dealing with it themselves, it never was heard of before; and if the doctrine was sought to be promulgated, and sought to be enforced in any manufacturing community in Europe, in London, in Manchester, in Sheffield, that a body of foreign alien laborers were to be thrown upon that people, in less than twenty-four hours the Trades Union would pour two million of people into Hyde Park, protesting in tones of thunder at the very foot of the throne, against the damnable outrage.

We are limited by the terms of the first section of this report in the exercise of that judgment to the proofs that the obnoxious parties are paupers, are vagabonds, or are afflicted with contagious or infectious diseases—a matter which no man can prove. We know that the laboring class coming from China are brought here under contracts for terms of service and labor for years. We are morally convinced of it, but we have no proof. It cannot be established in any Court of justice. These laborers now in all the fair fields of industry on the Pacific Coast, scattered over your agricultural lands, and in your mines, and in domestic service, are healthy people, in the general sense of the word, and can strip down as clean men as the majority of this Convention, and let Dr. O'Donnell examine them. They are inferior in muscular development, in brawn and brain, to the white man, but healthy people in the main. Here and there in the large cities of course are prostitutes, and of course there are diseases, perhaps. Maybe there are lepers. I think most of it is venereal disease; but it is not that we object to. That is not what the people of the Pacific Coast and the laboring and working men complain of. There never has been a time that it was not competent for the authorities, by the exercise of the powers which they enjoy, to have rid the State or the cities from that part of the curse. I suppose the reason why it has not been done is that there is metallic argument against it, drawn from the coffers of the Chinese Six Companies. I suppose that without any constitutional provisions at all, if one half, yea, one quarter of the truth be told, or has been told, with regard to the Chinese quarters in San Francisco, the municipal authorities of that city have had power to expel them without the city limits. I do not think there has been any question about that, sir. I do not think that the Burlingame treaty, the Fourteenth Amendment, or the Civil Rights bill would have been considered infracted by any municipal regulation for the abatement of that nuisance. I have seen it. I have seen a quiet community up in the mountains here in which this foreign alien people have settled, and wherever they settle they immediately draw together in some little quarter. They are like a small or a large devil fish, according to their members, wherever they plant themselves down everything else begins to get away, moves off, gets out of there. That devil fish has planted itself in San Francisco, and it throws out its arms and takes in one block at a time. There seems to be some sort of poisonous exhalation from it which makes everything else get out of there. Even the hoodlums, thieves, robbers, and low prostitutes among the whites get away from there. They cannot stand it. They evacuate, absquatulate, and leave the octopus there all alone. Then it reaches out and takes in another part of a block, and again everything disappears before them as if from some deadly blight. It is like the feeding upon pasture lands of a flock of sheep. I do not wish to injure the business of the sheep herders in the Convention, or the sheep raisers, but they do say that when they take a flock of sheep into a certain section, and they feed over that section, that thereafter cattle and horses and all the more nobler sex of domestic animals refuse to go there. They will not feed there after the sheep have tramped over it and fed there. And that is the way with the Chinese. Whenever they set themselves down they are masters of the situation; everything else seems to want to leave. As I have said before, they start a Chinese quarter. They establish a wash house, gambling house, and a house of prostitution. They are a noisy people, and they are a nuisance to quiet people. People living around cannot sleep at night, and are disturbed by the noise and the lewd women, etc. Finally, in some places, they are invited to go away. I know of a case, only a short time ago, over in the mountains. They were there, and they troubled the neighborhood. The people told them to leave and go away. They talked about their civil rights. The citizens gave them a few days to go, and they did not go. Then they went there with their wagons, loaded up their plunder, and moved off all they had there. They told them about the situation, and not to come back there. No one has raised anything about the Burlingame treaty, and no constitutional provision has been infracted. It seems to be the right of a civilized community to protect itself. Nor is that confined to the Chinese. I know that a nuisance of any kind is compelled to vacate by the strength of public opinion alone where there is an absence of the machinery of Courts and civil law to enforce the remedies. There is a fundamental right inherent in the people to protect themselves from that which is destructive of their peace, their comfort, and their well-being. And so I maintain that the section which I offered to be inserted in the Preamble and Bill of Rights is a broader, and a fuller, and a better declaration of the power than that which is contained in section one of the report of the Committee on Chinese. There is nothing asserted there which does not already exist as a part of the sovereign power without the declaration, and I object to it because the qualifications therein stated do not reach the evil. We do not object to the Chinese population particularly, or individually, or even collectively because they are vagrants, because they are paupers, because they are infected with contagious diseases, but we object to them because they belong to an alien civilization. That is the reason.

What is the population of this country? What is the unwritten idea of the growth and building up of this State? It is, sir, that we plant houses; it is that we create cities; it is that we contribute to the general prosperity and enter into the great mass of useful material to the building up of the State. These do not. They cannot in any sense of the word be said to contribute anything to American civilization, but they constantly draw from it. That is what is the matter. In our fathers' times—I must go back to them, though I want to keep to the question as near as I can, and I have not the voice to go fully into the question now—our fathers understood this matter. Our fathers found, when they struck the shores of the Atlantic, a people already there with prior rights. A people, sir, who are still said and still described by those who have made a study of peoples, to be derived from the same stock as the Chinese. The Asiatics probably are an Indian race—are understood by the best scholars to be. They are the sort of people our ancestors found upon the shores of the Atlantic when they came there. European civilization and Christian civilization obtained a foothold on a strip along the shores of the Atlantic, whilst these people were there, by assumed treaties, by assumed fair dealing, and not by conquest exactly. They have driven that people silently, slowly, and constantly before them, from the shores of the Atlantic to the Pacific, until they have almost disappeared from the face of the earth.

Mr. De Toqueville, the most able writer, perhaps, who has discussed American institutions, characterizes the treatment of the Indian by the people of the United States as barbarous. So it was in many senses. It was, in point of fact, to strip it of all disguise, from first to last a constant war of extermination. That is all you can say about it. And why was it, sir? I suppose if there is a Providence overruling all, that it was because the demands of that Providence and His overruling designs intended the continent for European civilization, and for a white man's government. And our forefathers, when in the light of their blazing homes they pursued the fleeing savage and shot him down, never stopped to discuss the morality of the method, or the causes of that blazing home. He hunted him away because he had no other means of dealing with him. He drove him before the white man's civilization because he could not civilize him—because he could not Christianize him, and there were, all over that broad land where prosperity has built the happy homes that dot the Mississippi Valley, and all of the great Atlantic Coast, the lands are all wrenched from the people that were there before them—wrenched by the hand of power from a people driven at the point of the bayonet, and by the bullet, from before the advancing tide of civilization—because, in the Providence of God, the way had to be opened for the white man's civilization. And that is the best argument that is possible against those who object to saying that we must reserve part of it from the refluent wave of that same kind of hostile civilization that comes from the Orient back to the West. We stand at the very gate of the reservoir that hangs like some high cloud over the people, not only of the Pacific Coast, but of the United States—a great reservoir with five hundred million hungry souls to draw from, which may burst at any time and inundate not only this shore, but flow across the Rocky Mountains and overwhelm the people of the whole United States. I say we must stop the crevasse, we must prevent the inundation anyway, barbarous though it may be, it is our duty to do it; and while the sentimentalists of the East talk about the brotherhood of man and the fatherhood of God, we can tell them that we are trying to preserve them in their homes, in their temples of worship, and in their schools, where they teach the brotherhood of man and the fatherhood of God; for if they do overrun them, as it is possible for them to do, and it is possible in the inscrutable designs of Providence that they should, we labored to prevent it. Do not talk to us about the severity or barbarity of our proceedings.

The American Indian and the Chinaman possess different kinds of civilization to our civilization. They differ in the methods in which they resist it, but it is none the less resistance. The American Indian is opposed to it. He opposed it by savage war; he opposed it by direct and open onslaught upon that civilization which he saw coming. In his ignorance, in his barbarity, and in his vice he had none the less a steady, stern, inflexible will which resisted any advance of civilization, and consequently there could be no other result except the conflict which came. But the Chinese oppose a different kind of warfare to our civilization, and in my judgment it is a more dangerous warfare, for it is an insidious, slow-eating kind of warfare on our civilization, against which you cannot raise an arm as you could against that sort of civilization which attacked you openly, and which you could crush by means of your power.

The police power of the State has no specific or legal definition, but the line of demarcation has to be found, not in what is expressed, not in what has been decided particularly by the Courts, but it is to be found in an examination of the powers that have been granted to the Federal

Government. Before the Fourteenth Amendment was adopted, and the other amendments, the power of the people over this subject, and over the admission of what, in their opinion—their judgment exercised upon the subject for themselves—determined to be obnoxious persons, was not questioned. The power was not questioned. The decisions in the Passenger cases, which have been quoted extensively already, fully and explicitly affirm the right of the people in the exercise of their jurisdiction over their internal affairs, and the regulations affecting the morals, the health, and the general welfare of the State was not denied. Now, so far as we are dealing with the question is concerned, the only effect of the Fourteenth Amendment and all the legislation of Congress thereunder, if any at all, as I claim, was to regulate the relations of the black people of the Southern States with the whites. That was the effect of that. Now, it is true that language is made use of in that amendment, and that language is made use of in the Civil Rights bill, which seems to imply that all persons found upon American soil, wherever the Constitution has sway, are entitled to the equal protection of the laws, and not to be abridged of any of their rights, or of the rights that are granted to any other person. On the face of it, I say, that seems to be the inference and necessary implication to be drawn from that Fourteenth Amendment and the Civil Rights bill. But the peculiarity of them is this: it is well expounded in the views of Judge Black, and in the views of General Butler, that the Fourteenth Amendment was intended to operate upon citizens—intended to operate upon citizens of the United States. In the first part of the article it makes use of the word "citizen." It says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Now, following after that, comes language which seems to be plain to the understanding of all persons:

"Nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Equal, how? Equal protection, in what manner? It is not to be construed or understood that the rights and privileges enjoyed by the citizen must necessarily be enjoyed by every person who comes within the jurisdiction. Not at all, sir. And therefore it is, in my opinion, that the effect of the amendments, and the intent of the amendments, and all the legislation thereunder, is to affect the citizens whose rights and privileges can be abridged, whilst aliens and those who have not become citizens, and who cannot be clothed with the rights of citizenship, shall not be permitted to enjoy those rights. Now, what are the powers of the State? (I must hurry through, for I am getting very tired.) What are the powers of the State over its internal affairs? And what are the internal matters over which the State has power? I wish, gentlemen, to come right square up now to the question. Has the State got any power? And if we point out to you the powers which the State has got, are you willing to exercise those powers? Are we going to confine ourselves down to the simple regulation of paupers, vagrants, and criminals; or shall we say the State has power to determine for itself that the whole class of people are obnoxious and dangerous to its well-being, and to bring that power to bear for the purpose of preventing and prohibiting that evil. Let us take the subject of the internal matters of the State, and of the right to catch fish. as an illustration. Does any man deny that the regulation and the exercise of that power is not proper to the State? Over the waters of the State, tide waters and all, except for the purposes of navigation and commerce, does any man deny that the State has absolute control? That it can admit to the privileges, for instance, of fishing in these waters, none but citizens and deny it to all others? If he does, I should like to see that man. Seven, five, or nine thousand Chinese live by fishing. Are gentlemen willing to say that the State, having this power, shall prohibit five, seven, or nine thousand Chinamen from exercising the right to catch fish in the inland waters of the State? The question is not new. Is that barbarous? The question is not new. Do you want to starve them out? The question is, will you exercise the power? You say you are willing to exercise any power of State. I tell you of a power. are you willing to bring it to bear? And I have a word to say on this question of starving them out. I do not know but it might be made to fit in with this first section. If we have got to find them out to be paupers. the best thing we can do is to make them paupers, and then we have got the power to send them out. That would be a natural and logical conclusion of this method of dealing with the question. We do not propose to let them starve, but if they are paupers, we propose to send them out to starve somewhere else. Why not say they shall not fish in the waters of the State, make them paupers, and then exercise the power which we have to send them out of the country.

Take the other question; take the subject of the right to carry on a business, trade, or occupation. It is a regulation over which the State has undoubted power. It cannot deny to its citizens, but it can deny to every one else the right to a license. Are gentlemen willing to exercise that power and take from the Chinese the right to do business? If they cannot do business, then of course they become paupers; and they are immediately put upon the same footing with the fisherman, and we can send them out.

Take for an instance, the subject of forbidding corporations organized under the laws of the State from giving employment to this class of people. Is there any question about the powers of the State to impose that sort of a condition upon corporations? They hold their franchises subject to the condition that the State may alter, amend, or repeal them, and if no one denies the power, it cuts them off from another great source of employment. Are gentlemen willing to go in for that? True, it will starve them out, but they become paupers, and then we take them as paupers and send them away.

Take again the subject of excluding them from employment upon any public work. I suppose there is no man who will object to the exercise of that power. I do not think nowadays that any man engaged in any public work would employ them, but, on the suggestion of my friend from Los Angeles, Colonel Ayers, I have no objection to its going in. The Supreme Court can set it aside if it wants to. We are not worse off. So as to section five:

"No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution."

I have this remark to make in regard to that, and I wish to call the attention of gentlemen to the posture of this question. We can make these declarations; we can insert them in the Constitution that we make; we can take the Chinese to the Courts, and wherever there is a doubt upon the question, I am in favor of taking the decision of a Court in this way—the only way in which I know it can be done; but I want something to fall back on. I insist that we shall not be left helpless and stranded after the Supreme Court of the United States has declared that these provisions conflict with the Constitution of the United States.

We have had, sir, for years and years, the same old thing. We have had platform declarations. We have had efforts in Congress to bring the subject before their attention ignored; so much so that, as I understand it, there has never yet been a vote taken upon it in Congress. The ayes and noes, or any kind of a vote, has never been taken in Congress upon the question in any shape whatever. So little attention has been paid to our constant and reiterated demands for relief that I do not know that even a committee has ever reported upon the subject at all.

Now, sir, we are proposed to be remanded to the Courts on every questionable and doubtful proposition declaratory of extremely questionable and doubtful purposes. And shall we be left there? No sir! I insist that we shall reserve still the power in the Constitution constituting the basis and framework for a legislative superstructure in the State of California upon the subject. I insist that we shall declare—positively and strongly declare—these rights, and these powers, police powers of the State, and direct the Legislature to erect upon it a system of laws by which the Chinese that are here will be excluded, and by which they can be driven out faster than they can be brought in. I say it can be done! I say it must be done. And I say I want to see it done, for the reason that Congress must be awakened, the great American people must be aroused. Men are there constantly at the doors of Congress, and in the President's chambers, insisting it is not the actual and genuine sentiment of the people of the Pacific Coast that this immigration must be stopped. We must demonstrate to them that we are in earnest. Yea, sir, we must startle them. I am in favor of shocking their sensibilities, and then they will know, sir, that we are in real earnest. What will be the consequence?

MR. AYERS. Do you think that there is anything that could shock the sensibilities of the East on this subject more than to adopt a section in the Constitution declaring the power of exclusion to exist in the State?

MR. BARBOUR. Yes, sir, I do. I think they would be more shocked by saying that if the worst comes to the worst that we are willing to use the public power of the State to starve them out. I do, because they might say we are trying to bully when we say that they shall not land here; but they know we have got the other kind of power, and seeing us propose to use it, they may say, "These people are in earnest. They are going for blood!"

Why is it that Chinamen come here? What is it that draws them to these shores? Demand for labor. If nobody employs them they will not come, will they? If they cannot get employment they will not come. That you may say is a maxim of political science. Men move from the love of food more than for mere conquest, and if they come here, they come here for food and employment. Destroy the demand and you destroy the immigration. If they see in the East that we are striking at the very demand for labor itself, they can but say, "These people are in earnest, if they are barbarous and cruel."

I am in favor of startling them. I am in favor of doing it so because I am willing to have either one of the consequences to happen. We try to reach them by saying, "Aliens ineligible to become citizens of the United States," because we do not want to affect foreigners of other countries. We can say that and take our chances. We do not actually know, by the decision of the highest tribunal, that they are ineligible to become citizens. The best decision that we have ever got, of course, declares them ineligible; but it is that sort of a decision that may be reversed to-morrow, and the highest tribunal may declare them to be citizens of the United States. Other Courts of record in the United States have admitted them, and are admitting them to citizenship. Congress might, at this session, amend the naturalization laws so that they could, unquestionably, become citizens.

Perhaps we will drive Congress into doing that, who knows! We had better drive Congress into doing something than to have this eternal contempt of the demands of the people of the Pacific Coast, for then, sir, we would be compelled to fall back on our own resources, knowing that there was no hope there. But it might have the other effect.

Gentlemen are always claiming and contending here that it would be a shame and a stain that would bring the blush to the cheek of a Californian to have such provisions in the Constitution, or our statute books, as apparently in defiance of our American civilization. I say, sir, that if under the spur of our resolute determination and our earnestness Congress should act, it is not difficult to remove them from the Constitution and from the statutes. It can be done simply and absolutely. It need not remain there when the effect intended has been produced in any other way. But the country must be awakened. It must be awakened as by an earthquake shock to the determination of the people of the Pacific Coast that something must be done, and some relief must be granted. And if it is possible to cut them off from every avenue of employment, and within the power of the State to do so, and it can be demonstrated on this floor that such would be the effect, where is the gentleman who opposes such measures, can reconcile it with his declarations to his constituents that he was willing to go to the

very verge of constitutional power for the purpose of doing so. It does not need, sir, that it be done instantly and at once. It does not need that the vast army of Chinese laboring on this coast shall be suddenly, at one fell swoop, cut off from all employment, but that they shall be worked out. That is the plan, and the idea; we all hope, we all desire, we all prefer, that Congress should close the Golden Gate against their further immigration, but the question has resolved itself simply into this: If Congress will not act, are you willing to do so here in the State of California? We are placed in this predicament that we cannot ascertain the action of Congress before this Convention shall adjourn. If we could, we might make a last appeal to them to step in now and forbid Chinese immigration, and we could attend to those that are here. But we have no such opportunity. We must act then as if we had no other resource. We must act as if the question was upon us to decide for ourselves, to regulate for ourselves, and to regulate it in the best and most efficacious manner. Now, sir, what is that manner? With every disposition on earth to conform as nearly as may be to the ideas of civilized mankind, and the ideas of justice, and of humanity, I do say and I do insist that promptitude of action is imperatively demanded by the exigencies of the case—promptitude of action, sir, in order to save the fair cities and the fair fields of California from being the scenes of carnage, of riot, and of blood, I speak whereof I know. I speak whereof I know when I assure gentlemen of the Convention, and every one within the sound of my voice, that an uprising is hard to be restrained to-day. I have been, sir, upon the inside. The reverence for American institutions, the reverence for law and order, appealed to, has produced its effect. There does exist yet in the minds of our people an earnest and prayerful desire that they may not be driven, as they believe it will become imperatively necessary for them yet to be driven, to resort to that course taken by the revolutionary fathers when they went upon that ship in Boston harbor and flung overboard the contraband tea. God spare us that sort of a revolution, sir.

We should avert it if possible. We should give them some gleam of hope that something will be done at home, by peaceable and constitutional means. They are not anxious to rush into these things, but they do know their power and it cannot be denied. It cannot be denied that a great majority having within their control the destinies of this State, having expressed time and time again the determination, find themselves continually denied the rights they ought to have, continually forestalled in the occupation of the avenues of labor by this alien race, are discontented. It is for that reason, sir, that here and now I call upon this Convention for some promptitude of action, whatever that may be, which shall be an effectual, startling, and convincing awakener of the people of the Eastern States, of Congress, and the ruling powers, to the fact that we are in earnest, resolute.

The last biennial message of his Excellency the President of the United States, supposed to present for the consideration of Congress all matters affecting the welfare of the people of the United States, has not one single syllable touching a question which is the overshadowing and paramount subject of discussion at every fireside on the Pacific Coast; not one syllable; not one line! Deaf, indeed, to all prayers seems to be the ears of those that are now in power.

I see the hour for recess has arrived, and I will give way for a motion that the committee rise.

MR. STEDMAN. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

MR. PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

The hour having arrived, the Convention will take a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

CHINESE IMMIGRATION.

MR. MILLER. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment to section seven.

SPEECH OF MR. BARBOUR—CONCLUDED.

MR. BARBOUR. Mr. Chairman: I was presenting to the consideration of the Convention the conflict, the irrepressible conflict, which is impending over the people of the Pacific Coast by reason of the presence of a Mongolian population. I maintain that the conflict, in the very nature of things, unless a feasible remedy can be found, is inevitable. It is, sir, an irrepressible conflict between two entirely dissimilar civilizations—aye, sir, between two different systems of labor, as was the old irrepressible conflict between the free white labor of the North and the slave labor of the South. The manifestations of the conflict and the opposition existing may be different from the manifestations of the old conflict, but it is none the less true that the signs for a future conflict exist as certain and as inevitable as ever did exist the signs of the old conflict, and it is the part of statesmen—of true and wise statesmanship—to avoid the revolutionary part of the conflict, if it is possible to do so. Had our forefathers been guided by the experience of nations, as they might have been, this country would have been relieved from the conflict which impended over it so long, and which finally burst with such terrible effect upon it. But they were not guided by experience. They temporized. They felt they could not yield up the kind of labor which in their day they contended was the only kind of labor with which they could develop the resources of their section of the country.

And that same argument has been made on the floor of this Convention. We have been told here that Chinese labor is developing the resources of this country; and we are told now that Chinese labor is necessary to the further development of the country. Members did not proclaim these sentiments in the nominating conventions; they did not proclaim it on the stump. If they held any such opinions they failed to make it known before the election. They admitted the impending conflict; they admitted the evils resulting from the presence of the Chinese, and yet they now tell us they cannot work their mines at the present rates of labor, and that the present wages for white labor are too high.

I admire the honesty and candor of the gentleman from Sonoma, Mr. Stuart, who makes no secret in this Convention as to what his opinion is. He believes that a great many of the landholders of the land can not work their land with white labor, at the present rates of production. I would rather hear men come out squarely and oppose these measures, for some cause, than to see them indifferent—assenting to the doctrine of the evils of Chinese immigration in the abstract, but unwilling to do anything practical to abate the evil. I contend, however, that the gentleman from Sonoma is mistaken in his premises. I contend that if the labor market of California could be instantly deprived of this great source of supply, there would be an influx of white labor to fill the vacancy. It will be governed by the law of supply and demand. Create a demand for labor, and inform the white laborers of the country that they will not be compelled to come in competition with Chinese labor, and they will come. You have but to call for white labor and it will come. There is no doubt about it in the world. It has been here, sir. It has looked over the fields, it has sought to obtain this employment, but it was forestalled, and it did not stay, because the ground was occupied—because free labor would not volunteer to place itself in competition with slave labor—or that which is similar in almost every respect to slave labor.

There might be present hardship to the industries of the country by the cessation of a hundred thousand laborers, if that is a correct estimate of the number. I admit that there would be a depression produced by the sudden withdrawal of this number of laborers. But is it not infinitely better for the interests of the entire community, for the interests of our future industries, and for the people of California and of the Pacific Coast, than that so much suffering, so much hardship be entailed upon them?

Now, I do not propose to go into an elaborate discussion of this section, or of the various sections of this report, but with regard to the method of regulation I have this to say: I do not desire to be left helpless and powerless by what I fear will be the decision of the Supreme Court of the United States. I do not say that these provisions cover the case, or are exactly such as this Convention ought to adopt. But I do say, and I insist, that it is demanded of us here in this Convention that we do make some use of the internal police power of the State, in the event of the restraint being denied by Congress, or in the event that these other provisions be declared null and void. When we enter into the State, which is called a political community, we make a contract with all the other members of that community, and to that extent surrender certain of our rights. A given number of the members of this Convention may enter into an agreement among themselves, by which they bind themselves, by certain forfeitures, not to employ Chinese labor. They are legitimate agreements. They may be enforced. I maintain that the State, having the power to make these regulations, is empowered and authorized to do the very same thing. I maintain that the State may impose upon its citizens certain disabilities, in the event of their employing that kind of labor, because it comes within the police power of the State. It has the right to determine what kind of labor, in its judgment, and the presence of what kind of laborers are detrimental to the welfare of the State; and whoever employs it, whoever is instrumental in bringing that kind of labor into the State, to that extent is instrumental in maintaining a nuisance; and, therefore, it is competent for the State to impose that condition upon its citizens, at least those who come within its jurisdiction with regard to subject-matters of that kind. With all that class of persons who hold public offices, and exercise rights and privileges granted by the State, the State has a right to impose that kind of conditions upon them—the State may name the obligation clause—*eo nominee*. They may say that the Chinese—putting the question squarely—may not be ineligible to citizenship, no matter what the Courts may decide; and it is within that power, and within that general authority of the State, to impose these conditions upon the citizens—the conditions upon which they may exercise these rights and privileges.

But I go beyond all that, sir, and I say that it comes within and it ought to be placed upon the ground of the great sovereign power of the State. Here is what is confessed to be the greatest nuisance ever imposed upon a free and enlighted people, drawn here by the circumstances, the result of the growth of the State under the laws of supply and demand, which was in the beginning considered unworthy of particular attention, but which has grown to such proportions that it has become a mighty nuisance. Now, where is the community, where is the individual, where is the city, where is the county, where is the State on the face of the globe which does not possess as one of its chief attributes the power to abate nuisances? Simply a nuisance, and a great nuisance. And the judgment of the people of the State of California has already proclaimed to the world that here in our midst is the crowning nuisance, which calls for the exercise of the sovereign power of the State for its abatement. I maintain, sir, that the State does have the

power to send them without our limits. And it is our duty to impose this duty upon the Legislature, which has control of the machinery. I am willing to take section one upon that ground. I am willing to take section two, which forbids the employment of Chinese by corporations. I am willing to take section three, which forbids their employment upon public works. I am willing to take section four, because it will hold at least until overturned by the Supreme Court of the United States. I am willing to take section five upon the same ground. Now, I understand the majority of this Convention are content to take this section, but desire to stop there. Now, sir, I can very readily perceive, under certain constructions put upon this section, how it will result; that we will deserve at the hands of the people the charge that we have done nothing. I can see how every single one of these sections may be rendered nugatory, because they do not—not one single one of them—come squarely down to a declaration of the duty of the State, to bring the arm of sovereignty, to bring its police power to bear directly upon this question. That is exactly where we differ. The Legislature and the municipalities will have no power. We not only want to give them power to do it, but we ought to impose the duty upon them. And it is for that reason that the succeeding sections, six, seven, eight, and nine, or something similar to those sections, ought to be incorporated in the Constitution, or submitted in separate sections. These sections are as follows:

SEC. 6. Foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State, and any lawyer appearing for or against them, or any of them, in a civil proceeding, shall forfeit his license to practice law. No such foreigner shall be granted license to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person or corporation employing them. No such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State; and all contracts of conveyance or lease of real estate to any such foreigner shall be void.

SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared hereby to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation or otherwise, for the expense of such exclusion. It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. It shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns.

SEC. 8. Public officers within this State are forbidden to employ Chinese in any capacity whatever. Violation of this provision shall be ground for removal from office; and no person shall be eligible to any office in this State who, at the time of election, and for three months before, employed Chinese.

SEC. 9. The exercise of the right of suffrage shall be denied to any person employing Chinese in this State, and it shall be sufficient challenge that the person offering to vote is employing Chinese, or has employed them within three months next preceding the election.

I introduced into this Convention a proposition to instruct the Judiciary Committee to report to this body the legality of submitting separate articles to the people, to be ratified or rejected, and I was in hopes they would have done so before we reached this article. I am informed they have made up their minds, and I suppose the probabilities are that we will be advised that it is not competent for us to submit separate articles for the people to vote upon. They may be right, and they may be wrong. I am of the opinion that it will be satisfactory to a large portion of the people to be allowed to vote directly and squarely upon this Chinese question; and if the outcome shall be that a majority are in favor of, or opposed to restrictive legislation, then it will have no validity; but on the contrary, if a majority do decide in favor of this legislation, it will be a direct and positive announcement: first, of the opinion of the people of the State of California; and second, that it will leave the Legislature power to do something for the accomplishment of this result. I have taken the opinions, as far as I have been able to do so, upon this question, and I believe they are willing to submit—outside of the Constitution—to the electors of the State of California, directly and squarely, the proposition whether this State shall bring to bear her police and internal power for the purpose of expelling the Chinese from our midst.

Many tell us that the question of Chinese commerce and the Chinese here are so mixed up with the laboring interests, bound up with it, that if you take the honest sentiment of the people of California, it will be found to be against restrictive legislation. Sir, I am perfectly content to risk it to the people, though I know that many who pretend to be anti-Chinese reformers secretly employ Chinese, and are secretly in favor of Chinese labor. I know that to be true, sir. I am willing to take the chances on that. I am not afraid but the honest sentiment of a large majority of the people of California will be found to be on the right side, if taken in a fair and square election.

Now, sir, I have spoken long enough, I suppose, both for my own good and the comfort of the Convention, but I have endeavored to plead the cause of the workingmen of this State before this body. I have endeavored to present the claims of that numerous class, but whether rightfully or wrongfully I know not. I have come to the conclusion, from the character of the legislation that has taken place; from the character of the events constituting the history of this coast for the past ten years—I say I have come to the conclusion that they have no friends among the powers that be. Whether rightfully or wrongfully, sir, I say that the workingmen of the State of California have lost confidence entirely in those who shape the legislation of the country, and they have done so because, notwithstanding the loud professions—the reiterated professions of friendship and devotion to the cause of labor and to the rights of laboring men—they have seen year after year roll away and nothing done—no, not one single step taken in the direction of reform—and I come before this Convention pleading their cause; and we would plead it in a sincere way. And I say to this Convention now, I demand, sirs, in the name of the workingmen of the State of California, that something more than mere obstructions, and humbug, and pretense, be dealt out to them hereafter. They want some practical work, something that will produce practical results. Nay, more, sir. Not alone for them do I appeal: I do so in the interests of the rising generation; I do so in the interests of humanity; I do so in the interest of the future prosperity of the Pacific Coast, and of California, which is my home, which has held me so far, and which will probably be my home so long as I live, and my resting place when I die. [Applause.]

MR. JOYCE. Mr. Chairman: I would like to offer a substitute for section one, as it at present stands.

THE CHAIRMAN. The question is on the amendment of the gentleman from Los Angeles.

The amendment was adopted.

MR. JOYCE. I offer a substitute for the whole business.

THE CHAIRMAN. Send it up.

THE SECRETARY read:

"SECTION 1. It shall be the duty of Mayors of incorporated cities, and the Supervisors of counties, after the first day of May, eighteen hundred and eighty, to see that no Mongolians be allowed to reside within the limits of their respective cities and counties; and it shall be the duty of the Governor of this State, in case of the inability of such Mayor, or such Supervisors, to use all the power of the State in assisting such Mayors and such Supervisors in enforcing the provisions of this section.

"SEC. 2. It shall be the duty of the Legislature to make all the necessary laws for the enforcement of the above section."

THE CHAIRMAN. The question is on the substitute.

SPEECH OF MR. JOYCE.

MR. JOYCE. Mr. Chairman: I offer that substitute for this reason: it seems to be unanimous, or very near unanimous, in this Convention, that they are all in favor of adopting some measure that will rid the country of the Chinese. Now, sir, it strikes me that being adopted, there is no possible means of labor being brought into competition with the Chinese after the enforcement of this. There is no necessity of dealing with the increase of the Chinamen in future, because, if they cannot reside here, they will have no anxiety of coming here. I believe that before the rebellion a majority of the border States had provisions preventing free negroes coming into their States. I believe, in a great many cases, these laws were executed; and I believe if this provision be embodied into the Constitution there will be no difficulty in the future in dealing with this thing. In the next place there is another principle back of it. If there are any counties in the State that desire to have Chinese, they can use the local option means. If the people desire to get rid of the Chinese in good faith, the sovereign will of the people can instruct their officers to do so. I do not see why this will not solve this Chinese question in a very simple way.

SPEECH OF MR. BARTON.

MR. BARTON. Mr. Chairman: Upon this subject, sir, I desire to say a few words, if I can have the attention of the committee for a few moments. This is a subject, Mr. Chairman, and gentlemen of the committee, more vital to the State of California and the whole Pacific Coast than any or all other questions that have ever been presented to the people of this coast. Year after year we have remained with our hands tied: year after year have we seen the Democratic party, and the representatives of the Republican party, assembled in this hall, and announce to the people of this State that they were positively opposed to the further importation of Chinese, and engrafting in their platforms, and upon their banners, in glowing colors, that infernal deception, calculated and designed for the purpose of creating sympathy and political prestige. Year after year have they inscribed upon their banners in every campaign this deception. Year after year we have heard these California demagogues (some of whom we find in this Convention to-day, sent here by the people to represent the people's interests), afraid to raise their voices on this floor on behalf of the people. Sir, I have been waiting for some of these great men who occupy seats here to rise up, statesman-like, and let me hear them place themselves either in favor of the people of the State of California and her institutions, or in favor of continuing this Mongolian curse.

I perhaps feel more deeply than many of you. I have been a citizen of this State long enough to rear a family to manhood, and I find myself and my children brought down by force of circumstances and misfortune to a level with these slaves, and yet I maintain my dignity. I stand here to-day to defend my dignity and my manhood; to defend the principles of our government and of the people of the country, and that is what I am here for to-day. The representatives of the working people of this State, in the Legislature of eighteen hundred and sixty-six and eighteen hundred and sixty-seven, asked to have engrafted upon the statute books that where the State granted aid to corporations, the parties receiving such aid shall not be permitted to employ Chinese labor thereon, and I am sorry to know that my Democratic friends and my Republican friends, in both branches of the Legislature, almost solidly voted against the proposition. That is a matter of record, and gentlemen need not take my word for it. Three several times when that measure was brought up, our Democratic friends and our Republican friends voted solid against it. The people asked that when the State was giving aid that the work should be done by white labor, and on these three several occasions the friends of labor, so called, turned their backs upon the people and voted against the proposition.

As to the evils of Chinese immigration, allow me to say right here that I do not believe, when you come right down to the real sober

thought, that there is any great need for this argument. On this subject, I believe that the voice of humanity dictates that it is a vice; that it is the sentiment of the people of this State that it is a curse; therefore I do not propose to discuss that proposition at any length. We find ourselves in a very peculiar condition. We have the slaves of Asia, the penal scum of Europe pouring in upon us for the last twenty-five years, and in addition to that we find England closing Hell Gate and all her colonial ports against all of such scum, and we ask, in behalf of the people of this State and of humanity, that the Golden Gate shall be closed against them likewise. We ask this as a matter of self-protection. And I claim we have the right, notwithstanding the Burlingame treaty, to incorporate a clause in this Constitution, to drive out, if you please, from the incorporated cities of this State, and from the counties, this Chinese curse. Now, you may think that this is an extreme view, but if there is one thing above all others that I am in favor of, it is of protecting my Caucasian brothers in the State of California. I say England has closed Hell Gate, and I am in favor of closing the Golden Gate also. When we talk about the Burlingame treaty we are informed by these shoddy demagogues, hypocrites, and false philanthropists that we are powerless. You cannot abrogate the treaty because England is a party to that treaty. They hold a part of China, and she has become a party to the contract.

It is a lamentable fact, Mr. President, that we find ourselves so thoroughly controlled, both in our State and national halls of legislation, by the money bags of Europe, that our liberties are almost gone. And if we are to be compelled to submit to this thing, what will be the result? When we find that our statesmen have betrayed us; when we find that the combined powers of Europe are controlling the National Legislature against us, why, there is but one sequel to this question, and that is, that this country will be revolutionized, because, sir, Mongolian slavery can never predominate in this free country. I hope my eyes may never behold the spectacle. Again, I ask, where are our statesmen? Will some great mind come to the rescue and stay the impending conflict, and prevent, if possible, the deluging again this glorious country with blood; and it was to prevent this state of things that the workingmen have been called into existence to bare their breasts to the fight to maintain the constitutional law of this government.

The farmers ought to be as deeply interested in this matter as any of us, but I am sorry to say such is not the fact. The Grangers are false to their professions in this. They declare in their declaration of principles to foster and to elevate labor. Do they practice what they preach? No; they turn my boy and yours from their door to become a tramp—in most cases unwillingly. Why, sir, I have been cautioned by my brother Grangers not to oppose Chinese labor; if you do, you will sink the institution. I am told that many of our most influential Grangers are the advocates of Chinese cheap labor, and the Grange cannot afford to antagonize such an influence in the Granges. I am sick and disgusted with all such ideas and men; they are our very worst enemies. Instead of elevating labor, they are dragging labor down to the level of the Mongolian serf. Let the producing classes come down from their false position of high life in low circumstances, drive the Mongolian from the kitchen, from the wash-house, and place therein a Caucasian boy or girl. Stop before it is too late. No longer assist in dragging down our daughters to degradation and disgrace. You cannot deny it. The result of this Chinese labor is the filling of our land with hoodlum boys and girls, and you may talk as you like, but this is the subject of all others. The people are calling upon you, and you should open your mouths and assist us in some way, and let us once more stand up in our stalwart worth and manhood, like decent and dignified white men of our nation and State. Why, sir, where are our statesmen? They are dead! dead! Dead to the sensibilities of human nature. They tell us if it had not been for this system of human slavery the State would not to-day have been what she is. Go with me into the berry fields of San José—or any other portion of the State—and when you find a man that is willing to give white men and white boys employment, what does he tell you? Simply that it is impossible for him to employ white labor and compete with his neighbor who employs Chinamen. This is something that presents itself to every intelligent mind, and it should be dealt with according to its merits. Go to the fruit growers of the State, along the Sacramento River, and see the hundreds and thousands of Chinese that are employed, and ask these men if, in their inner consciences, they think it is right to give employment to Chinese to the exclusion of white men. They will tell you that when a white man comes along and wants work, he is informed that he must eat with and sleep in the same house with the Chinese. If that don't suit, you can go along. So, of course, he is turned away from his own people, and made to live with a herd of slaves. He is not fit to lay down his blankets and partake of the hospitalities of his own people, but has to eat and sleep with these slaves. You have driven all the honest labor from the State, in this way, both male and female.

We have heard so much of the dogmas of the would be leaders of the Republican party. I hope I may be excused for speaking thus plainly in reviewing the actions of the political parties on which we have depended. I say to you to-day, behold, if you please, the Goddess of Liberty, weighed down by over two billion dollars. Where has this money gone? Much of it has gone to subsidize a few scoundrels in the shape of a Chinese steamship company, for the purpose of importing and bringing into this State this horde of Mongolian slaves, and yet they tell us that a national debt is a national blessing. God forbid that the intelligence of the State of California should longer submit to such doctrines. Gorham and his followers teach the doctrine of the brotherhood of man, and the fatherhood of God. Away with such sentimentalism; for it is a curse and a stench to the people of this State and of the nation. We want no more of them. But if there be any more of them left within the confines of the State of California, be he Democrat or Republican, we say to them, we will have no more to do with you. The time has come when the people who take from the soil the material wealth of this great State will have no more to do with them. We want live statesmen, who are awake to the wants and necessities of a great people. Mr. Chairman, I am afraid the American statesmen have all ceased to live. I would like to see California produce one statesman that the people might have confidence in. We are admonished by the gentleman from San Francisco, General Miller, not to be led away by what he calls popular clamor. Sir, was it not popular clamor that threw the British tea into Boston Harbor? And was it not that same popular clamor that resulted in American independence? It was that which actuated the people, and yet we are told that we must not give way to popular clamor. I admonish you to give heed to popular clamor, for it is the voice of the people finding expression, and the voice of the people is the voice of God.

And more, sir, we have seen these Chinese erect in the heart of a great city an independent tribunal of justice, so called, in defiance of the laws of the government. Is there any other nation on earth so imbecile; is there any other nation that would for one moment tolerate such a thing? These heathens are employed in almost every household in the land. Have you ever thought how extensively they are employed? In every house in the city, on the farm, and everywhere. Nineteen out of twenty farmers who have help to cook for employ Chinese cooks. Suppose they should determine to destroy us, they could by one fell swoop, by placing poison in the food, destroy the people of the State. We ask who does not employ them? The Supreme Judges do, all the State officers do, the farmers do—in short, we all do; directly or indirectly, in some way or other, we are compelled to contribute to their support; and little by little this curse is fastening itself on the society and the politics of our fair land. They can never assimilate with us, and never will. They can and will supersede us in all branches of industry and labor, because of their habits of cheap living. They domicile with the rats and dogs. One hundred of them will thrive and do well in the same space that would be required for an honest white man and his family. They pay no tribute to the government, they will not fight the battles of our Union; the autocrat, the millionaire, and the Shylocks of the land want them, and we are told that our duty is to compete with these Mongolian slaves. I say these are public servants who tell us to do this, and it is disgraceful. White men will not submit to these things, and white women need the work and must have it. Where is the cold-blooded wretch who says this is not a great shame and a disgrace? And I am proud to know that it does not meet with the approbation of the people of this State.

Then, sir, again my attention was recently called to another and terrible outrage. The State gives one hundred dollars for the support and maintenance of orphans, and seventy-five dollars a year for half orphans and abandoned children. The people of this State are called upon to pay this money, but, sir, within a stone's throw of this building all the washing from that asylum—which was burned a few nights ago—goes to the Chinaman. There are young girls in that institution from twelve to sixteen years of age who are perfectly able to do this work; but no—that curse is fixed upon us so firmly that false pride and false modesty is driving us to perdition as fast as possible. I say it is wrong that we should permit these things. It is wrong that the people of the State should be compelled to pay taxes to support such institutions as that. Think of it, thirty or forty dollars worth of washing taken out of that building every month and given to these Mongolians, when the inmates ought to be compelled to do it themselves, instead of being supported in idleness. Again I ask some of our great statesmen to rise and solve this problem. Help us out of this difficulty. It is debauching public morals in every sense. We see it on every hand, and yet our great men are never heard to utter a word against these things. They may say that these are trifling matters. Mr. Chairman, there is where we should begin. Come down to the very bottom, and work up to a more healthy condition of things. The Chinese, we are told, in many of the Eastern States are constantly being admitted to citizenship. Now I would like to be informed by some intelligent gentleman how we are to understand this. Are we informed correctly when we are told by the leaders of our government that they are not entitled to become citizens, or are we to take the records of those Courts which are admitting them to citizenship? Only a few days ago, in New York, several Chinamen were admitted to citizenship. I tell you gentlemen this is all a delusion and a snare. And I am waiting for some of the leaders of this Convention—I don't mean the mudsills—to come to our rescue, and do something that will relieve us of this curse. I would that I had the power to drive these slaves over to the other side of the Mississippi River, five thousand, ten thousand, yes twenty thousand of them, in order that the Eastern people might become educated up to our necessities; and if I had the power to-day I would send a horde of those Chinamen into New England. That is where I would send them. That is what I would do with them, and I pray that time may come. But there is no hope of that. They intend to make their homes here. And unless we can find some way to prevent it they will fasten themselves upon us forever.

And now, Mr. Chairman, I want to give you an idea of the character of a man who made an attempt to come to this Convention, and I know whereof I am speaking. It was he who contended against me for a seat in this Convention. He is possessed of great wealth, having an income of perhaps eight hundred or one thousand dollars a month from houses rented to Chinese prostitutes. When our little city passed an ordinance that these houses shall be closed, he goes to a Justice of the Peace and makes a bargain: "How much will you charge to marry these people for me—how much a couple?" He secures Chinese bucks enough, and the prostitutes were all married to them, and the next morning this individual goes out and kicks the door open and tells his tenants to walk in, and the authorities are told to go to hell. "These are my tenants and my houses." This is the character of man who would legislate for the workingmen of this State. But, thank God, they are

few, and if I thought such men could ever wield and control the power in this State, by the eternal God I would leave it, never to return. But having grown up, as it were, in this State, having enjoyed almost thirty years' citizenship, having all my interests identified with those of the glorious State of California, I shall not leave so long as there is a chance of ridding the State of this curse. If I had not taken the opportunity of saying a word on this question, I should have considered myself derelict in my duty as a citizen and a representative of the people. We want to know whether our hands are completely tied by the combined power of Europe and the banks of America? For God's sake do not let this opportunity pass, but in thunder tones breathe an emphatic declaration into the fundamental law of California. If the time comes when our liberties are to be taken away, let us rise up and see to it that none but friends are put on watch. Send those to Congress who we know will abrogate the Burlingame treaty, and make the Caucasian people free from the scum of Asia. Let us work in the interest of the free people of the country, and let us make our record now.

SPEECH OF MR. WICKES.

MR. WICKES. Mr. Chairman: What we do here must not be done with reference to any one class of the people of this State. Our work here is not final, and upon this Chinese question we wish, as near as possible, a unanimous ratification of our work. In deference, then, to those who believe in the brotherhood and evangelization of man, I give a brief outline of scriptural authority for the division and exclusion of races. First, I speak of the confusion of tongues and dispersion of races from the plains of Shinar, in the Valleys of Euphrates and Tigris. The same power, if the whole race is descended from one pair, must have infused primordial germs into these wandering peoples, from the development of which, under modifications of climate and surroundings, must have come the three or five distinct types of human kind. They created the tower of Babel, and the tower was destroyed, and a confusion of tongues ensued (something like that witnessed here in this Convention at times). These types now show that they are adapted to present and peculiar conditions.

St. Paul declares that, although God made of one flesh and blood all nations of the earth, He appointed unto them their bounds and habitations. Missionary work involves the sending out, to convert, not bringing in incongruous material to proselyte. The term "Apostle," means "one sent." Scripture, then, plainly teaches that the races are on different lines of evolution. If other races invade us, we should order them back, or meet force with force supported by the whole people of the State. The Jews expelled the Canaanites from the inheritance provided by God for Abraham and his descendants. A prediction in the Bible, relative to a people numerous as the sands of the sea, styled Gog and Magog, a Tartar race who shall threaten the Christian civilization, evidently points to the Chinese. It cannot mean the Turks, for the Mahomedan power is now broken, and its system of theology passing by an easy transition into the Christian.

Nature teaches the aristocracy of race, the law of nature's selection, the survival of the intellectually fittest. Culture developes the higher from the lowest types. Agriculture, floriculture, and stock raising teach us to preserve the best seed, The coming race, then, must be evolved from the white. The maintenance of this higher law should be dearer to us even than the Federal Union. In the Constitution we can only introduce such police measures as are covered by sections one, two, and three, and eight of the article on Chinese. We cannot exclude the Chinese, because we contravene the treaty-making power of the United States (vide amendments of the United States Constitution). We can now also memorialize the Congress of the United States to modify or abrogate the Burlingame treaty, and can prohibit naturalization of Mongolians in our Constitution. I am in favor ultimately of exclusion; but as we are obliged to lay our projectile Constitution before the United States Congress, for its recognizance, it would not now be good policy to defy the National Government. We must elect the next State administration pledged to support the closing of our ports against the Chinese, and work the public mind up to sustain such measures. Who does not stand shoulder to shoulder with us then, is a recreant to his race. For my own part, if this Chinese immigration is not stopped, I shall have to take my little family from these shores to some isle of the sea to spend the remainder of my days. I can see no other escape unless this invasion is soon checked. [Applause.]

THE PREVIOUS QUESTION.

MR. SMITH, of Kern. I move the previous question on section one.

The motion was duly seconded.

MR. CROSS. I am tired of hearing this previous question.

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

Division was called for, and the committee refused to order the main question—ayes 39; noes 46, and the section was passed over for one day, under the rule.

CORPORATIONS AND THE CHINESE.

THE CHAIRMAN. The Secretary will read section two.

THE SECRETARY read:

SEC. 2. Any corporation incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises, and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation.

MR. JOYCE. What becomes of my substitute?

THE CHAIRMAN. It goes over for one day.

MR. CROSS. Was the majority opposed to the previous question?

THE CHAIRMAN. Yes, sir; the committee refused to put the main question, and the section went over until to-morrow.

MR. BURT. Mr. Chairman: I offer an amendment to section two.

THE SECRETARY read:

"Strike out the words, 'are not eligible to become,' in line four, and insert as follows: "have not declared their intentions.'"

THE CHAIRMAN. The question is on the amendment of the gentleman from Nevada, Mr. Burt.

SPEECH OF MR. BURT.

MR. BURT. Mr. Chairman: I have two objects in offering this amendment. In the first place, I wish to state here that I am not only willing but anxious to go just as far as possible in legislating upon this subject without coming in conflict with either the laws or the treaty of the General Government. But it seems to me, sir, that the section as now constructed, if it is engrafted into the Constitution, must come in direct conflict with what is known as the Burlingame treaty. That treaty provides substantially that citizens of the Chinese Empire shall enjoy all the rights and privileges accorded to the subjects of the most favored nations. Now, it seems to me, sir, that this section two must of necessity come in direct conflict with the treaty; whereas, if the amendment which I propose is adopted, it will do away with any such conflict. If I am mistaken in my construction of this section I shall be only too glad to be set right; and my object in offering this amendment, or one object, is to provoke discussion upon this point, to determine how far we may go without coming in conflict with the laws and treaties of the General Government.

But, sir, I have another and more potent reason for offering this amendment. It is a well known fact that within a short time past certain citizens of the Chinese Empire have been naturalized in some of the Eastern Courts, with the avowed intention of bringing the subject before the United States Supreme Court, in order to have them determine whether or not Chinese are eligible to become citizens of the United States. Now, if the Court should decide that they are eligible, this section two, with the section following, must inevitably fail to accomplish the purposes for which they are intended. But under the amendment, as offered, it will still be effective to a certain extent, as it is not, in my opinion, reasonable to suppose that any large number of the Chinese will avail themselves of the privilege of becoming citizens of the United States. But, should the decision of the Court be in the negative, that they cannot become citizens, then the section, as amended, will still have as much force as it would if passed in its present shape. In offering this amendment I have no desire to aim a shaft at the people of any of the foreign powers known as Christian nations. If I did so intend, it would be upon the fact that I realize that the subjects of these foreign powers are here with the intention of becoming citizens of the United States, and they have only to declare their intentions in order to place themselves on a level with the citizens of the United States, so far as the prohibitions contained in this section are concerned.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: From a cursory view of this section, and of the amendment offered by the gentleman from Placer, I am inclined to favor the amendment more than the original section, for the reason that we are in a very uncertain state as to who are capable of becoming citizens of the United States. We have heard of one or two instances in which the Courts have decided that no Mongolian, or person of the Mongolian race, can, under the laws of the United States, become citizens. But recently the other Courts have held quite the reverse doctrine, and have naturalized Chinamen—Mongolians. So, as I said, it is very uncertain at the present whether a Chinamen can become a citizen or not. And long before it is determined, we do not know but Congress will step in and cut the Gordian knot by declaring that the people of that race can become citizens. We do not know but they may. I hope they never will; but we cannot tell what may be the outcome.

Now, this question of eligibility all depends upon the Acts of Congress. Generally we understand that the only grounds upon which Chinese, or Mongolians, have been prohibited from becoming citizens, are that Congress has never passed an Act covering the case. There are Acts of Congress authorizing white aliens to become citizens, and those of African descent—none other. Therefore, some of our Courts have decided that there is no law of Congress authorizing the Mongolian race to become citizens, and upon that ground they refused to naturalize them. But all that is necessary, under the most favorable decision, under the most unfavorable decision, as regards the Chinese, is simply for Congress to pass an Act covering their case. So, that placing this section as it now stands in the Constitution, or any of these sections in regard to aliens who are ineligible to become citizens, seems to me will amount to but little; because, if Congress is disposed to hear our complaints upon the Pacific Coast, and legislate in our favor, they will at once take steps to abrogate the Burlingame treaty, and pass other Acts putting a stop to Chinese immigration, by Act of Congress. If they are disposed to do it, they will pass direct legislation discouraging and prohibiting Chinese immigration. But if, on the contrary, they are disposed to look adversely to our views, take a different view, saying that we are wrong, notwithstanding all the articles we may pass against persons who are ineligible to become citizens of the United States, if Congress is so disposed, they will simply pass a law that any person of any race may become a citizen of the United States, and that will rob all these provisions of their vitality. As far as that goes, it had better be left to Congress. If we wish to prohibit their immigration and employment (we cannot prohibit immigration)—if we wish to put in a clause prohibiting their employment, why not say Chinese at once, instead of saying that no person of the Mongolian race shall be employed upon any of the public works, etc. We mean Chinese, and why not come out squarely and say so. It will be much more effective, if there is nothing whatever said with reference to aliens who are ineligible to become citizens.

Now, as to this amendment, I will state the danger I think I see in it. This section is very broad. Just look at it:

"Any corporation incorporated under the laws of the State, or doing business in this State, shall forfeit its franchise and all legal rights thereunder if it employs in any capacity whatever foreigners who are not eligible to become citizens of the United States, under the laws of Congress. This section shall be enforced by appropriate legislation."

Now, that might do very well if it only applied to men who come along and ask for day's work, because these corporations, or their officers, when a man comes along who looks like an Irishman, or an Englishman, can make him show his papers. If that was the only fault it would not be so bad. But even in that case I would rather have it apply directly to Mongolians than to all aliens. But we all know that a great part of the work of California, a great number of the enterprises carried on here are by corporations, which must of necessity be carried on by corporate capital. We have a great many mining companies, and we all know that modern mining enterprises must be carried on by corporations. In most of our mining enterprises a vast outlay of capital is required, and it takes years and years of constant effort before any profits are realized. Sometimes members of a company die and others take their places before the result is achieved. Such enterprises I say could not be carried on by voluntary partnerships. Now, one of these companies may have occasion to employ men in England, or in France, to carry on their business. They may have occasion to ship machinery from England, or from France, and of necessity would be compelled to employ a Frenchman or Englishman to do that work. They must not be employed by the corporation in any capacity whatever. I say, sir, that this section is entirely too broad. So, taking that view of the case, any Court would be compelled to place that construction upon it—in fact no other construction can be placed upon it. Therefore, every company having occasion to send to England to get a piece of machinery to carry on its works—machinery perhaps that could not be had here—employing an agent in England to see to the shipping, employing an English ship to transport it, the corporation would, under this section, forfeit its charter.

While I am on this subject, I will say that I agree with all that has been said on this floor as regards the evils of Chinese immigration. I have never employed Chinamen in my life, except when I was absolutely compelled to. I never employed them in any capacity except to do work that I could not get done by white men. I have never in any other instance employed them, and I never will if I can help it. I would rather pay a white man twice the wages. But, Mr. Chairman, I have taken an oath to support the Constitution of the United States. Now, I see an article here which my judgment tells me is in direct conflict with the Constitution of the United States. Whether it be right or wrong, as long as it conflicts with the Constitution of the United States I cannot support it. I say if this government is not good enough to live under, we had better rebel at once against the Government of the United States and set up an independent government of our own, where we will not be hampered. But as long as I am sworn to support the Constitution of the United States, I will not consent to a violation of its provisions, such as this. While we are one of the States of the Union; while I am here in a capacity in which I have sworn to support the Constitution, I say I will not vote for a section which my judgment dictates to me is a violation of that Constitution.

And there is another reason: it would be absurd to do so. We might show our disposition to make a Constitution here in violation of the Federal Constitution, but we will accomplish nothing by it, except to make ourselves the laughing-stock of the world. The first Court before which our work is brought would disregard it, and treat it as unconstitutional and void—as a violation of the Constitution of the United States. So that it is a mere waste of time to pass any such provisions. Gentlemen say we have a right to do this. That may possibly be so, but if it is, my judgment and reason are greatly at fault. My judgment tells me that we have no right to do it. If other gentlemen think differently, very well. For my part, I think we have no right to put it in the Constitution. I am prepared to stand here and defend and support the Constitution of the United States, and I am not prepared to vote for a section which I think is in direct violation of it. On that ground, and upon the ground that it will make us the laughing-stock of the country, I refuse to vote for it.

Now, if there is any thing we can do to prevent this Chinese immigration, I will go as far as any gentleman in this Convention, or any person in the United States, to accomplish it. I will go as far as any person in the United States in my own individual efforts to do it. We all concede that it is an evil. Why spend so many days in discussing that part of the question. Why do gentlemen get up here and spend time and money in discussing the evils arising from Chinese immigration, when we all admit it, with scarcely an exception? I venture the assertion that there is not one person in a hundred in this State but what looks upon the matter in the same way; and if they could stop it they would do it. Let us stop talking about that part of it, and try to find something effective, and not pass a section which will fall to the ground as soon as it is contested. If we cannot do any thing in this Convention, let us memorialize Congress, as one gentleman has well suggested. Let us do something which will have some effect, if possible.

Mr. Chairman, I have spoken longer than I intended. I merely suggest these objections to the section as it stands.

MR. BEERSTECHER. Mr. Chairman: How many amendments are there now pending?

THE CHAIRMAN. Only one.

MR. BEERSTECHER. Then I will offer an amendment by way of a substitute. It is proposition number four hundred and sixty-six.

THE SECRETARY read:

"SEC. 2. All persons of foreign birth, before engaging in any manner of employment on their own account, or for others, within this State, shall first procure a certificate of authority; such certificate shall be issued to any applicant of a race eligible to citizenship under the laws of the State, without cost, by any Court of record of the State. No person of foreign birth shall engage or continue in any manner of employment in this State unless possessed of such certificate; nor shall any person, copartnership, company, or corporation, directly or indirectly, employ any person of foreign birth within this State, unless such person possess such certificate. The Legislature shall provide for punishment of violations of this section. Prosecutions shall be maintainable against both employers and employés. Each day's violation shall constitute a distinct offense."

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I am oppposed to the amendment proposed by the gentleman from Placer, Mr. Burt. I am opposed to it because it strikes out everything that there is in the section directed against the Chinese. It strikes out the words "foreigners not eligible to become citizens of the United States," and inserts the words, "have not declared their intentions." It applies to all foreigners who have not declared their intentions of becoming citizens. It would be a question whether the Chinese would not escape it by declaring their intentions, though the Courts might hold that declaring one's intentions could only be evidenced by receiving first papers.

MR. BURT. I would ask if the substitute proposed by the gentleman is not open to the same objections?

MR. BEERSTECHER. I propose to speak of that. I am, therefore, opposed to the amendment because it destroys the section; it is rendered absolutely worthless as regards the Chinaman.

MR. O'DONNELL. Mr. Chairman——

MR. BEERSTECHER. When I get through I will tell you. The amendment which I have presented reads as follows, and I desire to call your particular attention to it:

"SEC. 2. All persons of foreign birth, before engaging in any manner of employment on their own account, or for others, within this State, shall first procure a certificate of authority; such certificate shall be issued to any applicant of a race eligible to citizenship under the laws of the State, without cost, by any Court of record of the State. No person of foreign birth shall engage or continue in any manner of employment in this State unless possessed of such certificate; nor shall any person, copartnership, company, or corporation, directly or indirectly, employ any person of foreign birth within this State, unless such person possess such certificate. The Legislature shall provide for punishment of violations of this section. Prosecutions shall be maintainable against both employers and employés. Each day's violation shall constitute a distinct offense."

It seems to me that is sufficient. It is not necessary, as a matter of punishment, for a violation of the provisions of this section, to say that the corporations shall forfeit their charters. It meets the objections raised by the gentleman from San Bernardino, Mr. Rolfe, that a person of foreign birth, not a citizen, and not desiring to become a citizen, entering the State for the purpose of erecting machinery, and after having done that particular work, again departs from the State. He says his objection to the original section is that, if the corporation so employed a man, it would forfeit its charter. They could not employ an alien in any capacity whatever, and to that he objects as being too broad. Now, in this case, under the provisions of the amendment I have offered here, that objection does not hold. Any foreigner can come into this State, whether he desires to stay one day or one year; and if he desires to do a particular piece of work, or desires to continue laboring here, it is not necessary for him to say that he desires to become a citizen, or to declare his intentions of becoming a citizen, but all he has to do is merely to go before a Court and ask for a certificate as a matter of right. He receives it, and he can then go on at any kind of labor without fear of molestation. But if any of these companies do employ any individuals not possessed of these certificates, they shall be punished as the Legislature may prescribe. If the Legislature in its wisdom should see fit to declare a forfeiture of charter the penalty for a violation of this provision, they can do so. The matter rests with the Legislature entirely.

Now, I have provided that "prosecutions shall be maintained against both employers and employés. Each day's violation shall constitute a distinct offense." Of course, if a Chinaman should go before a Court in this State, as the law stands to-day, he could not receive a certificate of this character. It would not hinder him from carrying on business on his own account, but he could not be employed by any corporation in this State. He would be subject to punishment by fine and imprisonment, and the corporation employing him would also be subject to fine and imprisonment. As the section is drafted, it says these certificates shall be granted on application to any person who is eligible to become a citizen under the laws of this State. Not under the laws of the United States, but under the laws of this State. It has been held by the Supreme Court of the United States that the matter of exercising the right of suffrage was a matter absolutely and exclusively within the supervision of the State, and that the State had a right to decide, had the right to say who should vote at its elections. And we can say that Chinese cannot vote in this State, and therefore I have used the word State.

It seems to me that the section will cover everything that can be covered. As the Chairman of the committee said—there is one way to get rid of the Chinese, and that is to starve them. There is a limit, even to their powers of subsisting, because they even cannot live upon nothing; and if they cannot get any employment in this State—if we prevent them from laboring—it will prevent others from coming, and the result will be that those who are here will be reduced to starvation, and will be glad to go, and those who desire to come will be discouraged from coming.

And again, as stated by the gentleman from San Francisco, Mr. Bar-

bour, if we adopt this system of starvation, if we give them nothing to do, if we pay them no money, we finally reduce them to paupers, and when they are reduced to the condition of paupers, we have the right to transport them and send them out of the country. I am in favor of adopting strict measures. We have to do it. If we adopt all these measures, and the Courts declare them unconstitutional, we are no worse off than we are now. It is expected of this Convention that we act decidedly in these matters, and that this great question be not ignored. I am very sorry to see the gentlemen upon this floor who should be expressing their opinions, whether for or against the legality or constitutionality, remaining silent. I hope the silence will be broken, and that the representative men upon this floor from different portions of the State will speak out upon this subject, or it will be a damage to the State of California, a damage to the interests of the State, a damage to the people of the State. Congress, at Washington, will point their fingers this way and say the great lawyers in the Convention, when the Chinese question was up for discussion, were silent. The great men who had seats in the Convention were silent upon the subject, and that shows that the people of the State of California care nothing about it. The Chinese representatives in the City of Washington will say, now you see who has been speaking upon this subject. It was only the Workingmen's delegates—the lower strata of society, not the solid, representative men. I would like to hear the solid men come out solidly upon this subject. It is due to the people of this State that they should come out and state their views on the subject. If we are wrong; if we are going too far; if we are overstepping our powers, let us know it. Now, every individual, whether he vote for or against the proposition, is indirectly responsible for every proposition that is adopted here. And if we adopt a lot of ridiculous stuff, the ridicule falls upon the head of every individual; it does not merely fall upon the head of those who introduced the propositions. I would like to see this matter thoroughly discussed, because a discussion of the subject would aid and assist in solving the question, and the record of our proceedings will go on to Washington and show that we are thoroughly in earnest in this matter and mean business.

MR. O'DONNELL. One word will correct this section, I think, and make it perfect. I wish to amend it by inserting after the word "employ" the word "Chinese;" and strike out all after the word "whatever," so that the section will read: "Any corporation, incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises, and all legal rights thereunder, if it ever employs Chinese in any capacity whatever."

THE CHAIRMAN. There are two amendments pending already, and the amendment is not in order.

MR. O'DONNELL. I wish to read the section again, as amended—(to a member interrupting)—shut your mouth, will you?

THE CHAIRMAN. The question is on the amendment of the gentleman from Placer, Mr. Burt.

Lost.

THE CHAIRMAN. The question is on the substitute offered by the gentleman from San Francisco, Mr. Beerstecher, which the Secretary will read.

MR. O'DONNELL. I offer my amendment.

THE SECRETARY read:

"In the third line, after the word 'employ,' add the word 'Chinese,' and strike out all after the word 'whatever,' so that the section will read: 'Any corporation, incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises, and all legal rights thereunder, if it ever employs Chinese in any capacity whatever.'"

THE CHAIRMAN. The question is on the amendment of the gentleman from San Francisco, Dr. O'Donnell.

Division being called for, the amendment was rejected—ayes, 31; noes 44.

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

MR. O'DONNELL. Mr. Chairman: That last vote was not fair, sir.

THE CHAIRMAN. The Secretary will read the substitute of the gentleman from San Francisco, Mr. Beerstecher.

THE SECRETARY read:

"SEC. 2. All persons of foreign birth, before engaging in any manner of employment on their own account, or for others, within this State, shall first procure a certificate of authority; such certificate shall be issued to any applicant of a race eligible to citizenship under the laws of the State, without cost, by any Court of record of the State. No person of foreign birth shall engage, or continue in any manner of employment in this State, unless possessed of such certificate; nor shall any person, copartnership, company, or corporation, directly or indirectly, employ any person of foreign birth within this State, unless such person possess such certificate. The Legislature shall provide for punishment of violations of this section. Prosecutions shall be maintainable against both employers and employés. Each day's violation shall constitute a distinct offense."

MR. SHOEMAKER. I wish to offer an amendment to the amendment.

THE SECRETARY read:

"The Legislature shall, and it is hereby made the imperative duty of the Legislative Department of the Government of the State of California, to enact such laws as shall prevent any alien who is a subject of the Emperor of China, from being employed within this State by any corporation incorporated or doing business under the laws of this State."

SPEECH OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I had thought, perhaps, that in this discussion I should have nothing to say, however deeply I feel its importance. And yet, sir, this substitute offered by the gentleman from San Francisco, Mr. Beerstecher, presents an idea to me that I am not justified in allowing to pass unnoticed. For years, sir, I have viewed with deep solicitude this Chinese question, and I have been to a certain extent conspicuous in my opposition. Since I can remember, almost, I have heard repeatedly from both sides of the political field; I have heard politicians on the stump declare their allegiance to the people, and their opposition to the Chinese, indicating that if that or this particular party succeeded, some relief would surely come to the people from this blighting curse. I have heard our own candidate for legislative position make pledges and promises, but I felt in my heart that nothing would be accomplished. Repeated failures to grant the people any relief has been one of the prime causes of the calling of this Convention. They came to believe that real reformatory measures could only be obtained through and by constitutional enactment. And, sir, feeling a great interest in this subject, I have looked into it and attempted to investigate it, and I have almost come to the conviction that even in the capacity of a constitutional body, we will fall far short of giving to the people the relief which they ask at our hands, and which they anticipate. We find that we are hedged about, even in a constitutional capacity, by the principles of a Federal Constitution on all sides. I refer to this matter as touched upon by the gentleman from Los Angeles. We are hedged about, sir, by the decision of the Supreme Court, as laid down in the twentieth California. We find also in the Federal Constitution (touching this proposed sixth section of the report of the committee) in the fourteenth article it declares that no State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law. It does not restrict it to any citizen, but to any person within its jurisdiction.

Now, sir, reverting to the Burlingame treaty, we find this again, where the Chinese are made equal in this country before the law with citizens of the most favored nations. All these conditions and difficulties confront us, even in a constitutional capacity, and render this subject full of difficulties and complications. Some remedy is demanded; some relief is prayed for. We have seen this curse growing upon us, we have seen the Chinese gradually spreading over the various portions of the State, crowding out the white population, until it requires no prophetic vision to see that it is only a question of time when we must go to the wall. In view of the difficulties which surround us; in view of the insidious character of the race; in view of the Federal Constitution and the treaties made under it, we may not be able to accomplish all we hope to accomplish, or all that the people demand. But it behooves us to take every measure compatible with the laws of the country, and the treaties of the country—every measure compatible with common sense and justice, to restrict this immigration, however extreme and radical they may seem.

Now, sir, under the general powers of the State, under the right of the State to regulate its own internal affairs, and under the police power of the State, I believe the provisions contained in the substitute offered by the gentleman from San Francisco, Mr. Beerstecher, can be made effective. It will at least have the effect, if not to send them back to China, to send them into some other States; and I wish, if we cannot awaken them in any other way, we could transfer the whole Chinese population over to some of the Eastern States, that the people there might be brought to realize the condition of the people of California. I believe that is the only way the people of the Eastern States can be educated out of their sentimentalism. They look upon us as crazy on this subject, as hardly knowing what we do want. In the debates before Congress, it has been asserted that the people here do not know what they want. That the opposition to the Chinese comes from the inferior classes, and not the opinion of the intelligent classes. The first idea is false, as indicated by the legislation which has been enacted. The people are almost, if not quite, unanimous in their opposition to Chinese immigration, and there is no gentleman on this floor who will deny it. But the question here, to-day, is not as to whether Chinese immigration is an evil; the question is, what can we do? How far can we go? What measures can we propose? The idea of this last proposition is, that we require all foreigners—making no distinction—to procure these certificates, in order to entitle them to engage in business, provided they are eligible to become citizens of the State. That would be refusing the certificates to the Chinese, and he becomes disabled from gaining employment; and the consequence will be that he will find his way into Arizona, or Nevada, or Oregon, or Washington Territory, and from there work his way East. They will be compelled to emigrate to some other part of the country, to some other part of the United States, and by that means, those skeptical people will be brought to realize the benefits of having a Chinese population in their midst, so that they may educate, convert, and Christianize them to their heart's content. I know it has been claimed in the East that we ought to thank God that it has fallen to our lot to have these heathen people cast among us, in order to Christianize and convert them to the true religion; yet I doubt very much if there has ever been an absolute Chinese conversion in the world. They believe in the doctrines of Confucius as firmly as we believe in our religion, and it is just as absurd to believe that one of these can be converted to Christianity as to believe that one of us should be converted to the religion of Confucius.

But, sir, as to this proposition before the Convention, I rose to ask the particular attention of the members to this proposed amendment, offered by the gentleman from San Francisco, Mr. Beerstecher; and if they believe that it will prove to any extent a panacea for the Chinese evil, I ask them to give it their sanction. I believe, in fact I know, that we are here to do all we can on this subject. I only want to know what to do, and I will do it. If there is any good in any of these propositions, let us adopt them. I would suggest that in line four, after the word "race," he insert the words "none other," so as to make it conclusive.

MR. BEERSTECHER. I have inserted them; it reads that way now.

MR. FILCHER. Then I believe it is a good proposition, and will help to mitigate the evil, and hope it will be adopted.

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: It seems to me to be a good idea for members to express their opinions upon this subject. As far as the mere question of power is concerned, it seems to me that the second section is not obnoxious—not open to criticism. It reads:

"SEC. 2. Any corporation incorporated under the laws of this State, or doing business in this State, shall forfeit its franchise and all legal rights thereunder, if it employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States, under the laws of Congress. This section shall be enforced by appropriate legislation."

I argue that it is within our power, because it applies only to corporations. Under our present Constitution the Legislature has the right to alter or repeal their charters. It is a part of the contract with every corporation created under the laws of this State. That reserve power exists in the Legislature, and in framing our new Constitution we can put in a similar provision, if it is necessary. As far as the question of power is concerned, it occurs to me that this section is not open to criticism. What is a corporation? It is an artificial entity. It derives its powers from the State, and is created by and under the laws of the State. We have an express decision of the Supreme Court of this State, in the eighteenth of Wallace: "They are not citizens of the State merely because they are created under the laws of the State, so far as the provision of the Constitution goes, which says citizens shall be entitled to all the privileges," etc. While they have this artificial entity, created entirely by the State, not having any powers derived from the Constitution of the United States; not having this power I have spoken of, having therefore an artificial character entirely, we have the right, not only as to the corporations already created, but as to those hereafter to be created, to place these restrictions upon them. So, as far as the mere question of power is concerned, there can be no question about it. But whether we should go the extreme of having corporations forfeit their franchises, is another question, as a penalty for the employment of Chinese in any capacity. I think it would be better to modify the section in that regard, so as not to go quite so far. For that reason I should favor the last amendment, leaving the power of providing penalties to the Legislature, in case of a violation of the provisions of the section.

There is no objection to using the word "Chinese" instead of "persons not eligible," etc. Now, there is something said about the treaty; and, although it has been a long time since I have read it, yet I think I know what it contains. The gentleman from Placer has referred to it, and I will read the sixth section:

"Citizens of the United States visiting or residing in China, shall enjoy the same privileges, immunities, or exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation; and, reciprocally, Chinese subjects visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States."

What is the provision here? It is in respect to travel and residence, that they shall enjoy the same privileges and immunities as the subjects of the most favored nations. They shall enjoy these privileges—in respect to what? In respect to travel and residence. Therefore, if we should attempt to say that they shall not lease houses, it would conflict with the treaty, because they have a right to reside here. And it might be argued, also, that they have a right to hold property. I am not so well satisfied about that, however. I am not sure whether the word "residence" can be construed to go so far as to confer upon them the right to hold property. It is restricted entirely to travel and residence in the State.

MR. HERRINGTON. Do you hold that the power of the government extends to the regulation of the residence of foreigners here?

MR. JOHNSON. No, sir. I am coming to that subject. I will answer the gentleman after awhile. I was about to say this: that there is no question but the power to regulate commerce exists exclusively in the United States. But there is another question that is not so clearly settled, and that is, when Congress has not passed upon the subject at all, whether the power rests exclusively in Congress, or whether it is concurrent. Now, even though the power to regulate commerce is in Congress exclusively, the passing of provisions excluding the Chinese from fishing, would in no manner interfere with commerce, therefore I think that section is not open to criticism. If Congress has passed no law in regard to fishing in the Bay of San Francisco, that power, according to the decision of the Supreme Court, is concurrent, and we have a right to pass local regulations.

I say the State has the power to control these corporations, but whether it would be policy to go to the extent of providing for a forfeiture of franchise, for simply employing Chinamen, is another question.

Now, in respect to the use of the word "Chinese," I cannot see any objection to it. There is nothing in the treaty to conflict, for the treaty is only in respect to residence and travel—exclusively residence and travel. There is another section here, to this effect:

"SEC. 3. No alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution."

It is entirely within our power to pass a provision of this kind, because the State has a perfect right to employ whom she pleases, the same as an individual. The citizen has this right, and the State has the same right. This provision is that the State shall not employ certain classes. I think, therefore, that these two sections are as clearly within the powers of the State as section one. But sections four and five clearly come within the inhibition in regard to the regulation of commerce by the General Government. It seems to me it is foolish to put a provision in our Constitution which we can but know will be overturned, because the Supreme Court of the United States has decided such provisions to be unconstitutional, and that is the law of the land. The Constitution of the United States, and the laws of Congress, and the treaties made under it, are the supreme law, and we cannot evade it.

Now it does seem to me that there would be some good accomplished by adopting these three sections, and preparing a section in relation to fisheries. I think a great deal of good can thus be accomplished. Now, one word in relation to the amendment introduced by the gentleman, which goes, not only to corporations, but to individuals, and I am not prepared to go to that length. I am willing to apply it to corporations, for that is within our power; but I am not willing to go to the length of forbidding individuals from making contracts and employing whom they please. I think——

MR. VAN DYKE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

RECESS.

MR. VAN DYKE. I move the Convention do now take a recess until seven o'clock P. M.

MR. O'DONNELL. I move to adjourn.

Division was called on the latter motion, and the vote stood: ayes, 51; noes, 51.

THE PRESIDENT. The Chair votes in the negative, and the motion is lost. [Applause.] The question is on the motion to take a recess.

Division was called for, and the motion prevailed by a vote of—ayes, 56; noes, 45.

And at five o'clock P. M. the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

At seven o'clock P. M., in the absence of the President and President pro tem., the Secretary called the Convention to order.

MR. STEDMAN nominated for temporary Chairman Mr. Huestis, who was elected and took the chair.

THE CHAIR. The Convention will come to order.

[Cries of "Call the roll!"]

MR. DUDLEY, of Solano. I move that the Convention resolve itself into Committee of the Whole.

MR. STEDMAN. I rise to a point of order. Rule Three says "not less than seventy-seven members shall constitute a quorum for the transaction of business." My point of order is that there are not seventy-seven members present, and I now call for the calling of the roll.

THE CHAIR. The Secretary will call the roll.

MR. INMAN. It is supposed that there is a quorum present. There will, undoubtedly, be a quorum here.

[Cries of "Call the roll!"]

THE CHAIR. It having been demanded, in regular order, the Secretary will call the roll.

MR. WATERS. I ask leave of absence for Mr. Boggs for the evening. He is sick.

THE CHAIR. There being no objection leave is granted.

The roll was called, and seventy-six members answered to their names.

MR. BEERSTECHER. I ask leave of absence for Mr. O'Sullivan, on account of sickness. Also leave of absence for Mr. Barnes. He is engaged this evening to deliver a lecture before a society in the city, and cannot be here.

THE CHAIR. There being no objection leave is granted.

MR. WATERS. I also ask leave of absence for Mr. Holmes, who is absent on official duty.

THE CHAIR. So ordered. Seventy-six members have answered. The rule requires seventy-seven members.

MR. STEDMAN. There is no quorum. Rule Three requires seventy-seven, and it has never been changed.

MR. VACQUEREL. I rise to a point of order. When the rule was made there was one hundred and fifty-two delegates. One is in Stockton, and two are dead, and a quorum consists now of seventy-five members. That is my point of order.

THE CHAIR. The Chair is of the opinion that the point of order is well taken.

MR. STEDMAN. I merely call attention to the rule as it now stands. It says seventy-seven members constitute a quorum.

THE CHAIR. The Chair is under the impression that a question of this kind must necessarily change the rule.

CHINESE IMMIGRATION.

MR. TINNIN. I move that the Convention resolve itself into Committee of the Whole, Mr. Huestis in the chair, for the purpose of resuming the consideration of the report of the Committee on Chinese.

MR. ROLFE. I rise to a point of order——

MR. STEDMAN. I desire to ask the Chair, under Rule Fifty-four, to instruct the Committee on Legislative Department, which proposes to meet to-night, as soon as we get into the Committee of the Whole, that under that rule they cannot meet while this committee is in session. There are a number of gentlemen——

MR. McCALLUM. I call for the question.

[Cries of "question."]

The motion to go into Committee of the Whole prevailed.

IN COMMITTEE OF THE WHOLE.

MR. BEERSTECHER. Mr. President, or Mr. Chairman: I desire to call the attention of the Committee of the Whole to a change that has been made in the printed copy of the amendment that I introduced this afternoon. There seems to have been a number of objections raised to the section, as it might require persons who had been naturalized and were citizens of the United States, and of the State, to take out the papers that are contemplated by the section. In line one of the section the words "persons of foreign birth," have been stricken out and the word "aliens" substituted. In line five the words "persons of foreign birth," have also been stricken out and the word "aliens" substituted, so that the section now reads: "All aliens, before engaging in any manner of employment, on their own account or for others, within this State, shall first procure a certificate of authority; such certificate shall be issued to any applicant of a race eligible to citizenship under the laws of the State, without cost, by any Court of record of the State. No alien shall engage or continue in any manner of employment in this State unless possessed of such certificate; nor shall any person, copartnership, company, or corporation, directly or indirectly, employ any alien within this State, unless such person possesses such certificate. The Legislature shall provide for punishment of violation of this section. Prosecutions shall be maintainable against both employers and employés. Each day's violation shall constitute a distinct offense." Now——

MR. STEDMAN. I rise to a point of order. There is not a quorum present. Rule Fifty-six prescribes that the rules of the Convention shall be observed in Committee of the Whole.

THE CHAIRMAN. Mr. Beerstecher has the floor.

MR. LARKIN. The gentleman is stating his point of order.

THE CHAIRMAN. Does Mr. Beerstecher yield the floor?

MR. BEERSTECHER. I do not yield the floor.

MR. STEDMAN. I rise to a point of order.

THE CHAIRMAN. Unless the gentleman will yield the floor you cannot make your point of order. There cannot be two persons——

MR. STEDMAN. I understand that a point of order can be made at any time.

THE CHAIRMAN. A point of order cannot be made without first obtaining the floor.

MR. STEDMAN. A point of order is always made when some one is on the floor. The point of order is against the member——

THE CHAIRMAN. The Chair will recognize the gentleman to raise his point of order.

MR. STEDMAN. My point of order is that we are proceeding to business without a quorum. Seventy-seven members constitute a quorum, either in Convention or in Committee of the Whole, and since the roll was called several members have left. Originally we had seventy-six members when we went into Committee of the Whole——

MR. SHOEMAKER. His point of order should be taken——

MR. STEDMAN. The rules of the Convention——

MR. TINNIN. I hope the Chair will enforce order——

THE CHAIRMAN. The gentlemen will please preserve order. The gentleman from San Francisco raises the point of order that there is no quorum present. The Chair recognized the point of order, and it will be in order to ascertain whether there is a quorum present by moving a call of the roll, or a motion that the committee rise.

MR. BEERSTECHER. I rise to a point of order. There cannot be a motion made for the committee to rise while a member occupies the floor. And furthermore, when we went into Committee of the Whole, sir, there was a quorum present, and there is no official knowledge now but what that quorum is present, and a vote cannot be taken upon the subject until I yield the floor.

THE CHAIRMAN. The point of order is well taken. The Sergeant-at-Arms will preserve order.

MR. STEDMAN. The Chair recognized me——

THE CHAIRMAN. The Chair recognized you to make a point of order.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: As I was stating, the objection to the section as introduced, which objection was privately stated to me by a number of delegates, was that the original section would compel persons who had become naturalized under the laws of the United States, persons who were citizens of the State—no matter whether they were citizens one day, or whether they were citizens twenty-five years, if residents of this State, but being persons of foreign birth—to procure these certificates contemplated in the section. The section now has been altered and so changed that it will not require any but aliens to make this application, and when a person has become a citizen of the United States, and a citizen of the State of California, it will not be necessary for them to go before a Court and get this certificate of authority to prosecute business in the State; and, therefore, the objection that has been urged against the section has been removed. Now, as regards this section, it is immaterial to me whether this particular section or whether a section of like import be adopted, but the section, in reality, goes much farther than section two, as reported by the committee. Section two, as reported by the committee, has exclusive reference to corporations, and to corporations alone. It says:

"Any corporation incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation."

MR. INMAN. Do you propose to prohibit an individual from employing Chinamen?

MR. BEERSTECHER. Yes.

MR. INMAN. I want to understand it, because I am opposed to that.

MR. BEERSTECHER. I am in favor of absolutely and unequivocally cutting off the power and privileges of any Mongolian of getting any character of employment in the State whatever. That is the only way that we can rid ourselves of the nuisance. I do not believe myself that we have the power to meet the Chinese at the threshold and prevent them from entering our State. I believe that they can come here. I believe that the power delegated to Congress to regulate commerce will land them in this State, and that the laws of Congress, and the powers delegated to Congress by the States, will protect them until they are landed, but the moment that they are upon the soil of California, the moment that they commingle and intermix with the people of this State, the moment that they become residents within the border of the State, that moment the power and the protection of the United States ceases. The powers vested in Congress, giving it power over commerce, foreign and between States, ceases when the Chinaman comes here and becomes a resident, and commingles with the people and engages in business in this State. The moment that national power ceases, the power of the State attaches, under the police regulations, and we can regulate their residence here. We can regulate their transaction of business here, under that police power which resides in the State, which is always reserved by the State, and which has never been given to the General Government, and never has been stolen by the General Government, as other powers have by the General Government. And I believe that if we have the right to regulate their employment by corporations, we have the right to regulate their employment by copartnerships, and by companies, and by individuals. At all events, I believe in drawing the section just as strong as it is possible to draw it. If this section went before the Courts, and an individual should say that his rights as a citizen of the United States, or of the State of California, had been infringed upon, because he is not allowed to employ whomsoever he pleases, then the Court will simply say that this provision of the Constitution is unconstitutional, as far as the Constitution of the United States is concerned. The Courts will simply say the section is a good and valid section, it has force and vigor in law, with the exception of what relates to preventing private individuals from employing Chinamen. They might say that it might be invalid, as relates to private companies employing Chinamen, but the section will be good as to everything else. Every Court is bound to give effect to every law just as far as it can give effect to the law, and a law is never totally wiped out if it can be preserved. But it might only be wiped out so far as it endeavors to regulate the employment of Mongolians by private individuals. If we desire to draw provisions here in relation to the Chinese that are, beyond all doubt, beyond all possibility of a doubt, constitutional, then we had better not commence to draw them at all, because all of these inhibitions, perhaps, will rest under a doubt as to their constitutionality. And in such cases it will be necessary to take them before the Courts and to test them, and that is exactly what we are after. We desire to have them tested, and we desire to make a test case and ascertain what rights we have in the premises. If this section is to furnish a test case, well and good. If any other section is to furnish a test case, well and good. The Court will not wipe out the section because it goes too far, and as to other provisions the section will stand.

I hope that this section will be adopted instead of section two, because it not only prohibits corporations, but goes way beyond corporations and embraces much more, and at the same time embraces corporations by its terms.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: As a member of the Committee on Chinese, I have considered the propositions that are submitted by that committee, and I do not wish to devote my time this evening to a lengthy speech, but simply to give my views on the proposition. I shall support the first section as reported by that committee to this Convention. I believe in that first section there are rights, and there will be powers conferred on the Legislature——

MR. BEERSTECHER. I will state that the first section has gone over until to-morrow.

MR. LARKIN. I shall support the second section, unless something better is offered than has been already. I cannot support the proposition of Mr. Beerstecher. It goes farther than I propose to go in this matter. I propose to go as far as I believe is consistent; as far as the people of this State demand; as far as the Courts will sustain us in this matter. I do not propose, by any vote of mine upon this question, to load this Constitution so that it shall be objectionable to the better portion of the people of this State that desire to rid themselves of this nuisance. When we apply the provision to corporations, it occupies an entirely different position from what it would applied to private individuals. Under this Constitution and under the laws we have power to regulate corporations; we have power to wipe the last one of them from the State, and require business to be conducted by copartners; we have that right both in the Constitution and in the laws. We have the right to say that they shall not employ Chinese coolies; that the public good demands that the preference be given to persons eligible to become citizens of the United States. I do not propose to enter into the constitutional right that the State has in her Constitution to say that a citizen of the United States shall not engage in any business and employ who he pleases. I believe the Constitution of the United States would declare that a provision of that kind in our Constitution would be null and void. I believe that any citizen in the United States has a right to engage in any business, whether the Constitution of the United States was a check upon that power or not. That right, I believe, belongs to an American citizen; and I do not believe that your Constitution should be attempted to infringe upon it. If we place in this Constitution provisions that the Supreme Court will not sustain, just so far we

weaken our position before the people of the world. Let us put nothing in there but what the Supreme Court will sustain. Then we have taken a step forward to accomplish the purpose which we design. To go farther than that shows weakness, a wild, rabid desire to do something, without any definite reason for what we are going to do, or without caring for the result of our acts.

Section three is again a clear proposition. In the Constitution of this State we would certainly have the power to-day that "no alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution." We have the right, I believe, to place that article in the Constitution. I believe it should be placed there. That and the provision before is all I am going to vote for in this Convention. That is as far as I will go on this question. I believe that is as far as the people of this State will sustain us in going, and anything farther than that will load the Constitution before the people of this State, which I do not propose to do.

Section five is the most extreme section offered in this report. "No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution." That covers the question of settlement in this State to any person ineligible to become a citizen of the United States. That section has a precedent in this Convention of Illinois that existed up to some fifteen years, when the Fifteenth Amendment was adopted, prohibiting mulattoes and negroes settling in that State. The State of Indiana prohibited negroes and imposed a fine upon them, which was used for the purpose of taking those from the State that were found in the State. That provision in the Constitution had been sustained by the Supreme Court as applicable to the negroes, and it certainly would sustain it as applicable to persons ineligible to become citizens of the United States. These provisions, sections one, three, and five, are all of this report I desire to support, and as far as I believe we should go. Powers enough will be conceded to the Legislature in these provisions, and I believe will determine the question. I desire to see us clearly and squarely stand upon these provisions that I think will be effective, and that the people of the State will ratify in the Constitution.

MR. STEDMAN. There not being a quorum present, I move that the committee now rise, report progress, and ask leave to sit again. There are less than sixty members present.

MR. TINNIN. I hope that this motion will be voted down.

MR. STEDMAN. It is not debatable.

MR. CONDON. I move you, sir, that that motion be laid on the table.

MR. STEDMAN. Mr. Chairman——

THE CHAIRMAN. The Chair will put the original motion.

The question was put, and the vote stood: ayes, 15; noes, 48.

THE CHAIRMAN. The noes have it.

MR. STEDMAN. I would like the announcement of the vote.

MR. WELLIN. I ask——

THE CHAIRMAN. The motion is lost.

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

MR. WATERS. I move that the gentleman have indefinite leave of absence.

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

MR. WELLIN. The decision of the Chair cannot be appealed from on a question of the vote of the house. The gentleman is entirely out of order. I don't know what is the matter of him to-night. I move that he be granted one year's leave of absence.

MR. STEDMAN. I want to say something more. There are two committees in session; one in room fifty-three, and one in the Senate Chamber, which is contrary to the rules of this house.

MR. TINNIN. I move that the gentleman be appointed a committee of one to bring in those members.

MR. WATERS. I rise for information. There has just been a question raised, and I would like to know whether there is a quorum present or not. I think I am entitled to the information.

THE CHAIRMAN. There are sixty-four members, according to the count.

MR. WATERS. Now, Mr. Chairman——

THE CHAIRMAN. The Chair rules that there is a quorum present.

MR. WATERS. I do not think that this house should proceed if there is not a quorum present. If there is a quorum present, all well and good.

MR. HOWARD. There is nothing before the committee. I raise that point of order.

THE CHAIRMAN. The point of order is well taken.

MR. WATERS. I will proceed in order, if the Chair will permit.

THE CHAIRMAN. The gentleman is not speaking to anything before the committee.

MR. WATERS. I would like to read section one thousand nine hundred and ninety-five——

MR. HOWARD. I rise to a question of order. We are not here to listen to the reading of the Pentateuch.

THE CHAIRMAN. The Chair has decided that the point of order is well taken. But the gentleman asks leave. With the permission of the house——

[Cries of "Read," "read."]

MR. TINNIN. What does he want to read?

MR. WATERS. Section one thousand nine hundred and ninety-five of Cushing's Law and Practice of Legislative Assemblies reads as follows:

"A committee of the whole house, consisting of all the members. The rule as to the number necessary to be present, in order to make a house, has been extended to committees of the whole. If, therefore, it should appear, at any time, that the number present is less than a quorum—to be ascertained in the same manner as in the house; that is, in the Commons, forty, and in the Lords, three—the Chairman must immediately leave the chair of the committee, and the Speaker resume that of the house. The Chairman, then, by way of report—for he can make no other—informs the Speaker of the cause of the dissolution of the committee. When the Speaker is thus informed of the want of a quorum in the committee, he immediately proceeds, in the same manner, to determine whether there is a quorum then present in the house. If the" ——

THE CHAIRMAN. The Chair calls the gentleman to order. The Chair has decided that there is a quorum present.

MR. WATERS. I understood that I had leave to speak.

THE CHAIRMAN. The question is on the amendment offered by Mr. Beerstecher. The Secretary will read it.

THE SECRETARY read:

"All aliens, before engaging in any manner of employment on their own account, or for others, within this State, shall first procure a certificate of authority. Such certificate shall be issued to any applicant of a race eligible to citizenship under the laws of the State, without cost, by any Court of record of the State. No person of foreign birth shall engage or continue in any manner of employment in this State, unless possessed of such certificate; nor shall any person, copartnership, company, or corporation, directly or indirectly, employ any alien within this State, unless such person possess such certificate. The Legislature shall provide for punishment of violations of this section. Prosecutions shall be maintainable against both employers and employés. Each day's violation shall constitute a distinct offense."

MR. ROLFE. Mr. Chairman: I think it would be unadvisable to take a vote on any of these amendments when the house is so thin, even if there is a quorum. In the amendment offered by the gentleman from San Francisco, Mr. Beerstecher, I see in line four, where he applies this rule of granting certificates, that he refers to persons eligible to citizenship under the laws of the State. I do not know why he refers to the laws of the State instead of the laws of the United States, unless it be under the impression that we can exclude a person from being a citizen of this State, although he may be a citizen of the United States. All these other amendments proposed by the committee refer to persons who are ineligible to become citizens of the United States. This refers to persons ineligible to become citizens under the laws of the State. If he is under an impression that the State of California, or any other State, can exclude from citizenship of the State a citizen of the United States, I think that he is laboring under a wrong impression. As to that, I refer to the Fourteenth Amendment to the Constitution of the United States, which reads:

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person, within its jurisdiction, the equal protection of the law."

Now, when the Chinaman can become a citizen under the laws of the United States, why, certainly, he is eligible to citizenship under the laws of the State of California, because if the State of California should pass a law to the contrary it would be invalid. Another objection I have to this section is, that it would be a great inducement for every Chinaman in the State, of whom very few now want to become citizens, to become citizens of the United States for the purpose of availing themselves of the Fourteenth Amendment. Therefore, I think that much of the gentleman's amendment as refers to a citizenship under the laws of this State, is a nullity. I would like to see it otherwise. I wish we had the right here to exclude the Chinaman from citizenship under the laws of the State, but under the Constitution of the United States we certainly cannot.

MR. AYERS. Would it be in order to offer an amendment?

THE CHAIRMAN. Not at this present time.

MR. AYERS. Mr. Chairman: It might get the committee out of its snarl. It is well known that the principal objection to the amendment of the gentleman from San Francisco is that it interferes with the right of American citizens to employ whom they see fit. My amendment I think would get around that objection. I would provide that every Chinaman residing in this State be required to take out a license authorizing him to procure employment of any kind in this State, and directing the Legislature to fix penalties for the violation of the section. Under that authority the Legislature could pass a law requiring that each Chinaman should take out a license before he could be employed.

MR. MILLER. Do you propose to require them to pay for these licenses?

MR. AYERS. Not in the Constitution. Let the Legislature fix that.

MR. MILLER. The Supreme Court has decided that all license taxes of that sort are unconstitutional. Our Supreme Court so decided in this State.

MR. AYERS. They decided the mining taxes unconstitutional, but they decided it under the old Constitution. There was no provision in the Constitution authorizing the tax. If we should here authorize that tax it would hold before the Supreme Court.

MR. MILLER. The case I refer to was tried in the Circuit Court in San Francisco two years ago.

MR. TINNIN. It was the case ——

MR. VAN DYKE. The case of the United States vs. Jackson.

MR. GRACE. If we submit anything to the people and they ratify it, and say it shall be the law, if this is a republican government, if we have a republican form of government, and the majority rule, I do not see why we should not say that they must get a license.

MR. BLACKMER. Suppose this State should see fit to vote in favor of seceding from the government?

MR. GRACE. The Constitution would provide against that. I hold that the Union is perpetual, but I hold that the sovereign States, and

that each State has equal rights, and have the right to regulate their own local affairs. I do not acknowledge the right of secession and never did. But I hold that one State has as much right as another. No State is bound to put up with an institution that is opposed to the advancement and prosperity of the State.

THE CHAIRMAN. The question is on the amendment to the amendment, offered by Mr. Shoemaker. The Secretary will read it.

THE SECRETARY read:

"The Legislature shall, and it is hereby made the imperative duty of the Legislative Department of the Government of the State of California, to enact such laws as shall prevent any alien who is a subject of the Emperor of China, from being employed within this State by any corporation incorporated or doing business under the laws of this State."

MR. BEERSTECHER. Mr. Chairman: I do not accept that amendment to my section. I am opposed to it. I know it is an amendment to my section, and I am opposed to it, because it is a repetition. It goes on and repeats. I have already said in my section that no person, copartnership, or corporation shall employ any one unless they possess a license. Now, upon this it is desired to tack this addition—in effect a repetition. It says "by any corporation incorporated or doing business under the laws of this State." Therefore, a foreign corporation, incorporated by Nevada, or by the State of Nevada, could employ Chinamen. We do not want to give any foreign corporations doing business in this State the privilege of doing what our own corporations cannot do. It is a favoritism towards foreign corporations. In answer to the gentleman from Los Angeles, Mr. Ayers, I would say, that the very object of making these permits or licenses gratis, that a man can get them free, and the Court must give them, would avoid the decisions in this State and the decisions of the Supreme Court, in relation to making men pay for these privileges.

MR. LARKIN. How about men in the County of San Bernardino, for instance, who live several hundred miles from the county seat? They cannot go there to get these permits.

MR. BEERSTECHER. They can get them from any Court of record in the State of California. He could get them in any town that he would pass through. I would say to the gentleman, if you are going to make it so very easy, if nobody is to be troubled in the matter of getting rid of the Chinese, if no person is going to sweat in this business, then we will never do anything.

MR. LARKIN. In those large counties it will be hard on persons who will have to go fifty or one hundred miles even to get a permit to work one day.

MR. BEERSTECHER. I would state to the gentleman that undoubtedly a man would certainly, in his travels, come to some place where there is a Court of record, and he could get his certificate there. He could get it from the Clerk of the Court in any town that he would pass through. A man could get it in San Francisco, and it would be good for his lifetime, all over the State. The trouble is, if we are not going to put anybody to any inconvenience, not going to trouble anybody, we will never do anything. For my part I am willing to go before a Court every year and spend half a day for the next ten years, if I can rid the State from the curse of the Chinese nuisance. [Applause.]

THE CHAIRMAN. The gentlemen will preserve order.

MR. AYERS. Mr. Chairman: I will introduce my amendment at the proper time for the purpose of bringing it under debate. The decision, so far as the license goes, was never before the Supreme Court of the United States. There is a line of decisions which have been sustained, and I think, on debate, by consulting the authorities, it will be found that we have the power. At the proper time I will introduce my amendment.

MR. INMAN. Mr. Chairman: I hope that these two amendments will be voted down. I, for one, am opposed to stripping any citizen of his rights. The gentleman seems to think it would be all right. Probably it would be all right for him in the City of San Francisco, but in the country to say that a man must not hire Chinese to help in harvest would not do. It certainly would be unconstitutional. The only thing is to restrict their coming here, if it is possible to do so, and I will go just as far as the gentleman to do that. That would only be done under the police and sanitary law. The gentleman, Mr. Grace, talks pretty good secession doctrine. I agree that what is good in one State is good in another, but I object to secession and nullification.

MR. GRACE. How do they do where they have no Chinamen? You don't want to go to the county seat to get a laborer to work for you. How do they do in other countries? How do they do where they have no Chinamen?

MR. INMAN. Two years ago the farmers began to harvest at two dollars a day; the men asked three dollars, they gave it; the men asked four dollars, they gave it; the men asked five dollars, and they would not pay it. They were compelled to hire Chinamen.

MR. GRACE. And you hired Chinamen?

MR. INMAN. No, sir, I did not; but I deny that any man has the right to say what kind of machinery I shall use, or what kind of help I shall employ. I employ any help that is available, if I am forced to do it.

MR. GRACE. I say that the Chinese must go, all of them, out of the country—black, white, old and young, Chinamen born, and native. I want to get rid of them. There is plenty of help. There is no trouble about getting help. I would help the gentleman through harvest myself, rather than that he should employ Chinamen. [Applause.]

THE CHAIRMAN. The Sergeant-at-Arms, at the next demonstration of that kind, will clear the galleries.

MR. INMAN. I do not employ any Chinamen on the farm. I am forced to do it in our house, because we cannot get any other help in the house. But I know other gentlemen who do employ Chinamen on their farms. They are compelled to employ this help or leave their farms uncultivated. No gentleman wants his capital to lie idle. If you stop their coming here that is sufficient, and we all agree upon that. But for the Legislature or any individual to say what kind of machinery you can use, or what kind of help you can hire, is certainly unconstitutional and uncalled for. I cannot see the good sense in putting anything in the Constitution that will be annulled.

Gentlemen talk about wages in this country being so low. I can remember, years ago, when I hired men for a dollar a day. I pay forty and forty-five dollars a month to-day. You cannot get a Chinaman for less than thirty dollars a month. There is no State in the Union pays so much wages. There is no State in the Union so prosperous. You talk about the people of this State suffering. You will find that if there is suffering it is on account of the whisky mills. Nineteen twentieths of these men are men who spend their earnings in the whisky shops. The whisky mills are ten times worse than the Chinamen. If you will put the whisky mills out of the country, I promise you I will not employ a Chinaman. My farm shall lie idle for ten years, and I will try and get along without it. I am opposed to the whole thing. I do not see any sense to it.

MR. GRACE. Are you opposed to saloons being allowed to sell whisky? Are you opposed to that?

MR. INMAN. I think so.

MR. GRACE. Then he has nullified the laws of the United States. The United States issues them licenses. That is nullification. It is nullifying the laws of the United States, and I am opposed to it.

SPEECH OF MR. WILSON.

MR. WILSON, of Tehama. Mr. Chairman: There were no Chinese here in eighteen hundred and forty-nine—nothing but white people. I think it was in fifty-one or fifty-two that the first Chinaman came to this country. But they came; they went to work in our kitchens, and wherever they could get anything to do. They would work for five dollars a month until they learned the routine work, and then they would call for more wages. They have gradually insinuated themselves into almost every avenue of labor; they planted out orchards, and berries, and vegetables; they worked themselves into the mines and now you find them everywhere. I have heard men say they would not employ Irishmen because they are given to strikes. Well, you hire a Chinaman and pay him five dollars a week, and he will steal another five dollars. He will carry off your sugar, and coffee, little at a time, so that you cannot notice it. They are the worst set of people that ever disgraced the earth. You hire one of them in your kitchen, and you will find he has half a dozen cousins to support. That is my experience with them. They are no benefit to the country; they bring no business to the stores. They buy nothing here, and they are a disgrace to our State, and ought to be got rid of, and I am in favor of the report of the committee.

SPEECH OF MR. LINDOW.

MR. LINDOW. Mr. Chairman: There is only three points in this Convention that ought to be taken up and discussed and voted on.

[Cries of "Louder!" "louder!"]

If the gentleman can't hear well he better get up and go out. [Laughter.] The principal thing was the corporations, taxation, and Chinese. The cry was all over the country that the Chinaman was a nuisance. That is the cry all over the country. ["Louder!" "louder!"] I wish that man would go out of the hall. [Laughter.] Mr. President, it is well understood that the principal thing been here now is this provision that ought to be put in force on the Chinese. Even if it does not come within the boundary and limits of the United States Government, let them test the thing in the Supreme Court, and then let them decide if we are wrong or right. That is the way it ought to work. If we don't do something besides talk, we might as well let the Chinese question be. It is a growing evil over the whole United States, and a crying evil in the State of California. Now, as my friend Beerstecher makes remark, I would like to see these men rise up and give us their views, so as to find out who are for the Chinese and who are against it. We like to see them gentlemen stand up and discuss the whole law of the United States, and discuss the law of the State of California, so we know when we are right and when we are wrong. That gives us an idea. My friend Beerstecher raised them up—woke them up on this side of the house. One gentleman said he employed Chinamen. I could not blame him; he only looked to his own interest. He don't look for the generation that is coming.

So long as I live here my few years I can get along without troubling me about the Chinese. But I am looking for the stock that I am raising. They hire out for a dollar a day, and they say we can live for a dollar a day, and we have no right to have any children. That is what they say. That is what's against us. They can't deny it. They done it. Of course money does it all. That's where it comes in. If the poor man had as much money as the rich man, nobody would want to work. It is only for money we work, and if we cut wages down so he can only just keep his mouth open, he might as well go back. We ought to give him a chance and respect him, and he will respect his employer. But as you cut wages down he don't respect him any more, and he finds the Chinaman in his place. So he sees right away that he is below the Chinaman; and there is gentlemen here who tells us that Chinamen is better than white men. I tell them the people don't think so. The Chinaman suits some people better than white men. Why? Because they can use him to cook and do chamber work, when another man would not do it. If he goes to a house he don't want to do chamber work. And that is where the whole question comes in. We want to get rid of this curse. We want the Chinaman away, and give a man a fair day's pay for a fair day's work, and then we won't have any tramps. If a man comes around and wants a job, the farmer, says he, "I have a lot of Chinamen;" and the man, says he, "I cannot starve, I will work for the same wages." "Well," says he, "you eat too much. You eat too much." He cannot get work for his grub; he cannot get

work because he eats too much. Now, I can't see why the whole learned gentlemen are opposed to this concern, when the cry is all over the State that the people want to get rid of these Chinamen. I would not stand up here if I didn't feel it. We want to put something in the United States Courts to test it; and if they want the Chinamen, they can have them all. We want to do it peaceably if we can, or the worst will come. That is where it is. But here we are assembled to make a Constitution, and we ought to try peaceably, and the worst can come afterwards, if we can't do any better. If we go a little beyond, don't mind it. Let the United States test it, and then we will see how the United States stands. That is how it is.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: It is seldom that I oppose measures introduced by my friend from San Francisco, Mr. Beerstecher, for I have almost always found him right, and almost always working for the right. I find, however, in this provision, as presented by him, one object sought to be accomplished, and that is to prevent aliens who cannot become citizens of the United States from being employed. The means that are employed by this provision to accomplish this result is to compel those who may become citizens of the United States to take out certificates before they will be permitted to obtain employment, to which I object. I say the results contemplated can be reached more directly, and that is why I oppose it. The principle contained we all agree to. We do not desire that race to obtain employment here. But I do submit that the result can be more directly reached by getting directly at the persons themselves, without calling upon those who may have the right to be employed by us, without compelling them to take the trouble to obtain these certificates. Now I will read this section, as amended by the author:

"SEC. 2. All aliens, before engaging in any manner of employment, on their own account or for others, within this State, shall first procure a certificate of authority. Such certificate shall be issued to any applicant of a race, and none other, eligible to citizenship under the laws of the State, without cost, by any Court of record of the State. No alien shall engage or continue in any manner of employment in this State unless possessed of such certificate. Nor shall any person, copartnership, company, or corporation, directly or indirectly, employ any alien within this State, unless such person possess such certificate. The Legislature shall provide for punishment of violations of this section. Prosecutions shall be maintainable against both employers and employés. Each day's violation shall constitute a distinct offense."

Now it makes very little difference whether it is the law of this State, or the law of the United States. Now this first clause is what I object to. I say the distinction is so small that it is useless to put this extra trouble upon those who may be entitled to become citizens. For that reason, if for no other, I am opposed to this amendment, because it attempts to do indirectly what we might as well do directly.

MR. BEERSTECHER. With the gentleman's permission I would like to inquire whether he has got anything better to offer.

MR. HERRINGTON. I propose to offer some assistance in this matter if I can. I want to make it as acceptable as possible, as free from objections as possible, and as strong and effective as possible. So far as this first clause is concerned, it can be reached more directly. It can be reached directly by a proposition, to the effect that no person shall enter into any manner of employment who is not capable of becoming a citizen of the United States. It is not necessary to compel all foreigners to take out certificates, because we can as well do it directly.

The next clause: "The Legislature shall provide punishment for a violation of this section." It is just as well to have it apply directly to the persons who are prohibited from engaging in these vocations. I say if we have the power to make these provisions with reference to the procuring of licenses, we have the power to prevent these persons from engaging in these employments, who cannot obtain certificates. And if we have the power, let us proceed directly. We cannot deceive anybody as to the intention of a provision of this kind, and if it will stand the test in one case it will in another. Why compel these persons who are entitled to citizenship to go to the trouble of obtaining certificates, before they can be permitted to engage in these employments. Now I think I have made myself understood. It seems plain to my mind, and if I have not made myself understood, it is simply because there is no language to express it. If it is necessary I will repeat it again. I say that the distinction is so marked between the classes of persons that there is no need of this circumlocution. It will not make it any more binding, or any stronger, or any more legal. Let it operate directly upon those persons who may not become citizens of the United States. It is wrong to put this hardship upon those who are entitled to citizenship. It is unnecessary to bring them in at all. It is unnecessary to put them to the trouble. If we have the power to prevent the Chinese from obtaining employment indirectly, we have the power to do it directly. Anything we can do indirectly we can do directly. Let us put it in the Constitution in such a shape that we will know precisely what we are acting upon.

MR. BARRY. Mr. Chairman: As this is a matter of importance, upon which this Convention is nearly unanimous, feeling that something should be done, that the fullest powers of the State should be exercised, going to the very verge of our authority, and considering the fact that there is no quorum present, I move the committee now rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. TINNIN. I move to adjourn.

Carried.

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

SEVENTY-FIFTH DAY.

SACRAMENTO, Wednesday, December 11th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barton,	Dudley, of San Joaquin,	Holmes,
Berry,	Eagon,	McConnell,
Biggs,	Fawcett,	McCoy,
Boggs,	Glascock,	Smith, of Santa Clara,
Campbell,	Hager,	Townsend.
Cowden,	Hale,	

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. McCoy, on account of sickness. Mr. Barton was granted two days leave of absence, and one day's leave of absence was granted to Messrs. Holmes, O'Sullivan, and Smith, of Santa Clara.

THE JOURNAL.

MR. VAN DYKE. I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

PETITIONS—MECHANICS' LIENS.

MR. VAN DYKE presented the following petition, signed by a number of mechanics and others, citizens of California, asking that provision be made in the Constitution for a lien law:

To the President and members of the Constitutional Convention:

GENTLEMEN: The undersigned respectfully represent that the practical working of the present legislation, and decisions of Supreme Court based thereon, regarding the rights of mechanics, material-men, and laborers to a lien for their labor and material furnished, is such that those who in a measure depend upon such law for just protection fail in nearly all cases to obtain it, because of the inefficient working of said law.

Wherefore, we pray you to declare in our organic law the right of every mechanic, material-man, and laborer to a perfect lien on the thing whereon his labor has been expended, or for which his materials have been furnished.

Moreover, we would state that we would be satisfied with amendment number one hundred and sixty seven, introduced by Mr. Van Dyke, on October tenth, eighteen hundred and seventy-eight, and read and referred to Committee on Miscellaneous Subjects, as follows:

"SEC. —. Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

And your petitioners will ever pray.

Referred to Committee on Miscellaneous Subjects.

SESSIONS OF THE SUPREME COURT.

MR. ROLFE presented the following petition from the members of the Bar of San Bernardino, which was referred to the Committee of the Whole.

To the honorable the Constitutional Convention of the State of California:

We, the undersigned members of the Bar of San Bernardino County, do on behalf of ourselves, and of the people of said county, respectfully but earnestly protest against any action of the Convention which will deprive Southern California of two sessions of the Supreme Court annually.

December 5, 1878.

W. J. CURTIS,
TALBOTT & HARRIS,
JOHN W. SATTERWHITE,
W. D. FRAZEE,
ANDEN B. PARIS,
BOYER & GREGORY,
J. W. NORTH,
C. W. C. ROWELL,
HARRIS & GOODCELL,
JOHN BROWN, JR.,
GEO. F. HASWELL.

RESOLUTION—PUBLIC LANDS.

MR. WYATT. I move that the resolution which I presented yesterday morning be taken up.

THE PRESIDENT. If there is no objection, it will be taken up. The Chair hears none, and the Secretary will read the resolution.

THE SECRETARY read:

Resolved, First—That we, the delegates of the people of the State of California, in Convention assembled, do most respectfully request our Senators and Representatives in Congress to use their influence to have passed a law reducing the price of the public lands in this State, within the limits of any railroad grants, to one dollar and twenty-five cents per acre, and to enable bona fide settlers upon said lands to homestead one hundred and sixty acres thereof—the lands belonging to the United States Government being the refuse or third rate lands, and mostly embraced within the foothills or mountains, and, in most instances, much subject to drought and scarcity of water, making it necessarily expensive to improve and utilize said lands.

Resolved, Second—That we respectfully request our Senators and Representatives to use their influence to have passed a law restoring to preëmption and homestead all the lands within the limits of forfeited railroad grants in this State, upon the same terms and conditions as before said grants were made.

Resolved, Third—That a copy of these resolutions be sent to each of our Senators and Representatives in Congress.

MR. WYATT. Mr. President: The first resolution takes the double minimum from the price of the even sections within the limits of railroad grants where the railroads have been completed—where the conditions of the grants have been complied with. That is done because all the better class of land has been taken, either by homestead or preëmption, or purchase, within those limits, and there is nothing left except an inferior class of lands that are not worth the double minimum price, either as to purchase or taking eighty acres by homestead or preëmption.

The second resolution refers to all the lands included within the grants heretofore made which have been forfeited by reason of the non-construction of the roads; in that case all the even sections being subject to the double minimum, and the odd sections not being in the market at all. The effect of this would be to restore all the lands within these forfeited grants to the market at a certain price—that is to say, one dollar and twenty-five cents per acre. All the lands which are surveyed certainly ought to be thrown open to homestead and preëmption by citizens of the United States. I believe it ought to be the policy of the government to make the lands as cheap as possible to the people, and not to increase the price, or make the quantity which a man may take less than one hundred and sixty acres. I think the resolutions are in accord with the popular sentiment of this State. I introduce them in compliance with very numerous petitions which I have received on the subject, and I hope they will be adopted.

THE PRESIDENT. The question is on the adoption of the resolutions offered by the gentleman from Monterey, Mr. Wyatt.

Adopted.

CHINESE IMMIGRATION.

MR. MILLER. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

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

SPEECH OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I did not intend to say anything upon this question now before the house, but from certain inquiries that have been made, certain allusions that have been made, by some of the gentlemen in their remarks, wanting to know why the lawyers on the floor had not participated in this debate—not that I thought the remarks had any reference to me whatever, because I don't claim to be one of the eminent lawyers whom this Convention would like to hear from in respect to this matter before the house; but two or three of the gentlemen found fault because the eminent lawyers on this floor have not expressed themselves either for or against the propositions introduced here. My reply is that there is but one side to take, looking at it in its legal aspect. Perhaps the reason that they have remained silent is that they know how utterly futile it would be to oppose the measures proposed to be inserted in the Constitution, consequently you have not heard from the legal gentlemen on this floor. Another reason is, sir, if they should get up here and attempt to enlighten the Convention upon this subject, as I should be glad to hear them do, one of the first things you would hear from the other side of the house would be that they were employed by some corporation; that they were interested in some scheme or other. These things have been hurled at the honorable gentlemen so often, when they have been trying to instruct this Convention, that they feel inclined to be heard less in the future. It is not very pleasant when a gentleman gets up here, when he feels that he is acting from conscientious motives, when he knows he is telling the truth, to have gentlemen get up and impugn his motives on this floor, and say that he is talking in the interest of corporations. I don't believe there is a single legal gentleman on this floor that has any other clients save the people of the State of California, or any other interests than the interests of the people of California. They are paid by the people; and their object is to make a Constitution that will be acceptable to the people of the State, and one that will be an honor to their own names when they die. And, sir, I believe—or at least I fear—that there are some of these legal gentlemen occupying places on this floor, if the various propositions which are presented here, and this report, particularly, if they should be incorporated into the Constitution of this State, that they would debate seriously in their own minds whether this Constitution will receive their support. I do not believe, sir, that men are going to be so far forgetful of their duty or their interests, and their desire for the right, as to support the measures which are attempted to be incorporated into this Constitution. They know that we have no right—that the State has no right, notwithstanding what has been said here—to incorporate such provisions as these into the organic law. Every legal mind, as well as every ordinary mind, knows that this Convention has no right to set at defiance a solemn treaty, made by the powers of this government with any other foreign government. Gentlemen reason, and say we can under the police regulation. They can't do it under any regulation, police or otherwise, if it contravenes a treaty made by the Congress of the United States, and there is no use of talking about it.

Now, gentlemen say this section means nothing, and is harmless. They can support it, but don't want to, because it means nothing. Now, Mr. President, it means considerable. It is enough in itself. I will read the first section, and you will see, by a careful reading, that it means a good deal:

"SECTION 1. The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary."

Now, our people are doing business in China to-day by virtue of this treaty made between their government and our government. We went there and asked them to make it; they did not ask us. England went there, and we went there and asked to be permitted to trade with them; to have a commercial treaty, and open up commercial relations—and some of the authorities of Europe were willing to go to war for the purpose of compelling them to make a treaty. We made a treaty, and we are availing ourselves to-day of the privileges and benefits of that treaty. Prior to the making of that treaty the United States were at a great disadvantage, because Germany at one time was about the only country that traded there. England and the United States also wanted to have this treaty; and I may as well remark, right here, that when that treaty was consummated San Francisco thought she had struck a great bonanza, and that it would make San Francisco one of the largest cities in the world. Now, after we made this treaty, we found that it did not work just exactly as we had anticipated, and now we want to do away with it. Gentlemen ought to have learned before now that it takes the same contracting power to do away with an agreement that it does to make it, and we cannot do away with that treaty here in any such way as this. Any lawyer knows we cannot do it; any thinking man ought to know we cannot do it. The contracting parties themselves are the ones that can do away with it. Now, that treaty has been read over to you by my colleague and others, and they say it only provides that the Chinese may come here for the purpose of residence and travel. If they are permitted to reside in this State, and to travel in this State, what are you going to say about this provision that Chinamen are prohibited from renting property? I would ask any gentleman when they are permitted by the terms of this treaty to come to this State and live, if it does not follow, naturally and logically, that they are entitled to live in a house—entitled to rent property. Would it not be an open violation of the treaty, when that treaty permits them to come to this country to reside, to deny to them the right to rent a house to live in? It follows naturally. Consequently, I say it is a direct violation of the solemn treaty made between the Government of the United States and the Empire of China, and I claim and assert that this body has no right to infringe upon that treaty.

Then, again, it reaches a class of persons that we should feel no antipathy against. What have they done to us? I would ask any gentleman here, if he would not better his condition if he could? Do we not all desire to make more money? Is it not human nature to better our condition whenever we can? I ask any gentleman, if there should be placer diggings discovered that would pay one hundred dollars a

day, if there are not thousands who would flock to the scene of discovery in the hope of bettering their condition? And at this particular time China is stricken with famine. There are millions dying of starvation. Is it not human nature for these men to go away from that country, when they are dying off every day of starvation, into a country where they can better their condition? Are these poor creatures to be blamed for it? I think not. I don't think there ought to be any feelings of hostility against these Chinamen. And I, as an individual, while I greatly regret that they are here in the numbers they are, have no antipathy to them. I do sometimes feel a little bit hostile toward the party that has prevented us from modifying the provisions of the treaty which exists between this country and China, so that we might stop this influx of Chinamen. It is toward those men I cherish feelings of hostility, if I have any at all, and not against the Chinese who come to this country, as I would go to China, to better their condition.

Gentlemen must not forget the fact that this country has been several years filling up with Chinamen. It has taken a great many ships to bring them here. They have been coming and coming for the past twenty years. We cannot expect to relieve ourselves of them in a day, nor in a week. It took several ships to bring them, and it will take a great many ships to take them back again. We cannot relieve ourselves of an evil of twenty years growth in a day. It will take some time. As far as I am concerned, I hope we can find some partial remedy at least. But I don't think we can do it unless we act rationally; unless we go at this thing in a legal way. We cannot do it by any such resolutions as it is proposed to insert here. They would be declared unconstitutional the first time they come before the higher Courts. Gentlemen have inserted in this report a clause that they shall not be employed by corporations; that they shall not do thus and so; that they shall not engage in business without a license, and then provide further that they shall not have a license. Now, suppose you do this; suppose you incorporate this provision in the Constitution, and suppose the Constitution is adopted by the people, and becomes the law of the land. What are you going to do with these sixty thousand Chinamen, if they are all going to be excluded from work, until such time as they can get away? Are the people going to keep them? Are the people going to feed them, or are you going to run them into the sea? What do you propose to do with them?

MR. KLEINE. Let these Chinese companies that brought them here send them back.

MR. OVERTON. Yes, they will send them all back in a week—sixty thousand of them. You can't get rid of them in a day.

MR. KLEINE. There are one hundred and sixty thousand of them.

MR. OVERTON. That makes my argument all the stronger. You can't get rid of them in a month. Again, as some gentlemen have said, I have a right to my opinion, and I propose to vote as my judgment tells me is right, and I do not care what the people of the State may think. I am not a candidate for any office; I don't know that I shall ever hold an office again. If I could insert a clause prohibiting Chinese immigration, I would do it, but I know it cannot be done. I am going to vote as my reason dictates. I am not going to fall down to popular clamor for the sake of support. I am not going to do that, sir. I am going to act for myself, and I shall be responsible for my vote, and I want my constituents to see how I vote.

Now, sir, as I was going to say, I have an opinion on this section. I do not believe, notwithstanding other gentlemen differ with me, I do not believe that a clause in which we say the corporations shall not hire them is worth the paper it is written on. I don't believe it is worth the price of the ink used in writing it. I believe that Governor Stanford, or any other man controlling a corporation, will go on hiring them, and the Courts will sustain them. The Courts will say that you had no right to put such a prohibition in the Constitution, and your work will be set aside.

MR. TULLY. What principle of law does it violate, prohibiting corporations from employing Chinamen?

MR. OVERTON. Simply this: that the treaty says they shall come to this country to reside and travel, and be treated like the people of the most favored nations. Now, sir, the most favored nations, Englishmen, Irishmen, and Germans, can come to this country and hire out to whom they please. There is a discrimination in that regard between these people and the Chinese.

Now, I did not expect to make a speech. I wanted to make these few remarks so as to show how I stand. My vote shall be in keeping with my judgment, and I am perfectly willing for the people to see how I stand. I am not afraid to let them know. Now, sir, I agree with you as to the evils of Chinese immigration. I had taken that position long before I was called on to run for this office. I am not an office seeker. I have always opposed Chinese immigration, and I am as strongly opposed to it to-day as ever; but I want to get rid of these people in a legal way. I am not willing to go to such extremes as to make this State the laughing stock of the country. I pledged myself to adopt all lawful methods, and I am ready to do so. I stated then that I believed the only real, effective remedy would be to secure a modification of the treaty. One reason that this has not been done, is that for the last ten years the Republican party have had control of the two branches of Congress. I have never expected a great deal of aid from that party. Not that the Republicans in this State are not just as much in sympathy with us on this question, and just as deeply interested, but the great body of the party back East has not sympathized with us, and does not to-day.

The great body of that party believe in the fatherhood of God and brotherhood of man theory, and they are in favor of the Chinese coming here, and will not give us the relief we need. I stated then, and I state it again now, that I believe that when the two houses of Congress get to be Democratic, then, and not till then, will we get relief. I believe the Democratic party are in sympathy with the people of this State on that question, and I have believed it for several years. I believe you gentlemen will see that we will get some relief from that quarter that will be of great use to us. If we cannot get it in that way we have no remedy. These resolutions will fall to the ground as nothing. We must not put ourselves in a hostile attitude towards the government, for if we do attempt to enforce these provisions we may plunge the country into a war with China. It could not be otherwise. We have a treaty with that country, and if our government is going to permit one individual State to set aside that treaty it is a cause for war, and war will be most apt to follow such an action on our part. We are not prepared, and the General Government is not going to permit us to violate a treaty in that way. The only way is to adopt the clause which I have suggested. I believe now, as we have, for the first time in years, both houses of Congress Democratic, I believe we can expect some aid from that source. I want to get rid of these Chinese as bad as any Workingman, or any other man. I see the evil effects. It corrupts our morals, degrades labor, and injures the business of the State; for, as I have often said, any man, I don't care who he is, may go to work and hire Chinamen because he gets them for less money, but he loses money by the operation. Every dollar paid to them is gone from us. We don't get any of it back, as we do when we pay it to white men. When you hire a white man and pay him money he will settle down in the neighborhood; if he is a single man he marries as soon as he gets enough, gets a piece of land, settles down, and becomes a valuable addition to the population. It is not so with these Chinamen. Every dollar we pay to them is gone from us. I have always advocated that it was to the financial interest of the country to get rid of them, but I want to do it in a legal way. I shall vote on these various propositions as my judgment dictates. I have taken an oath in this hall to obey the Constitution of the United States, and I do not propose to violate that oath.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I have been reluctant to participate in this debate, and if I had not been operated upon by a sense of duty I should certainly have continued silent upon this subject. I concede that the object and effect of this article is to exclude Chinese immigration from California. It is admitted by all the members of this Convention who have spoken on the subject, that Chinese immigration is a great and menacing evil to the moral and material prosperity of the State. Several gentlemen who have discussed the question maintain, however, that the State is, under the Federal Constitution, powerless to resist, and they oppose all action. They remind one of the fellow down East who was in favor of the Maine liquor law, but against its execution. The opponents of State action maintain that the power to exclude the Chinese, or any other immigration that endangers the safety of the State, is exclusively in the Congress of the United States. I deny the premises and the conclusion, both upon authority and reason. I shall be unfortunate if I do not demonstrate that the authorities are the reverse of such a proposition. Nor is this any new position with me. As long ago as eighteen hundred and sixty-seven, when Mr. Gorham was canvassing the State as the Republican candidate for Governor on the "fatherhood of God and the brotherhood of man" proposition, I discussed this subject in an address which was then published in the Examiner, republished, as to that portion of it, in a Workingmen's paper then printed in San Francisco. The truth is, there has always been a Chinese immigration party in the State, although at present few of its advocates have the courage of my friend from Sonoma, Mr. Stuart, to avow it. All those interested in the large moneyed corporations, like the railways, or who cultivate land by the thousands of acres, desire cheap Chinese labor, and a continuance of its importation. In this Convention that is the inner secret of the opposition to this report, and of the assertion that the jurisdiction is exclusively with the Federal Congress, where they are aware there is no relief to be anticipated. It is well known that for a long series of years the legislation in the Western States has excluded not only slaves, but free people of color, and it has gone unchallenged either by Congress or by the Federal judiciary. This course of legislation settles the question so far as State action is concerned. Article fourteen of the Constitution of Illinois of eighteen hundred and forty-eight, provides: "The General Assembly shall, at its first session under the amended Constitution, pass such laws as will effectually prohibit free persons of color from immigrating to and settling in this State; and to effectually prevent the owners of slaves from bringing them into this State for the purpose of setting them free." It is a matter of history that that policy was sustained and enforced by the State of Illinois with entire success, and without opposition from the Federal Government.

The thirteenth article of the Constitution of Indiana, adopted in eighteen hundred and fifty-one, declares:

"No negro or mulatto shall come into, or settle in this State, after the adoption of this Constitution. All contracts made with any negro or mulatto coming into this State, contrary to the provision of the foregoing section, shall be void, and any person who shall employ such negro or mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars nor more than five hundred dollars."

These provisions go quite as far as any contained in this report, and are as open to objection on the ground of code legislation as any contained in the report of the Committee on Chinese Immigration, and, aside from the treaty with China, are quite as obnoxious to constitutional objections. I maintain that the decisions of the Supreme Court are altogether clear and uniform as to the power of the State to exclude an immigration which endangers the morals and safety of the State, and that the power exists alongside of and independent of the power of Congress to regulate foreign and inter-State commerce. That it is a right of police regulation vested in the States exclusively, and which the decisions of the Supreme Court of the United States from first to last fully recognize and sustain.

The first case was decided in eighteen hundred and thirty-seven, and the last bearing upon the subject in eighteen hundred and seventy-six, and they are entirely consistent. The Passenger cases go to the extent of asserting that the States have the exclusive right to determine whether the immigration is dangerous or not, and of applying the necessary remedy. In the City of New York vs. Miln, 11 Peters, decided in eighteen hundred and thirty-seven, Mr. Justice Barbour, rendering the opinion of the Court, quotes from Vattel, as the law of the case:

"The sovereign may forbid the entrance of his territory either to foreigners in general or in particular cases, or to certain persons, or for certain particular purposes, according as he may think advantageous to the State." * * * "Since the lord of territory may, whenever he thinks proper, forbid its being entered, he has no doubt a power to annex what conditions he pleases to the permission to enter."

The Court then proceeds to prove that the State possessed this power before the formation of the Federal Constitution had not surrendered it to the General Government, and still retained it. It has been asserted that the decision in the Passenger cases overruled the decision in the City of New York vs. Miln. It is an assumption without the slightest foundation in fact. In the Passenger cases, Judge McLean says:

"In giving the commercial power to Congress, the States did not part with that power of self-preservation which must be inherent in every organized community. They may guard against the introduction of anything which may corrupt the morals or endanger the health or lives of their citizens."

To the same effect is the opinion of Judge Grier, and seven of the nine Judges who composed the Court. Seven of the Judges, including the majority and minority, delivered concurrent opinions on this question, and eight of them concurred in the position thus expressed by Judge McLean, as I shall demonstrate before I conclude. I shall show that all the other decisions of the Court either substantially maintain the same rule, or expressly reserve any opinion on the subject.

Then do the Chinese immigrants, in the language of Judge McLean, tend to corrupt the morals of our people, or endanger the safety of the State? Let us begin with the foundation of society, the marriage relation. We know, from history and the statements of travelers, that a system of polygamy exists in China, quite as execrable as that which prevails among the Mormons of Salt Lake. That the position of woman in China is practically that of a slave and an article of commerce. I need not dwell on the fact, that there can be no desirable civilization or sound state of morals where polygamy is the position of woman. In the nineteenth century that is an admitted axiom among all people of any liberal cultivation.

To illustrate the Chinese idea of the rights and position of woman, I give the following contract from the Senate Committee report on the subject of Chinese immigration at a late session of Congress: "An agreement to assist the woman Ah Ho, because coming from China to San Francisco, she became indebted to her mistress for passage. Ah Ho herself asks Mr. Yu Kwan to advance her sixty dollars, for which Ah Ho distinctly agrees to give her body to Mr. Yee for services as a prostitute for a term of four years." And yet the passage did not cost Yee exceeding forty dollars, and Ah Ho for this service was required to prostitute herself for four years. And this is the foreign commerce which gentlemen, in effect, argue is protected by the Constitution of the United States. It appears from the testimony of Governor Low, in the same report, that by an arrangement between the Chinese Companies and the steamship company no Chinaman will be allowed to return to China on the steamer until all his debts are paid; and, therefore, there was no way for this woman to escape her odious contract until the expiration of the four years. Yet, such are the Six Chinese Companies tolerated in San Francisco, and such is the steamship company subsidized by the United States Government in the cause of civilization and commerce.

It is an admitted fact, to which every practicing lawyer can testify, that as a race the Chinese have no sense of the obligations of an oath, either when the litigation is among themselves or between Chinese and others, whether the oath is administered according to our laws or their own customs. If among themselves, they generally produce about an equal number of witnesses on each side, who testify directly in opposition to each other. I recollect the history of a case, when I first came to the State, when a Justice of the Peace, as a matter of curiosity, had witnesses in a suit until fifty had testified in contradiction of each other. A race that has no sense of the obligations of a jural oath is dangerous in any country, and especially where jury trials prevail according to the English or American rules.

It is well established that smallpox and leprosy prevail among the Chinese to an alarming extent, and that they have introduced both into this country. It is also an established fact that leprosy is an incurable disease, and that several deaths from that cause have occurred in San Francisco.

It is well known that their women fearfully corrupt the youths in our cities, both in morals and health. I have been credibly informed that they have introduced among our young people the practice of smoking opium, which, in some instances, has been indulged by young females. It cannot be denied, that in opposition to law and the Acts of Congress, Chinese are introduced into this country as coolies bound by contracts to labor—practically slaves—and that the Six Companies rigidly enforce these contracts. Nor is it possible to detect this violation of law, or repress this system of slavery so long as Chinese are permitted to be introduced as immigrants. It appears from the testimony before the United States Senate Committee that these people are generally too poor to pay their own passage. It is, therefore, the practice of the importer to advance the passage money under a contract to labor, and the coolie goes before the American Consul, and proves—or some one else does it for him—that he is a voluntary immigrant; and thus he sells himself into slavery for a term of time, and becomes a person "held to service or labor," as our system of slavery used to be described.

It is well established that these people are often made the subjects of the grossest frauds, and sometimes leap overboard before the ship leaves port, and are drowned in their effort to escape their fate. On the voyage they have been known to suffer all the horrors of the middle passage. It is our duty to put an end to this horrible traffic which can only be effected by a total inhibition of the immigration. We are informed by the reports of Americans, who have visited China, that their prisons are often resorted to for the purpose of filling contracts for labor made by the Six Companies. It is the statement of all intelligent Chinamen that the laborers introduced into California of late years are generally drawn from the lowest dregs of the Chinese people. This coast has become, to a large extent, a penal colony for the Emperor of China.

Every citizen of California is fully aware that the Chinese companies have a system of government and laws for the Chinese entirely independent of our own government, which they sometimes enforce, even to the taking of life. One or two cases have fallen under my own observation. Yet such is their system of terrorism, that it can never be proved in a Court of justice. They are, therefore, in open rebellion against the State Government. It was charged to juries by the United States Supreme Court Judges on the circuit, that combinations to resist the execution of the fugitive slave law were treason. Such are the combinations of these people for a Chinese Government in California. It has been said by some jurists that treason against a State was also treason against the United States. If this be so, the Chinese are in open revolt against both the State and Federal Government. The Chinese are now well armed with the improved weapons, and with their own passion and those of our people excited as they are at present, civil war may be anticipated at any time. Many riots have already occurred. It must be apparent to all men of reflection that China, with her four or five hundred millions in a state of starvation, may pour such a flood of immigrants upon our shores that, in process of time, they will subvert our institutions and government. It has been well said by the Chairman, in his able and candid speech on the presentation of the report, that with these people it is a question of food and existence, which they can only solve by immigration. Our own security requires that we should turn this tide away from California. If they continue to come in the numbers in which they have been arriving, they will in time, and at no distant day, drive out the free white laborers by their merciless system of competition, which must inevitably result in their getting the possession and control of the country. In other words, they will Mongolianize the Pacific Coast, for in the absence of the Caucasian laborer they will be irresistible in numbers, force, and power. The Chinaman earns only eight or ten cents per day in his own country. He is therefore benefited by any change of residence. In this country, with his nomadic habits, he lives in tents, or tenements of the meanest character. He clothes himself with Chinese raiment, and subsists on rice and the cheapest food. It is impossible for the white laborer to compete with him, and as a consequence he drives off the white man and monopolizes the labor market.

Instead of checking this evil the Federal Government has subsidized railroads to import and steamers to transport these coolies by the thousand to the Pacific Coast. Governor Low, in his testimony before the Senate Committee, which will be found on page seventy-six, testified:

"The impulse of eighteen hundred and sixty-seven, eighteen hundred and sixty-eight, and eighteen hundred and sixty-nine, I have always conceived to have been given by the building of the Pacific Railroad, the company being very anxious for laborers. A great many were brought here directly and indirectly by the efforts of the railroad people to get laborers. * * * I should think on the Central Pacific, from my knowledge of it, four fifths of the labor for grading perhaps was performed by Chinese. That is, from here to Ogden."

The laborer can hardly regard a government as paternal which inaugurates measures to introduce a horde of Asiatics who compete with him in all the industries of the country, and by competition deprive them and their families of bread. National, like domestic charity, begins at home. The policy of the Federal Government for these last fifteen years cannot be accounted for on any rational or humanitarian principle. Under the cry against pauper labor it has established a so-called protective tariff, which has led to an importation of operatives, because it has rendered impossible an exchange of our agricultural products for the proceeds of that labor, filled the country with foreign paupers and tramps, broken up our foreign commerce, and overstocked the country with manufactures forced in this hotbed of legislation.

Asiatic immigration is opposed to all the great interests of the country. It represses that of our own and kindred races. I prefer that the future inhabitants of the Pacific should be descended from the fair daughters of Germany, Ireland, England, and France, instead of the copper-colored courtesans of China. Mixing with a lower race, without elevating them, debases our own.

There is another aspect of this question which requires our deliberate consideration. If this Chinese population is permitted to become permanent among us to the extent threatened, they will ultimately attain the right of suffrage. It is not possible to continue to carry them in our bosom as a quasi-alien enemy. If among us in the numbers we anticipate, paying taxes, it will be impossible to resist their claim to citizenship. They are already being naturalized in other States, and all legal objection to their naturalization rests upon the word "white" in the Act of Congress. How soon that will be construed away by the Courts, no one can divine.

If the Chinese now in the country had the ballot, in all party contests they would hold the balance of power and the Six Companies would control our politics and government. They would become the mere subjects of commerce, to be transferred to the party paying the highest price. It is urged that the exclusion of Chinese immigration from California is in opposition to the treaty with China. I have shown that according to the decisions of the Supreme Court of the United

States, it is not in the power of the Federal Government, by treaty, to annul the reserved rights of the States, or violate the Federal compact. If the President and Senate possessed that power they might abrogate the Constitution of the United States as well as the Constitutions of the States. The Supreme Court of the United States has also held that the right of the State to exclude an immigration which was injurious to the morals or dangerous to the safety of the State, was one of its sovereign powers never surrendered to the Federal Government. The existence of any sovereignty in the State since the rebellion has been denied. Such a position is merely preposterous. In the case of McCullough vs. The State of Maryland, Chief Justice Marshall and the Supreme Court of the United States said: "In America the powers of sovereignty are divided between the Government of the Union and those of the States. They are each sovereign as to the objects committed to it, and neither sovereign with respect to the objects committed to the other." This is almost verbatim the language of Alexander Hamilton in his report in seventeen hundred and ninety-one, in favor of the constitutionality of the United States Bank. It has received universal assent.

Since the rebellion, this doctrine has been repeatedly affirmed by the present Supreme Court of the United States. In United States vs. Daley, 11th Wallace, that Court held, the opinion being rendered by Judge Nelson: "The General Government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former in its appropriate sphere is supreme, but the States within the limits of their powers not granted, or in the language of the amendment 'reserved,' are as independent of the General Government as that government within its sphere is independent of the States."

It is a well established principle of law, from the earliest writers on international law to Vattel and Wheaton, that a treaty in violation of the Constitution of a country is void and without authority. In the Cherokee tobacco case, 11 Wallace, the Supreme Court of the United States held:

"It need hardly be said that a treaty cannot change the Constitution, or be valid if it is in violation of that instrument. This results from the nature and fundamental principles of our government."

And as to the power of Congress to abrogate a treaty, it is held in the same case:

"A treaty may supersede a prior Act of Congress, or an Act of Congress may supersede a prior treaty."

In order to establish satisfactorily that under the decisions of the Supreme Court of the United States, the State has the power to exclude an immigration which endangers her morals or safety, I shall have to go more fully into the principles and reasonings of these cases.

Judge Wayne states as the opinion of the Court in the Passenger cases:

"The State have also reserved the police right to turn off from their territory paupers, vagabonds, and fugitives from justice." (P. 425.)

Again: "But I have said the States have the right to turn off paupers, vagabonds, and fugitives from justice, and the States where slaves are have a constitutional right to exclude all such as are from a common ancestry and country of the same class of men. And when Congress shall legislate, if it be not disrespectful for one who is a member of the judiciary to suppose so absurd a thing of another department of the government, to make paupers, vagabonds, suspected persons, and fugitives from justice subjects of admission into the United States, I do not doubt it will be found and declared, should it ever become matter of judicial decision, that such persons are not within the regulating power which the United States have over commerce. The States may meet such persons upon their arrival in port, and may put them under all proper restraints. They may prevent them from entering their territory, may carry them out, or drive them off." (P. 426.)

It may be said that these were the utterances of a Southern Judge, but Mr. Justice Grier, of Pennsylvania, goes a bow-shot beyond him. He says:

"It must be borne in mind (what is sometimes forgotten) that the controversy in this case is not with regard to the right claimed by the State of Massachusetts, in the second section of this Act, to repel from her shores, lunatics, idiots, criminals, or paupers which any foreign country, or even one of her sister States, might endeavor to thrust upon her; nor the right of any State, whose domestic security might be endangered by the admission of free negroes, to exclude them from her borders. This right of the States has its foundation in the sacred law of self-defense, which no power granted to Congress can restrain or conceal. It is admitted by all that those powers which relate to merely municipal legislation, or what may be more properly called internal police, are not surrendered or restrained, and that it is as competent and necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and convicts, as it is to guard against the physical evils which may arise from unsound and infectious articles imported." (P. 457.)

I further answer this position in relation to the treaty in the language of Chief Justice Taney, who says: "And the first inquiry is whether, under the Constitution of the United States, the Federal Government has the power to compel the several States to receive and suffer to remain in association with its citizens, every person or class of persons whom it may be the policy or pleasure of the United States to admit. In my judgment this question lies at the foundation of the controversy in this case. I do not mean to say the General Government have, by treaty or Act of Congress, required the State of Massachusetts to permit the aliens in question to land. I think there is no treaty or Act of Congress which can justly be so construed. But it is not necessary to examine that question, until we have first inquired whether Congress can lawfully exercise such a power and whether the States are bound to submit to it. For if the people of the several States of this Union reserved to themselves the power of expelling from their borders any person, or class of persons, whom it might deem dangerous to its peace, or likely to produce a physical or moral evil among its citizens, then any treaty or law of Congress, invading this right, and authorizing the introduction of any person, or description of persons, against the consent of the State, would be assumption of power which this Court could neither recognize nor enforce." (P. 446.) The Chief Justice continues: "And it is equally clear that, if it may remove from among its citizens any person, or description of persons, whom it regards as injurious to their welfare, it follows that they may meet them at the threshold and prevent them from entering. For it will hardly be said that the United States may permit them to enter, and compel the States to receive them, and that the States may immediately afterwards expel them." * * * "I think it, therefore, to be very clear, both upon principle and the authority of adjudged cases, that the several States have a right to remove from among their people, and to prevent from entering the State, any person, or class, or description of persons, whom it may deem dangerous or injurious to the interests and welfare of its citizens; and that the State has the exclusive right to determine, in its sound discretion, whether the danger does or does not exist, free from the control of the General Government." (P. 467.)

In subsequent cases the Court has expressly reserved its opinion on the police powers of the State in this respect. In Henderson vs. Mayor of N. Y., 92 Otto, 250, decided in eighteen hundred and seventy-five, which was a question of a tax on immigration per se, the Court say: "Whether, in the absence of such action (Congressional legislation) the States can, or how far they can by appropriate legislation protect themselves against actual paupers, vagrants, criminals, and diseased persons arriving in their territory from foreign countries, we do not decide." (P. 275.) The most that can be said in favor of the exclusive power of Congress to so regulate foreign commerce as to interfere with the police rights of the States, is that it is not yet a settled question in the Supreme Court of the United States. The Supreme Court has not only by repeated decisions recognized the police power for the protection of its citizens, but in the recent case of United States vs. Dewitt, held an Act of Congress void, which prohibited the mining for sale of naphtha and illuminating oil, as interfering with the regulation of internal commerce, which it declared to be a power vested exclusively in the States. (11 Wallace, 41.) There could be no stronger illustration of the exclusive police powers of the States, and the utter want of jurisdiction in the Federal Government over that class of subjects.

In the case of Chy Lung vs. Freeman, 92 Otto, 280, so much relied on by the advocates of Federal power, the only point really decided was that a State officer could not go on board the ship and seize a woman and deprive her of her liberty as a prostitute without giving her a trial. The question arose on a writ of habeas corpus. There was no question of taxation involved in the case, nor any question of exclusion of the immigration, and clearly none of the safety to the State of Chinese immigration. The case and the State law assumed that the immigration of moral Chinese women was legal and a safe commerce. There is no doubt that the statute of California was liable to the criticism to which Mr. Justice Miller subjected it.

"The Commissioner has but to go aboard a vessel filled with passengers ignorant of our language and our laws, and without trial, or hearing, or evidence, but from the external appearance of persons with whose former habits he is unfamiliar, to point with his finger to twenty, as in this case, or a hundred if he chooses, and to say to the master: These are idiots, these are paupers, these are convicted criminals, these are lewd women, and the others are debauched women. I have here a hundred blank forms of bonds printed. I require you to fill me up and sign each of these for five hundred dollars in gold, and that you furnish me two hundred different men, residents of this State, and of sufficient means as sureties on these bonds. I charge you five dollars in each case for preparing the bond and swearing your sureties; and I charge you seventy-five cents each for examining these passengers, and all others you have on board; if you don't do this you are forbidden to land your passengers under a heavy penalty. But I have power to commute with you for all this for any sum I may choose to take in cash. I am open to an offer, for you must remember that twenty per cent. of all I can get out of you goes into my own pocket, and the remainder into the treasury of California."

This, although somewhat colored, is a tolerably accurate description of the statute. Of this law, Justice Miller correctly says:

"Its manifest purpose, as we have already said, is not to obtain indemnity, but to get money."

There was no pretense that it was a statute excluding Chinese immigration. The Court expressly admits the power of the State to the extent of what is necessary for self-protection, reserves its opinion as to what measures are necessary, and invites the presentation of a case which the Court may pass. The Judge says: "We are not called upon by the statute to decide for or against the rights of a State, in the absence of legislation by Congress, to protect herself by necessary and proper laws against paupers and convicted criminals from abroad; nor to lay down the definite limits of such a right, if it exists. Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity. When a State statute, limited to provisions necessary and appropriate to that object alone, shall, in a proper controversy, come before us, it will be time to decide that question." Thus the Court expressly rules that no question of exclusion is before them. The case, therefore, in nowise conflicts with the main question in the case of the City of New York vs. Miln, or the doctrines in the Passenger cases.

The truth is that no case has ever been before any State or Federal Court which fairly presented the right of the State to exclude Chinese immigration with its attendant circumstances. Unless the cases of the City of New York and the Passenger cases are in point which assert the right to prohibit it, it is entirely an open question. I maintain

that the necessity indicated in the opinion of Mr. Justice Miller has already arisen in California in relation to Chinese immigration, and that the only proper, appropriate, and efficient remedy is a total exclusion of the Chinese from landing on our shores.

That the case of Chy Lung vs. Freeman does not overrule the former decisions, that the State is the exclusive judge of the necessity of the case in a question of self-defense, and that according to the opinion of Justice Miller the State must judge at least in the first instance and present a case for adjudication.

It is simply nonsense to say that if we present a case of exclusion under this report and a revised Constitution, it will lead to a conflict with the General Government. If the case should be decided against us, which I do not anticipate, we have only to submit to the judgment of the Court, and there can be no possible contest between State and Federal authority. Besides, each section, under the decisions of the Courts, will be a distinct and separate enactment, and some of them, at worst, will be held valid, while others may possibly be declared in conflict with the Constitution of the United States. The interests and honor of the State require that the experiment of invoking a decision should be made as suggested by the Supreme Court of the United States.

It is pertinent to remark that since the decision of the case of Chy Lung vs. Freeman, the subject of the police powers of the States was again before the Supreme Court of the United States, after a heated political contest over the subject in California, and Mr. Justice Field, in the opinion of the Court, took occasion to modify the language of the former opinion. That such was the intention can admit of no doubt, as Mr. Justice Field, in the opinion of the circuit, declared that a State had a right to protect itself against Chinese immigration as a matter of self-defense.

In this case of Sherlock vs. Alling, decided at the October Term, eighteen hundred and seventy-six, the Court, in the opinion by Justice Field, say:

"In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country." (95 Otto, p. 100.)

In this case the whole principle is clearly enunciated. And now, sir, in conclusion, I take occasion to say there is not the least hope for relief by the action of Congress. I am utterly opposed to any action of that body in the premises, but the abrogation of the Burlingame treaty.

Now, sir, in the classic language of some of my friends on the other side, I say, "the Chinese must go." But I propose to make them go in a legal way, by the regular action of the government. Violence has been suggested. Mobs have been alluded to. Now, sir, so far as anything but regular governmental action is concerned, I set my face against it. If our system of government is not sufficient to correct all the evils of society, then is that government a failure and a fraud. I have no taste for mobs, whether they be in the nature of an honest uprising for the correction of abuses, or whether they are the lowest, and vilest, and most criminal of all mobs under the name of a Vigilance Committee. And, sir, if any violence is resorted to in relation to this Chinese question, if we have an Executive of honor and courage, it will be put down in sharp and vigorous action, cost what it may in blood or treasure. Let us take care what we do. We may as well talk sense as nonsense; it don't cost any more.

Mr. Chairman, mob means the torch; a mob means the destruction of property. It never can succeed in this country; there are too many property holders here. There are too many men who own little farms—little homes here. They will revolt against all mobs, and whenever violence is resorted to, I am for stifling it at once, be the cost what it may. In relation to the mobs of eighteen hundred and seventy-seven against Eastern railroads, although it may have been provoked by the reduction of wages at a time when they were declaring dividends of seven per cent., it was properly suppressed by the State and Federal Governments, and if President Hayes never does another act which will commend him to the grateful remembrance of posterity, the suppression of those riots will. No, sir, give us law and the regular methods of redress of grievances through the ballot box, and I trust we will redress a great many in that way.

I express myself in this manner, sir, because I know with what we have to deal here. I would not load the Constitution with objectionable and useless matter. I have no fear about the Constitution when it comes before the people. It will be ratified. I know, sir, that there is a disposition in certain quarters to malign this Convention. I know there has been a disposition to belittle our work and traduce it. And whatever we do or say, we are met with the threat that the Constitution will be rejected. But gentlemen are counting without their host. I know, sir, that certain papers in this State, notoriously in the interest of monopolies, are battling in that direction; that they endeavor to suppress all the reasons from the public for the action of the majority here. It is true, the Record-Union did print speeches for some of us, which we paid for, until we got to be too hard on the corporations, and then they shut down on us, and now you can't get a solitary line published which is against their views. The accounts which go to the city papers are so meager that the public can glean nothing of the reasons for what we do here. All this works against us, especially when everything said against the reforms proposed here is carefully published. But if we make a good instrument, and give to the public such reasons as we can, and take care to keep all tomfoolery out, I have no fear of the result; and I do not fear the opposition of this class of papers; it will fall harmless at our feet. We have no hope of any relief from this monstrous evil but in union among ourselves and the action of the State. I have no fear that such provisions as this will result in the rejection of the Constitution. If it should be rejected by the people, it will more probably be for what it omits than for what it contains. The cry of its defeat is an idle bugbear, which will not disturb even venerable maidens. The result will show that the wish is father to the thought, and that they who cry defeat are false prophets of evil omen. I say to you, in the language of the great bard:

"To thine own self be true,
And it must follow, as the night the day,
Thou canst not then be false to any man."

MR. GREGG. Mr. Chairman: If a motion is in order, I would like to move to strike out sections two, five, six, seven, eight, and nine of the report.

THE CHAIRMAN. It is not in order.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: From the way we are going, this Convention will be in session till the Legislature meets. It is about time we were adopting some fixed, settled line of policy. Now, I can hardly hope to add any argument to that which has been made by the gentleman from Los Angeles, Mr. Howard. The doctrines which he advanced are eminently sound, and his logic invincible. There are very few, if any, additional authorities besides those which have already been presented. It may not be improper, however, to state what I consider the object and purpose for which the Government of the United States was established under the Constitution and forms of law. It is said that the chief purpose of the Constitution of the United States, as decided by its founders, to be to form a more perfect union, establish justice, insure domestic tranquillity, provide for common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity. And when it is considered that this was asserted by the thirteen sovereign States, it will be understood that nothing more was conceded than what was agreed to by these general terms. And when you have referred to the specific provision that the same instrument contains, by which the power is conferred upon Congress to put in force this instrument, so as to enable the Government of the United States to carry out these several general powers, we have arrived at the whole plans and powers of the Government of the United States as contradistinguished from the powers still remaining in the States of this Union. And it is with these powers, regulating commerce with foreign nations and between the States, borrowing money, etc., that you parted. Upon this subject of regulating commerce, I presume you have been sufficiently enlightened by the gentleman last upon the floor; and by the gentleman from San Francisco, Mr. Barbour. So far as that power is concerned, it extends only to the regulation of commerce between the States, and between the United States and foreign nations. It has been held, and rightly so, and I presume that it embraces also transient foreigners passing through the country—as far as the Burlingame treaty is concerned—that those who are here may reside here. The doctrine of the powers of the State has been expounded very clearly, and it is hardly worth while for me to go into that subject. I shall, therefore, refer simply to the action taken in establishing the treaty. I do not say it was the purpose of the President of the United States, or of the Congress of the United States, but I say it was an oversight, the result of eagerness to secure the commercial interests of the United States, and in their eagerness to secure this result, important guards and restrictions were omitted. I apprehend, however, that if ever the construction of that treaty was called in question before the Courts, and a fair construction given to it, it would be held, as the Fourteenth Amendment has been held in certain cases, to which I will call your attention, to apply solely to the regulation which the government is authorized to exercise. I refer to the Slaughterhouse cases. (16 Wallace, p. 37.)

There was a cry for cheap labor. Capital wanted cheap labor; corporations wanted cheap labor; and now cheap labor is fastened upon us, and threatening our ruin, threatening starvation to our poorer classes, and we are told that we are powerless. I say, no wonder the poor man is tempted to lift his voice against the powers that be. He who has ever been ready to take up arms in defense of his country, and of its institutions, finds himself driven to the wall by serfs, with no power of redress. What wonder that he lifts his voice in lamentation. It is not drunkenness that has caused this trouble. It is the lack of employment which makes men lift their voices against this unnatural condition of things. Cheap labor has redounded to the benefit of a few capitalists, but not to the prosperity of the country, or any part of the country. The cry of cheap labor had no foundation in fact, but was used as an excuse for an enormous subsidy to a line of steamers. We have all seen the evils of cheap labor, and the State has the power now to remedy these evils.

It has been said here that the Constitution of the United States was the supreme law of the land, and the treaties and laws made in pursuance thereof were the supreme law, anything in the Constitution of the States to the contrary notwithstanding. I understood that the proposition was set up as a general proposition.

If I am not mistaken that proposition is not law, and it will be sufficient to merely state what is the law, and let it rest upon that statement. In every case where there is joint jurisdiction, and there is an absolute prohibition by the State, and the same authority is concurrent in the United States, in such a case the laws passed by Congress, in pursuance of the Constitution, are the supreme law of the land, anything in the Constitution or laws of the State to the contrary notwithstanding. But in the absence of any law of Congress on a subject, where the authority is concurrent, the laws of the State will hold good. Of course when Congress does act, that supersedes the State law.

THE CHAIRMAN. The question is on the adoption of the substitute proposed by the gentleman from San Francisco, Mr. Beerstecher.

The amendment was lost.

THE SECRETARY read section one, temporarily passed over:

SECTION 1. The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the

protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary.

THE CHAIRMAN. The question is on the substitute of Mr. Joyce.

MR. MILLER. This amendment has no relation to the subject-matter of section one. It more properly belongs to section seven, which reads thus:

"SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared hereby to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation or otherwise, for the expense of such exclusion. It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. It shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns."

It alludes to the same thing precisely. I think we had better let this first section stand as it is precisely, because it deals with a certain class of cases. When the proper time comes I will offer an amendment which I consider necessary to perfect the section.

THE CHAIRMAN. The question is on the amendment.

Rejected.

MR. MILLER. Mr. Chairman, I offer an amendment.

THE SECRETARY read:

"Insert in the fifth line, after the word 'with,' these words: 'Incurable diseases which are,' and strike out in the last line the word 'diseases.'"

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

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I hope the amendment will not be adopted, because it raises a question upon which doctors might disagree. While Dr. O'Donnell might consider a certain disease incurable, Dr. Shurtleff might consider it curable. I think the amendment weakens rather than strengthens the section, and, unless the gentleman can produce some better reasons for it, I shall have to vote against it.

MR. MILLER. The object is simply this: there are a great many diseases that are contagious and infectious, which are mild in form, such as measles, mumps, and things of that kind. We do not want to put in a provision here to remove a man from the State simply because he may have the misfortune to have the measles or the mumps. That is why I have suggested the word incurable.

MR. JOYCE. It seems to me that the section is in the interest of protecting the Chinese. What benefits there is going to be got out of section one I can't see. If we are going to get rid of a few sick Chinamen and keep all the healthy ones, I don't see the good. I want to get rid of them all, and not merely the sick ones.

THE CHAIRMAN. The question is on the amendment.

Lost.

MR. O'DONNELL. I have an amendment to the section.

THE SECRETARY read:

"The right is hereby reserved to the State to protect its citizens from pestilence and plague, and as a police regulation to prohibit the entering of dangerous and criminal classes."

SPEECH OF MR. O'DONNELL.

MR. O'DONNELL. I would like to have the Secretary read some extracts from the press which I send up.

Objected to.

THE CHAIRMAN. Objection is made and they cannot be read.

MR. O'DONNELL. Then I claim my right, and will read them myself, if the Secretary is not allowed to read them.

Objected to.

THE CHAIRMAN. Objection is made, and the gentleman cannot read them without the consent of the committee.

MR. O'DONNELL. Then I will speak of leprosy, and talk the extracts to you [laughter] I suppose. Mr. Chairman, that very few of the members on this floor understand what leprosy is. In the first place I want them to understand that Jesus Christ had delegated to his disciples the power to raise the dead, cast out devils, and heal every class of diseases, but he never delegated to any of his disciples the power to heal a leper. It is one of the most fearful diseases known to the world. I will show you a likeness of it. [Exhibiting a portrait, life-size, of a leper.] That is a likeness of one of these lepers now in the pesthouse in San Francisco.

MR. BLACKMER. Does the gentleman offer that as an amendment to the section? [Laughter.]

MR. ROLFE. I think I see a striking resemblance between that and the gentleman. [Laughter.]

MR. O'DONNELL. If the gentlemen don't stop interrupting me I won't get through before to-morrow night. [Laughter.] We know there are a thousand cases of leprosy in San Francisco, and there is no power to remove them. You all remember that a few years ago I went and got the reporters of the different papers and took them through Chinatown, and showed them over one hundred and fifty cases of leprosy, and the report is right there in black and white. It goes on and describes these cases. Now, according to the best medical writers in the world, if we allow them to remain here five years three quarters of San Francisco will be affected with this pestilence. That is the reason I produce that extract which you refuse to hear read. But, in the course of a few years, you will be sorry for it. If you don't take cognizance of this evil now, I say you, the delegates of this Convention, are responsible for the dire results which are certain to follow, and you ought to be held responsible.

There are now in the pesthouse, in San Francisco, some twenty-three cases. One of these cases was standing on the corner of Dupont and Washington streets for two years. Now, think of that. For two years one of these lepers was standing on the corner of Washington and Dupont streets, coming every hour in contact with your wives and children who are forced to pass through that part of the city. And according to the very best authorities in the world, they tell you that it is infectious. I want you to understand it is both infectious and contagious. The press, owned by the Chinese companies, will tell you that it is not. A majority of the people of this State don't know the difference between infectious and contagious.

MR. BEERSTECHER. What is the difference?

MR. O'DONNELL. I don't suppose there is any of them any more ignorant than you are. [Laughter.] Read what the honorable and distinguished Judge who died of leprosy on the island has to say about it, and how he contracted this loathsome disease by coming in contact with a leper. You all know the history of the islands. This man was traveling through the islands, and accidentally sat on a seat from which a leper had just got up, and he was removed to another island, where, in about seven years he discovered that he had the disease. This is an island set apart for lepers, and who enters there never goes away again. He had got the disease from sitting in the chair which the leper had occupied. He says leprosy is spread by coming in contact with lepers, or being where lepers have been. There have been five hundred lepers sent here for the purpose of sowing that disease broadcast all over this fair land. That is a fact. We have found it in San Francisco, and we have found it in every town in the State of California. Even here, in Sacramento, there are over fifty cases of leprosy. I can, within sight of this hall, produce over twenty cases of leprosy, that horrible, incurable disease. No human power can relieve the leper from that slow torture, a lingering, living death; there is no cure for the leper. You must understand that most of the press of the State of California is owned by the Six Chinese Companies. They tell me that it is not contagious. They tell you the disease is not contagious. But do they say it is not infectious? I say it is infectious! Remember, that wherever the coolie has gone, he has spread that disease. Look at the history of the Sandwich Islands. They were the purest blooded people on the face of God Almighty's world, those Kanakas, until these Mongolians came among them. What is the case now? Why, the island, to-day, is almost decimated from leprosy brought over there by the coolies. Go to other countries where they have gone; the same condition exists there; and I tell you that we have got to put our feet right down, and put a clause in the Constitution declaring that they shall not land here, or the people of the State of California will rise and stop their coming to this country. [Applause.] This section must be put in the Constitution, declaring that the coolies must not land on these shores in no instance.

Now, I say my object is to get rid of them, and this section will do it. We have the power to prevent their coming. We have the power to prevent them from spreading this loathsome disease broadcast over the land, and I mean to do it if I can. When we know that we have the power to put these things in the Constitution, why do you refuse to do it, when you know the people of the State of California demand it at your hands? My friend from Los Angeles says we have the power, and I know we have. Let us express it in the Constitution. The people want it, and they will ratify our work here if we do it.

MR. REYNOLDS. It seems to me that this is a good place for a point of order; the gentleman is not speaking to the question. The amendment which he proposes is out of order, for it assumes that the State has absolute power over the whole subject, which we all know is not the case. We can only provide for the exercise of such power as is reserved in the State, therefore the amendment is out of order. The Convention has no authority to reserve any rights or grant away any rights.

THE CHAIRMAN. The point of order is not well taken. The gentleman from San Francisco will proceed.

MR. SCHELL. I rise to a point of order.

MR. O'DONNELL. State your point of order. [Laughter.]

MR. SCHELL. I wish to read Rule Forty-one, for the government of this body: "Every member when about to speak, shall rise and respectfully address the President, shall confine himself to the question under debate, and avoid personality, and shall sit down when finished." The last part is what I base my point of order on. The gentleman does not sit down when he has finished. [Laughter.]

THE CHAIRMAN. The point of order is not well taken.

MR. O'DONNELL. I would like to inform the gentleman that I am going to finish my remarks if it takes until to-morrow night. [Laughter.] I am going to take my time, you can listen or not, as you please.

MR. VAN VOORHIES. I move we take a recess. [Laughter.]

THE CHAIRMAN. The motion is out of order. The gentleman will proceed.

MR. O'DONNELL. I would like to read some of the testimony taken before the Senate Committee, in regard to the condition of this spot called Chinatown—this plague spot situated right in the center of the city. "I have lived here for twenty-eight years, and studied their habits, visited their places and their criminal dens, and I think I know something about them. They are low, degraded, and filthy."

MR. STEDMAN. I ask the gentleman whose testimony he is reading?

MR. O'DONNELL. My own testimony, given before the Commission under oath. [Laughter.] I merely wanted to say that I visited one of the ships, and the captain, who was present, admitted it. Captain Joy was the captain of the ship. I went on board of that ship which was running between this port and China for a great many years, and has brought a great many coolies to this country. I testified that most of them were shipped from Hongkong, an English port, and that those who are brought here are brought under these labor contracts, which are familiar to every member of this Convention, and that a great many of them are infected with these diseases. Now, during the testimony I gave, Captain Joy was present and acknowledged it to be a fact. I will read from my sworn testimony, and you can see what I said:

"Question—How long have you resided in this State?

"Answer—Twenty-six years, about.

"Q.—What is your profession?

"A.—Physician.

"Q.—On what street do you reside?

"A.—On Kearny, between Jackson and Washington.

"Q.—What reference has that to the Chinese question?

"A.—We have the bulk of the Chinese right there in our midst.

"Q.—Are you conversant with them, with their habits, and their manners, and have you had opportunities to observe them?

"A.—Yes, sir. I have practiced as a physician among them for a great many years, and I have studied their habits, and I think I know something about them.

"Q.—State to the committee the result of your observations, taking such drift as you may please in regard to the general idea of their character and habits, and as to cleanliness—hygiene, if that is the proper word—and so on, all through the category of virtues and vices.

"A.—I have lived in that vicinity for over twenty years, right in the midst of them. I have visited all their gambling houses and bagnios. I have been very careful to study their habits, and their habits are very immoral, low, degrading, and very filthy. In regard to filth, the stench of that vicinity is sufficient, I should think, to produce any disease. I have discovered among them leprosy, and any amount of smallpox patients. They were the first that introduced the smallpox here about five years ago. This last time it originated from them, because the first case that occurred in this last epidemic was a teamster who lived in Hayes' Valley, and at that time a ship by the name of Crocus, I think, brought a gang of these pirates here. The captain said they were pirates.

"Q.—That is the English steamer, Crocus, Captain Joy?

"A.—Yes. He said they were all a lot of pirates.

"*Mr. Bee.* Let me correct that right here. The captain wrote a note stating that he did not call them pirates.

"*Senator Sargent.* Where is the note?

"*Mr. Bee.* I saw it published.

"*The Witness.* I visited the ship, and the captain told me they were pirates. He told me the only way to keep them in subjection was by using hot pokers. He said he had to keep a brigade of hot pokers to keep them in subjection. The captain said that to me. One of the Custom House officers told me this ship had arrived. It was about six o'clock in the morning, and he was going down to get aboard of the steamer. He said he had to go. I asked him, why? He said because there was smallpox on board. I immediately got my buggy and horse and went down there. They had discharged the ship on Sunday. I met one of these Chinamen on the corner of Second and Brannan streets. He was broken out all over with the eruption of smallpox. I immediately drove back to the Health Office and informed them there; and I was told by one of the detectives that there was no case of smallpox on board. I told them I had seen one case particularly that I knew to be smallpox, that had left the ship. That is where this epidemic originated."

Now, you all recollect that epidemic, and you all know where it started. We lost by that epidemic some two thousand three hundred of our very best citizens, by this epidemic brought here by the ship Crocus. You all know that to be a fact. There is the sworn testimony of the captain who brought these pirates over. Thirty-three cases were discovered that had been landed here in the City of San Francisco, between five and six o'clock in the morning. I met the detective at the City Hall, and I told him I was going down to see this ship, and see if there was any smallpox on board. Why, says he, I have been down there, and there is not a case of smallpox there. I said, I am going to satisfy myself. Before I got to the ship I discovered three cases; I stopped them right there. They were broke out all over. I went on down to the ship, and when I got there they told me I could not come on board. The Health Officer was on board.

I tell you, Mr. Chairman, and fellow delegates, we have got to quarantine our ground. These Chinese companies, I tell you, can do anything in the world. They can do anything they want to do. Now, the very idea of allowing that ship to land here with smallpox, to spread it all over the city, and all over the State of California, to sweep off hundreds of our best citizens, is an outrage on our civilization. All brought here by the landing of one ship, all because it was not quarantined.

Now, if we put in this additional clause, it will prevent all such things in future, if the officers and citizens do their duty. The Supervisors and Board of Health declare they have no power. This Convention was called for the very purpose of putting some section in the Constitution to save the citizens of the State of California, and protect them against this invasion. That was the main object of calling this Convention, and no member on this floor dare deny it. Now, it appears to me, that notwithstanding fifty wise men are trying by every means in their power to destroy the effect of this section, we ought to stand up and pass it. They are attacking it with the pruning knife, and attempting to prune out the best part of it. The people of this State demand, in the name of humanity, that we give them some means by which they can remove this pestilence out of the Golden State. They demand that we give them some means of protecting their wives and children. This very Chinatown is situated in the very heart of San Francisco. No man can go from the eastern part to the western part of the city without coming in contact with these lepers.

Now, I want to read you what Mr. Gibbs says about these diseases:

"*Mr. Haymond*—How long have you resided in California?

"Answer—Since January, eighteen hundred and fifty—twenty-six years.

"Q.—How long in the City of San Francisco?

"A.—From eighteen hundred and seventy to the present time. The balance of the time I resided in Sacramento.

"Q.—What is your official position?

"A.—Supervisor from the Eleventh Ward, city government.

"Q.—Do you know anything about hospitals in this city?

"A.—I am Chairman of the Hospital Committee.

"Q.—Are there any Chinese in the hospitals?

"A.—In the hospital, one; in the almshouse, one; and in the pesthouse, thirty-six. I think eight are afflicted with leprosy, and most of the balance with venereal diseases.

"Q.—Do the Chinese contribute anything for the support of these persons?

"A.—Nothing whatever.

"Q.—What do they do with their sick and helpless?

"A.—I understand they are turned out to die.

"Q.—Have you ever been through the Chinese quarter of this city?

"A.—Yes, sir; several times.

"Q.—What is its condition as to cleanliness?

"A.—It is in a miserable condition—a disgrace to the city and to the police for permitting it; and to the health department, too, I think.

"Q.—In your opinion, what influence has the presence of this Chinese population on the morals of this city?

"A.—A very bad one, indeed. The women have inoculated the youth with diseases. The prices are so cheap in Chinatown that young lads resort there, and as a consequence have all sorts of venereal diseases. There are many cases of young men in the hospital, suffering from syphilis, contracted in the Chinese quarter.

"Q.—Have you ever seen any Christian Chinamen?

"A.—No, sir; I have not. I have been told that the Chinese each pay five cents a day for the right to be doctored free when sick; but should a Chinaman fail to pay his five cents, he must look out for himself.

"*Mr. Rogers*—You say a great many young boys are inoculated with these diseases; are many of them in the city institutions?

"A.—I think there are some, but a great many more are cured outside. A large number of dispensations are given and filled at the city institutions."

Now our wives and children have to pass through Chinatown every day. These Chinamen are all over the city, and all over the State. They go out into the country to work, and spread this disease everywhere. One of them cooks in your kitchen, and at night he goes down to these bagnios, associating with the lepers and prostitutes, and the next morning he is back in your kitchen.

I see that it is time for the committee to take a recess, and I will finish after dinner.

MR. VAN VOORHIES. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

The Convention then took a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and a quorum present.

MR. HILBORN. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section one and amendments are before the Convention. Mr. O'Donnell has the floor.

SPEECH OF MR. O'DONNELL—CONCLUDED.

MR. O'DONNELL. Mr. Chairman and my fellow delegates: I will only detain you a very few moments. It is only the importance of this issue that compels me to say a few words more. One of the most useful papers in the State, one that the people rely most upon, is the Call, and that paper says that "there is not a single house which does not contain at least one or two of these lepers." Mr. Chairman, listen to the language. Listen to the language of the most able man in San Francisco, and from the most truthful press in the State of California. They tell you that in every house in Chinatown there are cases of leprosy. It is sowing the seeds of death all over this State. That is the language; deny it who dare. There are gentlemen right around me here now that will tell you that there is over five hundred cases that they know of in Chinatown in the City of San Francisco.

MR. JONES. Mr. Chairman: I rise to a question of privilege. I understand from the speaker that he has been himself intimately connected with, and come in contact with, this horrible disease. That he has been daily mixed up with it, and that it may sleep in his system,

and be communicated to other people. If that be so, I think it is the privilege of this Convention that they should have some guarantee against this thing cropping out on them seven years hence. That we ought not to be subject to the danger of contagion or infection here now.

MR. O'DONNELL. That exposes the ignorance of people. They don't understand that it takes at least five or seven years to come out on the system, and that it is only infectious when you get the pus or scale off the leper.

MR. JONES. We want the privilege of not having it come out seven years hence on us. We don't want it at all.

MR. O'DONNELL. Mr. Chairman: I hope you will protect me from the mouthpiece of these Six Chinese Companies. I want my rights guaranteed to me, and I will have it as any other member on this floor.

MR. STEDMAN. I rise to a point of order. My point of order is that the gentleman is trying to mislead this Convention; that there are seven Chinese companies in San Francisco and not six.

MR. O'DONNELL. Oh, sit down.

THE CHAIRMAN. The gentleman from San Francisco will proceed.

MR. SCHELL. If the gentleman will allow me I would like to make a request.

THE CHAIRMAN. Does the gentleman from San Francisco yield the floor?

MR. O'DONNELL. For a moment I do.

MR. SCHELL. I desire to ask a favor of the gentleman. It is this——

MR. O'DONNELL. Now, I will not yield the floor. I want to go on.

MR. SCHELL. Mr. Chairman: I rise to a point of order. My point of order is this: that the gentleman has a picture there upon his desk which has been exhibited here, and is being exhibited at the present time. I believe there is a penal statute now in force in this State which says that it is against the law, and makes it a crime, to exhibit an obscene picture. I consider that an obscene picture.

MR. O'DONNELL. Do you know the meaning of the word obscene? [Laughter.] Any other gentleman want to ask me any questions?

MR. SCHELL. If the gentleman wants to know what I consider a synonym of an obscene picture, I might state it.

MR. O'DONNELL. I don't want any information whatever. If I do I will go to some other source. Mr. Chairman, this is what a missionary knows about Chinese:

"The Rev. G. Benton, a missionary who has just returned from China, lectured Monday evening, in one of the halls of the Metropolitan Temple, on the subject of 'The Chinese must go.' He said that all missions to convert the Chinese have and will prove failures. It was time that philanthropists should cease giving money for such purposes. The Chinese are unexcelled in smuggling; they have no credit system in their business; they are such cheats and liars that they do not believe in the existence of truth. The filial duty so often attributed to Chinese is a myth; it is only practiced for self-aggrandisement and after the death of the parent. They are inveterate thieves; they are cannibals. Their officials are more corrupt than an Indian Agent or a School Director. They have no ambition; their only aim is to eke out a scant and miserable existence. Their ignorance and superstition is astounding. Their overrunning this country is only a matter of time, unless prompt legislative action is taken. They believe there is more gold in California than we can use. He did not understand how so many Chinese came to California. He thought the Six Chinese Companies were a ring who advanced them their passage money, and had a 'fat thing' in extorting money out of their wages."

That is from a missionary.

MR. TINNIN. What paper does the gentleman read from?

MR. O'DONNELL. I don't know. There is the article; I didn't notice the paper.

MR. STEDMAN. It is the Chronicle. [Laughter.]

MR. O'DONNELL. There is the article. I did not notice the paper. We have got to incorporate into this Constitution a law to prevent this class from landing. Self-preservation is the first law of nature. Charles O'Conor says that revolution is the highest law of the land. [Laughter.] The right of revolution is the highest law of the land. The people of the State of California, through their delegates to this Convention, have sent you for the purpose of putting an organic law into this Constitution to protect them against this pestilence. The State demands it and asks it of you. First, the Supervisors of San Francisco ask you to give them a little authority by which they could be able to remove this pestilence out of the heart of the City of San Francisco. They have come out before the people and say to the workingmen and to the citizens of the State of California, "Wait until the Convention adjourns." I don't know when that will be, but they will have patience I hope. That is what we say to them. We will get a clause into that Constitution to prevent them from landing here. Now here is our Attorney-General of the State. He says to me, "I would like to get an opportunity of testing this Chinese question." He says, "I know it is a State right, and we can prevent Chinamen from landing here." That is the language of the Attorney-General of this State. I hope that we will give him the right to test this question.

Now, Mr. Chairman, I am not going to detain you but a few moments. I only want to refer to the record. Maybe you are all familiar with it. According to the Custom House report, from eighteen hundred and sixty-eight to eighteen hundred and seventy-six—eight years—we have drawn from that country over one hundred thousand Chinese. Over one hundred thousand of these Chinese have come to this coast for the last eight years. Now, think of that! They have taken from this State two hundred and forty million dollars. Do you wonder at the cry of hard times in the State of California? Take one hundred and fifty thousand of these Chinese in this State, getting wages from a dollar to a dollar and a half a day, and out of the dollar they send seven bits to China. Over ninety thousand dollars leaves the State every day and goes to China, never to return. They do not pay taxes sufficient to pay for the criminals that are in the State Prison. They pay nine thousand dollars taxes altogether. Out of some six hundred in the State Prison they have two hundred and ten. They took from this country twenty-five million dollars in two years—eighteen hundred and seventy-one and eighteen hundred and seventy-two. They took twenty-one million dollars three years out of this State, never to return. Then you talk about hard times. I am going to warn these capitalists. Wait until you see—their own little children will be running to their fathers crying for bread. The white man cannot get work, cannot get labor to earn the bread for his little children. I tell you it is not in the nature of a white man to stand up and see his little children starve to death. Here is the gentleman from Sonoma. What did he say? Why, he says one Chinaman is worth a dozen tramps. Who make them tramps? It is the likes of him, who employs Chinamen in preference to the white man. It is the likes of him that are spreading this disease of leprosy throughout the country—employing these Chinamen, letting them go all around, and spreading this disease.

Another article, and then I will close. Mr. Chairman, I will read from the report to the California State Senate of its Special Committee on Chinese Immigration:

"The committee addressed circular letters to each County Assessor in the State, and from returns received, the assessed value of all property, real and personal, assessed to Chinese in this State, does not exceed one million five hundred thousand dollars. The rate of State taxes is sixty-four cents on each one hundred dollars in value, and if the whole tax was paid, the revenue derived by the State from the property tax laid upon property held by Chinese would not exceed nine thousand six hundred dollars.

"The assessed value of all the property in the State is, in round numbers, six hundred million dollars.

"The total population of the State is about seven hundred and fifty thousand, and the Chinese population is more than one sixth of the whole.

"The Chinese population, amounting to at least one sixth of the whole population, pays less than one four hundredth part of the revenue required to supply the State Government."

Now, think of that, Mr. Chairman and my fellow colleagues! We have on this coast over one hundred and fifty thousand of these Chinese, and we have over four hundred million of them nearer to us than New York. You say they cannot get ships here to run us out. In less than six months they could overrun this country. This report says again:

"The real cost of the State of keeping one hundred and ninety-eight Chinese prisoners in the State Prison is not less than twenty-one thousand six hundred dollars per annum, a sum twelve thousand dollars in excess of the whole amount of the property tax collected from the Chinese population of the State."

They do not pay one cent tax to the support of their criminals. The number of criminals is five hundred and forty-five in the State Prison. Out of that number two hundred and ninety-eight are Chinese. Now, just think of that, Mr. Chairman! And they tell me that we cannot prevent their landing here. With all we have before us, I cannot believe that out of the one hundred and fifty wise men of the State of California but what they can get an organic law to prevent them from landing here, or get rid of those lepers that are here. Five hundred and fifty-four are in prison in the State Prison, and two hundred and ninety-five are Chinese! Now, I say that the majority of those that come to this country are criminals of the blackest dye. I say, Mr. Chairman and my fellow delegates, we ought to give our children the same right to live as our parents gave us. We can only do that by banishing from their presence the contaminating influence of the coolie.

In regard to the females, you know as well as I do what they are. [Laughter.] According to the testimony of the committee, the report of the special committee, in eighteen hundred and seventy-six, they say that they are all prostitutes of the vilest kind.

I thank you kindly for your attention, and I assure you I would not have detained you one moment longer than I thought was necessary. I am satisfied that we do not understand the evil of the Chinese element that are in the State of California. I know it. No man believes any such a place as Chinatown ever existed in the world without he has been there. Why, we have had Health Officers in San Francisco for eight years to come out and acknowledge that they never were within two blocks of Chinatown. They themselves said that they were not, and never had been within two blocks of Chinatown, and were the Health Officers of that city. That was his evidence before the Commissioners, and that was Dr. Schorb. He said that he had been Health Officer for ten years, and had never been within two blocks of the center of Chinatown. There were nine of them, and the first house we came in contact with we saw three lepers. The next house, in Bull Run Alley, we found fifteen. One of them, when he was removed from his cot, part of his limbs fell apart. Now that is a fact, Mr. Chairman! [Laughter.] You may laugh, but I tell you it is a fact. When they seen that portion of Chinatown, and seen these lepers, they only went in a few houses, they said they had seen enough. But they say, "What can we do? We have got no authority." Now, I ask you, in the name of humanity, to give them the authority to remove these people. I went round with a petition, to get the names of the most respectable citizens of San Francisco. They did not wait; they signed their names, and their partners' names. They insisted that their partners' names should be placed there on that petition, which was to isolate the Chinese, or colonize them outside of the City of San Francisco; to remove them out of the city. I called on over five hundred of the merchants, and every man placed his name to that petition, for the purpose of colonizing them outside of the city. There you see that the best citizens of San Francisco have prayed, in the name of humanity, for you, my fellow colleagues, to do something to remove this curse from the land. Every

merchant of the five hundred that I went to put his name to that petition to colonize them outside of the city. There is a good many members here that know this to be a fact. I carried that petition before the Board of Supervisors. I went to them with a decision from the Empire State of the Union, a decision of the Supreme Court of the State of New York, declaring that a house in a filthy and crowded condition was a nuisance which could be abated by having the house torn down. I asked the citizens, and urged them to keep the peace, and wait for awhile and see if they cannot get some redress from the city officers. You all know that in that case, where there was forty people crowded into a house forty by seventy, divided into small departments, and in a filthy condition, the citizens tore the house down and chopped it into pieces. The owner of the property went to the Supreme Court, and the result was that the Supreme Court decided that the citizens had a right to destroy that house. It is known to every man in the City of San Francisco that they have a right to put the torch to that Chinatown; to tear every house to the ground and chop it to pieces. But they wait with patience. They demand of you to give them redress; to stop this disease spreading throughout the land.

And now, my fellow colleagues, we have the Attorney-General of this State right here present, and I want to repeat what I did say when he was not here present. He said that he wanted an opportunity to test this question, and I tell you he is able to do it. And why not give him an opportunity? Why not compel the Attorney-General to test this question, and save the streets of San Francisco running red with blood? I know it will, because there has been a conflict, and, my fellow delegates, they will allow no vessel to land inside of that harbor. And I tell you that the military of this State is in the entire control of that class of men that will, if you do not delegate this State the power to check it, rise in a mass and check it themselves. They say it must be done, because self-preservation is the first law of nature. You see the city crowded with men walking around the streets, praying to get a chance to work and save their children from starving. And these men who employ Chinamen they say, "We don't want you, we can get a Chinaman for fifty cents a day." Do you suppose that these men, that have made this country what it is, are going to stand up and see their little children starve to death? No! For me, if I was a working man and could not get employment to earn food for my children, before I would see them starve I would take the first one of these capitalists I met by the throat and tell him to give me money to save my children from starving. If you don't give the work to the white class of people, how can they rear their little children or prevent them from starving? Why, I sat here in this hall, where I suppose the greatest body of intellect that was ever in a hall before in the world, is assembled, and I heard one of these men say—what? He says that these men will not work; that they are tramps. Who made them tramps? How were they made tramps? It has been repeated here that while they were making a fight for their country and for their flag——

MR. DUDLEY, of Solano. Mr. Chairman: I rise to a point of order. The gentleman has rehearsed almost this identical speech, and I think one rehearsal is sufficient. He is out of order in repeating.

MR. O'DONNELL. That speech will do to repeat every hour of the day to sensible men. I am surprised to see the Chinese Six Companies speaking through so many mouthpieces on this floor. After consulting several eminent lawyers I prepared a minority report on the Chinese. I approve of a good many sections of the majority report, but I want to get a clause of this kind in the Constitution:

"No alien of Asiatic descent shall ever be eligible to American citizenship, nor carry on any trade or occupation in the State of California, nor shall they be employed on any public work within this State."

I also wish to add this to section one. Thank you kindly for your attention.

RESOLUTION.

MR. MURPHY sent up the following preamble and resolution.

THE SECRETARY read:

WHEREAS, Leprosy is a very dangerous and fatal disease, and is both infectious and contagious; and, whereas, Dr. O'Donnell has publicly asserted that he does not know but what he himself, on account of his intimate professional connection with the lepers of Chinatown in San Francisco, is afflicted with the disease; therefore, be it

Resolved, That in order to preserve the health and save the lives of the numerous statesmen, future Governors and Congressmen, comprising this Convention the said Dr. O'Donnell be quarantined and isolated, and that a portion of the gallery be set apart for his use and benefit.

[Laughter.]

MR. INMAN. I move it be adopted.

MR. STUART. I offer this substitute——

THE CHAIRMAN. The resolution is out of order.

MR. STUART. I wish to offer this as a substitute.

THE CHAIRMAN. The resolution is out of order.

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. Chairman: What Dr. O'Donnell has said about leprosy being a fearful disease is true, but I see that he has caused a great deal of alarm in this body. The gentleman from Mariposa has left, and a great many other gentlemen have left, through fear. I wish to say that according to high medical authorities in the United States, and Great Britain, and in Continental Europe, leprosy is not considered a contagious or infectious disease. It is considered a hereditary disease, transmitted from parent to child, as scrofula is transmitted, sometimes slipping a generation, and then attacking a second or third generation. I make this explanation to quiet the fears of members of this body, for I begin to think that even the delegation from San Francisco would hardly dare to return to their homes; and also to come to the rescue of the delegate, that he may not be expelled from this body.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I did not intend to take any part in this debate, and have not now prepared myself to do so except with a few authorities, hastily collected. I am not going to read all these books, so I hope the gentlemen will not take their leave. I am not going to discuss the question of leprosy either, nor the question of the bad influence of the population that is under discussion here upon the people of this State. It seems to me to be time wasted to attempt to prove anything that is so well understood. Hardly an individual in this Convention would argue or believes but what the statements upon this question as they have been proven to this Convention, are in the main true. The question for us to determine is, what can be done about it? and that is all the question there is in it. It is for us to determine how far it is advisable to go, and how far our powers extend in that direction. Now, sir, I think it a good plan occasionally in this body to return to the landmarks that are to guide us; and I wish to read again, as it has been read here before, a part of section one, of article six, of the Constitution of the United States, for I think it has an immediate bearing upon this question:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Now, sir, if there is a Constitution of the United States in force, if there is a treaty made in pursuance of the provisions of the Constitution in force, it is binding upon the people of the State of California, and we cannot do anything to break it. We can only have our action to agree with the provisions of that treaty. We must take this position. Anything outside of that is treason; and we are not here for that purpose. Now, sir, let us see for a moment two provisions here in that treaty in regard to the provisions of which we are discussing at the present time. In a section preceding the one which has been read here, it touches upon that same question, and it says:

"The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free immigration and emigration of their citizens and subjects, respectively, from the one country to the other, for the purposes of curiosity, of trade, or as permanent residents."

Now, following that comes the provision that subjects of the Government of China who come to this State, or this country, shall have the privileges and immunities that are enjoyed by the citizens or subjects of the most favored nations. These are the plain provisions of the treaty, and a treaty that we cannot abrogate. Now, it is maintained here, that under the provisions of the Constitution and the rulings of the Supreme Court, we can prevent the people of that country from coming into the State. It occurs to me, sir, that that provision of the Constitution of the United States which says that "the Judges in every State shall be bound thereby," settles that question. A treaty must hold until it is proved unconstitutional. It was that very thing that called the Convention to bring forth the present Constitution of the United States—the idea that the States had a right to govern their own commerce. I refer, gentlemen, to the 9th of Wheaton's Reports, page 224. I merely cite this for the purpose of getting at the facts. It says:

"For a century the States had submitted, with murmers, to the commercial restrictions imposed by the parent State; and now, finding themselves in the unlimited possession of those powers over their own commerce which they had so long been deprived of and earnestly coveted, that selfish principle which, well controlled, is so salutary, and which, unrestricted, is so unjust and tyranical, guided by inexperience and jealousy, began to show itself in iniquitous laws and impolitic measures, from which grew up a conflict of commercial regulations, destructive to the harmony of the States, and fatal to their commercial interests abroad.

"This was the immediate cause that led to the forming of a Convention.

"As early as seventeen hundred and seventy-eight the subject had been pressed upon the attention of Congress by a memorial from the State of New Jersey; and in seventeen hundred and eighty-one we find a resolution presented to that body, by one of the most enlightened men of his day, affirming that 'it is indispensably necessary that the United States, in Congress assembled, should be vested with a right of superintending the commercial regulations of every State, that none may take place that shall be partial or contrary to the common interests.' The resolution of Virginia, appointing her Commissioners to meet Commissioners from other States, expresses their purpose to be, 'to take into consideration the trade of the United States, to consider how far a uniform system in their commercial regulations may be necessary to their common interests and their permanent harmony.' And Mr. Madison's resolution, which led to that measure, is introduced by a preamble entirely explicit to this point: 'Whereas, The relative situation of the United States has been found, on trial, to require uniformity in their commercial regulations, as the only effectual policy for obtaining, in the ports of foreign nations, a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the United States, for preventing animosities, which cannot fail to arise among the several States from the interference of partial and separate regulations, etc.; therefore, resolved,' etc."

There was the necessity, and there was one of the things that brought about the Convention to frame a Constitution.

Now, one word in regard to the case that was cited by the gentleman from Los Angeles, Mr. Ayers. The case was that of Houston vs. Moore, in 5th Wheaton, page 48. It seems to me that the conclusion drawn from this case is not warranted by the case itself. It seems to me a fair

construction to put upon the opinion delivered in the case, to take the whole opinion in connection with the fact that is passed upon. Now, the case was cited here to prove that we had a right to exclude these people from coming into the State, and that the jurisdiction of the State would extend to them. The case was one, as stated in the opinion, where there may be, perhaps, concurrent jurisdiction in the case. The State of Pennsylvania had passed a law that any person, an officer or private in the militia, who should refuse to come out and serve on a requisition from the President of the United States, should be subject to certain penalties. The case was carried up on the point that the statute of Pennsylvania providing penalties in such cases was unconstitutional; and the case was decided that the statute of Pennsylvania was constitutional. And in the decision, Justice Story (I read from page 48 of the fifth volume of Wheaton's Reports—the case of Houston vs. Moore) says: "The Constitution containing a grant of powers in many instances similar to those already existing in the State Governments, and some of these being of vital importance also to State authority and State legislation"—it was essential that the State be authorized to bring out the militia, and also that they should affix penalties in case they refused to come out; so that, in this case, both the authorities had the right to call out the militia, the State for its own defense, and, upon the requisition of the President of the United States, for the defense of the whole country—"it is not to be admitted that a mere grant of such powers in affirmative terms to Congress does, *per se*, transfer an exclusive sovereignty on such subjects to the latter. On the contrary, a reasonable interpretation of that instrument necessarily leads to the conclusion that the powers so granted are never exclusive of similar powers existing in the States, unless where the Constitution has expressly in terms given an exclusive power to Congress."

Now, that is the case here. The Constitution has, by the declaration that "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land," said that the authority rests entirely with Congress in a case of this kind. I think that question cannot be decided upon any other ground. We must be bound in our action in this Convention by the Constitution of the United States, and by the treaties that have been made under it. Now, this is the question: "How far can we go under these provisions?" This report, if we take it as a whole, will carry us, in my judgment, far beyond that. We shall be authorized under the Constitution of the United States to exert the police power of this State to control these people when their presence here is inimical to the good and welfare of the State. We have the right to exert that police power. When we have done that, we must rest the case with the authorities of the United States. They must be made to see the great trouble that is brought upon this country, and directly upon this State, by this large immigration of this population. Now, it will be our first duty to so present this case, in a calm, dignified, clear, and unmistakable manner to the powers in Congress that they may have the voice of this Convention speaking to them in all sober earnestness, putting the case as strong as it is possible, and at the same time with such dignity that it will have weight. When we have done that, it will be our duty to turn our attention to see what can be done within the State upon this question. This first section, it is said, does not mean anything. To my mind, it means a good deal. It says:

"The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legistature to pass such other police laws or regulations as it may deem necessary."

It may be said that we have that power, but this is a reaffirmation of this power in this Constitution which we are to present. The second section provides:

"Any corporation incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises, and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation."

It is not so clear to my mind that we have authority to say that any corporation shall not be allowed to employ whoever it sees fit. It is a question in my mind, first with the corporations, and second with the treaty. The inhabitants of that country—and we must look this matter square in the face—are guaranteed by the treaty the same privileges and immunities as the citizens or subjects of the most favored nations. Article VI of the treaty says:

"Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities, or exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation; and, reciprocally, Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions in respect to travel and residence as may here be enjoyed by the citizens or subjects of the most favored nation."

That is the treaty; that is the paramount and supreme law of the land so long as it stands. Now, then, if we go to that country it is our privilege, in common with those who go there from other nations, to employ ourselves as best we may for our own interests, and if we are debarred the privilege of labor, or engaging in any kind of business, we are not upon the same basis with the citizens or subjects of the most favored nation; and it is the same with the Chinese. If they are allowed to come into the port and spread themselves over the State; if they are by the treaty to stand upon the same platform as do those who come from the most favored nations, we cannot debar them from the privilege of either labor or business without breaking that treaty in some point. The third section is:

"No alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution."

I think we have that right. We have a right to say that they shall not be employed on any public works, either by the State, by the cities, or by the counties, because that work is under public control. I am in favor of that.

Section four I believe goes beyond our authority. It provides that "all further immigration to this State of Chinese, and all other persons ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation." I do not believe we have that authority. I believe that if we should take that step we should go outside of our duty; and I do not propose to lend my vote, or my voice, or my influence, to take this Convention one step beyond its constitutional bounds. We are pledged by the oath we took at the opening of the Convention to support the Constitution of the United States and the Constitution of the State of California. We are not here to put in some kind of legislation that will be adapted to a modification of that treaty. That is not the purpose, and it is not necessary. Gentlemen argue that we should put them in so that if the treaty is modified we will have a provision in the Constitution that will allow us to do something. A treaty made by the Government of the United States does not need the State Constitution to carry it out. Whenever that treaty is modified, a modification of the treaty works itself out by the force of the constitutional powers that have made it, and we do not need a provision in our State Constitution to do it.

The fifth and sixth sections I am entirely opposed to. I need only to read them to show why:

"SEC. 5. No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution.

"SEC. 6. Foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State, and any lawyer appearing for or against them, or any of them, in a civil proceeding, shall forfeit his license to practice law. No such foreigner shall be granted license to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person or corporation employing them. No such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State; and all contracts of conveyance or lease of real estate to any such foreigner shall be void."

The seventh section has been by some included in their scheme, and by others entirely rejected. It seems to me that the first part of that section might as well be adopted. It is giving an official expression of the opinion of the people of this State to say that "the presence of foreigners ineligible to become citizens of the United States, is declared hereby to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power." I would have it read, "by all suitable means within its power." Whenever that has been done, all has been done that we ought to do; all that we have a right to do. I do not propose to favor setting up the government of the State of California in opposition to the government of the United States. I do not propose to entertain or advocate, or assist anything that looks toward the doctrine of State's rights. I do not believe that we are ready to look a question like that in the face and welcome it. We have done enough in this country in that direction. We are to stand here and see to it, that whatever we do, we keep within the bounds of constitutional law; that we recognize our allegiance, politically, first of all, to the Federal Constitution, and next, to the Constitution of the State of our adoption. But when we have done that; when we have framed—as I think we shall—such a declaration as will be within the Constitution; that will give expression to our indignation at the result of this treaty, and to our hope that we may, by reason of the influence of this Convention, have some effect upon the powers at Washington. When we have done this, and have finished the other work that we were sent here to do, we will have performed our duty.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. Chairman: I have a substitute to offer.

THE SECRETARY read:

"Coolieism, serfdom, peonage, or slavery of any description, shall never be tolerated in this State. Chinese brought into this State, who are bound by contracts to labor for corporations, or other parties importing them, or who enter into such contracts here, are hereby declared to come under the designation of coolies, serfs, or peons, and their importation is prohibited, as similar in all respects to the importation of African slaves. All contracts made by such coolies, serfs, or peons, or which they may make, to perform service under bond for a specified time, are declared void; and such contracts shall be regarded as a penal offense, both on the part of the importer or contractor and the coolie, serf, or peon so imported, and shall be punishable with the full force of the law."

MR. O'SULLIVAN. Mr. Chairman: I rise, sir, not to attempt making a speech, which would be superfluous, after the able arguments presented by gentlemen here, but simply to say a few words on this Chinese question, which I regard as in every way the most important question before this body. Since the first anti-coolie agitation occurred in this State I have with voice and pen earnestly opposed the immigration of the

Chinese, seeing, perhaps, clearer than others, the dangers ahead which threatened in the future. In eighteen hundred and fifty-two, when the agitation commenced, and when the cloud of Chinese invasion was no bigger than a man's hand, I believe its course could have been checked, if not entirely stopped, if the people, the public men of the State, had gone sincerely to work to do so. Mr. Chairman, I regret to say that the people neglected their duty, and the politicians did not act, because the people did not compel them to fulfill their duties. In eighteen hundred and fifty-two the cloud of the coming Chinese curse was no larger than a man's hand. Now it forms a black pall overshadowing the whole of California, and threatening untold dangers in the near future.

Mr. Chairman, my business has led me for some years past to reside in many different quarters of the State, from Mendocino in the northwest and Sierra in the northeast, to Ventura and Los Angeles in the south, and I assure you that the public sentiment of the State is all but unanimous as to preventing the future immigration of the Chinese. Now, Mr. Chairman, as to the legal aspect of the case I pretend to have little or no knowledge. The eminent legal gentlemen in this Convention ought certainly to be able to devise some means of preventing the increasing evil of this obnoxious immigration. I tell you, Mr. Chairman, and gentlemen of the Convention, the people of the State demand earnest action at our hands on this question. As sure as God rules this world, revolution will come, and come shortly—sooner than we may now think—if the Chinese invasion is not stopped by the power of law. An irrepressible conflict between Chinese civilization and white civilization is at our doors. I fear it will only be settled by blood-letting. It will certainly be settled in no other way, if we sit here supinely and take no action, such as the people demand. I do not believe that because of the infernal centralization of power which is at work at Washington, that we cannot do anything. The people will take the matter into their own hands.

Section four I will support. It goes to the point. It says that "all further immigration to this State of Chinese, and all other persons ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation." Self-preservation demands this action. Hungry men know no law. Hungry men who will not see their wives and children starving, will eventually break down the barriers of law, overturn everything that stands in the way, and cause indiscriminate ruin. Let us not invite this disaster. The amendment I offer I think is perfectly constitutional. If the Government of the United States has the power to prohibit the importation of African slaves, we have a sovereign right to prohibit the importation of Chinese serfs, as they are no more than slaves.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I did not intend to address the Convention upon the questions involved in this report, but I yield to the request of the Chairman of the committee and others to give expression to my dissent to the intent, the language, and if there is any difference in the expression, to the recommendation of this report.

For one I am disposed to listen to the voice of complaint and of entreaty; to hear the men who complain, respectfully and patiently, even when I believe their wrongs have not been endured, if I can only see sincerity in the complaint. It is difficult to entertain with respect statements of wrongs in which truth and error are recklessly or even ignorantly intermingled; but it is utterly exhaustive of all patience when one must see that the truth is quite disregarded, and that complaint is utterly unfounded.

Those who especially represent the workingmen here, I have no doubt, state their case truthfully, for truth is what the law of their nature compels them to believe. Not adopting all their opinions, I believe myself that the public opinion upon this subject is correct. I am therefore disposed to listen with great patience to expressions which violate propriety, which go beyond the occasion, and by senseless virulence darken counsel by words without knowledge, although they demand not respectful consideration, but only reproof and condemnation.

I have not had the opportunity of listening to the arguments here, excepting to those of the gentleman from Los Angeles, and those of others this morning. I have read the speech of the Chairman of the committee who presented this report. Judging, gentlemen, by what they say, giving their language its ordinary and necessary interpretation, it has come down simply to this: if a large body in this Convention, and apparently a majority of it, correctly represent the people, these crude, unreasonable, and absurd claims must be allowed, and be by us carried, not into effect, but into this Constitution. An open revolution agains all government is to be the effect. To give force to the argument we are distinctly told by one gentleman, and the idea is reiterated by others, that if this Convention does not yield obedience to these demands the streets will run with blood.

MR. O'SULLIVAN. I rise to a point of order. I never said that there was any understanding to have a revolution, or anything of the kind.

MR. SHAFTER. I quote the language. One gentleman from San Francisco said that "the streets would run with blood," and the gentleman himself said that he believed it would "only be settled by blood-letting." Blood running in the streets upon such a question and for the reason here avowed, is but revolt against the law, which assumes the proportion of levying war against the government, which is treason within the definition of the Constitution.

I am not disposed to treat such ebullitions with any very great seriousness. Whether they are indulged in for the purpose of satisfying the particular constituency these gentlemen represent, or whether they are the result simply of febrile excitement, or are merely to be attributed to a desire for oratorical display, they equally invite commiseration and oblivion.

While I will exercise the forbearance to utter no threats in return, I may permit myself to say that when constitutional law has no longer any force in this State and country, when ignorance and violence shall undertake to rule us, it will become necessary to possess our souls in patience to endure the consequent disorder, or to provide those sharp remedies by which order and civilization vindicate at last the supremacy of their right.

It is undeniable that people of the United States, as represented by the General Government, are the final arbiters of this whole question of Chinese immigration. It would seem at least prudent to approach this tribunal respectfully, and in a manner winning confidence in our claim and in the justice of the tribunal to which we appeal.

I have addressed audiences in New England more than I can now remember, urging upon their consciences all those arguments which asserted that the extinction of slavery was necessary to the existence of republican institutions in this country. These arguments were all based upon the assertion of the substantial equality of man, and of the necessity for justice in the practical administration of the law. Satisfy them that your complaints are true, and that the remedies you propose are consistant with philanthropy, as well as statesmanship, and they will give you the power of this nation to your aid.

But no threatening will be listened to for a moment. The nation that put down the rebellion of eighteen hundred and sixty will ridicule, though it may be offended at, the bluster with which many indulge in relation to this subject. They will put their own interpretation of the Constitution, and they will see it enforced. Instead of such idle attempts as are presented by this report to enforce our views or our wishes, we can much more profitably turn our attention to possessing our Eastern friends with full information as to the true relations and actual effect of the Chinese upon our prosperity here in California. I believe our true condition is largely misunderstood.

It is true that most people who have visited us from the East, while they have seen the most favorable features of our Chinese population, have never seen their darker side. They have seen the Chinaman as a domestic servant, as an artisan, or laundryman, but never in the midst of those horrors which we group under the generic term "Chinatown." From what they have seen, they have returned home with the belief that the Chinese as domestics are superior to all others, and as workers are industrious, indefatigable and persevering, and accumulating the results of their labor by abstinence and economy. Now all of this is near enough to the actual fact to require the countervailing statement to be made. But what do we hear? Denunciation of an inferior race, of whose higher qualities we stand in mental dread; whose industry and economy are regarded as menaces to civilization and republican institutions. In my judgment, it would be a happy day for us all when the industry and economy of the Chinaman would be regarded by us as worthy of imitation. We belittle our objections in our allusions to his dress, not like our own, it is true, but at once warm, cheap, and convenient—qualities which ours often lack. We declaim and denounce him as a rice-eater, quite forgetting that rice is the food of more than half the human race.

The assertion of these accidental and trifling peculiarities has been attributed to us as the only, or at least some of our objections to the Chinese people, and as demonstrating the weakness of our position in regard to them. I have always thought it was a good thing to state your adversary's case stronger than he could himself, and then to answer it by one stronger than his own.

We may as well admit it, for it is true, the Chinaman is industrious and economical beyond the average laborer. He can do two thirds or three fourths as much as the average white man. It has been demonstrated that in heavy railroad work, selected gangs of Chinamen and Europeans, pitted against each other, the victory was repeatedly with the Chinaman.

He lives at about one fourth the cost of the support of a white laborer. I have had some hundreds of them in my employment, and assert that such as I have had, were as cleanly, as attentive to their business, as honest in the performance of their contracts—not as the tramps and wandering white man, but as the average laborer of respectable habits and character. Regarded as intelligent machines, with which a certain amount of labor is to be done, they must be regarded as a comparative success.

The same objections which are now made to them, fifty years ago were urged against, at least, some European immigrants. Differences of religion, of language, of dress, and habits, were in these people considered evidences of inferiority, and as indicative of danger. The true difficulty arises from the fact that between us and them there are vital differences of intellectual and moral character. The Chinaman, his life and motives begin and end in himself. There is apparently in him neither sincerity nor gratitude, and as to America, no patriotism. This country is to him foreign soil. In it he has no interest, and with its institutions he has no sympathy. In any tumult he is and will be an element of danger, and if his immigration is not checked, looking to the vast hordes which the Chinese Empire can pour out, he may become our fianl calamity.

Believing in, and not receding an inch from, the fact of the universal fatherhood of God and brotherhood of man, I have never supposed that to be all of truth, nor that it was the only maxim necessary for the administration of human affairs. Identity, demarcation, and isolation, are prerequisites to all governments. The precise relation of the individual man to the State must be prescribed, so that the mutual obligation of sovereign and subject may be alike known and enforced. The separation of the earth into distinct divisions demonstrates that nature itself denies the possibility of universal dominion. It is permitted to the philanthropist to distribute his gifts and expand his benevolence throughout the earth. Governments have rightful powers to exercise, and duties to discharge to their subjects, and to them alone. To foreign States and

people they owe nothing, except observance of that code denominated the law of nations, and to that code obedience only so far as it secures their own safety and dominion. That governments have the right to exclude any and all foreigners from the country subject to them is undenied.

The treaties by which foreigners are allowed in this country directly admit this fact. When such treaties exist, all that remains to be done is to interpret and enforce their provisions. I do not intend to enter into any argument upon the labor question. The gentlemen who assume to be the only exponents of the economic laws controlling that topic will doubtless enlighten us in regard to them. The world and its statesmen have for a time covering a large part of history, exhausted themselves upon the relations of capital and labor. In the presence of the political economists who grace this chamber, I only permit myself to say, if all Chinamen are excluded from the State, other laborers must be found to take their place, and those laborers must work for a price which their employer can afford to pay, and such employer must pay such price and no more. How this is to be brought about I am not advised. How agriculture can bear the strain of increased cost of labor I, who have employed many hundreds of laborers, am utterly at a loss to conceive. Probably those who never did, or paid for a day's work on a ranch are better advised.

Waiving all such discussions, we have here only to consider the power of this State, which this report proposes to exercise by the exclusion of the Chinese. I deny that this power exists in this State, to any extent, or for any purpose. Passing by all questions raised or decided by the cases, what is the common sense view—that aspect which presents itself to non-professional minds? In intercourse between governments there must to each be attributed absolute sovereignty. There can be no claim, no interest, nor project affecting the relations of one nation to another, but of necessity must be the subject of agreement between them, and this can only be accomplished through the treaty making power. Neither party can enter into the question as to the power of the governmental agencies employed by the other, when their plenitude has been established by the certificate of the government from which they come. To hold any other doctrine is simply to say that the right which, by the law of nature, every man has to protect himself by prevision, by the aid of his servants and friends, is denied to a nation which is supposed to be "instituted among men," for the purpose of securing to the State as the embodiment of all individual rights, that very protection. The right or duty of inquiring into the powers of a foreign government as to conduct of its citizens, injuriously affecting another, was expressly denied by us in our late contest. British subjects, in violation of the law of nations, fitted out vessels for the Confederates. Our government, making claims for payment of damages, the British Government raised the question of responsibility, from the fact that by the alleged condition of their law the building and departure of these cruisers could not have been prevented.

Our reply was, that was a matter with which we had no concern. If British law was inadequate to prevent British subjects committing acts in violation of the law of nations, that Great Britain was directly responsible to us for an act of which its neglect was the cause. It might as well be claimed by the ship builders on the Clyde that this government should enter into treaty stipulations with them, as for the State of California to make the pretensions of this report. Nor is it at all probable that Great Britain will attempt to deal with California, Virginia, or Vermont, or make treaties with either as an independent nation.

A circumstance illustrative of the course of business as to treaties, fell within my own experience. I believe I drew, as Secretary of State of Vermont, the first extradition papers on the American side under the Webster-Ashburton treaty. Some criminals had escaped from Vermont to Canada, a requisition from the Government of Vermont upon the Governor-General of Canada was complied with, and the criminals returned. The next requisition of the same character was rejected, upon the ground that the United States alone possessed the power of requisition, and the demand had to be procured from the State Department at Washington. In all things relating to the formation and execution of treaties, the National Governments, who are the parties to them, can alone be heard.

That the present treaty with China is in no sense extraordinary, and that it involves on the part of the United States no unusual exercise of power, is apparent upon its face. It is, however, asserted here, by my distinguished friend from Los Angeles, that this treaty violates the Constitution of the United States. Such an assertion should be supported by the most direct demonstration. The language of the Constitution and of the treaty is before us, in what consists the conflict? Point it out.

The features of the treaty complained of are essentially the same as those with other nations. Are all these treaties void? and has the Legislature and people of this nation, during their whole existence, been mistaken in the exercise of the treaty-making power? Those who make this assertion should at least point out the conflict they allege.

The fact is, the Constitution says nothing at all about the extent of the treaty making power. It takes the term "treaty" as one, the significance of which was thoroughly comprehended among mankind. A fact in human government existing from the day of Lot and Abraham to the present moment, and the comprehension of which term was as universal as language itself. All the Constitution undertakes to do is to place the power of making treaties in the President and Senate. The power is designedly withdrawn from the people and the States, and lodged in those whose lofty office and intelligence separate them, as far as possible, from popular heat and the notions of the hour.

That this power of exclusion or admission of foreign peoples was exclusively in the possession of the United States, was admitted by the provision of their Constitution which forbid its exercise as to negroes before eighteen hundred and eight. Unless the National Government possessed this power there could be no propriety or force in this provision.

The United States Supreme Court is the tribunal in which all questions, arising under treaties, must be finally decided. When so decided, all State tribunals must adopt and act upon such decision.

This has been often affirmed by that Court, and such necessarily results from the nature of the subject.

It is said, in this report, that Chinamen should be forbidden to own real estate, to fish in public waters, to carry on business, or to be employed by any corporation, or do any work for the public, and that this may be done without violating any provisions of the Burlingame treaty.

That treaty says: "The United States of America and the Emperor of China, cordially recognizing the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free immigration and emigration of their citizens and subjects respectively, from the one country to the other, for the purpose of curiosity, of trade, or as permanent residents." This is a general declaration of principle.

It says, that the right of the Chinese to immigrate into California, to change his home and allegiance, is as truly "inherent and inalienable" as life, liberty, and the pursuit of happiness are declared to be, in our Declaration of Independence.

Under this principle Chinese would have been eligible to citizenship, but for a subsequent express exclusion from that privilege.

With this exception, under their treaty, the Chinese stand upon exactly the same ground as does the Frenchman, the Irishman, or the German.

Not only were they, in their advent here, considered here of right, but they were treated to distinguished social attentions. Festivals were held in their honor, attended by the highest officers of the State and National Government. As late, I believe, as seven or eight years ago, Chinese were invited to take part in our national festival commemorative of the principle that "all men were created equal;" and riding in the processions, occupying a distinguished place, the merchant and Consular agents undoubtedly admired our institutions, and that justice and courtesy taught by Confucius over two thousand years ago, "not to do to others what you would not have others do to you." This State not only exhibited these courtesies to the Chinese, but it made them extremely useful. While the foreign miners' tax was assessed in terms upon all foreigners, it was collected substantially from the Chinese alone. Hundreds of thousands of dollars so collected went to feed the extravagance, or to pay the debts of the mining counties, and of the State.

This exaction was held ultimately to be in violation of our treaty obligations. Of a kindred character was the tax imposed upon the Chinese for the privilege of fishing, all of which, I believe, was stolen by the Collector upon constitutional grounds. While agreeing fully with the purpose to rid ourselves of this immigration, it seems to me that our past violation of our treaty obligations should lead us to avoid future ones. But I read again from the treaty:

"Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities, or exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nations; and reciprocally, Chinese subjects visiting, or residing in the United States, shall enjoy the same privileges, immunities, and exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nations."

Now, what are the reasons why Chinese cannot hold real estate in California? The reason assigned is, they cannot become citizens; and therefore the proposed provision confining the right to hold real estate to such foreigners as are eligible to citizenship is a proper one. My first thought was that this could be justified, but I now, after reflection, am convinced that such notion is erroneous.

Treaties must have a free general interpretation. Even close construction demands that all necessary or convenient incidents shall follow and accompany the principal right.

As the Chinese are to reside here, they must have all ancillary rights as to property necessary to make life desirable. If we can prevent his owning a house in which to reside we can prevent his leasing one, or even a spot of ground upon which to pitch his tent. He is not to be hired, and as he is forbidden to carry on a business, he must simply, after exhausting his present means, become a burden upon the charitable; and when charity is exhausted, starve. This is not what is meant by these stipulations. The Chinese stand upon the same ground that citizens of this country do in China, or that citizens or subjects of any other nation do here. All other foreigners have the right to buy and hold real property, to work, and earn their bread by the sweat of their face. Why should not these men have, under this provision, the same privileges as others, within the express terms of this treaty?

It cannot be otherwise than the right to reside carries with it the right to house and home, and the right of labor to support them.

In case of the adoption of the doctrine of this report, the Chinaman might well say: "You do take from me life, when you take from me the means whereby I live."

As to the prohibition of the employment of the Chinese upon public works, I consider it so far doubtful that I shall vote for it, leaving the question for its final solution to the Courts. It is said, if these provisions do seem of doubtful propriety, still, in deference to popular feeling, we ought to pass them, and leave the national judiciary to determine the questions they create. Undoubtedly such appeal to the Courts will be had, and it will become the duty of the law officers of the State and nation to give their aid in the premises. This fact, however, that our errors may have no evil consequences, is no reason with me for consenting to an act which I can clearly see is in violation of a treaty stipulation into which we have entered.

I have had repeated occasion to call attention to the fact that the dogma of States rights seems the controlling consideration with many gentlemen upon this floor. I do not wonder that those who were brought

up with the idea that the States have paramount authority—that as to every governmental act which is to be exercised within their separate limits the State alone is to be ultimately obeyed—should support this report. But I think it behooves those of different education and opinion not to suffer the desire of securing a great good, to do the great wrong of attempting to nullify the paramount law. The attempt will only recoil upon ourselves, and disappoint and delay the fulfillment of our wishes. Cases have been cited here clearly establishing the law, declaring that this whole subject is a matter exclusively of national concern.

These decisions have received for answer declamatory effusion, garbled citations from dissenting opinions, and the obtrusion of personal opinion here, from those whose claim to the character of jurists and statesmen has been acquired in the pursuit of mechanical employment, or peddling goods, or in digging holes in the earth—employments honorable in themselves, but having no connection with nor relation to judicial learning. Among all the cases cited here one important one seems to have been overlooked. It has always seemed to me that the decision to which I allude was of the highest consequence, and I have never heard of its having been overruled. I allude to that which was finally rendered and put upon record at Appomattox Court House, in eighteen hundred and sixty-five, when Chief Justice Grant stood there, with all his Associate Justices, to decide this question of States rights, with a hundred thousand executive officers around him. I think that decision ought to end this discussion. It pushes by the lawyer, the jury, the civil codes, and at once denying all other jurisdiction, settles all question by the law and the force of arms. The ultimate force of government, the inexorable will guided by the highest intelligence of the people, declared that the Constitution of the United States, and the treaties made in pursuance thereof, are the paramount law of this land from this time forth. The moral grandeur of this spectacle by far exceeds that of the ratification of the law by the twelve tribes on Ebal and Gerizim. No new code was created, but one was reiterated and declared, and from the doctrine of that enunciation there is no appeal. Yet, astonishing as it may seem, men are still found who seem to have slept for the last twenty years, to have become torpid, with the thought about half expressed, about the rights of our sovereign State upon their life, and after their long sleep awake to the same line of thought, and to finish its incomplete expression.

The gentleman from Los Angeles reads us the dissenting opinion of Judge Taney as to the doctrine of the so called Passenger cases. Notwithstanding that Judge's admitted ability, I am unable to see what force is to be attributed to his views, when they are directly in conflict with the prevailing opinion in those cases. Those cases decide distinctly, as do the California cases, that laws affixing conditions to the immigration of foreigners to this country are regulations of commerce within the Constitution of the United States, and that by that instrument the power to create such regulations is conferred exclusively upon Congress.

There was a difference of opinion as to whether the States would have a right to regulate commerce between themselves and with foreign nations, in case Congress failed to exercise this power. The prevailing opinion held that in no case could a State exercise this power, but there was no diversity of opinion as to the paramount jurisdiction of Congress over this matter. As to this view, Judge Taney holds that the power is not concurrent, and that if it is lodged in the General Government the States do not and cannot possess it.

The result is one of necessity, that whether a rule regulating immigration is established by Act of Congress or by treaty, the State is excluded from meddling with such immigration.

Pressed with these considerations, their force is attempted to be diverted by alleging that when the Chinese arrive here they can be so dealt with by what is miscalled the police power as to make life intolerable, if not impossible to them, and thereby effect their practical exclusion. It seems to be supposed that this class of persons—whose right of residence is assured by treaty, whose status is fixed upon the same basis as that of the most favored nations—are rightfully to be subjected, under police regulations, to exclusion from convenient residences; are to be prevented from earning their bread by prohibition of all employment, by exclusion from trades, from working the mines, from fishing in public waters, and, in short, from everything but the sacred right of starvation and death; and after death he is further pursued by police regulations relative to sepulture and the custody and removal of his bones.

Now, there is no doubt that when any person has arrived here—has become one of our people—that he is subject not only to police but to all other laws which concern his personal character and conduct. It is in the power of this State to confine and to extradite criminals, insane persons, paupers, and the diseased, in any way which the exigencies of the case may require; but this cause must relate to and inhere in the individual as a distinct personal characteristic. I may further say, the existence of this cause ought to be judicially ascertained; at least, it ought to be declared by some authority as the result of personal examination. When a Chinaman attempts to land from the ship which has brought him here, the proposal of this report is to compel his departure from the State, not on the ground that he is a criminal, a pauper, or any of that class of persons, but that he is a Chinaman, or rather that he is one ineligible to citizenship. The treaty does not recognize the right to become a citizen as determining the right of residence. Indeed, it expressly negatives it, by at once allowing residence and forbidding citizenship.

Passing from the treaty, the power to regulate commerce with foreign nations rests with Congress alone. The only question which has ever been seriously made, is one to which I have already adverted, are *persons* within the scope of this provision?

This question has been often decided, and it is a subject of congratulation that the decisions in this State follow those of the nation. In The People vs. Raymond, 34 Cal. R. 492, Crockett, J., gives the opinion:

"After a careful examination of the numerous cases which have been adjudicated touching these provisions of the Constitution, we consider the following propositions to be definitely settled on reason and authority: 1st. That the term 'commerce,' as employed in that clause of section eight which is under discussion, is not to be construed as limited to an exchange of commodities only; but includes as well 'intercourse' between foreign nations, and between the several States; and the term 'intercourse' includes the transportation of passengers. 2d. That whatever doubt may have existed as to the power of the several States to regulate commerce between their own citizens and foreign nations, as with the citizens of other States, in the absence of legislation upon that subject by the Congress of the United States, it has never been seriously questioned, that when Congress, in the exercise of its constitutional right, does legislate upon that particular subject, its authority is permanent and exclusive, and its enactments supersede all State legislation on that subject. Any other rule than this would lead to perpetual conflicts between the State and Federal Government, and would prove to be utterly impracticable. 3d. That if the State has not the constitutional power, by means of direct legislation, to regulate the intercourse of its citizens with foreign nations and with the other States, it cannot accomplish, by indirect methods, what it is forbidden to do directly. These propositions are sustained by the following authorities: Gibbons vs. Ogden, 9 Wheaton R. 1; Passenger cases, 7 Howard R. 283."

The learned Judge proceeds to cite a large number of authorities; having done so, he examines them in detail, and states the result with such exhaustive precision and force as renders further comment unnecessary.

A later California case, that of Ah Fook, 45 Cal. R. 402, decides that the police power extends only to those who are personally objectionable, and must then only be exercised upon at least quasi-judicial examination.

In the case of The State vs. The Steamship Constitution, 42 Cal. R. 578, the Court clearly state the right of the State to exclude diseased or dangerous persons, and distinguishes such legislation from that which "operates upon persons who at the time of landing are neither paupers, vagabonds, or criminals, or affected with any mental or bodily infirmity, but on the contrary are perfectly sound in body and mind, and in every way fitted to earn a support."

The Court further sums up by the declaration "that a statute which obstructs the entrance into this State of persons who are neither paupers, vagabonds, or criminals, or in anywise unsound or infirm of body or mind, is not an exercise of the police power of the State, in any just sense of that term." Proceeding in the course of argument the Court submits to and adopts the decision of the Supreme Court of the United States, that "whatever subjects of this power—to regulate commerce—are in their nature national, or admit of one system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress." The case then proceeds to hold that any law of this State, statutory or constitutional, which attempts to subject any class of immigrants to regulations to which they are not subjected elsewhere, and such as are not imposed upon such immigrants by any Act of Congress, is void.

It doubtless is in the power of Congress to pass a law which shall disregard the Burlingame treaty. This ought, according to the comity of nations, only be done after all proper efforts have been made to modify or annul it, as to its objectionable features.

If such efforts fail, then upon reasonable notice as to time, we shall have the moral as well as the lawful power to exempt the nation, States, and people from all observance of it. Of the necessity and justice of this act we are the sovereign judges.

If China—not amenable to our tribunal or judgment—is dissatisfied, she will be at liberty to assert her claims under the treaty in any way she may select.

This is the result which the law of nations and of nature alike allows. When there is no arbiter, no tribunal to which both parties may be compelled to appeal, the arbitrament of force alone remains. It is the first remedy which Blackstone indicates the right of the injured party to defend and redress himself. This right pertains to nations as to individuals. When such contest ensues, whatever may be said about the justice or expediency of the contest, the subordinate States and the whole people are equally justified under the act of their general government. As the General Government is bound to protect its citizens in all contests in which it engages him, it must have corresponding power over and duties to discharge as to all subjects of controversy, and to take such course as to them as it shall be advised. When piratical vessels were fitted out in the Clyde to destroy our commerce, as already stated, we held Great Britain responsible for the damages. When McLeoud, in the time of the Canadian troubles, burnt the steamer Caroline in Schlosser, a port of New York, he was committed and sentenced in a New York Court, and was redeemed from death only by the act of our General Government. Great Britain claimed that his act was in obedience to the command of his superior officer, and admitting it was an act of war, made reparation, apology, and satisfaction for the offense.

Suppose that we proceed to violate the treaty with China, and that Empire demands redress, is the General Government, as to its own treaty, going to turn China over to California for reparation? We are apt to speak of China with profound contempt, but it may be worth while to reflect a moment upon the power of the Empire of over four hundred millions of subjects, and of the inconvenience which might result if those hordes were precipitated upon us. Logically, our government should leave us to settle this contest arising from our act, to ourselves alone. Thus far I have endeavored to show that, first, we have no power over the subject-matter of this report; second, that if we had, it is unwise at this time to exercise it. I have now to call attention to

the extraordinary acumen displayed in the particular language and intention of the provisions recommended.

I am here reminded of a saying of De Tocqueville forty years ago, that "in America the highest abilities are excluded from all public employments, as fully as though there was a positive regulation to that effect." This thought has been reiterated by many distinguished men.

But could they examine this report on the Chinese, they would be so astonished at the profound statesmanship exhibited, the clear appreciation of the Constitution, its high spirit, the clearness of idea, the full provision for all possible contingencies it displays, I am persuaded they would abandon their original opinion, and find here that breadth, that clearness, that profundity which would at once remove all fear and awaken a wondering admiration. The first splurge is as follows:

"The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary."

Here aliens of the dangerous classes are subjected to needful regulations. Why should not the native born scoundrels be subjected to like control? Not only those who are, but those "who may become" of that class are within the scope of this supervision.

Who may not become a pauper, mendicant, or invalid afflicted with disease under this clause, and that, too, without his fault? Because all of us may become thus unfortunate, are we to be now treated as worthy of action due to criminals in fact? It is not declared that those likely to become sick and diseased shall be dealt with, but that the whole of Adam's race, as they are, shall be thus subject. Who are "aliens otherwise dangerous or detrimental to the well-being or peace of the State." Who is to determine this matter? How is it to be determined?

A mere majority of the Legislature can, under this provision, expel any body or class of men disagreeable to them. I think the "presence" of democrats, or those likely to become such, is detrimental both to "the well-being and peace of the State," but it has never occurred to me that their exclusion is an act justifiable for that reason.

If this power of exclusion is to be conferred upon the Legislature, it should extend to the native born as well as the alien. As the greater sinner, the native deserves the severer rule and punishment. Unfortunately crime seems to be safe with us, at least the graver crimes, but they are committed not only by aliens, but by naturalized, as well as native born citizens. I am for applying the same rule to all. We have many among us who may appropriately quote the poetry:

> True patriots we,
> For be it understood,
> We left our country
> For our country's good.

Great as our inclinations may be to discriminate against these persons, we must recollect that they are not only here under the sanction of treaties, but they are here under the express protection of the Act of Congress, which secures to them every right of action and defense which belongs to the native born.

I have asked who are aliens "who may become" dangerous, and section seven attempts to answer the question:

"SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared hereby to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation or otherwise, for the expense of such exclusion. It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. It shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns."

Foreigners ineligible to become citizens are declared dangerous to the well-being of the State, and their exclusion is demanded.

It is true that the dangerous classes may be excluded by some unknown process, but here a special class is directly operated upon. The only question is, is he a Chinaman? for that nationality alone is excluded from citizenship. The treaty puts them on the ground of the most favored nations. It moreover declares that they may become residents. The Act of Congress, and the amendments to the United States Constitution, put them on exactly the same ground as any "other person," except as to naturalization; yet it is attempted by this section to oppose and repeal every provision established by the nation for the protection of "all persons" alike within their jurisdiction. Language fails to properly characterize the folly and atrocity of this attempt.

The good sense and grandeur of the attempt is further exemplified by section six.

"SEC. 6. Foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State, and any lawyer appearing for or against them, or any of them, in a civil proceeding, shall forfeit his license to practice law. No such foreigner shall be granted license to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person or corporation employing them. No such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State; and all contracts of conveyence or lease of real estate to any such foreigner shall be void."

The strong objection to the above is, that it is incomplete. Foreigners who are eligible and do not become citizens ought to have the "right" to be sued without, I will say, the liability or infliction of making a defense; and they should be further prohibited as known "vagrom men," from bringing any action whatever. An alien enemy, or insane person, or one not possessed of good moral character, or not well affected towards this government, is as ineligible as the Chinaman.

What grand pickings this provision will give to our profession. When this Constitution is adopted I propose to return to the practice of at least constitutional law, and see if I cannot sequester some few millions belonging to these unfortunate souls that the new Constitution proposes to turn over to robbery and spoliation.

But the section is as eminent for its consistency as it is for its sense. This foreigner *cannot be sued*. The independent American citizen cannot make the Chinamen pay his bills, nor for his transportation, except by direct force. I beg to suggest, we must get rid of the provision that no man can be deprived of his property "except by due process of law," for here is a case where the law cannot even be invoked. The ardor of our profession is not only checked, but it is stayed in the very presence of the swag, by the provision that "any lawyer appearing for or against them, or any of them," is immediately debarred. At first sight I thought this was an open attack of the workingmen upon lawyers; that debarring lawyers from this class of litigation they intended to constitute themselves (being as far removed as possible from that description of persons) the peculiar guardians of these unfortunate people. The provision, however, that the Chinamen can neither sue or be sued disposes of this idea. No, he is in a civilized community, coming here upon our invitation, to bear *caput lupinum* upon which any one may knock who will.

It is difficult to see the sense of the further restriction of this section. The rigbt to reside, to fish, to work, to lease or buy lands, is of no moment, when the law has denied all redress to those in whom these rights are violated.

"SEC. 8. Public officers within this State are forbidden to employ Chinese in any capacity whatever. Violation of this provision shall be ground for removal from office; and no person shall be eligible to any office in this State who, at the time of election and for three months before, employed Chinese."

This section, while in form it is a prohibition to the officers of the State, and declares a penalty to those not officers, but desirous of becoming such, is in text and effect directed to and is equivalent to debarring Chinese from employment. It has already been seen that this cannot be done. This seems to me to be a very small business. I have had in my employment natives of most European countries, of the isles of the sea, including the Cannibal Islands of the South Pacific. Why do you not exclude the Kanaka, the Fiji, the Malay, or the criminal from Australia. No reason against the Chinaman but presses with greater force against these people.

Some persons like them in considerable numbers are necessary in California. Cooks, domestics in country houses, in lumbering or ranches, in mining or other camps, cannot be obtained among women, who for moral and physical reasons cannot safely and properly be called upon for such service.

The descent into this trifling, this interference in the minute details of domestic life, which this provision involves, is ridiculous. There are low, menial services, for which this people are from their indifference well fitted.

I am asked if Americans can hold real estate in China? I am not informed upon that point. I believe the English are so allowed, and if so, under the treaty, we ought to stand on the same ground. Certainly most foreign nations, and perhaps all, have that privilege with us. Upon arriving in California, in eighteen hundred and fifty-five, I found a difference in our treaties with other nations; under them some foreigners could hold and transmit real estate here, and some could not. I addressed and published an article upon that subject, and drew a bill, which was passed at the session of eighteen hundred and fifty-six. That Act remains in force, and fully secures to foreign heirs transmission and inheritance of California estates.

If it is thought desirable to exclude Chinese from holding real estate, and I think it is, I hope the treaty will be made to so declare. The common law of England excluding all foreigners from ownership of lands was founded upon a just jealousy of foreign influence, may perhaps be extended over those so distinctly separated from us in intellectual constitution as are the Chinese.

Other objections are made to the Chinese, that they are dishonest, filthy, etc. In these respects they are certainly a very singular people. I have said, as to fulfillment of contracts, I have found them honest up to the average, and yet paradoxical as it may seem, in almost every way they will contrive some little sneaking advantage, laughable for its simplicity, and for the utter indifference they exhibit when exposed. So shameless are they when detected as to lead one to suppose that at least in their dealings with us they are incapable of distinguishing right from wrong.

I have found them scrupulously cleanly in their person beyond the white laborer, but in their aggregation, filthy beyond description. I have been through Chinatown with Eastern gentlemen and ladies of the highest social position, and have marked the horror which the life exposed created with those who had not been hardened by familiarity. Prostitution, passing through every stage of lust, had become bestialized in every quality a manifestation of which human nature was capable. Contagion and filth beyond description; dens filled, one which we entered, say twelve by fifteen feet, with fifteen persons, some of them white, in it, in every stage of stupefaction from opium, down to a sleep where breathing was intermitted and life apparently was ebbing to its

close. And tripping with lifted garments through this noisome scene, shrinking from the touch of the beings there, were those who typified American civilization—the fair brow, the pure eye, the white trembling lip. Who could fail to see that between these races there was a gulf as deep as that which separated Dives from the heaven he had lost. In looking at these, who could fail to exclaim: "Lord, why hast thou made all things in vain."

The complaints made here by delegates from San Francisco, especially those of Mr. O'Donnell, I have no doubt are fully justified by the facts. The condition of things which is alleged to exist, does so, I am persuaded, by the connivance of officials, who are especially charged with the duty to suppress these evils which they foster and protect. The Chinaman has money, and he has long since learned that official blindness is created by its touch. The foulness of Chinatown, its leprosy, and crimes, are as well known to the police as are the streets, and are sources of a large revenue to them.

Sad as is this picture, hateful and destructive to progress as is this presence, I do not think the evils at present existing are the worst we may have to endure.

The growth, culmination, and ending of governments and peoples seem to follow a fixed law. They struggle against difficulty, grow in mind, become cultivated, learned; arts, science, and moral character are attained; they become rich, luxurious, enervated, corrupt. When thus weakened they fall, because of want of vital force, or are overcome by exterior barbaric force. Barbarism is the end. To-day we have attained the second stage. We are comparatively cultivated and rich. We are even now showing signs of decadence. By a singular fatality we are confronted with this people with whom we parted six thousand years ago on the plains of Central Asia. They number nearly five hundred millions of people. They are fatalists, reckless of life and its expenditure. They are becoming possessed, and skillful in the use of arms. They are fast creating a navy superior to ours, and are apparently making phenomenal advancement in warlike power and skill. An English statesman has lately expressed serious apprehensions as to this people, and of the effect which its precipitation upon the outer races will produce upon human progress. I confess I share his views, and consequent fears. We are more exposed to a Chinese invasion than were the Southern European Empires when overrun and conquered by the Northern hordes.

China is more truly a storehouse of nations than was Northern Europe. I submit that any further change from the direction indicated is at least a factor worthy of serious consideration. In this view, it becomes not only doubly important, but it becomes a necessity to prevent this immigration—to give China no foothold here; and while I, for one, desire friendly relations with the Chinese people, I desire to shake hands with them across an ocean.

But as important as the attainment of this result may be, I am not willing to attain it by means which violate my oath to support the Constitution of the United States, nor to disregard a treaty made under its authority.

No necessity exists for any such procedure. Let the government at once propose a modification of the Burlingame treaty, such as we desire. If our overtures are not accepted, give reasonable notice of the abrogation of the treaty, and then proceed to such independent action as will at once furnish a remedy for the evils under which we suffer, and vindicate our right by the whole power of the nation.

MR. CAPLES. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

COMMITTEE APPOINTED.

THE PRESIDENT announced the following as the committee under the resolution of Mr. Dowling, adopted on December ninth: Messrs. Barnes, Howard, and Dowling.

ADJOURNMENT.

MR. CAPLES. I move that the Convention take a recess until seven o'clock P. M.

MR. STEDMAN. I move that the Convention adjourn.

The motion prevailed, and, at four o'clock and twenty-six minutes, the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

SEVENTY-SIXTH DAY.

SACRAMENTO, Thursday, December 12th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barton,	Campbell,	Herold,
Bell,	Fawcett,	McConnell,
Berry,	Glascock,	Pulliam,
Biggs,	Hager,	Smith, of Santa Clara.
Boggs,		

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Campbell for three days, and indefinite leave of absence to Messrs. Pulliam and Smith, of Santa Clara, on account of sickness.

THE JOURNAL.

MR. CAPLES. I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

PETITION—MECHANICS' LIENS.

MR. GORMAN presented the following petition, signed by a number of mechanics and others, citizens of California, asking for a provision in the Constitution for a lien law:

To the President and members of the Constitutional Convention:

GENTLEMEN: The undersigned respectfully represent that the practical working of the present legislation, and decisions of Supreme Court based thereon, regarding the rights of mechanics, material-men, and laborers to a lien for their labor and material furnished, is such that those who in a measure depend upon such law for just protection fail in nearly all cases to obtain it, because of the inefficient working of said law.

Wherefore, we pray you to declare in our organic law the right of every mechanic, material-man, and laborer to a perfect lien on the thing whereon his labor has been expended, or for which his materials have been furnished.

Moreover, we would state that we would be satisfied with amendment number one hundred and sixty-seven, introduced by Mr. Van Dyke, on October tenth, eighteen hundred and seventy-eight, and read and referred to Committee on Miscellaneous Subjects, as follows:

"SECTION —. Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

And your petitioners will ever pray.

Referred to the Committee on Miscellaneous Subjects.

CHINESE MEMORIAL.

MR. HARRISON. Mr. President: During the early days of this session, a resolution was introduced by the gentleman from San Francisco, Mr. Barbour, providing for a memorial to Congress asking for the abrogation of the Burlingame treaty. This resolution was referred to the Committee on Chinese, where it now remains, no action having been taken on it. I do not propose at this time to enter upon any discussion of the great Chinese curse, as it affects the people of the State of California, nor to refer at any length to the keen anxiety with which our people are looking to the deliberations of this body, as well as to all other properly constituted authorities of the land, for relief. I am safe in asserting with confidence, however, that there is not a constituency represented on this floor, nor I think any gentleman representing a constituency in this body, who do not thoroughly sympathize with and heartily indorse every legitimate move looking to the extinguishment of this accursed coolie competition, and the removal from our midst of these hateful Mongolians—a race whose characteristics have been so completely summarized in the pithy saying of the distinguished Senator from Nevada: "Their vices corrupt our youth, and their virtues starve our men."

Recognizing the unanimity of the people of our State upon this all-absorbing question, I am anxious, Mr. President, that no unnecessary delay shall intervene in the drafting and forwarding of this memorial. Congress is now in session, and the present being a short one, the session will have more than half expired before the memorial can be laid before the body, even with the most complete expedition on our part; and I am anxious that whatever of good may result from it, will not be thrown in jeopardy by any delay on the part of this Convention in not getting it before Congress in time to enable it to receive some consideration from that body.

Personally, however, I am not disposed to anticipate from this memorial any great result. The evident disposition of that part of the United States lying east of the Rocky Mountains, upon this Chinese question, is so utterly at variance with any sympathy or understanding of the prostrate condition of our labor on the Pacific Coast, that it would be idle to hope it. Already that great and insidious septarchy, the Chinese Seven Companies, with its insatiate commercial greed, seeing where their labors to retain and increase their foothold in our country will be most effectual, have transferred their efforts to the East, and the journals of that section are teeming with editorials and leaders extolling the industry, honesty, virtue, and benefits of the Chinese as a race, attributing to their presence in our midst advantages, and with a maudling sentimentality, as false in fact as it is pernicious to our future, setting up the principle that, according to the underlying ideas which created our government, we can no more deny or resist this Chinese immigration than the immigration which comes to us from any of the oppressed nations of the earth.

There, also, we see another step—the naturalization and conversion into citizens of several of the representatives of this non-assimilating race—viewed with distrust, and accepted almost without dissent, by these same journals, which reflect in a great measure the sentiment of the people of that section, while on the other hand the honest and indignant wail of our people here, who feel the blight, is denounced as incendiary vaporings of demagogism.

The President of the United States, in his annual message to Congress upon the general condition of the country, wholly ignores the question, and his lukewarmness, or I might better say indifference, to our situation, is typical of the general sentiment there. This seems to be a strange and anomalous attitude for the General Government to stand in with reference to a part of the country; but that is by no means a new one on the part of the National Government with reference to the Pacific States, the history of the past legislation, where the interests of these States have been in question, will amply prove.

Still, although comparatively hopeless of any successful issue, I am anxious to have the memorial speedily forwarded. It will perhaps be the most thoroughly authenticated protest upon the Chinese question yet submitted from this State, and will place the State squarely on the record, and the General Government will be forced into the acknowledgment of the fact that if the Burlingame treaty is the great bulwark which protects this accursed Mongolian invasion, and during the existence of which we can do nothing to relieve ourselves—which possibilities, I desire to say here emphatically, I in no manner admit—then unless the General Government openly ignores the material and social future of this coast entirely, the Burlingame treaty "must go."

For myself, sir, the paramount and overriding question which brought me to a place in this body, and the all-absorbing idea, which I am free to say, tinctures all of my positions upon every question which is or has yet to come before it, embodied in that familiar and honored slogan, now, and from the first, the inherent spirit of the party of which I am proud to be called a member, "the Chinese must go!" And upon this rock I will build my faith, and neither the gates of h—ll or the Burlingame treaty "shall prevail against it."

I therefore offer the following resolution:

THE SECRETARY read:

Resolved, That the Committee on Chinese, to whom was referred the resolution submitted by the gentleman from San Francisco, Mr. Barbour, providing for a memorial to Congress aking for the abrogation of the Burlingame treaty, be and they are hereby directed to report the same, together with the memorial contemplated, at their earliest convenience.

THE PRESIDENT. The question is on the adoption of the resolution proposed by the gentleman from San Francisco.

The resolution was adopted.

NOTICE.

MR. WEBSTER. Mr. President: I give notice that, to-morrow, I will offer an amendment to Rules Fifty-six and Forty-three, to read as follows:

Amend Rule Forty-three so as to read as follows:

RULE NUMBER FORTY-THREE—TIMES A MEMBER MAY SPEAK.

No member shall speak more than twice on any one question, nor more than fifteen minutes at any one time, without first obtaining leave of the Convention, nor more than once until other members who have not spoken shall speak, if they so desire.

Amend Rule Number Fifty-six so as to read as follows:

RULE NUMBER FIFTY-SIX.

The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except that the ayes and noes shall not be taken, but the previous question may be moved; *provided*, that when the previous question is sustained, it shall only apply to the amendments then pending, and other amendments may be offered to the section.

Laid over for one day.

RESOLUTIONS—LAND AND HOMESTEADS.

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

THE SECRETARY read:

Resolved, That the Committee on Land and Homestead Exemption are required to report to this Convention immediately, or give sufficient reasons for not doing so.

MR. O'SULLIVAN. There is every reason in the world why this resolution should pass. The work of that committee was finished over four weeks ago, and they have never done any business since. The propositions were passed upon, and a majority of them voted down—the main propositions on the land question. The minority of that committee, consisting of four members, have their report ready, and are waiting to report. Now, there is no excuse in the world for this delay on the part of the majority. It looks, indeed, as if there was a deliberate intention to stifle this land question. I don't say that it is so, but I say it has every appearance of it; therefore, I demand immediate action, so as to know what excuse the majority have for not reporting. I am ready to make a minority report now at any moment, Mr. President; and if it is the intention to stifle this land question, we have a right to know it, so that we can make it hot for these bloated landholders. This is a question that must not be stifled, for the minority are going to be heard before this Convention.

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

A QUESTION OF PRIVILEGE.

MR. SHAFTER. Mr. President: I rise to a question of privilege in regard to the report in the Record-Union, of the few remarks I made yesterday. I have to apologize because my voice is not of the best, and I am well aware that it is very difficult to hear amid the great confusion in this hall. I am reported as having said that the Chinese could become citizens. I never entertained any such notion. I never said such a thing. I argued that under the treaty, the Chinese could become permanent residents, because it was included in the treaty. I said they could have become citizens like the people of any other nationality, had it not been for the tail end of the section, which says they cannot become citizens. I am charged again with saying that the same objections could be urged against the Irish. I do not charge the reporters with intentionally misstating it; I have no idea that they did. I never said any such thing, however. I never thought any such thing. I meant to say that the Irish, forty years ago, were objected to upon the ground of cheap labor. No man ever heard me utter a word disrespectful to the Irish on account of their nationality, and nobody ever will hear me utter a word. The Irish are entitled to the same respect as people coming from any other part of the world, and no more. They stand upon the same ground of equality, and I spurn any man's assertion that I have in my heart any feeling towards them because of their nationality, because I never did have. I was brought up an old line-back, yellow-bellied abolitionist, and I believe they stand upon an equality with me and all other men, and no higher.

MR. WELLIN. Mr. President: I sat close by the gentleman when he was speaking, and I am satisfied that he had no idea of slandering the people of any nationality.

MR. BARNES. I have a resolution.

THE PRESIDENT. The resolution of the gentleman from San Francisco, Mr. O'Sullivan, is before the Convention. The question is on the adoption of the resolution.

MR. BROWN. Mr. President: I will state that the Chairman of that committee is not present. I believe he is absent on account of sickness. That is my understanding. Now, sir, I have no opinion as to there being any disposition whatever to stifle that report, as stated by the gentleman from San Francisco. I have looked myself, time and again, to see something upon this subject, and I have been a little surprised that the report was not made. But I have concluded it was because this Convention has abundant business on hand, and consequently there is no demand for the report, because no action could be taken. Whether that is the correct reason or not I cannot say. But I do think it is unfair and uncalled for to hold out the impression here that there is an effort upon the part of that committee to stifle and suppress action on this question. That committee went through with its business, and acted, as far as I could see, very fairly, discussed the measures fairly, and arrived at its conclusions, and I doubt not the Chairman will make his report in good time. But to pass a resolution here requiring an immediate report, when the Chairman is sick in his bed, I think would be wrong on the part of the Convention, and I hope the resolution will not be passed. I am convinced that the report will be made in good time, and I do not see any use in pushing the committee. The report could not be taken up at this time anyway. I hope the resolution will be voted down.

MR. ANDREWS. Mr. President: I believe Mr. Smith, the Chairman of that committee, is sick. I know he has not been well for some time. I think he is sick in bed. I move, therefore, that the resolution be laid on the table.

Carried.

FUNERAL EXPENSES.

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

WHEREAS, The expenses incurred in the funeral obsequies of Honorable J. M. Strong and Honorable B. F. Kenny amount to the sum of six hundred and fifty-one dollars, and the Controller of State has declined to allow the same to be drawn from the appropriation for the expenses of the Convention;

Resolved, That an assessment of four dollars and forty cents be levied upon each of the members of this body to pay said expenses; and that the Sergeant-at-Arms be and is hereby authorized to collect from the State Treasurer all the warrants to be issued by the State Controller for the per diem of members for the current week, and deduct therefrom the sum of four dollars and forty cents per member, and apply the same to the payment of said funeral expenses.

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

MR. BARNES. Mr. President: These expenses were incurred, as they properly should have been, and it was supposed that the Controller of State would permit them to be paid out of the funds of this Convention. He has declined to do so for reasons which are satisfactory to himself. In view of the circumstances, and that these expenses have been

incurred by order of this Convention, and for a most worthy purpose, I think there will be no objection to the resolution. I know this question was submitted to the Supreme Court, in some shape, I know not exactly what; I only know the effort failed.

MR. ROLFE. Did I understand that the Supreme Court has decided this matter?

MR. BARNES. I understand the Supreme Court decided that it was not a case for their interference. That the application could not be made to them unless it passed through a certain groove. They said they could not determine anything about it. They fired the legal committee out of the Court-room and adjourned *sine die*.

MR. WELLIN. Is it not the fact that the case was presented in such a bungling manner that the Court could not hear it? I have been so informed.

MR. BARNES. I have no doubt that this committee would have succeeded if my colleague from San Francisco (Mr. Wellin) had been Chairman of it. My only regret is that he was not added to the committee to settle the question.

MR. HILBORN. Who were the committee?

MR. BARNES. I do not propose to indulge in any personalities in debate. [Laughter.] I prefer to leave this committee to the merited oblivion into which it has fallen. But we have lost our chance, and this money ought to be paid. Now, sir, it is too much to ask of the Sergeant-at-Arms that he shall take a subscription paper and run around to all the members. It is simply a matter of business, and this money ought to come out of all alike. Let him collect all the warrants, deduct the amount from each, and that will be the end of it. The money must be paid.

MR. BARRY. The necessity of the resolution is so obvious I trust it will be passed without anything more being said about it.

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

It was adopted unanimously.

MEMORIAL TO CONGRESS.

MR. ESTEE. Mr. President: I have a memorial which I wish to offer.

THE SECRETARY read:

To the President of the United States, the Senate and House of Representatives:

The Constitutional Convention of the State of California, duly assembled and now in session by authority of law, by a unanimous vote of said Convention, the names of whose members are by themselves signed to this memorial, respectfully represent:

That, for many years past, large numbers of Chinese have come into our State, until the number of adult male Mongolians now exceeds one hundred and twenty thousand. That they are an inferior race of men, incapable of assimilation with the American people, or of becoming citizens of the American nation. That their laws and customs, which they bring with them and ever retain, differ from those of any civilized people; that they have no families; that they are the pauper element of a nation, where want is the rule and plenty the exception, and where this class of people, like other animals, seek for food only, and have no other ambition; that the presence in such large numbers of this class of servile laborers is closing every avenue to free white labor, and rendering it impossible for white laborers with families to live in this State; that civilization is more expensive than pauperism, and hence civilized white men cannot compete with Mongolian labor; that the Chinese are semi-nomadic, living in the open air, or in tents and outhouses, except in our large cities, and have few of the expenses which white men are subject to; that in a large degree the Chinese came here under contract with some of their own people, who control——

MR. BARBOUR. Mr. President: I move that the further reading be dispensed with, and that it be referred to the Committee on Chinese.

MR. ESTEE. I would like to have it read. The Secretary seems to have some trouble with my writing, and if the Page will return it to me, I will read it.

THE PRESIDENT. The motion is to dispense with the reading, and refer it to the Committee on Chinese.

Lost.

MR. ESTEE. I will read it myself. [Reads.]

To the President of the United States, the Senate and House of Representatives:

The Constitutional Convention of the State of California, duly assembled, and now in session by authority of law, by the unanimous vote of said Convention, the names of whose members are by themselves signed to this memorial, respectfully represent that for many years past large numbers of Chinese have come into our State; that the number of adult male Mongolians now here exceeds one hundred and twenty thousand; that they are an inferior race of men, incapable of assimilation with the American people, or of becoming citizens of the American nation; that their laws and customs, which they bring with them and ever retain, differ from those of any civilized people; that they have no families; that they are the pauper element of a nation where want is the rule and plenty the exception, and where the chief aim is to obtain food; that the presence, in such large numbers, of so many servile laborers is closing every avenue to white free labor, and rendering it impossible for white laborers who have families to live in this State; that civilization is more expensive than barbarism, and hence civilized white men cannot compete with Mongolian labor; that the Chinese are semi-nomadic, living in the open air, in tents and outhouses (except in large cities), and they have few of the expenses to which white men are subject; that in most instances the Chinese come here under contract with some of their own people, who control their labor while here; that very many of the males are criminals, and at least nine tenths of their women here are prostitutes; that every ship coming into our ports from China is freighted with this class of laborers; that the further influx of this plague is viewed with profound alarm by every class of our people, and if allowed to continue will cast a blight upon one of the fairest portions of our country; that the health, the peace, and the general prosperity of our people depends, in a great degree, upon the early inhibition of this class of immigration.

We, therefore, most earnestly pray that the present treaty with China be so modified as to prohibit the further immigration of this class of Chinese laborers, or that such laws be passed as will restrict such immigration.

MR. ESTEE. I ask to have this referred to the Committee on Chinese. I had it drawn up before the resolution was presented this morning; hence I wanted to have it read and referred to that committee.

MR. BARNES. What does the gentleman propose to do with this document? I understood that this subject was left to the Committee on Chinese.

MR. ESTEE. I wanted it read for this reason: I am most anxious to have some memorial go to the power that can control this matter, representing the unanimous voice of this Convention; and I believe it would be unanimous. It has been now some three or four weeks since this matter came up, and when it did come up I supposed the memorial would be presented, and it was with a view to hurrying it up that I have presented this.

MR. MILLER. There is no sort of objection to this being referred to the Committee on Chinese. We will hold a meeting and present a memorial, whether it will be this one or some other one I cannot say until I hear the views of the members of the committee. There are several already drafted. We will take the best one and bring it before the Convention to-morrow. There can be no objection to this one being referred to the committee to be considered along with the others.

THE PRESIDENT. If there be no objection the memorial will be referred to the Committee on Chinese. It is so referred.

CHINESE IMMIGRATION.

MR. MILLER. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section one and amendments are before the committee.

SPEECH OF MR. WINANS.

MR. WINANS. Mr. Chairman: When Mr. Seward declared that there was an irrepressible conflict between opposing and repugnant forces on one margin of the continent, he uttered a truth which, in this latter day, finds its repetition on the other. Now, as well as then, and here as well as there, there is an irrepressible conflict between opposing and repugnant forces. That conflict there, eventuated in a holocaust of blood. What may be its issue here? He alone, who holds the destinies of nations in the hollow of His hand, can determine; and, sir, unless relief be had, the portents, signs, and omens of the time point to a sanguinary future. You cannot mingle two races where there is no compatibility and no power of assimilation.

When Sparta overcame the Helots, it was to conquer, and coerce, and turn them into slaves. There was no possible assimilation, and the Helots soon perished from the face of earth. When the white man set his foot upon this continent he drove the red man from his path into the Western wilds. Before the advancing march of civilization the red man still receded, until now the relics of that fated race are swiftly passing to those happy hunting grounds which lie beyond the boundaries of time. Here, again, there was no compatibility and no power of assimilation. And now, as in the past, when the uncounted and innumerable hordes of Asia are pouring in upon us, there is no compatibility and no power of assimilation. The stronger will absorb the weaker, and the result may follow, if relief is not obtained, that the white race will succumb to their Mongolian invaders. There can be no union, no coalescence, no commixture, because the Chinese belong to a different people from our own; different in character, in culture, and in creed; different in the diversity of the distinctive races of the globe; different to the extent that they stand, in all respects, contrasted and repugnant.

The Chinaman is a barbarian. His habits, instincts, and pursuits are entirely alien to the nature and character and customs of our people. He bows down before an idol, and rejects the worship of the true God. Even in the frantic fanaticism of the French Revolutionists there was something manlier than this, for they deified the noblest faculty of man—the reason—and not a thing of wood or stone. He is cruel, treacherous, and revengeful. He has lived under a dominion entirely foreign to our institutions, and subject to a law antagonistic to our own. He holds in our midst an *imperium in imperio*. And, sir, even in his demise he is hostile to the land wherein he was an alien sojourner, for, while in life he exists in hostility to our customs, in death he shrinks from the pollution of our soil. Sir, the two races are absolutely irreconcilable in their nature, and cannot coexist. The one must absorb the other, and this absorption will be governed by the force of numbers. Unless stayed by the hand of power they will continue to come in countless myriads, such as no man can number.

In that physical convulsion of the globe wherein the waters that covered the Desert of Sahara lost their equilibrium, while they receded from the shores of Africa, leaving dry their sandy bed, they recoiled on the American Continent and formed the Gulf of Mexico with its tremendous flood. Below those waters lies a vast domain, exuberantly rich, where cities might have grown; where smiling farms might have spread broadcast o'er the soil; where peace and plenty might have reigned. But now it has become absorbed beneath those overwhelming waves. And, sir, by a significant analogy, there is a human tide, immense and measureless, now threatening to recede from the confronting shores of Asia, and sweep up upon this State in a resistless tidal wave, and utterly submerge our institutions and our people.

This is no fancy, no fiction, but an indisputable fact, unless we stay the inroads of this mighty, moving mass.

When the Goths and the Huns, from their northern fastnesses, beholding the Romans steeped in luxury, and enervated by excess, poured down in solid phalanx upon the imperial city, what was the result? The civilization of centuries sunk speedily into barbaric night. We are told by the Chairman of the committee that the Empire of China is overcrowded; that she needs relief for millions of men; that she cannot escape to the West, and she must therefore escape to the East.

Now, sir, if that be true, and it is proved to be, what is to hinder her from hurling in on the Pacific Coast this great human mass, more resistless and more devastating than the avalanche which rushes down the mountain side? Is this impossible? Not at all! Is it improbable? Nothing is more likely to occur. I believe that unless we adopt means

to resist it, we will be compelled to accept the alternative of our extinction as a nation. From that overcrowded empire, to withdraw two hundred millions of its populace would only give relief; to force them upon us, would only involve national annihilation.

Now, sir, while such is the evil, the question arises, what is the remedy? The learned gentleman from Marin, in an able address to this Convention, endeavored to demonstrate that we were powerless to act, except through the medium of Congress. That gentleman enforced his proposition with his usual ability and skill. He was plausible in illustration and forcible in speech; but, sir, I think his reasoning is fallacious when strictly analyzed. I think he has made use of arguments that, while they were plausible and almost convincing, did not embody true principles, but were calculated to mislead and to deceive. Sir, his proposition is that there can be no restraint except such as Congress may afford, and it is based upon the idea of the existence and binding effect of the Burlingame treaty. I shall not discuss this question upon the broad, abstract, and constitutional ground, but simply direct my attention to an investigation of it in the form in which it here presents itself. Can we take any action in this body that would seem to militate against the provisions of the treaty with China which entitles the subjects of that empire to a residence among us? Without pausing to discuss the collateral privileges which the right of residence involves, I do not hesitate to say that, in my judgment, we can and ought to take some action tending to suppress this evil here and now.

When general principles exist in law, they are commonly of universal application, but when one of these comes in conflict with another, the one or the other must give way.

Congress has the power, under the Federal Constitution, to make treaties with other nations, and that power is unlimited. But on the other hand, each State has the power to regulate its own internal affairs, and to control its police system, which power is also unrestricted; and when these two come into collision, one must of necessity yield to the other.

In Cooley on Constitutional Limitations, that learned commentator says, page five hundred and seventy-two, of the police power of the State: "On questions of conflict between national and State authority, and on questions whether the State exceeds its just powers in dealing with the property and restraining the actions of individuals, it often becomes necessary to consider the extent and proper bounds of a power in the States, which, like that of taxation, pervades every department of business, and reaches to every interest, and every subject of profit or enjoyment. We refer to what is known as the police power. The police of a State, in a comprehensive sense, embraces its system of internal regulation, by which it is sought not only to preserve the public order and to prevent offenses against the State, but also to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, as far as is reasonably consistent with a like enjoyment of rights by others."

"This police power of the State," says Redfield, Ch. J., in Thorpe vs. Rutland and Burlington Railroad Company, 27 Vt. 149, "extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State. According to the maxim, *Sic utere tuo ut alienum non lædas*, which being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others." And again: By this "general police power of the State persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; *of the perfect right in the Legislature to do which, no question ever was, or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned.*"

It seems then that while, on the one hand, the Burlingame treaty gives the Chinese the right of immigration to an unlimited extent, on the other the police power of the State gives it authority by protective legislation, to suppress or modify this right when it endangers the peace, the health, or the welfare of our citizens, or threatens the subversion of our institutions.

Now, sir, if this be so, then the question arises, how far can we assert the prerogative of the police power of the State to abate this monstrous evil without trespassing on the domain of Federal authority? We hear gentlemen talk upon this floor as if the passage of these sections, by this body, would be an act of rebellion. Are they not familiar with the fact that nearly every State within the Union, without intending resistance to Federal control, has enacted laws which the Supreme Court has afterwards declared unconstitutional and set aside? Was the passage of such laws rebellion? If so, New York has rebelled, Massachusetts has rebelled, and divers other States. No, sir, we have not reached the point of rebellion. We have no desire to rebel; nor do we advocate the so called doctrine of States rights.

We are a loyal people, and if we should pass a law here, or adopt an article in this Constitution, or a section therein, or resolve upon a measure that tends to repress this intolerable evil—this curse of Chinese immigration, as it now exists—and, if in the future, the Supreme Court of the United States should decide our action to be unconstitutional, when that ultimate tribunal so decides, then, and then for the first time, will we have reached the crisis at which resistance is rebellion.

It is now but the testing of our legal rights. It is now but an attempt to lawfully accomplish what we may, within the limits of our constitutional restraint, to protect ourselves against the further inroads of this alien and barbaric race. It is intimated that the prevailing, or what is probably the legal sentiment, upon this floor, claims that we can do nothing to relieve ourselves. I do not believe that such a sentiment predominates, but if it does, it has no effect on my opinion. The bar of this State, including many of the most eminent among its members, were astonished at the decision of the Supreme Court in the Chicago Elevator cases, which involved the constitutionality of a law of the State of Illinois. If that law had been declared unconstitutional, could it have been said that the State was in rebellion? Or, if the State forebore to pass the law through fear that it might be pronounced unconstitutional, would not such a course have been analagous to that which alarmists among us now urge us to pursue?

Sir, these provisions of the Burlingame treaty were intended to have a general operation throughout the length and breadth of the United States. It was sanctioned by Congress with the intent and understanding that it would benefit the nation. It was believed at the time to be an act of public policy. But the fallacy and folly of that policy have been demonstrated to such a terrible extent that the doctrine of States rights is appealed to by many as a protection against its ruinous results.

Conscious as we are that these difficulties which have arisen were utterly unforeseen by Congress, should we not exercise the privilege to declare our sentiments upon the subject, and enforce our rights by legislation? Why, sir, suppose that the Pacific could be turned into a sea of ice and remain permanently such. Suppose that two hundred million of Chinamen should cross that glittering bridge and pour in upon us, to destroy our people and devour our land, would we be powerless to resist them because Congress had made a treaty that was suicidal to the nation? Would we be powerless to interpose resistance to the onward march of this devastating host? Or suppose—what makes the merely hypothetic sternly possible—that those insatiate invaders should employ their power and resources in constructing ships to an unlimited extent, until they literally bridged the Pacific with their navy, and thus obtained the means to force themselves upon us in an overwhelming swarm. Would we have no authority to repel them, until Congress could take, in our behalf, its slow and languid action?

Sir, the remedy ought to be adopted, and proportionate to the emergency, and I believe the Supreme Court, though maintaining the spirit of the Constitution, would be able to sustain such provisions, as in our prudence we might make, if those provisions be moderate and statesmanlike, as I desire they should, beyond the mere provisions of the first section, which is entirely nugatory, because the mere declaration of an abstract power existing in the State both heretofore and now. I believe the policy we are desirous to adopt ought to be considered by the Supreme Court of the United States, and any introduction of these or kindred amendments into the new Constitution of the State affords the only way in which they can be brought before the Court. What we desire is to relieve ourselves from an existing evil, now sapping the very foundations of our political and social structures, and prevent its indiscriminate extension. We desire to keep this Oriental outpour from coming in such streams upon our shores as to produce the same effect on us as the ferocious Danes wrought on the Saxons when they inundated England from across the sea. Something must be done by us, or some unconstitutional prophet will arise to stay this plague. Congress seems to be alike indifferent to our prayers and our tears. Nor will we ever be able to derive help from Congress, until we have first made an effort to help ourselves; a righteous, honest effort; an effort conceived in the spirit of legality, compelled by the sense of duty, and made in such a manner as will prove us true to the obligations of the Federal compact, and true to ourselves.

I firmly believe that Congress will aid us when it perceives that we are fearfully in earnest, and that we mean to help ourselves—as Horace says:

Si vis me flere
Primum tibi flendum est.

When the cartman stood by his wheel, in the mire, and prayed to Hercules to lift it out, the god replied: "First put thine own shoulder to the wheel, then I will help you," and Congress will no longer be indifferent or neglectful of the demands and claims of our people, after they shall have taken the stern initiation of action. If Congress should thereupon refuse to aid us, and the Supreme Court should decide that what we do is in violation of the Constitution, then we have no alternative remaining, save submission. But the hour of submission has not come, though the hour for action is at hand.

Sir, a new party has arisen in the State. It contains many agitators, many demagogues, many men who are selfishly seeking their personal advancement. But these are the mere scum upon the surface, while beneath lies a vast seething mass of human suffering. The strong man goes penniless to his home at night. He gazes on his tearful wife; he listens to his children's cry for their bread, until, in the excess of agony, with an aching heart and a bursting brain, he becomes savage in his instincts. In the wide diffusion of this misery, what wonder that the evidence of riot and of rapine is threatened, if this cause of the prevailing suffering, the Chinese curse, be not removed? The malcontent, groaning under a burden too heavy to be borne, is in no condition to consider fine spun constructions of constitutional law when his wife and children are famishing before his eyes. Who shall deny that, amid the general distress, a vigorous effort should be made in the halls of legislation to provide a remedy for the fierce malady that is consuming the vitals of the commonwealth? It is our duty to act in this emergency, and something must be done. The people are crying for relief, and their cry must not be disregarded.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I do not desire to occupy the attention of this Convention at any great length upon this subject. The debate has already been lengthy, though by no means uninstructive. But the variations of opinion, as to what our right and powers are, seem to be very wide. One side holds that the State has complete power to remedy the evil from which we are suffering. The other class holds that we are utterly powerless, and can do nothing but supplicate at the doors of Congress for relief from this evil. Both of these opinions seem to be largely supported by the law and authorities which have

been produced pro and con. I am inclined to think that we ought to go to the extent, if it be necessary to go so far, of giving the Supreme Court an opportunity of passing upon the issues here involved. I am first, therefore, in favor of section one, as reported by the committee.

"The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary."

Now, as I said, I am in favor of that section. Section two of the report provides as follows:

"Any corporation incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises, and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation."

I am in favor of that section, but I want it changed in wording so that we will know exactly what it means. I want it amended so as to apply, *co nominee*, to the class it is intended to effect. I shall, therefore, move to amend section two, when that matter again comes up for consideration, as follows:

"SEC. 2. The Legislature shall pass laws prohibiting any corporation incorporated by or under the laws of this State, or doing business in this State, from employing or giving employment to any Chinaman or Mongolian, in any capacity whatever, within this State, under such penalties as may be prescribed."

I don't want to say aliens who are not capable of becoming citizens of the United States, because that is a matter of some uncertainty. It is true that one Judge has decided that Chinamen cannot be naturalized under the laws. That is Judge Sawyer's decision; and I believe one Judge in the City of New York has followed that decision, and denied the application of Chinamen for naturalization. But I am also aware, if the public prints are to be relied upon, that other United States Judges have naturalized Chinamen, and are now naturalizing them. And to say now that Chinamen are not capable of being naturalized, is simply to state a mooted question, one upon which precedents can be produced pro and con, and one upon which at least it is very doubtful whether there is any settled policy in the Courts.

I am in favor of section three, which also provides that "no alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution." It provides that all public work shall be done by citizens, or at least shall not be done by Chinese; that they shall be prohibited from contracting for or doing public work. I shall favor section three for that reason. I think, however, that the section ought to be enlarged, as to pointing out more particularly that sub-contractors shall be prohibited from employing Chinamen—that they shall not be employed directly or indirectly.

That, sir, brings me to section four, which provides that "all further immigration to this State of Chinese, and all other persons ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation."

This brings up the question of the jurisdiction of the State in its police capacity, and the jurisdiction of the United States in its capacity as sovereign of the States in their outside relations with the world. And there is where the conflict comes in the authorities that have been presented to this Convention. I am in favor of section four, but I would like to have it worded a little different, so as to say expressly what we intend to say. I support it for the purpose of bringing this matter before the Supreme Court of the United States for reëxamination, so as to have them determine what are the rights of the State, and what are the rights of the United States, in reference to this subject. The decisions that have heretofore been made upon that subject were made not with a view to the magnitude of the subject here presented, they were made with reference to immigration coming from Europe—men of like character, and like feelings, and like blood as ours. It was made with reference to preventing the shipping of a limited number of paupers. It was made with reference to preventing those governments from shipping criminals to our shores. I say, sir, that since eighteen hundred and fifty-two—in particular since eighteen hundred and sixty—the Chinese question has grown to be a momentous one; that it was unknown and undreamed of prior to that time, either by Congress, or the President, or the Supreme Court, or any governmental authority that were called on to deal with the question of immigration. The characters of this people are so different from ours, that the very virtues of the one become the vices of the other. They are antagonistic in everything—in government, in religion, in personality, in morality, in all that goes to make up a nation, and in all that goes to make up an individual. They come by invitation, it is true, but they are coming in such vast streams that we are crying out for mercy. They must be stopped, or they will crush us out of existence.

You all remember the Granger cases in Illinois, which were passed upon by the Supreme Court in eighteen hundred and seventy-four or eighteen hundred and seventy-five. They have just been referred to by the gentleman from San Francisco. The decision of the Court, as he says, was a surprise to the legal fraternity, and contrary to the law ideas of the Bar, not only in San Francisco, but all over the State, and all over the United States. Notwithstanding that, the decisions were made in obedience to the necessities of the case, in obedience to the demand of the great body of the people of the United States. And whenever law is so exclusive that it ceases to supply the wants of the people, that it ceases to protect the people, that it becomes an engine of destruction and oppression to the people, it ceases to become good law for the people. And I say now that if we pass these provisions and bring this matter before the Supreme Court of the United States, presenting it as it can be presented, I believe they will find a way to relieve us from our burdens, as they did the farmers of Illinois. In doing that we further present this subject in a forcible manner to the American Congress, and before the people of the country, and we make an appeal which is manly, and one which will carry conviction with it. We make an appeal which is loyal on our part, which is right on our part, and we say to them, we have done all that a people of a State can do for life and self-protection.

I am, therefore, for section four, in such language as will cause the case to be presented in proper shape—if it becomes necessary—to the Supreme Court of the United States; for I submit, if the doctrine of the gentleman from Marin is to be maintained as law, the people of the United States become the basest serfs that it is possible to conceive of, for by treaty the people of the State of California, and of the United States, may wake up some morning and find themselves bound hand and foot by a treaty, when the Congress of the United States by no direct law would be authorized to bind them in any such shape; when the Constitution of the United States confers no such direct power upon them. In other words, they can, by the circumlocution of a treaty, do that which they are powerless to do directly. A treaty of the United States, like every other administration of law under the authority of the United States, must be within limits and bounds. The Constitution itself is limited. The laws of Congress, made in pursuance of the Constitution, are the supreme laws, and no other law is supreme. Yet Congress must not go beyond the authority enforced upon them by the Constitution. They are not law unto themselves. They may make laws pursuant to law, pursuant to authority, subject to authority. Then, I say, if the people can be oppressed beyond the limits established by the Constitution by treaty stipulation, it is saying we can do through a treaty what we could not do directly under our constitution and laws.

Then, I say, it is our duty, when we believe the treaty has exceeded the authority of the treaty making power, to make the issue squarely in our capacity as a State; deny that the treaty is binding upon us, and declare that Congress exceeded its authority in making the treaty, and go before the Supreme Court of the nation upon that issue. For that reason, I am in favor of this section. I am in favor of having the question of the rights of the State, in regard to self-protection, reëxamined before the Supreme Court of the United States. The change in time, the magnitude of the question, the very right of existence upon the part of the people of this Pacific Coast, demand that we do it; not for the purpose of rebellion, but for the purpose of ascertaining our legal rights in a legal and regular manner. For, Mr. President, it would be useless to ask me, or any other man outside of a lunatic asylum, as to whether he favors war or not. You might as well ask him if he is in favor of the next flood of the Sacramento River, or the next cyclone sweeping the shores of our State. Whenever the conditions exist, they come, and no human power can prevent it. Whenever the laws of good government have been so violated that restraint becomes impossible; that the administration of the law no longer affords protection to life and property, then rebellion and anarchy come, whether men are in favor of it or not. But it is the part of wise statesmanship to prevent such a state of affairs coming about, and I differ with the gentleman from Marin as to the method of preventing it. I say we must take issue with the laws of Congress, and with the Burlingame treaty. Under this "most favored nation" clause, they say that the Chinese can come here and hold real estate in defiance of the laws of the State of California—the very highest privilege that can be conferred by the State upon her citizens—that they can come here and hold real estate in defiance of our laws, and we cannot pass laws to prevent them from doing it. If we are reduced to such an absurdity by the treaty, let us take issue with it at once, and go boldly but respectfully before the Supreme Court of the United States. Let us take issue with it in every conceivable manner. I say we are encouraged in this action by another decision.

The Fourteenth Amendment seems very sweeping in its provisions, and was supposed to substitute itself in all the States of this Union for all other character of government. Were the provisions of the Fourteenth Amendment contested before the Supreme Court, so far as relates to this question here, I have reason to believe that it would not be held to be so sweeping as some claim.

Mr. President, I hope we may be able to relieve ourselves from the dire calamity which is impending. But the sooner we do it the better, for I am inclined to believe that, sooner than see this fair land overrun and devastated by this Asiatic horde, the people will rise in open rebellion. That time has not arrived; but when all peaceful means fail, that event is not improbable.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: When this subject of Chinese immigration first came before the Convention, I had not expected to participate in the debate. I had somehow induced myself to believe that the views expressed by the Chairman of the committee, in his able opening argument, would be adopted as the sentiment of the Convention. I believed that the position he had taken would be accepted by all persons, and especially by the legal fraternity. Those views seemed to me to be plain, clear, and decisive of the course which should be pursued here. I thought that the Convention would adopt section

one, and probably section three, and reject the other sections of the report. I had myself, at different times, long ago, examined this question, and did not think that, on the subject of the power of the State, there could be any dispute. I had studied the question, not as an advocate, not as a lawyer to sustain his client, but judicially, as any impartial person would examine a question for the purpose simply of arriving at the right conclusion. But it seems that I was mistaken, and that differences of opinion exist in the Convention between gentlemen eminent and able, upon the subject of the power of the General Government and the power of the State in this matter. Learning that fact, I have been induced to present my views on the subject of the power which the State may lawfully exercise in this matter, in connection with what I conceive to be the great evils attending Chinese immigration.

Twenty-five years ago and upwards I landed in San Francisco in company with yourself, Mr. Chairman, as you well recollect. We were strangers in the State of California and in San Francisco. You will recollect that there were many things strange, curious, and peculiar, which attracted our attention, and that we wandered from place to place looking at the different portions of the city for some days. We were not, in those days, troubled very seriously with clients. Nothing was of greater interest or curiosity to us than the Chinese population. We had never seen this race of people before; knew nothing of their habits, qualities, and modes of life, except from general reading, and they were objects of interest and curiosity to us. We visited the Chinese quarters to learn what kind of people they were. We saw their merchants and their traders, visited their various places of business and houses of trade. We visited their theater to learn their idea of histrionic art. We visited their joss house, and other places of amusement and trade. We saw a population isolated entirely from other people, and from the citizens of San Francisco.

Twenty-five years and upwards have since gone by, and the children of the white race of people that were in this city have grown now into manhood and womanhood. The white boys of that day have become the men who participate in our government of to-day. They are citizens; they are taxpayers; they are the men of whom our armies are made, and of whom our statesmen are made. But the Chinese remain ever the same. They have extended the limits of their quarter of the town, and, I believe, have an additional joss house, and an additional theater, but, in other respects, this period of upwards of a quarter of a century has found that people the same, and in the same place, with the same qualities, habits, and characteristics. This, of itself, teaches statesmen and political economists a great truth—that here is a non-assimilative class; a great body of people in the heart of a great city in the American republic remaining for more than a quarter of a century completely isolated from all Americans, adopting none of our principles, customs, or habits of life, but differing with us in every respect.

There is no advancement, no progress, no change, but still the same to-day and forever. Still the same Chinese alien, worshiping a Chinese joss, eating Chinese victuals, wearing Chinese clothes, and remaining forever Chinese. The people from all the other nations of the earth come here and assimilate and commingle with our people and become a part of our people. Their children grow up Americans; they become Americans, and become one people with us. The Chinese alone remain an isolated, distinct, and peculiar people, and in their nature cannot become a part of the people of this country. This, of itself, is a great evil, if there were no other. Their mode of life is different from ours; their feelings are different from ours; they have not a similar habit of thought; they have not the same religion; not the same ideas of government, or anything else. This, of itself, is a great weakness in our government. It is an element from which we do not draw voters in time of peace, nor soldiers in the time of war. One hundred and twenty thousand foreigners are in our midst, remaining foreigners forever. This, I repeat, is a great evil and a great weakness. It is like a foreign substance that has found its way into the human body, but which never receives the heart's blood; which never takes up the circulation, but remains forever a foreign thing, irritating the nervous system and impairing the health; only to be remedied by the surgeon's knife. The Chinese are absorbing the material and mechanical industries, and monopolizing the labor market of the country. Their influence in that respect has been so thoroughly stated upon this floor that it needs merely to be mentioned. We all know that the Chinese do not establish homes in the country, in the great English and American sense of the term. One of the characteristics and great landmarks of American civilization is the home of the family, consiting of a wife, husband, and children—the home—of all places most blessed, and connected with which are the sweetest memories and associations. Not so with the Chinese. No such thing as home, in that sense, is known to them. The Chinese population consists of a large mass of men and a few women of the lowest character. But few marriages take place, and they live together in crowds. Now, in view of all these evils, we find—what? We find a strong feeling of antagonism existing between a large class of the American people and this Chinese horde. Whether this feeling is justly entertained or not can cut no figure in the discussion of this question. Whether that prejudice is ill founded or not, I say, is unimportant. It is a fact that we have this foreign horde in our midst, this peculiar people, and there is arrayed against it a strong hostility of feeling upon the part of the citizens that is irrepressible. Therefore the cause should be removed; the citizen should be protected, and this vast horde taken from our midst, if it is possible to do so. The important question here is, how shall we get rid of them? And this sends us back to another question—how did they get here? There has always been something in oriental life that has seemed to be exceedingly attractive to persons who are not in the midst of it. There has always been an idea amongst the nations of the earth that it would be a wonderful achievement to secure the trade of the Orient.

England, very early, obtained the East India trade, and the Dutch (I do not mean the Germans), obtained at one time almost an entire monopoly of the Japanese trade, and for a series of years held that trade, long before the Americans had made any treaty with China or Japan. These events were regarded by the other nations of the earth as of the greatest importance, and it was thought a grand thing to secure the trade of these people. The English were so anxious to get a portion of the Chinese trade, and the French were so desirous of the same thing, that they acted in concert, and by absolute force of arms—at the cannon's mouth—made China open up its ports to trade, and allow them the advantages of commerce there. The Yankee, that great American tradesman, quietly followed after and persuaded the Chinese and the Japanese that we were their friends; that we had always been their friends; that we did not intend to act as the French and English had acted, and demand to participate in their trade through force of arms: but that we wanted a little of it in a quiet way. We succeeded in persuading those nations that it would be to their advantage to allow us to participate in that trade. We succeeded partially through skillful diplomacy. Our statesmen, and especially our Chinese Ministers, received the highest approbation at the hands of the government and the people for their great success in managing that business and getting an entering wedge, allowing us to participate, to a very limited extent, in their trade. The first treaty was negotiated by Mr. Cushing—called the Cushing treaty—in eighteen hundred and forty-four (see 8 U. S. Stat. 593). It was very limited in its scope, but it secured something. By it we secured commercial relations with China, and we hoped for something better in the future. All will recollect the glowing pictures portrayed and anticipations indulged by Senator Benton in regard to these countries, and how he described what was to be our glorious future in that trade with China and Japan. It seemed as though it was only necessary to open up trade with those nations and people to make the country prosperous and wealthy. A great trade was to set in; we were to become the great commercial nation of the earth. Encouraged by what we thus secured, we pushed on stronger and stronger, and, in eighteen hundred and forty-eight, made another treaty through the efforts of Mr. Reed, securing greater rights and privileges (see 12 U. S. Stat. 1023). Finally, we pushed on to such an extent that in eighteen hundred and sixty-eight we accomplished what was regarded as a great triumph, in the Burlingame treaty. (See 16 U. S. Stat. 787.) It was very strange, and one of the novelties of this affair, that Mr. Burlingame, an American statesman, should appear as the Ambassador of the Chinese Empire in negotiating this treaty. We made that treaty with great satisfaction, and through it, in conjunction with the former treaties, secured to ourselves certain rights, privileges, and commercial advantages, and reciprocated by granting similar privileges to the Chinese. But in these treaties, as we have found out since, the Chinese had very much the advantage. Our anxiety to get the trade, and our solicitude to secure this business, was so great that we gave China largely the advantage.

While they admitted us to trade to a limited extent in three or four seaport towns, the whole of America was opened up to the Chinaman, and he was invited to come freely and like the rest of the earth to this "asylum of the oppressed," to this "land of the free and home of the brave." He was permitted to settle anywhere—trade anywhere in the United States. The Yankee was not afraid to come in contact with any person on the face of the earth! He was willing to swap jack knives with anybody. After this lapse of time, we find we have the worst of the bargain. While we have obtained a portion of the Chinese trade, we have received too many Chinamen. We have one hundred and twenty thousand of them here as against one or two thousand of our own people in the Chinese Empire. We have them spread all over our country, while our people are limited to two or three of their ports. Now we want to get rid of them. We opened the gate to their coming, invited them in, and thought we were very sagacious and blessed in our success. Now, we have found that it was a grand mistake. We have invited the guest to our house, and having gotten him here we desire to be rid of him. But he is so quiet, so bland, and yet so decided in his enjoyment of the privileges we have accorded to him, that it requires at our hands again some diplomacy. It is somewhat difficult to get him out of the house into which we so lately urged him to enter. How will we get rid of him? That is the question. By some it is said that we may prohibit the Chinese from coming, and absolutely shut up the Golden Gate and not let in any more; and that we may likewise expel and drive out those who are already here in the country. It is urged that if we cannot do this directly, we may do it indirectly, and that we have that power, because there is a great inherent though somewhat undefined power of self-defense and self-protection, called the police power, which has cut so great a figure recently in what is called the Elevator cases, and the Granger cases, which gentlemen here have referred to. It is said that we could fall back upon that great police power which has now become the modern citadel into which all undefined powers seek refuge. On the other hand, we find looming up before us these several treaties of which I have spoken. We find the Constitution of the United States giving to Congress the absolute and exclusive power to regulate commerce between the States, and between this government and foreign nations. We have also standing up before us the Fourteenth Amendment to the Constitution of the United States, which seems to throw some impediments in the way of our efforts upon this subject. We have been preaching for years and years the great doctrine of expatriation. It has been insisted upon as long as the American Government has existed. It is a great doctrine underlying the American Government that any man has a right to leave his place of birth, and throw off his allegiance to the land of his nativity, and go to and reside in another country according to his own will and pleasure.

We have been recently trying to establish this doctrine with other countries, and as part of the law of nations. That doctrine, in part, brought on the war of eighteen hundred and twelve, because the British cruisers attempted to take off from American vessels sailors and marines

born in the British Empire. The English claimed that "once an English subject, always an English subject," and that allegiance is always due to the land of one's birth, and cannot be thrown off. We contested it, and insisted that the subjects had the power to throw off their allegiance to their own nation and become American citizens. I say that one great cause of the war of eighteen hundred and twelve was that very question of the right of a man to leave his place of birth and reside in and become a citizen of any other nation. We have, in all our modern treaties, pushed that question upon the nations of the world, and tried to get them to adopt it as part of the law of nations, and in the Burlingame treaty we presented the same proposition to the Chinese Government. In our anxiety to have this recognized as a broad principle of international law among nations, we succeeded in incorporating it into the Burlingame treaty, there solemnly announcing the right of the Chinese people to come here and live among us, and accept the privileges of an asylum, open to all the nations of the earth. That idea would never have originated with the Chinese. The Chinaman would never have thought of it. It is of American origin, and the Chinaman accepted it as part of the treaty on our own solicitation. Now, this treaty creates the great difficulty here in the use or exercise by the State of that great police power upon which gentlemen so much rely. The police power is of course a very great power in the State Government, as is also the taxing power. It is defined as one of those inherent, original powers necessary to the existence of a State. Yet, great as it is, and it has been defined as the grand repository of all undefined powers, it must be considered in view of our relation to the whole United States and to foreign nations. In forming a General Government we conceded something of our powers. If we have given any portion of our original power into the hands of the General Government, we can no longer claim to exercise it. If we have agreed in the national compact that any power shall be exercised by the General Government exclusively, we have given up the right to exercise it ourselves in every respect. As a State we have no relations with foreign countries. As the Chairman of the Committee on Chinese, General Miller, has ably shown here, the State of California is not a nation, but the United States alone is the nation. We have our relations as a State with the General Government, but we have no relations as a State with foreign countries. We can make no treaties with them. They do not recognize us; do not know us. We are only a part of the nation, and they will deal only with the whole Federal Government, or with the representatives of that government. Therefore, as far as treaties are concerned, we have yielded up to the General Government the entire power, exclusively and solely to make all treaties with foreign nations, and to enter into all those compacts and relations which usually and ordinarily exist between separate nations of the earth; therefore, a treaty made by the General Government becomes the paramount law of the land. The Constitution of the United States puts treaties on an equality with Acts of Congress. The Constitution says that treaties made under the Constitution of the United States, and Acts of Congress passed pursuant thereto, shall be the supreme law of the land. They necessarily override all local and State legislation. Therefore, it follows that this treaty-making power, within its rightful scope, is superior and paramount to all the local powers, call it police, or call it anything else. A treaty is a law of the land, and is superior to any law of the Legislature, and, in case of conflict, supersedes it the same as a rightful Act of Congress will supersede it. Now, it is a great mistake to suppose that the treaty-making power has nothing to do with our internal and municipal regulations, because sometimes it has. A case arose in this State many years ago, and was carried to the Supreme Court of California, in which a treaty between Prussia and our government came directly in conflict with a statute of the State concerning real property, and the right of an alien Prussian to take by descent. Now, if there is any one thing over which the State of California, or any other State, would seem to have absolute and exclusive control, it is the regulation of the descent of land situated within this State, and of the persons who may take by descent. The treaty with Prussia provided as follows: "And when on the death of any person holding real estate within the territory of the one party, such real estate would by the laws of the land descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same and withdraw the proceeds without molestation." Now, the statute of California provided that in such case the real estate of the decedent should escheat to the State. The Attorney-General, on behalf of the State, claimed the property against the administrator of the deceased, and a purchaser from the alien heirs. The conflict was direct, and one or the other had to yield. The question was fairly and squarely presented as to how far the treaty-making power could transcend the power of the State to control its own domestic affairs. The case is reported in the Fifth California Reports, page three hundred and eighty-one, and is entitled The People ex rel. the Attorney-General versus Gerke and Clark. The Justice who delivered the opinion, Judge Heydenfeldt, is very well known as an able man, an accomplished lawyer, and a learned Judge. He was born and raised in the South, with all the old notions of the strict constructionists of the Constitution. My friend from Los Angeles, General Howard, who is a strict constructionist himself, knows that they never conceded a particle of power that was not specially granted. Judge Heydenfeldt, who delivered the opinion in the case referred to, was as strong a State rights man as any.

His opinion is very well fortified by authorities. It refers to and cites the views of Jefferson and Adams—those two leaders of opposite schools of construction—uniting and agreeing upon this one proposition, establishing the paramount authority of national treaty over State authority. Mr. Calhoun's views are also cited, and he has always been regarded as the leader of the school of strict constructionists. Within the limits and strict construction which he has placed upon the treaty-making power, he admits the superiority of the treaty power over a State statute, in such a case as that. So that the State lost and the alien heir took contrary to the California statute. In Chirac vs. Chirac, 2 Wheaton, 259, the Supreme Court of the United States decided that the treaty with France of seventeen hundred and seventy-eight, secured to the citizens and subjects of either power the privilege of holding lands in the territory of the other. This was again affirmed in Cavenac vs. Banks, 10 Wheaton, 189. A treaty with Great Britain of seventeen hundred and ninety-four, to the same effect, was held good and controlling by the Supreme Court of the United States in Hughes vs. Edwards, 9 Wheaton, 489. As said in The People vs. Gerke, by the Supreme Court of California: "So far as the authority of the Federal Courts is concerned, they appear to have uniformly administered the law upon the meaning given by construction to the language of the treaty, seeming never to have, in any respect, doubted the power of the General Government to provide by treaty with a foreign power for the mutual protection of the property belonging to citizens, or subjects of each, in the territory of the other. The treaty-making power of the Federal Government must from necessity be sufficiently ample so as to cover all of the usual subjects of treaties between different powers. If we were to deny to the treaty-making power of our government the exercise of jurisdiction over the property of deceased aliens, upon the ground of interference with the course of descents, or the laws of distribution of a State where property may exist, by parity of reasoning we should not make commercial treaties with foreign nations, because it might be said some of their provisions would injure the business of a portion of the citizens of one of the States of the Union."

This decision has been reaffirmed in later cases by the Supreme Court of this State. In fact, their views have never been doubted outside of this Convention.

The United States has the power to make all treaties, not only with foreign nations, but with Indian tribes. When exercised with regard to the Indian tribes, a treaty occupies the same position, and is of the same general nature, as when exercised with foreign nations. The Indian is regarded as a protegé of the United States. We have bestowed upon him the dignity of making a treaty with him, and these treaties are to be observed and kept as solemnly as when made with foreign nations. And the treaty-making power, in regard to the Indian tribes, is of the same nature as the treaty-making power with foreign nations.

In the Supreme Court of the United States, in a very recent case, a question arose as to the power of the government to interfere directly in the domestic affairs of a State Government, by a treaty with the Indians, and the treaty-making power was held to be paramount in that respect to the power of the State of Minnesota. The case is entitled "The United States vs. Forty-three Gallons of Whisky." (93 U. S. Reports, 197.) There the treaty-making power having declared that no liquor should be sold to Indian tribes anywhere within the limits of the State, the United States officers proceeded to forfeit this liquor which dealers in the State of Minnesota were selling to the Indians. The position was taken there that Minnesota was a sovereign State, and that she had conclusive control over her domestic affairs, and therefore the treaty-making power could not intrude itself in such a manner as to interfere with the power of the State Government over what was entirely domestic and purely local. But the Supreme Court of the United States held to the contrary. The decision referred to says:

"Besides, the power to make treaties with the Indian tribes is, as we have seen, coextensive with that to make treaties with foreign nations. In regard to the latter, it is, without doubt, ample to cover all the usual subjects of diplomacy. One of them relates to the disability of the citizens or subjects of either contracting nation to take, by descent or devise, real property situate in the territory of the other. If a treaty to which the United States is a party, removed such disability, and secured to them the right so to take and hold such property, as if they were natives of this country, it might contravene the statutes of a State; but in that event the Courts would disregard them, and give to the alien the full protection conferred by its provisions. If this result can be thus obtained, surely the government may, in the exercise of its acknowledged power to treat with Indians, make the provision in question, coming, as it fairly does, within the cause relating to the regulating of commerce."

Now, if this be true with regard to the State of Minnesota, how can it be said that the Burlingame treaty is a violation of the rights of this State; that it interferes with the police powers of the State; that it infringes upon it; that it is in contravention of natural law and natural justice? It has been, as I have shown, a principle and doctrine of the American Government almost since its origin, that Congress may enter into a treaty on such subjects as these under the treaty-making power, which shall be paramount and superior to the power exercised by the State itself. The Burlingame treaty has been read here. By it the Chinese are allowed to enter this State at will and become permanent residents, and their security in life and property is guaranteed by the treaty. They are placed on an equality, in regard to personal liberty and property, with the people of the most favored nations of the earth. How, then, can we here, with these limitations upon us, in a Constitutional Convention, as statesmen and jurists, undertake to contravene the power of the United States Government to make that treaty? In what attitude would we place ourselves before the American nation if we undertake to sail our ship of State upon this rock of Gibraltar?

MR. BARBOUR. I would like to show you Mr. Black's opinion on that matter.

MR. WILSON. I have seen Mr. Black's opinion; I read it at the time it was published. Mr. Black came here on a hurried visit to our coast and was entertained handsomely by our people, and while here was invited to express an opinion on this subject. He learned that there was a strong feeling here on the subject of Chinese immigration, and when called upon to give an opinion on that subject, in full sym-

pathy with our wishes and feelings, he wrote the letter alluded to without any investigation or examination. Let us read it. The first thing he states is: "I have not examined this subject with that care that its importance demands." Mr. Black would have done well had he then added, "Yours respectfully," and said no more. If members can derive any comfort from this opinion they are welcome to it; it does not relieve me much. I read it at the time it was first published, and I thought Mr. Black had expressed a very hasty opinion upon a profound question, and had allowed his sympathy to supply the place of his judgment.

MR. BARBOUR. I would like to ask you a question.

MR. WILSON. Certainly, sir.

MR. BARBOUR. I would like to know, sir, whether, in your opinion, there is any limit to the power of Congress or legislation by way of treaty, or whether that power of Congress is unlimited, and whether, in your opinion, there are any reserved powers remaining in the States at all?

MR. WILSON. I think I can answer the gentleman. I believe there is a limit to the treaty-making power. If the gentleman has industry enough to examine Mr. Calhoun's views, referred to by Judge Heydenfeldt, he will learn that there are certain limits which exist. A treaty cannot change our form of government, and there are many other things which cannot be done by treaty. It is not necessary for me to depart from my line of argument to attempt to read the acknowledged law on that subject. It is sufficient for me to say that the power exercised in the Burlingame treaty is within the treaty-making power. These cases which I have cited are cases which bring the Burlingame treaty clearly within the treaty-making power. That is sufficient, without undertaking to say where the exact line is. Probably I would agree, in the main, with the views of Mr. Calhoun.

That treaty must, therefore, be respected. It is the paramount law of the land. In case of conflict, whether by the exercise of police power or otherwise, the police power must yield to the treaty-making power in its broad extent. In the case of Henderson, cited by the Chairman of the Committee on Chinese, General Miller, in the United States Court, where the express object of the Court was to settle the question, as far as it was possible, this question of the police power of the State is commented on. The Court say, in that case, in respect to this police power:

"This power, frequently referred to in the decisions of this Court, has been, in general terms, somewhat loosely called the police power. It is not necessary for the course of this discussion to attempt to define it more accurately than it has been defined already. It is not necessary, because whatever may be the nature and extent of that power, where not otherwise restricted, no definition of it and no urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution.

"Nothing is gained in the argument by calling it the police power. Very many statutes, when the authority on which their enactments rest is examined, may be referred to different sources of power, and supported equally well under any of them. A statute may at the same time be an exercise of the taxing power and of the power of eminent domain. A statute punishing counterfeiting may be for the protection of the private citizen against fraud, and a measure for the protection of the currency, and for the safety of the government which issues it. It must occur very often that the shading which marks the line between one class of legislation and another is very nice and not easily distinguishable.

"But, however difficult this may be, it is clear, from the complex nature of our form of government, that, whenever the statute of a State invades the domain of legislation which belongs to the Congress of the United States, it is void, no matter under what class of powers it may fall, or how closely allied to powers conceded to belong to the States."

It is manifest, then, that this treaty-making power having been exclusively granted to Congress, if there is a conflict between the exercise of that power and the police power of the State, the police power must yield, and the treaty-making power must be held paramount. The power of Congress to regulate commerce, foreign and inter-State, is exclusively in Congress, and is closely allied to the proposition I have stated in regard to the treaty, as far as this question is concerned. That power is exclusively in the United States Government. Years ago the transportation of passengers was held to fall within these powers to regulate commerce. It was so held in "the Passenger cases," and since that in a series of others. It was so held in a recent case in the United States Supreme Court, 5 Otto R. 265, and also in the case of Henderson, 2 Otto R., cited by General Miller. All of the recent cases, "the Passenger cases" especially, are based on the conceded proposition that a State cannot prohibit the entrance of foreign goods or foreign passengers. What is the use of discussing these sections prohibiting the Mongolians from coming into the State, when every one of these cases cited have decided that it is not in the power of the State to so ordain. These sections attempted to reach the Chinese passenger coming here, through what is called the exercise of some inherent State power similar to the power of taxation, or police power, as they choose to call it; and it is by the exercise of some one of these powers that it is sought to place the first check upon Chinese immigration.

MR. WYATT. Will the gentleman allow me to ask him a question.

MR. WILSON. Certainly.

MR. WYATT. Now, upon the supposition that the introduction of passengers described in this case is absolute death to the citizens of the State, what attitude would it then assume before the Supreme Court of the United States in regard to the decisions upon these questions, conceding that the very presence of these people here is conducive to the destruction of the State?

MR. WILSON. In the first place, the question, in its legal aspect, would not be bettered by such an extreme state of facts. The treaty-making power, having absolute control over the commercial relations, determines the question as to what is right and what is wrong. If the State should differ with the United States, the State would certainly have to yield. She might enter a remonstrance; she might appeal to the authorities of the United States for modification or other relief, but so long as the United States insist that these people shall be permitted to come here under its treaty, the State has not the power to exclude them. So far as the power to regulate commerce is concerned, it embraces passengers as well as freight and merchandise. All the cases where that question has been raised have conceded that, and all the authorities are uniform, and agree that the State has not authority to regulate trade in such a manner as to impede it or place onerous burdens on commerce, and that this power is vested in the General Government alone. Although, in some of the States, it was attempted to maintain these cases under the guise of the taxing power, the Supreme Court of the United States invariably looked through the disguise, penetrated the gauze work, detected the object and intention of these provisions, and therefore decided that even the power of taxation cannot be exercised so as to interfere with commerce. This was so in "the Passenger cases." There it was sought to escape the question of interference with passengers directly by an ingenious intervention of onerous duties on the master of the ship. The master of the vessel was required to give certain bonds to protect the State upon the introduction of passengers, and the argument to sustain the law was this: "We have not interfered with your passengers; we do not ask anything of the passengers, but simply lay a duty on the vessel, which we have a right to tax." The Supreme Court penetrated this ingenious device, and saw that it was intended to prevent the passengers from coming into the State; that it incommoded them, and prevented their free entrance into the State. It is therefore useless to discuss any farther this power of prohibition, because the highest Court in the land has already, as shown, decided against the right of prohibition in the State, and against the right of a State to place or impose any onerous burdens upon passengers. I will read a short extract from the decision of the Supreme Court of the United States, in the case of Chy Lung, 2 Otto:

"The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores, belongs to Congress and not to the States. It has power to regulate commerce with foreign nations: the responsibility for the character of those regulations, and for the manner of their execution, belongs solely to the National Government. If it be otherwise, a single State can, at her pleasure, embroil us in disastrous quarrels with other nations."

I further find that in the attempt to exercise or interfere with commerce, even commerce between the States comes in conflict with the Federal Government. It was found, some years ago, that the cattle introduced from Texas into various States of the Union, had certain diseases which were infectious, and it was attempted to prevent the importation of these diseased cattle in Missouri, and thus avoid the spreading of the disease among the domestic cattle in the latter State. The State of Missouri passed a law prohibiting the importation of cattle from Texas into that State during a period of six months in each year. That was a very strong case, and I do not know that any gentleman has submitted, in regard to the power of a State to regulate its own domestic affairs, any case which is stronger than the one presented on that occasion. There were droves of diseased cattle coming in from the prairies of Texas, which were likely to spread infection and disease among the domestic cattle of Missouri, and the question was as to the power of the State of Missouri to protect herself against this threatened danger to man and beast. The Supreme Court of the United States, in the case of The Railroad Company vs. Houston, 5 Otto, 465, pass upon the validity of that statute of Missouri.

MR. HOWARD. I would like to ask the gentleman a question. Does not the Texas case go upon the grounds that the statute is so broad that it excluded all the cattle, healthy as well as diseased?

MR. WILSON. You are trying to exclude the healthy Chinese cattle as well as the diseased ones.

MR. HOWARD. I say they are all diseased. That is not an answer to my question. I asked you upon what grounds that decision went. Whether the decision of the Supreme Court was not upon the ground that the statute was so broad that it included healthy as well as diseased cattle?

MR. WILSON. It is precisely as I stated it. The State of Missouri undertook that mode of cutting off the diseased cattle just as in these other cases. The Chairman of the Committee on Chinese has shown exactly how far the limit goes in regard to the exercise of State power. You can reach the pauper, but you cannot go beyond him, so all these decisions say. The Supreme Court said that that did not come within the proper police regulation; it was an interference with the right to regulate commerce between the States which is vested solely in Congress. Neither the unlimited power of the State to tax, nor any of the large police powers, can be exercised to such an extent as to work a practical assumption of the powers given to Congress by the Constitution of the United States.

MR. FILCHER. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

RECESS.

The hour for recess having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and quorum present.

CHINESE IMMIGRATION.

MR. LARKIN. Mr. President: I move that the Convention now resolve itself into Committee of the the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The gentleman from San Francisco, Mr. Wilson, has the floor.

SPEECH OF MR. WILSON—(Continued.)

MR. WILSON. Mr. Chairman: I have occupied more time upon this subject than I had expected, and I will proceed as rapidly as possible. I have called the attention of the Convention to the case of the Railroad Company against Husen. It seemed to be conceded in that case that if the State of Missouri had confined itself in the exclusion of diseased cattle only, that the statute might have been constitutional and proper. But while the real object was to exclude diseased cattle, it applied to all cattle for certain periods of time, and it was held that the statute was more an absolute regulation of commerce than the police power of the State could warrant. And the limit is defined between that class of legislation which operates to exclude paupers and criminals, and similar persons, and other sanitary measures, and that which would embrace persons against whom no objection could be raised, or more properly against whom no such sanitary regulations could be aimed. The first section on this subject reported by the committee is aimed principally at persons following directly and properly within the police powers of the State, such as vagrants, paupers, criminals, and those afflicted with incurable diseases. All these are clearly within the domain of the police power of the State. But the subsequent sections which embrace and include all persons in the State, whether of the classes before indicated or not, fall directly within the decisions which I have read and commented upon. In the several decisions cited in the argument of the Chairman of the Committee on Chinese, the same rule is laid down, and the opinion of the Courts are very explicit and consistent.

In the case of Henderson, the Supreme Court intended to settle the question, but there is a doubt expressed as to whether the police power will extend to the cases of paupers. I think, however, that the decision, in most of the cases, is to the effect that a State may exercise the police power over vagrants, paupers, diseased persons, and criminals. But some of the cases, particularly the last case referred to, seems to throw a doubt upon the exercise of this power over paupers. It seems to incline to the view that in that respect and class of cases, Congress is the sole repository of such power.

I am willing to go to the extent of the exercise of that power, as indicated in section one, as it seems to me we can sustain ourselves upon it. There is nothing dangerous in it to the State. The learned gentleman from Los Angeles, in his argument took the ground that the State itself should be the judge of the proper exercise of the police power. But the Supreme Court of the United States differs with him upon that subject, and, highly as I respect the opinions of that gentleman, yet, when his views are in conflict with the decisions of the Supreme Court of the United States, the decision of that tribunal will secure my concurrence.

In the case of the Railroad Company against Husen, the Court discusses this very question, as to who shall be the judge of the proper exercise of the police power. It had been urged that the question of the propriety of the exercise of the police power is to be determined by the Legislature of the State and not by the Courts. But the Supreme Court of the United States says: "With this we cannot concur. The police power of the State cannot obstruct foreign commerce, or inter-State commerce, beyond the necessity for its exercise; and under color of it objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the Courts to guard vigilantly against any needless intrusion."

These decisions we must accept as final, because whether we indorse them or not they are the law of the land. In considering this subject, there are some other questions worthy of our consideration. I will refer for a moment to the Fourteenth Amendment of the Constitution of the United States. It is well known that some of these latter amendments to the Constitution arose from the peculiar condition of affairs in the South during and subsequent to the civil war. Congress passed a number of Acts, the special object of which was to protect the negro recently emancipated from slavery, and to confer upon him all the rights of an American citizen. The Fourteenth and Fifteenth Amendments of the Federal Constitution were designed to place the negro in a position of political equality with the whites, and Acts of Congress were passed to enforce the principles embodied in those amendments. Of the wisdom of what was thus done we have nothing to say, we can but simply accept the result as an accomplished fact. The Fourteenth Amendment says:

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws."

We must yield to these persons within our borders and jurisdiction the equal protection of the law. It matters not who the individual is; it matters not how humble he is, or how base he is, the broad shield of the law extends over him, and he may demand all the right which any other person may have to the equal protection of the laws. Of course this does not embrace political privileges, which are limited, but he is entitled to full protection. This amendment has sometimes been supposed to be limited entirely to the negro race, because the circumstances and condition of that race at the end of the war caused the passage of these Acts; but the language is not limited merely to the negro, it is comprehensive enough to embrace all others, and it must be construed according to its natural meaning. In the history of laws we see that certain things cause the enactment of ordinances and statutes, but they must, nevertheless, be construed according to plain ordinary meaning of the words employed. It is not necessary to show this by argument, because the Supreme Court of the United States, in the Slaughterhouse case, in 16 Wallace Reports, here so construed this very amendment of the Constitution. After viewing the history of this legislation, and this constitutional enactment, showing that the negro was the cause of these laws having been passed, and that the negro was primarily intended to be benefited by them, the Court says: "We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly while negro slavery was alone in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage, or the Chinese coolie labor system, shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent."

My object thus far has been to demonstrate, so far as in me lies, that in view of the Burlingame treaty and the decisions of the Supreme Court of the United States, we cannot safely go beyond sections one and three as presented by the committee, if indeed we can go that far. Yet I do not wish to be misunderstood. If any one can show me how we may constitutionally relieve ourselves from this Chinese incubus, I will go as far as his light may illume the path. I am no lover of these Oriental pagans. They have no advocate in me. I entertain no mere prejudice against them, but I have a settled conviction, the result of years of observation and reflection, that their residence among us is a scourge, a growing evil, and highly detrimental to our prosperity, morals, and general welfare. It is a public calamity that they are in our midst; and in their undisturbed presence here I see much to make the statesman fear, the patriot mourn, and the philanthropist despair. Yet I will not lend myself to any measures in themselves inhuman, or which violate the Constitution of the United States, or that of the State of California, or place myself in an absurd attitude before the people of the United States.

MR. HERRINGTON. I would like to ask the gentleman a question. If the present Burlingame treaty were not in force and effect, would it be proper for the State of California, for this Convention, to adopt provisions in our Constitution to prevent the accession by the Mongolians of permanent residences in this State?

MR. WILSON. Yes, I think in that event we might go a great way in that direction, until met by the provisions of the Constitution as to commerce.

MR. HERRINGTON. Then I will ask another question. If that be so, would a provision of this Constitution be in violation of any provisions of the Constitution of the United States; or would it be in any different position than the law in reference to insolvency, when the general bankrupt law was in existence?

MR. WILSON. It would be like passing a law by the Legislature or by the Constitution, in direct violation of the Act of Congress, because the treaty is a law as much as the Constitution, or an Act of Congress. We cannot pass any legislation which is an infringement upon that existing law.

MR. HERRINGTON. Then the law passed a little while before the repeal of the bankrupt law was not in violation of the Constitution; that law is still in force and effect.

MR. WILSON. A serious question was raised on that point the other day. A gentleman of great legal experience suggested to me, in a case we were discussing, that, as the State insolvent law was passed pending an Act of Congress, it could not be considered of any validity or effect now; and that suggestion raises serious doubts in my mind as to the validity of the Act. However, this is like one of the recent school examinations, and I have not been furnished, as the parties there were, with the questions beforehand. [Laughter.] This first section, as reported by the committee, has a clause which I am somewhat doubtful about:

"The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary."

The clause I refer to is that relating to "aliens otherwise dangerous or detrimental to the well-being or peace of the State." These words give a wide latitude. They may embrace almost anything. "Detrimental to the well-being or peace of the State." How? In what respect? By what mode? What is the well-being of the State? is it wise to use these words, to which nothing definite can attach, and which in their wide sweep are boundless as space?

These words remind us of the old English bills of attainder. They were based on the same idea contained in the language to which I object. All the constitutions in this country contain prohibitions against bills of attainder. They grew up in England upon the idea that while there were definite crimes for which persons could be tried and punished, yet there occasionally might exist in the State a man who, though not guilty of any known or defined crime, would be dangerous to the peace and well-being of the community. Bills of attainder originated on this assumption. Parliament passed such bills to reach these persons asserted to be "dangerous or detrimental to the well-being or peace of the State." By bills of attainder such persons were punished, their blood attainted, and their estate confiscated to the crown. I believe the last bill of attainder was passed in England over a century ago. I believe that almost every one of the State Constitutions contain provisions against such bills. The Constitution of the United States provides that no bill of attainder shall be passed. The present Constitution of California contains also the same prohibition against such bills. Now, this provision of section one sounds very much like the old bills of attainder—"aliens otherwise dangerous or detrimental to the well-being or peace of the State." In other respects I have agreed with section one, not that I think it is necessary, because I think the State has inherently all the power that that section gives it. But as some expression of opinion on this subject by the Convention is thought to be desirable, I yield my concurrence to this section as it stands.

In my view, the remedy is beyond the powers of the State, and it has been my object, so far, to show that we can have no relief, either through the Legislature or Constitution, against the evils of Chinese immigration. We have no power to stop these people from coming into the State; we have very little power to control them while here; and though I am anxious to see the State rid of these evils, I am persuaded that the only remedy is in an application to the treaty-making power, or to Congress itself. We may have a modification of the Burlingame treaty, with the consent of China, it being a contract—and the consent of the Chinese Government is necessary in making a new treaty, to guard and protect us against this unlimited invasion of foreigners not susceptible of naturalization. We may also call upon Congress for some remedy, and Congress has the power to so regulate the intercourse between the two countries as to afford us some relief. There is no doubt at all about the correctness of the position assumed by the gentleman from Marin, that while the treaty itself binds the two nations, we cannot get rid of it except by consent of China, although we may break it by Act of Congress or otherwise, being ourselves responsible to the Chinese Government, as we are in all cases, for the infraction of a treaty. That responsibility, if I were a part of the administration of the General Government, I would be willing to take. I would give relief, even if we had to resort to war. But we can only have adequate relief through Congress, or the treaty-making power. Just at this particular time California seems to occupy a very important position. The political signs indicate that California will soon rise from political obscurity and assume a place of power in the national councils—I do not care what party succeeds here, whether it be the Workingmen's, the Republican, or the Democratic party.

This State may hold the balance of power and have a voice in determining who will be the President of the United States; and that probability, has, to a great extent, gained faith recently. We are entitled to use our power for our State protection; we are entitled now to demand of the General Government that it shall awake and listen to us. And, I believe now, that if a strong, earnest, and determined effort is made, the General Government, in view of the political condition, will listen to us. And, in my judgment, whether they do or do not, it is our only hope and our only remedy, and we should here put ourselves upon this record, in the language of the gentleman from San Diego, Mr. Blackmer, in a dignifying, manly, and statesmanlike position, and go to the General Government and ask it to relieve us from these evils under which we are suffering. I believe that anything in the shape of violence towards the Chinese will have the same effect that it did in regard to the negroes. In order to protect the negroes, Congress made them citizens of the United States, and I believe now that any violence on our part against the Chinese will simply induce Congress to pass an Act rendering them eligible to citizenship, which will render them more hurtful to the interests of the State than now, and merely aggravate our evils. And, in that view of the case, I think we should appeal to Congress in a sensible, statesmanlike manner. I believe we will get relief. It may be long coming; it may be difficult to rouse those people of other States to a comprehension of our situation, and, when you come to think of it, it is not wonderful that it is so. They know nothing about this subject; they know nothing of this competitive labor; they know nothing of the absolute power of the Chinese to affect, most injuriously, the laboring men of the country; they know nothing of the manifold evils attending the residence of Chinese among us. We call upon them to reverse the old, respected, and revered doctrines of the government on the subject of expatriation. We have boasted, time and again, that we had here a land open to all the nations of the earth. We have listened to that doctrine preached in the halls of Congress, and in Fourth of July orations, and from the stump. We have everywhere proclaimed that this is an asylum for the oppressed of all nations, and asked them to come here and enjoy, without stint, the blessings of this free land of ours. Now we turn to the people of the other States, who have heard these things preached for one hundred years, and say to them, "reverse all these things and exclude these people from our shores."

It is the first time any such proposition has ever been advanced; it is the first time any such request has ever been made. It is not wonderful they are slow to adopt our views. It would be strange if they easily yielded to our arguments. We must be careful and sensible in our action. We must try to induce them to hear us. It is the only possible remedy. Now, I know, Mr. President, that if I were to urge extreme measures here I would please some persons. I know that there is a great deal of radicalism on this subject among many persons, but my object on this floor is not merely to please, but to advocate these measures which will afford the true remedy for the wrongs we suffer, recognizing that I am responsible to the people of the State for my action, and desirous of putting myself upon the record here, as one not afraid to speak the truth, however unpalatable it may be; therefore, I say that I cannot favor these extreme measures. We should look at this question as it is, in all its naked deformity, and ascertain where the remedy lies, and not run after a remedy which will not avail, or which will only result in future distress to us. We have appealed to the General Government to aid us in this matter. Let us continue this appeal. Let us take advantage of the political crisis about to come, and make our power in that respect felt. Let us demand proper legislation by Congress, and proper action by the treaty-making power, which will relieve us of this gigantic evil.

MR. BARBOUR. I ask the gentleman if he indorsed the Non-partisan platform upon which the candidates in San Francisco were elected?

MR. WILSON. Does it make any difference in the strength of the argument, whether I indorsed that platform or not? In fact I was not here in the State at the time that platform was framed, or at the time of the election. I was in the Atlantic States, and therefore never have seen it to this day.

MR. BARBOUR. All right.

MR. WILSON. I had supposed that my action was in accordance with it. If I am convinced, as I am, that the State has no power over this subject, and that the remedy is in Congress alone, and I am anxious and willing to adopt that remedy, I suppose I am not inconsistent with the Non-partisan platform. I have, therefore, fully presented my views, recognizing the greatness of the evil and where the remedy is. I abide the result, whatever it be.

SPEECH OF MR. BARNES.

MR. BARNES. Mr. Chairman: No one can feel more keenly the responsibility which rests upon us in the consideration of this question than I do. No one can feel more desirous than I that whatever is done here should be wisely done; and if it be true, as suggested by the gentleman last on the floor, that the people are remediless, and that, when so many of our citizens feel perhaps their lives—certainly the welfare of themselves and their families—depend in a great measure upon this Convention, I feel unequal to the task of coping with gentlemen so able and distinguished as those upon the other side of this question, who have argued to us with the earnestness that marks them as sincere, that the people of this coast are absolutely and solely remediless in the premises. That we are to be in the future, as we have been in the past, and are in the present, subject to the unlimited presence of an element so forcibly described by my colleague from San Francisco, without hope of remedy, is to say that our government is a failure. Surrounded by distress, and hunger, and want on every hand, it is said we must sit supinely down under this upas tree and inhale the poison that falls from its limbs, absolutely devoid of the power—not merely to lay the ax at the foot of the tree, but powerless to remove a single limb that drips its poison upon us. And we are referred to the Constitution of the United States, and to the treaty-making power conferred upon the President and Senate of the United States, as something which constitutes an impassable barrier between us and this great social and political wrong. Now, sir, I prefer to regard this, not as a case depending altogether upon authorities—though I believe that authority, and good authority, can be advanced for the views which I entertain—but I prefer to look for a moment at it as a case of first impression, as if we had not this provision in the Constitution in reference to the power of the government, and the rights given to Congress and the President of the United States; as though none of these vexing questions had ever risen at all; as though there had never been such a case as that cited from Otto in respect to diseased cattle; as though we had never a case passed upon in respect to the importation of Chinese women; as though we had never had a case founded upon the right of one citizen to import into another State his merchandise of human bodies. Let us look for a moment at it as a case of first impression.

These great men who gave us this form of government called the Constitution of the United States, under which this nation has attained all its greatness, and grandeur, and prosperity, gave it to us for one purpose, as they say, and only one. And while they exacted from us certain things, they gave us certain other things in return. For what we surrendered we received an equivalent in return. But let us see farther what each was to receive in accordance with that compact. It is necessary to see what these rights are in order to determine what powers it is necessary for us to have in order to maintain the rights which were guaranteed to us under the Constitution. Now, sir, although I detest the spirit of nullification as I detest the spirit of secession, I do not believe that a State can live in this Union which repudiates one law intended to enjoin harmony on the balance; still I believe it is the right of every State to bring the principles which it considers underlie the social fabric to the test. I do not understand, with the gentleman from Marin, that it is a violation of our constitutional oath of office to engraft into this Constitution anything which we might consider necessary and essential for the welfare of the people of this State. It is well known that the Legislatures of the States have, from time to time, passed laws and adopted resolutions, which, when submitted to the critical tests of judicial interpretation, have been declared unconstitutional. There was no pretense that the members violated their oaths when they attempted to establish some law which they considered right and just, though in the end it was declared to be in violation of the Constitution. And I consider that we are eminently justified in going to the extreme verge of constitutional law, both here and elsewhere, for the purpose, if nothing else, of ascertaining by the determination of the Court of last resort, whether we have the rights we believe we have or not. If that Court

shall decide that we do not possess them, we can submit, as we have always done, and as I trust we always will do. If that Court decides that we do possess these rights and powers, we shall feel that we have been the means of accomplishing a great reform. Sir, I regret that the gentleman who preceded me seemed to think that it was easy to speak on the popular side of this question. I do not so understand it. I think the man who undertakes to take a step in advance requires more courage, better will, and stronger resolution than he who attempts to stick in the dark, and says we shall not move for fear we may run counter to the Constitution of the United States.

Now, sir, what was that compact? Why, sir, the compact made by the people of the State was that we entered into this agreement and surrendered these powers utterly and absolutely to the centralized government for several purposes. It was to form a more perfect Union. It was to establish justice. It was to insure domestic tranquillity, provide for common defense, and the general welfare, and secure the blessings of liberty to ourselves and to our posterity. We find ourselves subjected to an innovation, the extent of which no man can tell, which is absolutely destructive to justice; which destroys domestic tranquillity; which places an obstacle in the way of common defense, destroys the general welfare, and absolutely undermines the blessings of liberty which we claim for ourselves and for our posterity. Under that form of Constitution it was expected that the nations of the earth would come in here and find a common heritage, to grow up a homogeneous and united people. The provisions were ample at that time, because our fathers never looked out beyond the western shore into this great unknown sea of hungry humanity. They never dreamed that the happy and contented people were to be exposed to such danger and degradation as that. If they had, sir, does any one doubt that those wise men would have framed this Constitution so as to give us some protection and some defense? They never had any such idea. They never dreamed of the danger ahead. The provisions in respect to naturalization were broad and full. Congress was directed under the organic law to provide a system of naturalization that should enable men, whether born here or not, to live among us on equal terms, participate in the government of the country, and become American citizens in every sense of the word. They guaranteed a republican form of government, based upon intelligence, upon education, and upon love of country. Those were the principles enunciated by the father of his country; those were the principles upon which this government was founded, and upon which our fathers intended it should survive. That was the basis, and that is the only basis upon which a republican government can ever stand. It was upon the idea of universal intelligence, where the people in their individual and collective capacity, without reference to wealth, stand equal before the law.

Well, sir, have we got that form of government here to-day, when in our midst exists this poison; when in our midst exists this great body of people who have no sympathy or interest in the government; who take no part in our system of education; a people who have no part in the underlying religious ideas of our institutions? Why, sir, the argument on that side has been so forcibly presented by gentlemen who have preceded me, that it needs no language—indeed, language would fail to express it in all its horrors and destructive capacity. No man of intelligence will deny, I think, that this thing is a curse that will in the end, if continued, destroy the very framework of government and society; and when you have said that, you have said all that can be said on that branch of the subject.

Now, we are told that notwithstanding we are living under a government that professes to carry out the principles to which I have referred; notwithstanding we are guaranteed a republican form of government, under which all are supposed to be equal before the law, we are told here to-day that we must adopt no means here by which we can test the validity of this compact, because they say the Constitution of the United States, and the treaties made in pursuance thereof, are the supreme law of the land, and we must not question them. I say they are subject to the interpretation of the Supreme Court the same as any other law. Suppose for a moment that the President of the United States and two thirds of the Senate should make a treaty with Great Britain, by which certain portions of this country should be formed into a kingdom, or some system of government which should absolutely overthrow the Constitution of the United States, and the people should undertake to test it, as they should test it. The question would be submitted to the Supreme Court of the United States. I see no difference—none laid down in the books—between a treaty and a law of Congress. And we have the right, as we have the power, to test it in every way, and this is the best way in which it can be tested. And I have no doubt, if it could be shown before the Supreme Court that any treaty or law of Congress, whichever it may be, is, either in itself or in its results, subversive of American liberty, as we all understand it, that it would be set aside and annulled, and the people declared free and independent of its operations. It might plunge us into a war with China; it might bring about any other international difficulty, but so long as the people are contented and prosperous at home it makes very little difference what such difficulty may be. I say it is our duty to put a provision in the Constitution, such a one as in our judgment the exigencies of the times demand, with the purpose—if for nothing else—of testing this thing before the Courts of the land. The gentleman says we cannot run counter to the central government; that we are bound here hand and foot until Congress shall see fit to act, and that the only thing for us to do is to continue to pray to Congress for relief.

We are, he said, to continue our supplications until Congress shall do like the woman did—marry the man who was courting her in order to get rid of him. [Laughter.] Now, we have tried that sort of thing for a long time, and no man of intelligence can look ahead and give us any assurance of relief in that direction. I can see no prospect of it. We know what the feeling in other parts of the country is, and we know the influence that surrounds Congress in the City of Washington, and we know that that influence will continue to be exerted and continue to have its effect. It will not be until this State shall be filled from one end to the other that Congress will awaken to the necessity of doing something for our relief. I am free to say that I do not anticipate any relief in that direction; I see no prospect of it. I can see nothing in the future which holds out any hope of relief. If we could see the bow of promise, like that which God hung over the people after the flood, we might be willing to wait yet a little while; but, sir, I cannot see anything of the kind. On the contrary, the signs of the times to my mind indicate that if we, as a State, do not do something for ourselves, we will miss the only opportunity we shall have of helping ourselves. And here in the organic law is the place to make the attempt.

Now, sir, I do not like this article on Chinese. My opposition to it is based upon this: that it is evasive; that it is attempting to do indirectly what it seems by tacit consent we can do directly. And if we can do a thing indirectly, we can do it directly. All these provisions about requiring aliens to get certificates, and all that sort of thing, are worse than nonsense. It is unmanly. If we are going to act at all let us put a broad, open, and manly declaration in the Constitution, declaring that the presence of these people is a constant menace to our government, and then apply the ax to the tree, and go boldly before the Courts claiming our right to act in self-defense. Now, this first section, let us see what that contains:

"SECTION 1. The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary."

Why, sir, that is nothing but a declaration of the powers of the State, which it has always had. The police power of the State has been talked about here from the beginning. We all know what it is. It is to compel men to slaughter hogs outside of the city limits; provides for the sale of milk cows. The State has that power, and always will have, but that does not help us here. It is a fraud. It mutilates the article. [Applause.] And I am glad of it. It is cowardly. There is nothing in it which entitles it to our respect. There is nothing in it which entitles it to the respect of mankind. To say that we are going to get rid of a population that are menacing free government, and destroying our happiness, and carrying desolation to our homes, by the exercise of the police power of the State, is utterly absurd.

Now, my friend from Marin refers to his life-long services in the cause of abolition. He knows very well there was a time in the history of the abolition of negro slavery in this country when it was considered an impeachment of the Constitution of the United States for a man to deny the divine right of slavery. Take your books and examine the decisions of the Supreme Court of the United States, and see how many of these enactments were declared unconstitutional, one after the other, as opposed to the spirit of comity and the right of Congress to regulate commerce. The Act of eighteen hundred and twenty-one, passed by the State of New York, was contested upon the ground that it was unconstitutional, flying in the face of slavery and the Constitution of the United States to pass it. That great man, under whose teachings Charles O'Conor stood, produced an argument almost identical with that of the gentleman from Marin—that to undertake to pass these laws was unconstitutional, and they were flying in the face of Providence and the Constitution of the United States.

Now, sir, all these provisions here are evasive. They undertake to escape from the results of a conflict of authority by undertaking to accomplish them in an indirect way. In my judgment, we ought to do whatever we do, directly. I don't like the language, "aliens ineligible to become citizens of the United States." If we mean Chinamen, why not say Chinamen or Mongolians? If we intend to rid the State of them, let us say so openly and squarely, and then we will have the respect of the Courts and of the government. They may set aside the declarations which we put in the Constitution, but if they do, no harm follows. We will gain nothing by saying "persons ineligible to become citizens," for everybody knows we mean that to include the Chinese, and no one else; so that it is far better and far more manly to say Chinamen at once. Let us make these propositions direct to the point, and something will be accomplished.

Now, my ideas of what ought to be embraced in this article—and I have no doubt they will shock the nerves of the gentlemen who are bound up in the Constitution of the United States—are somewhat different from this. They are my honest views, and they are open to criticisms. My ideas are embraced in an article which I have drawn on this subject, and gentlemen can vote for it or not, as they please. I know of no way to stiffen their backs or quicken their consciences. [Laughter.] I will read the article:

"ARTICLE —.

"IN RELATION TO MONGOLIANS.

"The people of California, while recognizing the paramount authority of the United States of America to regulate commerce and intercourse with foreign nations and all treaty obligations, demand, as they possess, the inalienable privilege of controlling their domestic affairs to the end that serfdom in every form may be abolished, and themselves protected from a vicious, non-assimilating population incapable of the duties of

American citizenship. As intelligent citizenship must be the reliance of representative government, so must the presence of large numbers of persons incapable of such citizenship be its perpetual menace. In the immediate presence of this danger, and threatened with its overpowering continuance, a contingency not foreseen, and therefore not contemplated in the grant of power to regulate commerce made by the people to the Congress of the United States, the public safety authorizes and demands the following constitutional provisions:

"SECTION 1. All Mongolians within this State shall be required to remove therefrom within four years from the time this Constitution takes effect. At the first session of the Legislature convened hereunder, provision shall be made for judicial proceedings to compel such removal, and for the seizure and sale of so much of any property of such Mongolians who may not theretofore have voluntarily departed within the period herein limited, as may be necessary to defray the necessary cost of their removal from this State to their native country.

"SEC. 2. After this Constitution takes effect, no Mongolian shall carry on or maintain any business, occupation, profession, or mechanical trade for gain, or perform any usual manual labor for reward in this State, and it shall be unlawful for any person or persons, bodies corporate or politic, to employ, contract with, or harbor such aliens, except for temporary accommodation, shelter, or charity.

"SEC. 3. All persons or bodies corporate who shall violate the provisions of this article shall pay to the State suitable penalties, to be provided by the Legislature, and to be recovered in civil action or actions by the people of the State. No property shall be exempt from levy on execution or other process issued to collect such penalties according to law, and such penalties shall be a lien upon real property superior to any other lien created after this Constitution takes effect.

"SEC. 4. All penalties collected under the provisions of this article shall be placed in the State treasury, to the credit of a fund to be called the "Mongolian Transportation Fund." They shall be expended as the Legislature may direct, in the deportation to their native country of all Mongolians who shall be unable to provide transportation thereto for themselves; and also of all such Mongolians who may be imprisoned in any State Prison, County Jail, or other place of confinement for persons convicted of crime; and also of all such Mongolians, as aforesaid, who shall be or become paupers or inmates of public hospitals, almshouses, or places of refuge for the indigent and destitute.

"SEC. 5. All such Mongolians, as aforesaid, who shall, after this Constitution takes effect, be convicted of any crime or offense against the laws of the land, except capital offenses, shall, in lieu of fine or imprisonment, or both, be sentenced to deportation from this State to the country of their nativity, and the Legislature shall make due appropriations of public moneys for the purposes of this section to supply any deficiency in the fund to be provided by section three of this article.

"SEC. 6. The Legislature shall provide by law for the enforcement of the provisions of this article."

Now, let me call your attention to this treaty with China; and as I remarked at the outset that I believe a treaty made by the United States is subject to the same test as any law of Congress, and that it may be determined to be contrary to the spirit and letter of the government given to us the same as any law. Now, suppose you submit the treaty to the test of constitutionality, and set up that it is not in harmony with the provisions of the Constitution of the United States, declaring that only a homogeneous people, an intelligent people, a liberty-loving people, are qualified to form a republican government.

Let us see how this treaty reads:

"The twenty-ninth article of the treaty of the eighteenth of June, eighteen hundred and fifty-eight, having stipulated for the exemption of Christian citizens of the United States and Chinese converts from persecutions in China on account of their faith, it is further agreed that citizens of the United States in China, of every religious persuasion, and Chinese subjects in the United States, shall enjoy entire liberty of conscience, and shall be exempt from all disability or persecution on account of their religious faith or worship in either country. Cemeteries for sepulture of the dead, of whatever nativity or nationality, shall be held in respect and free from disturbance or profanation."

That is article four of the Burlingame treaty. Again I read:

"Citizens of the United States, visiting or residing in China, shall enjoy the same privileges, immunities, or exemption, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nations; and, reciprocally, Chinese subjects, visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon subjects of China in the United States."

That is the sixth article of the treaty—the most favored nation clause. Now, there is upon the very face of the treaty a violation of the principles of the Constitution of the United States, and of our whole system of government. There is a class of people permitted to come here without limit or restriction, who are acknowledged to be unworthy of becoming citizens of the United States. If they were worthy, then that power ought to have been conferred upon them. If they are not worthy, then they have no business here, for this country has no use for an alien population. And I say if this treaty was submitted to the test of the American judiciary, it would, in my opinion, be held violate and subversive, and destructive of the principles upon which this government is founded, as contained in the instrument itself.

Now, sir, I believe it is our right, and not only our right but our duty, to test this question. Whether the treaty will be reformed or altered I do not know. I see that one of our Representatives in Washington has introduced a bill on this question, but I do not know what it will accomplish, even should it pass. But I want to test this matter in an open, direct, and manly way. I want it decided on a square basis. If we are overthrown, well and good, let us be overthrown upon a plain question, and not undertake to do it in this indirect and unsatisfactory manner, which will make us the laughing stock of the country. Now, section one of the article which I have prepared, says that "all Mongolians within this State shall be required to remove therefrom within four years from the time this Constitution takes effect. At the first session of the Legislature convened hereunder provision shall be made for judicial proceedings to compel such removal, and for the seizure and sale of so much of any property of such Mongolians who may not theretofore have voluntarily departed within the period herein limited, as may be necessary to defray the necessary cost of their removal from this State to their native country."

Now, it has been argued that we had the right to take them after they got here and locate them on a sort of a Chinese reservation, as the Government of the United States locates the Indians upon reservations removed from the settlements, where they are kept under the control of the government. If we can do that; if we have the power to designate one place, we have the power to put them out of the State. If we have a right to place one single restriction upon the residence of the Chinese here; if we have the right to locate them upon any given quarter section of land in this State, or put any limit upon them whatever, upon the ground that it is necessary for the protection of the public, why, then, if we think it is necessary for the protection of the public to make John go further, go out of the State, we have the power to make him go. "All Mongolians within this State shall be required to remove therefrom within four years from the time this Constitution takes effect." Now there is something direct about that proposition. [Laughter and applause.] It is a direct intimation to the Chinaman that his company is not desirable. [Laughter.] Now don't laugh—that is the legitimate result, I submit—the legitimate, honest result of the views expressed upon this floor, and all else that seeks to strike at this thing is simply in my judgment cowardly and evasive. I am prepared to vote for it, because I believe, with my colleague from San Francisco, that the Mongolian is a curse to our golden land, and because the prosperity and happiness of this people depend upon his going. If anything is to be done that will be effectual, it must be something of this nature. We want this question decided by the Supreme Court of the United States, and I have broadly declared here that we intend to exercise the power which we believe we possess to rid ourselves of this dangerous element, which is a perpetual menace to free institutions. Why not make this broad declaration instead of putting in such a provision as this: "The Legislature shall have and shall exercise the power to enact all needful laws and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State, upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary."

I tell you there is nothing in it. It will accomplish no good whatever.

Now, I will take up section six, which provides that "foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State, and any lawyer appearing for or against them, or any of them, in a civil proceeding, shall forfeit his license to practice law. No such foreigner shall be granted license to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person or corporation employing them. No such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State; and all contracts of conveyance or lease of real estate to any such foreigner shall be void." Now, why should we put in a provision that they shall not fish in the waters of this State, nor to purchase, own, or lease real property? If the Chinaman stays here—if you are going to allow him to stay here—he should have every privilege that everybody else has. He should be allowed to engage in any business he pleases, and earn his living. He should have the protection of the laws guaranteed to him, if he is to be allowed to remain here. But I say he shall not stay here. He is undermining the welfare and prosperity of our people, and is the cause, in my judgment, of nine tenths of the tramping feet going on all over the land.

The great corporations, declaring dividends of seven, eight, and nine per cent. on stock watered four or five times over, have reduced the rate of wages so that the laboring man can no longer support himself, and wife, and little ones; and the corporations have been enabled to do this because of the presence of this cheap labor. Let us take the question up, and if we are going to deal with it at all, let us have something that will present the question fairly and squarely, and not go up to the Supreme Court upon a provision that will make us the laughing stock of the country—which is both a disgrace to manhood and a disgrace to the State. If you are going to keep the Chinaman here, give him the privileges of every other man, and let him earn his living the best way he can. But if we believe, as I think we do, that his presence is injurious and destructive to the very form of government under which we live; destructive to private rights and public morals; injurious to every interest of the State, there is no other way for *men* to do but to come squarely up and say to him, *you shall go.* [Applause.] We will give you a reasonable time, so that the Supreme Court of the United States may pass upon the question of our power, and decide between us, but if we have the power, *you shall go.* [Applause.]

Now, Mr. Chairman, I wish to offer this article as a substitute to the article reported by the Committee on Chinese.

MR. HILBORN. I do not rise to make a speech, but simply make a motion that the usual number of copies be printed. The members will then have a chance to read it and study it.

THE CHAIRMAN. Such a motion is not in order in the Committee of the Whole.

SPEECH OF MR. MILLER.

MR. MILLER. Mr. Chairman: Not having these amendments, proposed by the gentleman from San Francisco, and having had no chance to read them, I wish to ask him whether, in his plan, he proposes to prevent the immigration of the Chinese.

MR. BARNES. No, sir; there is no plan for anything of that kind. They can come as much as they like; but when they get here we will send them back. If this constitutional provision shall be declared to be constitutional, I don't think many of them will be disposed to make the trip. It has been decided that we cannot interpose any restrictions upon immigration, but upon the theory that when they are here we can remove or deal with them, I make this article. If we send them away when they do come, they will not be apt to come.

MR. HILBORN. I would like to ask the gentleman a question.

MR. BARNES. Yes, sir.

MR. HILBORN. Whether you will begin to remove them before the expiration of four years from the passage of this Act.

MR. BARNES. No, sir.

MR. MILLER. Then I understand the proposition. It is that the Chinese who are here, and those who come here, can remain for four years before they are to be disturbed, before we make any attempt to rid ourselves of them; and the Chinese who are not here can come for the next four years, without any effort on our part towards their prohibition. That is the sum and substance of this proposition. The other matters contained in the article are merely details.

Now, I do not see anything brave in that. [Laughter.] I do not denounce it as cowardly, as the gentleman did the report of the committee. I expected, when he got through with his denunciation of cowardice, that he would propose something that was the very essence of bravery—something warlike [laughter]; that he was going to do something that would involve some responsibility. Instead of that, what does he propose? Why, to entail this evil, this curse which he denounces with such fiery eloquence, as a perpetual menace to free institutions, as a disgrace to our civilization, as the destroyer of domestic peace and tranquillity—to entail this evil upon the people of California for four years more, without making a step to relieve ourselves from it. And as he considers that the State has the power, and is the proper authority to deal with this question, it seems to me he puts off the day of remedy for a long time.

Now, I must confess that the gentleman frightened me, and I suppose the other members of the committee were frightened also. We are a committee of very cowardly and unwarlike men, but we were trying faithfully to devise some plan whereby the State could relieve herself from this evil. In our humble, quiet, and peaceable way we did what we thought was for the best. I do not agree with all that the committee—the majority of the committee—have done in respect to these last sections, and particularly in relation to the non-employment of Chinamen. I opposed them in committee as improper to be offered to this Convention, but a majority of them agreed to it, and it was reported. Now, from the reading of the proposition offered by the gentleman from San Francisco, Colonel Barnes, I do not see that it is very much of an improvement upon these sections reported by the majority of the Committee on Chinese, in respect to non-employment. We say that we will deal with the paupers, vagrants, and criminals, as we have the undoubted right to do. We never pretended, never asserted, never intimated that this was a complete remedy for the Chinese evil. But we, in effect, said that in our view of the Constitution the powers of the State, under the Constitution of the United States, and the treaties made in pursuance of it, that all we could do was to deal with this class that were admitted to be dangerous—that class of persons which no foreign government has any right to allow to depart from their shores, to import into our country under any pretense of law. I explained that under the operations of the first section. I thought we could begin a system of deportation at once, in perhaps a simple way—not such a grand, warlike way as the gentleman from San Francisco would do, but in what I believe to be a legitimate and lawful way. I stated my belief that under the section we could debar from the State about five thousand of these people per annum. I believe so still. By that means, before the gentleman will have blown a single blast to call to battle his army for the banishment of the Chinaman, we will have rid the State of twenty thousand of the very worst of these people. What the gentleman expects to gain by placing California in open conflict with the treaty I cannot see. If we send five thousand back every year it will have some effect in stopping immigration; not, perhaps, a very great influence, but it will exert some influence in stopping immigration; that is all we claim; that it will have a tendency in that direction, because we know that these people are aided in coming here. They have not the means themselves to get here; they borrow the money—raise money in some way—by which to get here. They mortgage themselves; they mortgage their wages and their children—anything they have; mortgage their toil and labor for years in advance in order to raise the means requisite to bring them here. Now, we thought, by deporting five thousand every year the people in China who are in the habit of loaning this money, and giving aid to these people to come here, would at once see that they were in danger of losing the money by reason of the forced return of these people back to China. It would give them reason to fear that they would never get back their money, and they would be more careful about making these investments. That is one of the reasons why we proposed that section. We never pretended, we never dreamed, that it was going to settle the Chinese question.

I do not think it is necessary for me to further argue the question of the power of this State to qualify an Act of Congress, or to abrogate a treaty, or any part of it, made by the law-making power of this country. I say I do not think it is necessary to argue that question further, because the arguments that have been adduced on this side of the question have not been answered. They have never been touched. The gentleman who has just taken his seat has certainly not answered the arguments of the gentleman from San Francisco, Mr. Wilson, or any part of his arguments. I think that question has been so thoroughly discussed, and the arguments are so conclusive, that it may be considered settled that the remedy, the full remedy, for this evil of Chinese immigration, rests not with the State but with the General Government. Gentlemen seem to forget here that when the framers of the Constitution made that instrument they did something more—they created a nation among the powers of the earth. They created a national sovereignty upon the face of this planet. That governmental sovereignty, that governmental power, has been maintained in the face of the world with tolerable success up to this time. They seem to forget that every State in this Union is a subordinate sovereignty to the national sovereignty; that the States have no relations with foreign powers; have not the power to make treaties, nor the power to repeal treaties. I do not believe the State of California can repeal the Burlingame treaty; I do not believe that any gentleman who has studied the question thoroughly, who understands the theory of our government, and the objects of our government, its purposes, and its powers, will contend for a moment that the State has the power to repeal, or alter, or abrogate a treaty made by that government, or an Act of Congress either.

Now, I am not going to repeat the arguments that have been made here by my friend from Marin, and other able gentlemen, in respect to the danger in the State's setting itself up in defiance to the Federal Government. I think it has been sufficiently demonstrated here that it is an unwise policy to pursue. I have no doubt there are a great many men in California who are perfectly willing, at any time, to implicate this State in a conflict with the Government of the United States. They say this will be no conflict, or, if it is, it will be nothing but a peaceable conflict. Now, suppose you pass an Act inhibiting Chinese immigration, or any other law in respect to this question, clearly violative of the Constitution of the United States. Suppose you prohibit vessels bringing these people into the ports of the State. You must pass some Act of the Legislature to carry out your prohibition. You must appoint officials to execute its provisions, and prevent the landing of these people. How will you do this? Your officers go aboard these ships and say to the captain, you must not land your passengers, the State forbids it. Well, suppose they say, we have the right to come and we will come. You take charge of these vessels, and put them in duress, you quarantine the passengers, until the case comes up in the Courts to try the validity of the Acts of your Legislature. The case is carried up to the Supreme Court of the United States, supposing that the Supreme Court of the State has decided in your favor. What have you gained? Why, you have simply stood up to be knocked down.

MR. BARNES. What do you mean by saying that the Chinese should not fish?

MR. MILLER. I have not proposed any such thing. The gentleman had better ask that question of somebody else. I have not proposed, and I shall not support this fourth section. I am quite satisfied that it is not in the power of the State to pass any such law. I hold in the first place that the Chinamen have some rights of some kind. There are two kinds of domiciles. One is a political domicile entitling the party to all political privileges. Another is the social domicile, under which he has the right of social domicile, but has no political rights, but has some rights. You cannot murder him with impunity. You cannot deprive him of his property. You cannot deprive him of the right to live. He has a right to what he owns, and he has a right to what he earns; and I say the right to labor is as high a right as the right to live, because it involves the right to live; the one includes the other, because all men must live by labor. If you deprive a man of the right to labor you deprive him of the power of subsistence. A man cannot live upon air. He cannot live on water. He cannot live on the elements. He must live on something raised from the soil. Deprive him of the right to labor and he must starve. I say you cannot do that with any human creature. It is a pernicious principle upon which all these sumptuary laws are founded—like a law saying that a man shall drink what the State prescribes. If you can go that far, you can go further, and enter into his house and see what kind of a fire he shall build; what sort of a house he shall have; and what sort of clothes he shall wear. I say I will never sustain any such propositions. I am willing to go as far as the power of the State will permit us to go, and that is, in my view, to prohibit the dangerous classes, such as criminals, diseased persons afflicted with contagious and infectious diseases, and paupers, from residing here. That class of persons are included in the section favored by the minority of the committee, but none others.

It has been shown conclusively by the gentleman from Marin that this class are not included in the treaty. There is no treaty with any government with whom the United States have relations, which authorizes them to cast upon our shores any such class of persons; but it does not follow that we have power to prohibit the whole nation, for they are not all of that class. There are other kinds of people. They are not all bad. They are not all paupers and criminals. And if you drive out the whole nation, declare that they are universally bad, you do something which you have no right to do. Right and reason will not sustain you in it. The law will not sustain you. It is a violent assumption on your part which the law will not permit you to profit by. It is a violation of the United States law regulating commerce.

Now, what is commerce? What is commercial intercourse? Com-

merce does not mean simply to trade. It means intercourse—intercourse of the people of one nation with the people of another nation. You cannot carry on commerce without intercourse. You cannot carry on commerce within the meaning of this treaty unless a certain number of the people of the other nation may reside in your country. This thing has been very well explained. I say it is not in the power of any State to dictate to the Government of the United States.

MR. HERRINGTON. I wish to ask the gentleman a question.

MR. MILLER. Certainly.

MR. HERRINGTON. Is there not a distinction. Some reside here for work. Some do washing, some cook, and they enter into various employments in this State, which have no reference to intercourse with other States. Such residence has nothing whatever to do with commerce.

MR. MILLER. I think it has. All kinds of business pertain to commerce. They have a right to come here and travel around through the country, and stay as long as they like. I think, in the present state of the public mind upon this question, it is unnecessary to put in an illegal thing. And if we did put in such a provision it would do no good, because, if the people of California show a spasmodic disposition on this subject; if we adopt these unconstitutional provisions, it will prejudice our case. For the ultimate success of our cause, it is necessary that we deport ourselves in this matter in a dignified and legal manner. That is my position. Now, my whole life and conduct have shown that I have been sincere, and uniformly opposed to Chinese immigration. I have been opposed to it for years—ever since my attention was called to the subject, and it is not in the mouth of any man here to rise and say because I believe the Constitution of the United States prohibits us from adopting these measures, I am insincere. No man has a right to say it, or intimate it. No man has a right to say it of any member. We are here to act upon our judgment and consciences; and God being my helper, I intend to do it, and I can say to the people that I have acted here upon what I believe to be reasonable, legal, and just. I believe the people of California will sustain me. I do not believe it is cowardly to take such a course. I do not believe it is ever cowardly to do right. [Applause.] I am not brave enough to violate the Constitution of the United States for the purpose of this question, or any other question, or for any other purpose. [Applause.]

Now, sir, haven't there been tests enough? Haven't these questions been decided and settled over and over again? You all know it; and under the pretext of making a test case, you propose to violate the Constitution of the United States. You can do as you like; I shall not do it. I am too cowardly to do it, if you please. I do not propose to say anything upon this subject; I have said all I wish to say, as I do not wish to go over what has already been said. It has been ably and liberally debated; nearly everything that can be said on either side has been said. I arose simply to vindicate the committee and myself from these aspersions—that the conduct of the committee in reporting these first and second sections was cowardly.

SPEECH OF MR. BARNES.

MR. BARNES. Mr. Chairman: I was inclined to think my friend from San Francisco, General Miller, was joking when he rose to his feet and said he was afraid when I commenced what I had to say. I thought he meant it as a joke. But I was inclined to think before he got through that he was afraid. Something or other was the matter—that he didn't seem to comprehend the remarks I made.

MR. MILLER. I was scared. [Laughter.]

MR. BARNES. Nobody is less inclined than myself to charge the gentleman with cowardice, and nobody has charged him with cowardice. He has been a brave and valiant soldier in the army of his country, and everybody knows he is not afraid, and nobody has any reason to say so or to think so. I was talking about the principle, and I said the best way to meet this question was the direct way; and I say, and I think it cannot be denied, that all the provisions contained in the article as submitted are in fact evasive. Now, I am not in favor of evasion. I am in favor, either of leaving this whole subject alone, or making a radical article; one that is fair and just; one that is fair and just to the Chinese, fair and just to ourselves. And that is no crime, as I insist, against the Constitution of the United States; and I do not think any gentleman need be afraid to sustain that, or any other proposition that is advanced here upon principle, because it may, in some sense, seem to be against the Constitution of the United States. Lawyers differ, and Judges decide, and the Supreme Court settles it one way or the other.

Now, to say that this whole thing should stand upon the undoubted question of the police power of the State, is to say too little. An entirely different condition of things exist now from what did exist at the time any one of the questions was passed upon by the higher Courts of the nation. It is time to advance. The gentleman says his provision provides for the deportation of the criminal classes. That object is attained by the proposition I submit, which takes effect immediately. That provision deals with the criminal class, with which we have the undoubted right to deal. I propose to do this, either by general taxation, or by requiring those who employ them to pay in some form to the government something that should provide a fund, at the end of a given time, to be employed for the deportation of those who belong to the diseased classes. I propose to put the time at four years, and the gentleman says, why not have it operate at once. I say they are entitled to notice, and four years seems to me to be but reasonable notice—reasonable to those who deal with them—a reasonable and fair length of time for all concerned. As far as the criminal classes are concerned, that provision takes effect at once.

Now, it is possible, barely possible, that as the science of jurisprudence grows, it has taken, and will take, steps in advance as to what are understood to be popular rights. I do not suppose there is a distinguished lawyer on this floor—the gentleman from San Francisco, Mr. Wilson, the gentleman from Marin, Mr. Shafter, or the gentleman from San Francisco, General Miller, lawyer as well as general—who would undertake to say that in five years, or ten years, the higher Courts may not have taken advanced doctrines as to what are considered popular rights. Such advances are necessary in order to keep pace with the changed condition of things. The bearing of circumstances may change and alter the condition of things, and the law, being a progressive science, will move along and keep pace with this change; and if we put a clause in the Constitution that will permit this question to be reopened and reëxamined, no man need be afraid of this being in the nature of a defiance of the Constitution of the United States. It is the only way to test it. It is the legitimate, legal, honorable method of testing it, and having our powers and our rights defined. It does not require either bravery or cowardice, and it was not necessary for the gentleman to say that no man had a right to charge him with insincerity, for no one did charge him with it.

MR. MILLER. I did not allude to you.

MR. KLEINE. Suppose the four years expires, and the Chinese do not go? We want them to go.

MR. BARNES. I propose to make them go.

MR. KLEINE. Perhaps it will take four years longer to make them go.

MR. BARNES. We have a way to make them go; but we will do it according to the forms of law. It is my purpose to deal with this subject, not only in view of the powers which it is admitted we have, but to try and see if we have not something more. He gets nothing who asks nothing. If we fail to assert our powers, we will reap no benefit from them. They say we can deal with this subject under our police power, but that is as far as we can go without running counter to the Constitution of the United States. I have no fear of hurting the Constitution of the United States. But what I do say is, that we shall see how far a treaty can infringe upon the powers rightfully belonging to the State. If we believe we have rights, let us maintain those rights, and let the United States Courts draw the line. No harm is done to the government, because the Courts of that government are the ones we appeal to. The Constitution of the United States will stand forever, against the storm and tempest, like the lighthouse upon the rock-bound coast. The waves beat against it, but still it stands. No man pretends to claim any such thing, and it would be folly if he did; and the gentleman puts us in a wrong attitude. We are seeking to put this State in a position where it can ask—where it can act. We put it into the organic law, and if the Supreme Court shall decide against us, when the case comes to be tested, that will be the end of it. But if, taking an advanced step, in accord with the progress of the age, they shall sustain us, then we will have accomplished something of consequence.

I do not desire to make a demagogic argument. I have nobody to please except myself. I have nobody to please but myself. It would have been far more agreeable if I could have kept silent, and agreed with my friend Wilson. Generally my views drift in straight lines with his, but this is an exception. I think it is time now to make some advance to meet a popular demand and a popular necessity. I am not so much personally interested as many others. I can live somewhere else as well as here. Chinese immigration strikes no blow at me. But I do not want to see this beautiful land the home of barbarians. I want to stop it; but I want to deal with the matter in an open, manly way. I want to say to the criminal classes, this is no home for you. I propose that the men who employ these Chinamen shall be held responsible. I do not claim that this is going to raise wages, or assist the laboring classes, except to give them the work which is now performed by Chinamen. I do not believe that the Chinamen's going will help the laboring classes as far as wages are concerned. I think there are natural laws which reach far beyond that. I have not discussed this question in that aspect at all. I think that so long as wages are low at the East, they will be comparatively low here. Any raise of wages here will bring laborers here from the East, and the prices will be governed by the supply. There are others who are interested in this question to as great an extent as the laboring classes. The taxpayers, who are compelled to support these Chinese criminals in our prisons, are interested, and vitally interested. The Chinese have a government within a government, which is stronger than ours. Look at the one hundred and twenty thousand Chinese in this State, how few of them resort to our Courts to settle their own differences. Once in a great while you see them litigating, but it is not general. They punish for offenses against their code of laws independent of our Courts. They have their own code of laws. They buy and sell property according to the laws of the Empire of China. Whether this change will help the laboring classes I do not know. I doubt it very much. I do not believe it will be of any great assistance, or that their salvation is to be worked out in this way. I did not intend to say this much at this time, but I wanted to correct the erroneous impressions that had gone out, and make myself understood.

MR. BARRY. Mr. Chairman: I believe the report of the committee should not be further acted upon until the substitute offered by the gentleman from San Francisco, Colonel Barnes, is printed, and I therefore move that the committee rise, report progress, and ask leave to sit again.

Lost.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I believe the question is on the amendment of the gentleman from San Francisco, Dr. O'Donnell.

THE CHAIRMAN. Yes, sir. The Secretary will read it.

THE SECRETARY read the amendment again.

MR. HOWARD. Mr. Chairman: I am opposed to all these amendments. I prefer the original section as presented by the Committee on Chinese, because it goes further and is more effective than any of these

amendments. Now, sir, the first section provides that "the Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary."

Now, sir, all the criticisms upon this first section are unmerited, because, under it, if it is adopted, the Legislature can provide for the removal of all persons, and especially all Chinamen, who are deemed dangerous to the safety and well-being of the State. And under that section, sir, every Chinaman in the State, if the Legislature declares him to be dangerous to the peace and safety of the State, can be removed out of it, and at once. There is no four years about it. Therefore, I am in favor of that section. And I may say, as a general thing, that after a committee have spent weeks upon a subject, and the majority bring in a report, I am loth to offer or accept amendments. Now, my plan is to adopt the report of the committee down to the sixth section. To adopt the fifth section and stop, because, I think, these sections cover the whole question. As far as the arguments that have been presented here are concerned, I am somewhat astonished, in view of these arguments, that the able gentleman from San Francisco, Mr. Wilson, and the learned gentleman from Marin, Mr. Shafter, should be willing to support this first section. They see nothing unconstitutional in that, they see nothing wrong in that, though, in point of fact, it gives us power to remove every Chinaman in the State.

There is another reason in favor of adopting several sections in regard to this subject—because it is a well settled principle of construction, that in all laws one section may be constitutional and valid, and another unconstitutional and invalid. And therefore it is that if we adopt the first section and it shall be held to be constitutional and valid, as the gentleman from San Francisco and the gentleman from Marin say they believe, then, at least, we will have accomplished so much. Now, sir, as to those arguments which have been addressed here to the proposition that the State is bound—absolutely bound—by what the Federal Government does, and has no recourse—cannot resist—when they adduce such arguments they do so against the plain decisions of the Supreme Court of the United States. I stated yesterday that these six Judges in the Passenger cases had declared that the State had the power, as a matter of self-defense, to protect itself against injurious legislation by Congress, if attempted. I now find that I was mistaken as to the number—there were seven. In reviewing it again to-day, I find that Judge McLean says that in giving this power to Congress, the States did not part with the power of self-preservation, which must be inherent in organized communities. They may guard against the introduction of anything which may corrupt the morals or endanger the lives and health of the citizens. There were seven Judges agreed on that point. And no case has been produced—no case can be produced—overruling that decision. Judge Wayne says that if Congress should ever undertake to pass a law which, against the wishes of the people of the State, were to impose upon her a dangerous class of citizens, such law would be pronounced unconstitutional; and a treaty stands no higher than a law of Congress. All the decisions go to the extent that a law of Congress or a treaty in violation of the Constitution is void, and has no legal existence whatever.

Now, if the committee will bear with me a moment, I will read a few sentences from the opinion of Judge Wayne:

"But I have said the States have the right to turn off paupers, vagabonds, and fugitives from justice, and the States where slaves are have a constitutional right to exclude all such as are, from a common ancestry and country, of the same class of men. And when Congress shall legislate—if it be not disrespectful for one who is a member of the judiciary to suppose so absurd a thing of another department of government—to make paupers, vagabonds, suspected persons, and fugitives from justice subjects of admission into the United States, I do not doubt it will be found and declared, should it ever become a matter for judicial decision, that such persons are not within the regulating power which the United States have over commerce. Paupers, vagabonds, and fugitives never have been subjects of rightful national intercourse or of commercial regulations, except in the transportation of them to distant colonies to get rid of them, or for punishment as convicts. They have no rights of national intercourse; no one has a right to transport them, without authority of law, from where they are to any other place, and their only rights where they may be are such as the law gives to all men who have not altogether forfeited its protection.

"The States may meet such persons upon their arrival in port, and may put them under all proper restraints. They may prevent them from entering their territories, may carry them out or drive them off. But can such a police power be rightfully exercised over those who are not paupers, vagabonds, or fugitives from justice? The international right of visitation forbids it. The freedom of liberty of commerce allowed by all European nations to the inhabitants of other nations does not permit it; and the constitutional obligations of the States of this Union to the United States, in regard to commerce, and navigation, and naturalization, have qualified the original discretion of the States as to who shall come and live in the United States."

Now, sir, that is what the Court said; that is what the Court determined. That is what Justice Wayne said; that is substantially what Justice McLean said. And Judge Grier, 7 Howard, 450, says: "It must be borne in mind (what has sometimes been forgotten) that the controversy in this case is not with regard to the right claimed by the State of Massachusetts, in the second section of this Act, to repel from her shores lunatics, idiots, criminals, or paupers, which any foreign country, or even one of her sister States might endeavor to thrust upon her; nor the right of any State, whose domestic security might be endangered by the admission of free negroes, to exclude them from her borders. The right of the States has its foundation in the sacred law of self-defense, which no power granted to Congress can restrict or annul. It is admitted by all, that those powers which relate merely to municipal legislation, or what may be more properly called internal police, are not surrendered or restrained; and that it is as competent and necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and convicts, as it is to guard against the physical pestilence which may arise from unusual and infectious articles imported." * * *

Now, these were cases in which the State of New York and the State of Massachusetts attempted to impose a tax upon passengers arriving from foreign countries. That is, they first attempted to require a bond from the master of the vessel that such parties should not become a charge upon the State. The Act provides that they might go on board the ship, take a list of these passengers, see who they were and where they came from, exact a bond from the master of the vessel in the sum of five hundred dollars, or any other sum, that these people should not become a government charge. In lieu of a bond it provided that they might accept a tax of one dollar and fifty cents from each passenger. The Court decided that this was a restriction of commerce, and therefore contrary to the Constitution of the United States and void. The opinions that I have just read go to the extent of giving the State power to protect itself against paupers, vagrants, and criminals. The second plan presented here in this report goes to the extent of compelling prohibition of Chinese immigration.

Now, that is a solemn decision of the Supreme Court of the United States, and I challenge the gentleman to produce anything to the contrary. Now, sir, I was particularly lost in admiration at the ingenious manner with which my learned friend from San Francisco, Mr. Wilson, touched this matter. He talked all round the point, and when I put a question to him, he tried very hard not to answer it. He is too skillful and wary to put his foot in it, as he would have done had he answered the question.

MR. WILSON. I thought I had answered you very successfully. Quite a number of the people said so. [Laughter.]

MR. HOWARD. You didn't answer me at all, and how it could have been successful, I do not know. He was absolutely dumb, and made no retort. He answered in the only way he could, by remaining silent about it. Now, sir, I say if this people are dangerous, as they are admitted to be, our power to expel them is undoubted, according to the emphatic decision of the Supreme Court of the United States. Are they not dangerous? Who denies it? Who dares to deny it? Have they not a government of their own here, independent of ours, by which they administer law and life in open defiance of our law? Why, there is a sect in India known as Thugs who murder everybody but their own sect. Suppose that a cargo of Thugs is about to be introduced from India and landed here. Are we compelled to submit to their introduction within our borders? Judge Wayne, Judge Greer, and a majority of the Court of eighteen hundred and seventy-seven, say no. We may meet them on the shore and prevent their landing; or, if they landed, send them away. That is law and common sense. But, according to the doctrines of the gentlemen from Marin, we would have to wait until the Thugs commenced to murder our people, before we could interfere and send them away. Again, sir, suppose the United States Government should, by subsidizing a line of steamers, bring a lot of cannibals here. Do the gentlemen mean to say we cannot meet these cannibals and turn them away. According to the haggling doctrines of the gentleman from Marin we must wait till they have eaten a man clear up to his eyebrows before we must say a word. We must not even protest against it for fear of hurting somebody's feelings. It is absurd. There is no sense in it. There is no reason in it. And being destitute of common sense and reason, it cannot be true as a proposition of constitutional law.

THE PREVIOUS QUESTION.

MR. LAINE. I move the previous question.

Seconded by Messrs. Schell, Rolfe, West, and Smith, of San Francisco.

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

Carried—ayes, 65; noes, 37.

THE CHAIRMAN. The first question is on the amendment proposed by the gentleman from San Francisco, Mr. O'Donnell.

Lost—ayes, 1; noes, not counted.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Francisco, Mr. O'Sullivan.

MR. FILCHER. Mr. Chairman, is it offered as a substitute, or as an addition to the section.

THE CHAIRMAN. As a substitute.

The substitute was rejected.

MR. BROWN. Mr. Chairman: I desire to offer an amendment.

MR. BARNES. Mr. Chairman: I understand that I will have to offer my proposition section by section; that it cannot be submitted as a whole article.

THE CHAIRMAN. Take them up and offer them section by section as we reach them.

MR. BARNES. I move that the preamble and section one be adopted as a substitute to section one, as reported by the committee.

THE SECRETARY read:

"The people of California, while recognizing the paramount authority of the United States of America to regulate commerce and intercourse with foreign nations, and all treaty obligations, demand, as they possess

the inalienable privilege of controlling their domestic affairs to the end that serfdom in every form may be abolished, and themselves protected from a vicious, non-assimilating population, incapable of the duties of American citizenship. As intelligent citizenship must be the reliance of representative government, so must the presence of large numbers of persons, incapable of such citizenship, be its perpetual menace.

"In the immediate presence of this danger, and threatened with its overpowering continuance—a contingency not foreseen, and therefore not contemplated in the grant of power to regulate commerce made by the people to the Congress of the United States—the public safety authorizes and demands the following constitutional provisions:

"SECTION 1. All Mongolians within this State shall be required to remove therefrom within four years from the time this Constitution takes effect. At the first session of the Legislature convening hereunder provision shall be made for judicial proceedings to compel such removal, and for the seizure and sale of so much of any property of such Mongolians who may not theretofore have voluntarily departed within the period herein limited, as may be necessary to defray the necessary cost of their removal from this State to their native country."

THE CHAIRMAN. The question is on the amendment.

MR. BEERSTECHER. I desire to have Colonel Barnes' proposition printed. I therefore move that the committee rise, report progress, and ask leave to sit again.

Carried. Ayes, 80; noes, 35.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

MR. HUESTIS. I move that the Convention do now adjourn.

MR. STEDMAN. I hope the gentleman will withdraw the motion temporarily, so as to permit the gentleman from San Francisco, Colonel Barnes, to make a motion which he desires to make.

MR. HUESTIS. I withdraw it.

MR. BARNES. I move that the preamble and article submitted by myself be printed and laid on the desks of members to-morrow morning. I want the proposition to have a fair consideration.

MR. BEERSTECHER. I move as an amendment that all the sections be printed—four hundred and eighty copies—out of order.

THE PRESIDENT. That is the motion already.

MR. ROLFE. I would like to know whether the printers can do it, and get it back here in time.

THE PRESIDENT. Yes, sir.

MR. FILCHER. I move as an amendment that it be printed in the Journal to-morrow morning.

Carried.

ADJOURNMENT.

MR. STEDMAN. I move we now adjourn.

Carried.

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

SEVENTY-SEVENTH DAY.

SACRAMENTO, Friday, December 13th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Bell,	Fawcett,	Pulliam,
Berry,	Glascock,	Shoemaker,
Biggs,	Murphy,	Vacquerel,
Campbell,	Overton,	Waters.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Waters, Glascock, and Vacquerel.

Two days leave of absence was granted Messrs. Shoemaker and Overton.

THE JOURNAL.

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

Carried.

REPORT ON EDUCATION.

MR. WINANS, from the Committee on Education, presented the following report:

To the President of the Convention:

Your Committee on Education, to whom were referred amendments numbers thirty-six, fifty-three, fifty-five, sixty-seven, seventy-nine, one hundred and eighty-five, two hundred and fourteen, two hundred and seventeen, two hundred and twenty-four, two hundred and forty-two, two hundred and forty-seven, two hundred and fifty-four, two hundred and sixty-seven, two hundred and ninety-seven, three hundred and fifteen, three hundred and eighty, four hundred and forty, four hundred and forty-nine, four hundred and sixty, four hundred and sixty-nine, and five hundred, having considered the same respectfully report said amendments back to the Convention, with a recommendation that they be not adopted.

So much of such proposed amendments as your committee have approved is either literally or in a modified form embraced in the educational system, which is proposed by your committee, and accompanies this report.

Your committee have the honor to submit, and recommend the adoption of the same as Article Nine of the Constitution.

December 12th, 1878.

JOS. W. WINANS,
AUG. H. CHAPMAN,
W. F. HUESTIS,
EDWARD MARTIN,
JAS. S. REYNOLDS,
L. D. MORSE,
JNO. MANSFIELD,
R. M. LAMPSON,
J. WEST MARTIN,
E. T. BLACKMER,
S. B. THOMPSON,
J. RICHARD FREUD.

ARTICLE IX.

EDUCATION.

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.

SEC. 2. A Superintendent of Public Instruction shall, at the first gubernatorial election after the adoption of this Constitution, and every four years thereafter, be elected by the qualified voters of this State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday of January next after his election.

SEC. 3. A Superintendent of Schools for each county shall be elected by the qualified voters thereof at the first gubernatorial election, and every four years thereafter; *provided*, that the Legislature may authorize two or more counties to unite and elect one Superintendent for all the counties so uniting.

SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted or have been granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State, subject to the provisions of section six of this article.

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year, in which a school has been established; and any school district neglecting to keep up and support such a school, shall be deprived of its proportion of the interest of the public fund during such neglect.

SEC. 6. The public school system shall include primary and gram-

mar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools.

SEC. 7. A State Board of Education, consisting of two members from each Congressional district, shall be elected by the qualified voters of the district at the first gubernatorial election after the adoption of this Constitution, who shall hold their office for the term of four years, and enter upon the duties thereof on the first Monday of January next after their election; *provided*, that such members first so elected shall be divided into two equal classes—each class consisting of one member from each district—and that the first class shall go out of office at the expiration of two years from the commencement of their term of office; and at each general biennial election after such gubernatorial election, one member of such Board shall be elected from each Congressional district, so that one half thereof shall be elected biennially. The Superintendent of Public Instruction shall be ex officio a member of such Board, and President thereof.

SEC. 8. The State Board of Education shall recommend a series of text-books for adoption by the local Boards of Education, or by the Boards of Supervisors, and County Superintendents of the several counties where such local Boards do not exist, but such recommendation shall not be compulsory. After the adoption of a series of text-books by said Boards, or any of them, such books must be continued in use for not less than four years. The State Board of Education shall also have control of the examination of teachers and the granting of certificates. They shall possess such further powers and perform such further duties as may be prescribed by law.

SEC. 9. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools.

SEC. 10. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in their existing form and character, subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and of the several Acts of the Legislature of this State, and of the Congress of the United States, donating lands or money for its support. It shall be entirely independent of all political or sectarian influences, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs.

THE PRESIDENT. The report will lie on the table and be printed.

MR. HILBORN. The Committee on Mileage and Contingent Expenses report the following resolution, in relation to the ice bill of December, and recommend its adoption:

Resolved, That the sum of thirty-three and eighty one hundredths dollars be appropriated, out of the fund for carrying on this Convention, to pay the bill of the Pacific Ice Company for the month ending December first, eighteen hundred and seventy-eight, and that the warrant be drawn in favor of the Sergeant-at-Arms of this Convention.

Adopted.

PETITION.

MR. SWING presented the following petition, signed by a number of the citizens of San Bernardino County, against any provision prohibiting appropriations for charitable purposes:

SAN BERNARDINO COUNTY, California, November 12, 1878.

To Honorables Byron Waters, H. C. Rolfe, and R. G. Swing, members of the Constitutional Convention of California:

The undersigned, your constituents, hereby petition each of you to oppose the insertion of any clause or clauses in the new Constitution that will forbid or in any manner restrict future Legislatures from appropriating any State moneys to private orphan asylums.

Very respectfully.

Referred to the Committee of the Whole.

NO MORE ICE.

MR. HILBORN. As there seems to be some opposition to the payment of the bills, I move that the Sergeant-at-Arms be directed to dispense with the further use of ice for members.

Carried.

LIMIT TO TIME OF SPEAKING.

MR. WEBSTER. Mr. President: I desire to call up the notice I gave yesterday to amend Rules Fifty-six and Forty-three.

THE SECRETARY read:

Amend Rule Number Forty-three so as to read as follows:

RULE NUMBER FORTY-THREE—TIMES A MEMBER MAY SPEAK.

No member shall speak more than twice on any one question, nor more than fifteen minutes at any one time, without first obtaining leave of the Convention, nor more than once until other members who have not spoken shall speak, if they so desire.

Amend Rule Number Fifty-six so as to read as follows:

RULE NUMBER FIFTY-SIX.

The Rules of the Convention shall be observed in Committee of the Whole so far as they may be applicable, except that the ayes and noes shall not be taken, but the previous question may be moved; *provided*, that when the previous question is sustained, it shall only apply to the amendments then pending, and other amendments may be offered to the section.

MR. WEBSTER. Mr. President: It will be observed that the only amendment to this Rule Fifty-six is in striking out a part of the second and third lines. It simply strikes out the words "except for limiting the times of speaking and." It will be observed that all the amendments are contained in that rule as read with this exception that I have mentioned. In amending Rule Forty-three the only change which is made is in adding after the word "question," in the first line, the words "nor more than fifteen minutes at any one time." That is all the amendments that are made. The one depends upon the other. Without the one is adopted the other is useless. I think that the reason for these amendments are obvious to every member of the Convention. It is not the design to cut off any legitimate debate. It is simply to put it within the control of the Convention. The Convention ought to have more jurisdiction over it. The time of any member will be extended whenever the Convention desires to hear him. Therefore I think that the Convention should have control over the debate.

MR. TINNIN. I desire to offer an amendment to Rule Forty-six.

THE PRESIDENT. The gentleman will have to give one day's notice.

MR. TINNIN. I mean Rule Forty-three.

THE SECRETARY read:

Provided, That the Chairman of the several standing committees may have one hour when their reports are first read in the Committee of the Whole.

MR. TINNIN. I think that is fair. The remarks made by the Chairmen on the taking up of their reports have been interesting and instructive.

MR. WEBSTER. I think there will be no objection to its being added. I have no objection to accepting the amendment. This Convention will extend the time to any reasonable extent at any time.

MR. O'SULLIVAN. Mr. President: I am utterly opposed to this proposition to limit the time of speakers in Committee of the Whole to fifteen minutes. I look upon it as an attempt, after the great and eloquent orators of this body have had full swing in making known their views, to shoke off the small fry, among whom I include myself. I submit to all fair-minded, candid men, that this would hardly be right or just. For myself, I have occupied the floor very little indeed, as all members know, not but what I would like to have spoken many times when I was silent, and was unable to do so. But there are questions coming up for discussion in which I desire to take a part; questions on which I claim to be somewhat informed, and when I shall speak upon these questions, I will certainly require more than fifteen minutes to present my views intelligently. There may be only one single question on which I shall desire to be heard at any great length, but under this rule I shall be cut off—absolutely gagged from having my full say. There is a subject to come up which I deem of vital importance, and one which I think should be fully ventilated in debate. I appeal to the common sense of the majority, if it is just to apply the gag now, when it will strike members in my position? I have sat in this Convention, and voted constantly against all attempts to limit gentlemen to any specified time, on the principle of doing unto others as I would like to be done by. That is an excellent principle, which we should never forget, because if we act contrary to it, we may ourselves some time suffer for it. I appeal to the sense of justice of a majority of this Convention to vote down this proposition to alter Rule Forty-three.

MR. LARKIN. Mr. President: Upon the adoption of this amendment depends whether this Convention makes a Constitution or not. Seventy-six days of the time allowed in the Act are now spent, and we have not completed half the work of this Convention. After the one hundred days, we have to depend upon our own resources. There will be no provision to pay us. The money will be exhausted in a few days more. We may draw warrants for the balance of the one hundred days after the fund is exhausted, but after the one hundred days expire members will have to remain at their own expense. I do not believe that a majority of the Convention can afford to stay here two months longer to complete a Constitution. I think fifteen minutes is long enough time for any gentleman to express his position on most questions, and my experience has been that when a man is talking to the question the point is never raised. But the Convention should have the power to call time, so that speeches should not be made for delay. Members can say all that is necessary in explanation of their votes in fifteen minutes.

MR. STEDMAN. Mr. President: I shall vote in favor of the amendment offered by the gentleman from Alameda, Mr. Webster, but I shall not vote for the amendment to the amendment offered by the gentleman from Trinity, Mr. Tinnin. I want to see all members upon this floor placed upon an equal footing. I want to see the fifteen-minute rule applied to all; and if a member is delivering an interesting speech, one in which the Convention is interested, the time can very easily be extended. I do not desire to see the amendment to the amendment adopted. I do not believe that the Chairmen want that advantage, or very few of them. Let us have the rule, and if they are not delivering interesting speeches, let us cut them off in fifteen minutes.

MR. KLEINE. I offer this, Mr. President:

Resolved, That from and after the adoption of this Constitution no Mongolian shall be allowed to have in his possession any firearms of any description.

THE PRESIDENT. The resolution is out of order.

MR. RINGGOLD. Mr. President: I hope that this body will not adopt this fifteen-minute rule, because it will take more time than that to discover where the gentleman from El Dorado, Mr. Larkin, stands on any question. [Laughter.] I am opposed to it.

MR. ROLFE. Mr. President: I hope this gag law, as it is called, will be sustained. I do not call it a gag law. I have made a calculation, to the best of my mathematical ability, as to the length of time that will be required to complete our work at the same rate of speed we are going now, and according to the calculation that I have made it will take until the first of next October. So any gentleman can see that our work will be useless. We must get it done by the fore part of May. I do not charge it to any gentleman here, and I do not suppose it has been done, but if there are any reasonable number of delegates here who are opposed to this Constitution, who are working to defeat entirely the work of the Convention, which I do not suppose there are, they could very easily do so by talking against time, and there has been already too much talk on this matter. We have had enough talk. Let us get down to business.

MR. WELLIN. Mr. President: I am rather sorry to hear the gentleman on the other side of the hall calling this gag law. I do not look upon it so. We have spent seventy-six days here, and what have we done? If we keep on in this way, when will we ever get our work through? I believe that fifteen minutes is long enough for any delegate to tell all he knows. The Chairman should have more time. Therefore I hope the amendment will be adopted.

MR. CROSS. Mr. President: It seems to me that the time for four-hour speeches has gone by, and I am in favor of this fifteen-minute rule. We never will get through unless we adopt some such rule. Gentlemen have occupied a half day here talking about one thing and another that is not to the question at all. If this rule is adopted every member will confine himself more directly to the question, and in fifteen minutes he will be done, and the Convention will get through with their work more rapidly.

MR. SMITH of Santa Clara. Mr. President: I move the previous question.

THE PRESIDENT. The amendment of the gentleman from Trinity, Mr. Tinnin, has been accepted by the mover of the amendment to the rule.

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

Messrs. Stedman, Ringgold, Farrell, and Harrison also demanded the ayes and noes.

MR. McCALLUM. I move to strike out the proviso.

MR. TINNIN. I rise to a point of order. The previous question had been moved.

THE PRESIDENT. The previous question had not been ordered.

MR. LARKIN. The ayes and noes had been moved, therefore the motion was not in order.

THE PRESIDENT. The Secretary will call the roll.

The roll was called, and the amendment to Rule Forty-three was adopted by the following vote:

AYES.

Andrews,	Harrison,	Ohleyer,
Ayers,	Harvey,	Porter,
Barnes,	Heiskell,	Prouty,
Barry,	Herold,	Reed,
Barton,	Herrington,	Rhodes,
Belcher,	Hilborn,	Rolfe,
Blackmer,	Hitchcock,	Schomp,
Boggs,	Holmes,	Shafter,
Boucher,	Howard,	Shurtleff,
Brown,	Huestis,	Smith, of Santa Clara,
Burt,	Hughey,	Smith, of 4th District,
Caples,	Hunter,	Smith, of San Francisco,
Casserly,	Inman,	Soule,
Chapman,	Johnson,	Steele,
Charles,	Joyce,	Stevenson,
Condon,	Kelley,	Stuart,
Cowden,	Keyes,	Sweasey,
Cross,	Laine,	Swenson,
Crouch,	Lampson,	Swing,
Davis,	Larkin,	Terry,
Dean,	Larue,	Thompson,
Doyle,	Lewis,	Tinnin,
Dudley, of San Joaquin,	Lindow,	Townsend,
Dudley, of Solano,	Mansfield,	Tully,
Dunlap,	Martin, of Alameda,	Turner,
Edgerton,	Martin, of Santa Cruz,	Tuttle,
Estee,	McCallum,	Van Dyke,
Estey,	McComas,	Van Voorhies,
Evey,	McConnell,	Walker, of Marin,
Filcher,	McCoy,	Walker, of Tuolumne,
Finney,	McFarland,	Webster,
Freeman,	McNutt,	Weller,
Garvey,	Mills,	Wellin,
Gorman,	Moffat,	West,
Grace,	Moreland,	Wickes,
Graves,	Morse,	Wilson, of Tehama,
Gregg,	Nason,	Wilson, of 1st District,
Hager,	Neunaber,	Wyatt.
Hall,	Noel,	Mr. President—118.

NOES.

Barbour,	Miller,	Reynolds,
Beerstecher,	Nelson,	Ringgold,
Dowling,	O'Donnell,	Stedman,
Farrell,	O'Sullivan,	White,
Freud,	Reddy,	Winans—16.
Kleine,		

THE PRESIDENT. The amendment to Rule Forty-three is adopted. The question recurs on the amendment to Rule Fifty-six.

MR. REYNOLDS. Mr. President: I move an amendment to the amendment. I offer as an amendment Rule Fifty-six, as printed in the Standing Rules. There is going to be another opportunity to get rid of the previous question in Committee of the Whole, and I cannot afford to let it pass. That is the reason I move this amendment. There is another reason. We do not need the previous question in Committee of the Whole, because we have adopted the fifteen-minute rule. With that rule there is no necessity of ever moving the previous question in Committee of the Whole.

MR. TERRY. That rule as printed in the Standing Rules contains the words "except for limiting the times of speaking."

MR. REYNOLDS. I will send up my amendment.

MR. TOWNSEND. Mr. President: I think we can be killed in fifteen minutes by some men's talking, and I hope it will not be adopted.

THE SECRETARY read Mr. Reynolds' amendment, as follows:

RULE FIFTY-SIX.

The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except that the ayes and noes shall not be taken, and that the previous question shall not be moved.

MR. REYNOLDS. Mr. President: Now that we have adopted the fifteen-minute rule in Committee of the Whole, which we ought to have done in the first place, instead of the previous question, I hope that the Convention will take that absurdity out of the rules, and do away with the previous question in Committee of the Whole.

MR. TINNIN. Mr. President: All I desire to say is that the adoption of the amendment will defeat the rule we have just adopted, because it excepts limiting the time of speaking.

THE PRESIDENT. He does not include that in his amendment.

MR. REYNOLDS. Mr. President: Let me say here that the previous question in Committee of the Whole has had but one single effect, not to save fifteen minutes time on any one question, but it has led, on three different occasions, to having business so jammed up that it required three days to get out of the difficulty. Members have been surprised into voting upon amendments that they did not approve. A section is read in this way, an amendment is offered, and then another amendment. A discussion ensues, and then some person, who regards it as his special duty, moves the previous question, and that is the only speech that gentleman ever makes. The Convention then comes to a vote upon the last pending amendment, and then turns its attention to the next amendment. This amendment may be a good one, if it could be slightly amended, but this cannot be done, and the committee must adopt it as it is, or reject it altogether. In nine cases out of ten gentlemen are compelled to vote for something that does not suit them, and the result has been that we have been three days at a time getting out of this trouble. Let us return to something like reasonable sense. Let us return to the time-honored custom—a custom which all legislative bodies have adopted since the time when the memory of man runs not back. Have no previous question in Committee of the Whole, and then you always have an opportunity to perfect your work. That is what the Committee of the Whole is for.

MR. REDDY. I think this is rather a bad time to change the rules.

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

Messrs. White, Inman, Nelson, and Farrell also demanded the ayes and noes.

MR. McCALLUM. Mr. President: I undertake to say that the confusion which has arisen here and the misunderstanding, has been from the fact that for days general questions have been discussed, and the immediate pending question has not been referred to at all. If we continue with the understanding that after a reasonable time discussion shall close, the result will be that members will discuss the pending question and not the general subject. I think we had better not change this rule of disposing of the two pending amendments, which would be the effect of the adoption of the amendment proposed by the gentleman from San Francisco.

THE PRESIDENT. The Secretary will call the roll on the amendment offered by the gentleman from San Francisco, Mr. Reynolds.

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

AYES.

Barnes,	Herrington,	Porter,
Beerstecher,	Hughey,	Reynolds,
Blackmer,	Johnson,	Ringgold,
Brown,	Joyce,	Shurtleff,
Casserly,	Keyes,	Smith, of San Francisco,
Condon,	Kleine,	Stedman,
Cowden,	Laine,	Steele,
Dudley, of San Joaquin,	Lindow,	Stevenson,
Dudley, of Solano,	McFarland,	Sweasey,
Estee,	Moffat,	Swenson,
Farrell,	Morse,	Turner,
Freeman,	Nelson,	Wellin,
Freud,	Neunaber,	White,
Grace,	O'Donnell,	Winans,
Hager,	O'Sullivan,	Mr. President—47.
Harrison,		

NOES.

Andrews,	Finney,	Martin, of Alameda,
Ayers,	Garvey,	Martin, of Santa Cruz,
Barry,	Gorman,	McCallum,
Barton,	Graves,	McComas,
Belcher,	Hall,	McConnell,
Boucher,	Harvey,	McCoy,
Burt,	Heiskell,	Miller,
Caples,	Herold,	Mills,
Chapman,	Hitchcock,	Moreland,
Cross,	Holmes,	Nason,
Crouch,	Huestis,	Noel,
Davis,	Hunter,	Ohleyer,
Dean,	Inman,	Prouty,
Doyle,	Kelley,	Reddy,
Dunlap,	Lampson,	Reed,
Edgerton,	Larkin,	Rhodes,
Estey,	Larue,	Rolfe,
Evey,	Lewis,	Shafter,
Filcher,	Mansfield,	Smith, of Santa Clara,

Smith, of 4th District,	Townsend,	Webster,
Soule,	Tuttle,	Weller,
Stuart,	Van Dyke,	West,
Swing,	Van Voorhies,	Wickes,
Terry,	Walker, of Marin,	Wilson, of Tehama,
Thompson,	Walker, of Tuolumne,	Wyatt—76.
Tinnin,		

THE PRESIDENT. The amendment to the amendment is rejected. The question recurs on the amendment to Rule Fifty-six, offered by the gentleman from Alameda, Mr. Webster.

The amendment was adopted.

PAY OF EMPLOYÉS.

MR. BARNES. Mr. President: If it is in order, I move to take from the table the resolution offered by me on the seventh instant, in relation to the pay of the employés of the Convention.

MR. BEERSTECHER. I second the motion.

MR. BARNES. I do it for the purpose of modifying and altering the resolution and explaining it. I do not think it was understood.

THE SECRETARY read:

WHEREAS, The appropriation for the expenses of this Convention is now nearly exhausted, and the session is likely to be prolonged to the limit expressed in the Act of the Legislature convening this body, and perhaps beyond it,

Resolved, That when payments from said appropriation shall reduce the balance in the State treasury to the sum of seven thousand dollars, the President be and he is hereby directed not to certify any payroll for the per diem of members, and that said unexpended balance be reserved exclusively to the expenses of the Convention, other than per diem of members, and to the payment of salaries and wages of employés.

MR. WHITE. Mr. President: I hope that this resolution will remain on the table, because I believe it perfectly absurd. We are all here the servants of the people. Those who came here and solicited these places if they do not wish to remain can go. We can get others to take their places. Already gentlemen have offered to come and take their places, and take their chances for pay; perfectly willing and perfectly competent. They are no better than us, and we are no better than they are. We are all servants of the people here together. I think every delegate intends to remain here and perform the duty we were sent here to do, even if we never get a dollar for the time beyond the hundred days, or beyond the extent of this appropriation. Now, we ask of them to do the same. They come and solicited these places, but of course they can walk off, and we will get others in their places. There are men on this floor who will do the duties of this desk, if the men leave it who have been elected to do the work. There are men here who will see to these doors and perform all the duties of every employé in this house, if it is necessary. But as to this distinction, that they are something so inferior, that is assuming a position of grandeur that I have no sympathy with. I contend that we must all go together, and take just what we get; and this idea of making ourselves so grand that we are to give out our pay to them, I do not consent to it, and I trust this Convention will take this view of the matter, and if these gentlemen wish to retire let them retire.

MR. BARNES. Mr. President: I only asked that the resolution should be taken from the table in order that I might modify it and amend it, and put it in a shape where I think it can be adopted. If the gentlemen agree with the proposition of my friend from Santa Cruz, that the members of the Convention can do all the work that is required to be done here, I have no objection. I think the gentleman would look very cunning running around here as a Page, and it would be delightful to call him in from cleaning a spittoon to take part in the proceedings of this body. I simply ask to have the resolution taken up so that I can amend it, and then the Convention may dispose of it as they see fit.

MR. STEDMAN. Mr. President: With all due deference to the gentleman from San Francisco, whom I respect very much, I move that the motion to take from the table be indefinitely postponed.

MR. TULLY. I would like to make an inquiry.

MR. STEDMAN. I rise to a point of order.

MR. TULLY. I want to know what this Convention has to do with that question? Every member is entitled to his money as long as there is any. I propose to have my money as long as it lasts; and after that I propose to stay here and pay my own expenses as long as there is any Convention, and take my chances.

MR. JOYCE. It seems to me that this thing has been settled.

The motion to indefinitely postpone the motion to take from the table prevailed.

NOTICE.

MR. O'SULLIVAN sent up the following notice:

I give notice that I will, on Monday, December sixteenth, move an additional amendment or proviso to Rule Forty-three, so that a member who presents a minority report from a standing committee shall also be permitted to speak for one hour.

Laid over for one day.

CHINESE IMMIGRATION.

MR. MILLER. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

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

SPEECH OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I did not intend to say anything on this subject, but, inasmuch as I cannot vote to the extent of my desire in the premises, I wish to briefly explain my vote, and I hope I may not exceed the fifteen-minute rule; if I do exceed it a few minutes I hope I may not be interrupted. Now, Mr. President, I appreciate, to the fullest extent, as has been said here, the difficulties and dangers of this Chinese question. We all appreciate the fact that we have upon us here a system which, unless it is checked, will result in a species of slavery in this State, and perhaps in other States, as objectionable, if not more objectionable, than the system of slavery that prevailed in the Southern States. We have a population here not only foreign in law but foreign in nature, and a population that in the nature of things cannot become assimilated, as every man knows. It would not be desirable if it could be assimilated. Then, Mr. Chairman, we have this condition of things: unless checked it will bring up in this country men of great wealth, concentrated capital, large landed estates, which we unfortunately are plagued with here, and an inferior race as laborers. Every one recognizes that as the ultimate result, unless some check is put to this. American institutions cannot survive long when one class of the population are a degenerate and inferior race, incapable of becoming citizens, incapable of taking any part in the government, and when another class are becoming richer and absorbing the estate and property of the country. As has been well said:

"Ill fares the land, to hastening ills a prey,
Where wealth accumulates and men decay."

Republican institutions cannot, I say, survive such a condition of things. We all understand this on the Pacific Coast, and I think our brethren across the mountains are beginning to comprehend the question in its true light. We cannot complain that they have not at once jumped at the conclusions that we have arrived at. We were ourselves at first at fault in this, and no party can be justly chargeable with this evil that is upon us. Why, sir, in one of the most beautiful parks in St. Louis—Lafayette Park—stands a splendid monument to Senator Thomas H. Benton, a large sized statue of that noble old hard money Democrat. He is represented as he stood in the United States Senate making his great speech, with a scroll in his hand, with the lines of commerce to Asia designated upon it. With the other hand the great Senator is pointing to Asia, and on the base are quotations from one of his speeches: "There is the East; there are the Indies." Now, sir, I say he was pointing west across the mountains and the broad Pacific—"There is the East; there are the Indies." That symbolized the hope, the dream, the aspiration of the American nation. It was to get, as we supposed, the rich trade of the Indies and China. That was what we all desired. Now, sir, I say that no party and no class of our people are to blame. We were all blinded by this dream of glitter and grandeur by acquiring this trade of the Indies and China. But, Mr. Chairman, we have lived here to see that dream dispelled, and like other dreams, to vanish into thin air. We have seen the realization of that dream, and it is not necessary to say that we are all disappointed, that the glowing picture has vanished, and the reality is that which we have now to confront, and that is to check this growing evil, or have a system entailed upon this country which is threatening to the perpetuity of our government.

I am in favor of going as far as any gentleman on this floor to check this growing evil, but, sir, there are right ways and there are wrong ways to accomplish this result. There is a straightforward, legitimate way to reach the object in view, and there are ways which are unstatesmanlike and which will not accomplish the purpose we have in view. I claim that the direct and proper way to reach the object we have in view is through the General Government. That government was instituted for the purpose of regulating our affairs with foreign nations, and, Mr. Chairman, as I remarked, we will not have to wait long for this action from the General Government. And I say we cannot be surprised that the whole people of the United States have not arrived at the point we have, but the leaven is working. Does any man suppose that two or three years ago a resolution could have passed through both houses of Congress requiring the Executive Department of the government to take steps to annul a treaty which we ratified here with great acclaims of joy? And yet, at the last session of Congress, that was witnessed. What has brought about this change of sentiment? Why, the discussion of the matter in a legal manner. They sent an investigating committee here composed of representatives of both the Senate and House of Representatives. They then perceived for the first time, that here they were about to establish a new system of slavery in the country. Having but a few years previously wiped out one system of slavery we were about to establish another. The moment this dawned upon the minds of the people of the Northern States, a complete revolution has been going on there. My own personal experience proves this to be the case. In eighteen hundred and seventy-six I attended the Centennial in Philadelphia. One of the most extensive exhibitions of the Oriental nations was the fine department from China, representing their arts and wares. That was visited by thousands. The Chinese were glorified by all of the visitors there. But last Spring I passed through some of the Northern States, and had occasion to stop at several towns in New York, Illinois, and Ohio, and in conversation with people there I found their minds had altered, and a complete change in the tone among the people there was perceptible. They said that they perceived the danger, and this evil should be checked; and, sir, it will be checked, and will be checked properly and legitimately. I have not the least doubt about it.

Now, sir, after the citation of authorities here by gentleman who have addressed this committee, I say that an unbroken line of decisions from the 9th of Wheaton to the present time has been laid before this committee, showing conclusively the controlling power of the General Government in reference to commerce and treaty obligations. Not only that, but we have in our own State—since we have gentlemen who defer more to the authority of the States than they do to the General Government—a line of decisions running from the 4th to the 48th

California Reports, all the same way. Not a break in the line, either in the Federal Courts or in the State Courts. It is true, sir, gentlemen have read from dissenting opinions, and by assuming their positions justify the position they take. But, Mr. Chairman, what weight would any such dissenting opinions, or such loose expressions, even though they come from eminent jurists, have with any Court where such an unbroken line of authorities were presented on the other side. Why, of course, they would not be listened to for a moment. And that is just the attitude in which this question presents itself before this committee precisely.

I hold in my hand the Federalist, and I wish to read a few remarks from Mr. Madison upon this question; and it will be borne in mind that not only in the Supreme Court of the United States, but all the Courts of the Union, wherever constitutional questions are involved, the papers of the Federalist are considered the best kind of authority. They were written by two of the most conspicuous members of the Convention that framed the Constitution of the United States, Hamilton and Madison. Mr. Madison is answering the attacks upon the new Constitution made by its enemies, on the ground that it had exceeded the powers given to alter the old articles of confederation. In warding off attacks on that score he would not be likely to claim for the Federal Government any more powers than were actually conferred upon it, because his purpose was to show that the government did not possess unnecessary powers. Its enemies were saying that they had given it too many powers, therefore I say that he cannot be charged with claiming more for it than actually existed. Mr. Madison is compelled to admit—I refer to the fortieth number of the Federalist—that the Convention did exceed, in this respect, the call for the Convention. He says: "From these two acts it appears, first, that the object of the Convention was to establish in these States *a firm national government*; second, that this government was to be such as would be *adequate to the exigencies of government*, and *the preservation of the Union.*"

Then, farther on, page one hundred and eighty-six, he enumerates the several powers conferred on the Government of the Union. He says:

"That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the Government of the Union; and that this may be the more conveniently done, they may be reduced into different classes, as they relate to the following different objects: First, security against foreign danger; second, regulation of the intercourse with foreign nations; third, maintenance of harmony and proper intercourse among the States; fourth, certain miscellaneous objects of general utility; fifth, restraint of the States from certain injurious acts; sixth, provisions for giving due efficacy to all these powers."

These were the exclusive powers. Now, on the subject of treaties, you will find, on page one hundred and ninety-three, number forty-two of the Federalist, by Mr. Madison, this:

"The second class of powers lodged in the General Government consists of those which regulate the intercourse with foreign nations, to wit: to make treaties; to send and receive Ambassadors, other public Ministers and Consuls," etc.

He says:

"This class of powers forms an obvious and essential branch of the federal administration. If we are to be one nation, in any respect, it clearly ought to be in respect to other nations."

MR. RINGGOLD. Mr. Chairman: I rise to a point of order. The gentleman voted for the fifteen-minute rule, and now he is exceeding his time.

THE CHAIRMAN. The gentleman's time is up. Shall the gentleman from Alameda have leave to proceed?

MR. O'SULLIVAN. I object.

MR. CROSS. I object.

The question was put, and the Chair declared that the noes appeared to have it.

A division was called for, and the gentleman was allowed to proceed, by a vote of 46 ayes to 31 noes.

THE CHAIRMAN. The gentleman from Alameda will proceed.

MR. VAN DYKE. Mr. Chairman: I am obliged to the Convention. Mr. Madison says:

"The powers to make treaties, and to send and receive Ambassadors, speak their own propriety. Both of them are comprised in the article of confederation, with this difference only, that the former is disembarrassed by the plan of the Convention of an exception, under which treaties might be substantially frustrated by regulations of the States."

Now, that was the fault of the old confederation, that the States might interfere with treaties, and Mr. Madison says, explicitly, that in that respect, by the new plan, the treaties are placed entirely above and beyond the reach of the States. Now, again, in considering the limitations on the States, the same great statesman says, in referring to this clause in reference to treaties:

"This Constitution, and the laws of the United States, shall be made in pursuance thereof, or all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land, and the Judges in every State will be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Now, he says, upon that:

"The indiscreet zeal of the adversaries to the Constitution has betrayed them into an attack on this part of it also, without which it would have been evidently and radically defective. To be fully sensible of this we need only suppose for a moment that the supremacy of the State Constitutions had been left complete by a saving clause in their favor.

"In the first place, as these Constitutions invest the State Legislatures with absolute sovereignty in all cases not excepted by the existing articles of confederation, all the authorities contained in the proposed Constitution, so far as they exceed those enumerated in the confederation, would have been annulled, and the new Congress would have been reduced to the same impotent condition with their predecessors.

"In the next place, as the Constitutions of some of the States do not ever expressly and fully recognize the existing powers of the confederacy, an express saving of the supremacy of the former would in such States have brought into question every power contained in the proposed Constitution.

"In the third place, as the Constitutions of the States differ much from each State, it might happen that a treaty or national law of great and equal importance to the States, would interfere with some and not with other Constitutions, and would consequently be valid in some of the States, at the same time that it would have no effect in others.

"In fine, the world would have seen for the first time, a system of government founded on an inversion of the fundamental principles of all government; it would have seen the authority of the whole society everywhere subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members."

Can there be anything added to that? Not at all. A treaty is the supreme law of the land, and it makes no difference how we meet it here, with a clause of the Constitution or by a statute. It amounts to the same thing. It is said that we might do this and have it tested. Why, Mr. Chairman, what would we think of a gentleman at the bar who would bring week after week and day after day a suit where there were forty authorities to show that it had been decided adversely to him without exception? I am not, for one, disposed to put myself in the attitude either of a demagogue or of a fool in this Constitutional Convention. I propose, sir, here to abide by my oath, and I do not propose to put into this Constitution, so far as I am concerned, anything which is in direct—unmistakably direct—conflict with a treaty of the United States, simply because we can raise a point before the Supreme Court on it. After we know it has been decided against us, it is sheer folly and madness for us to put it in here. I say it would weaken our position before the country. I say we want the coöperation of the whole country. We cannot paddle our own canoe in this matter. This is a matter which concerns a great nation. It is a matter which a great nation will right in due time. And what is required is for the people to be enlightened upon the subject, and they are fast being enlightened.

I cannot vote for any part of the proposed article except that in the first section; and I agree with the gentleman from Los Angeles, General Howard, that that covers the whole thing. It is given as a declaration. It covers the whole ground. I will support that as a declaration of our principles against this Chinese evil, and I will sign the strongest kind of a petition to Congress and the President of the United States.

MR. BARNES. I would like to ask the gentleman from Alameda what he understands by the language, "and aliens otherwise dangerous or detrimental to the well-being or peace of the State?"

MR. VAN DYKE. I suppose that the Legislature can pass laws under that to exclude some classes of Chinamen. It might be tested, and it is certain that the State can exclude paupers, criminals, and that class of people.

MR. BARNES. But I call the gentleman's attention to the words, "and aliens otherwise dangerous or detrimental to the well-being or peace of the State."

MR. VAN DYKE. I do not know as I am ready to define that. They could drive out a great many——

MR. BARNES. Then, if it is proposed to confer that power on the Legislature, why not test it here and now?

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: I do not propose to transcend the limits prescribed—fifteen minutes—and, in fact, it is with the greatest diffidence that I presume to say anything upon the subject which has been discussed by some of the ablest lawyers of this State. I am convinced, however, that each one of us must think for himself. That is as unequivocally established as that we must eat for ourselves and see for ourselves; and, in fact, if we are only to be guided by what we are told, we are not fit to vote in this Convention. We have heard able authorities quoted; we have heard eminent men discuss this subject, and, in their discussion, taking their arguments, it would seem that certain things were so beyond all doubt; then, when other gentlemen of ability, on the same provision, were engaged in the discussion of this subject upon the opposite side, the same would appear almost obviously clear. Now, I am under the impression that it is necessary for us to look at this matter in a certain light, and we must consider the great principles under which we are acting, and if we will look back to the period when the Constitution of the United States was framed, we will see a band of men collected together, the country just having emerged from under the dark cloud of war, and those men determined to transmit to posterity the advantages and benefits of the seven years' revolution. And when we turn to that instrument and examine the preamble, there we will discover the purpose of their meeting—the purpose of that instrument which they got up for the government of these United States. Now, it is to be observed at all times, that there is a great principle of law, a spirit of law, and that that spirit is the essence and reality of law. When we turn to the Constitution of the United States and read the preamble, there we find what was the purpose and intention. It reads as follows:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

This was one great thing to be promoted. This instrument was gotten up for the welfare of the people; for the prosperity of the nation; and we must understand this great principle as expressed in this preamble, extending through that great instrument in all its bearings. And we must understand that anything whatever that is in conflict with the

welfare of the people, the prosperity of the nation, the prosperity of all the States, is in direct conflict with the grand purpose and spirit of this instrument which is expressly for the prosperity of the people. What we must take into consideration is the great spirit of this instrument. Now, if we take this into consideration, we are compelled at once to see, with regard to any matter here, it is in conflict with these grand provisions in that declaration of the spirit of the Constitution of the United States. We may say the Burlingame treaty was popular; the people demanded it. So they did. The people have made many popular mistakes, and Legislatures have made many popular mistakes, and it may be that the treaty-making power has made a mistake, and we believe it has. It was popular in its day. Now we must consider that this treaty-making power has the right—no one doubts that. The gentleman last on the floor seemed to contend with great earnestness of purpose for this right, but we must understand that all human institutions and human purposes are defective. Popular opinion was wrong, and this matter of the treaty proved it. Now, the great matter is this, shall we consider this treaty as lying in the way of getting out of this difficulty, of getting rid of the Chinese, or the Mongolian race, in this country? I am convinced that every one of us will admit, so soon as we consider that they deprive the white race of labor, that they deplete this country of money and carry it away into a distant land where we never see it again, that they are a detriment to the country, that they are at variance with the great interests of this State, and that as soon as they are at variance with the prosperity of the State, they are at variance with the principles of the Constitution.

Now, as to those who made the Constitution. We do not doubt their right. We know that they are good authority, but we do contend that the matter has resulted differently from what any one anticipated, and that instead of the treaty being a blessing, instead of being as intended, it has turned out to be a curse. Now, if we attempt to legislate against this it appears to me that we should pronounce it an evil. I will read from article sixth:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land."

We must look at the spirit, and not the mere words. "Under the authority." What is the authority? The Constitution of the United States is the authority, and the only authority by which the treaty-making power has carried out what it has in this matter; and everything that is made in accordance with this is binding, is effectual. But we find practically that this is not in accordance with that instrument. Instead of adding to the prosperity, and happiness, and tranquillity of the people, it has the reverse effect to almost all intents and purposes. Now, we should look at this in this light, and consider the authority. The Legislature frequently passes laws that are inconsistent with the Constitution. This very clause seemed to anticipate the matter of Constitutions conflicting. Now, we find that this shall be the supreme law of the land, and the laws of the United States made in pursuance thereof, and the treaties, shall be the supreme law of the land. But the first thing spoken of is the Constitution of the United States, and these others in accordance with the same, and by authority of the same. But it must be in accordance with the spirit of the Constitution. The Constitution is placed first. "Made under the authority of the United States," which authority is the Constitution:

"And the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Now, I am fully impressed with the idea that we can meet this evil, and we should act upon it accordingly, and in fact it is proper and right. We should carry out wishes here in this Convention. I believe that we have a right to do so. Some say it is treasonable. You ought to have read the Constitution, and you would see that it is nothing of the kind. Treason is raising an army against the United States, or giving aid or comfort to the enemy; but making laws contrary is nothing of the kind. This great treaty is a law *de facto*, but not a law *de jure*. We have a right to go ahead and make provisions as we choose. We will be representing the great spirit of the Constitution. If the treaty is in violation of the spirit of the Constitution, we have the right to go on and act outside of it.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I could commit no greater folly than attempt to prolong this debate. I shall, therefore, endeavor to see how short I can be—how brief my remarks can be made—not how short I can be. Mr. Chairman, I am unable to support the substitute for section one, which is now pending, and in order that there may be an understanding in regard to this, I call for the reading of section one of the substitute offered by Mr. Barnes.

THE SECRETARY read:

SECTION 1. All Mongolians within this State shall be required to remove therefrom within four years from the time this Constitution takes effect. At the first session of the Legislature convened hereunder provision shall be made for judicial proceedings to compel such removal, and for the seizure and sale of so much of any property of such Mongolians who may not theretofore have voluntarily departed within the period herein limited, as may be necessary to defray the necessary cost of their removal from this State to their native country.

MR. BARNES. Mr. Chairman: I ask leave to strike out the word "Mongolians," and insert the word "Chinese."

MR. CROSS. I object. That will let in the coolies from India. They are the worst class we have.

MR. REYNOLDS. Mr. Chairman: Two difficulties hedge us about when we approach the discussion of this question. If we attempt to interfere with the immigration of this class of persons, we are immediately beset with the interpretation which the Supreme Court of the United States has put upon the power granted to Congress to regulate commerce; and the gentleman himself, Colonel Barnes, and several other legal lights on this floor, have taught us to understand, and I hesitate not to say, have convinced us, that it is utterly useless for us to attempt to prohibit the incoming of subjects of the Chinese Empire. If there has been anything settled by this decision, it is that; and hence, I am surprised to see the gentleman himself, after successfully meeting that question and settling it, introduce this section, one which flies directly in the face of the very proposition he has himself settled. For, as was stated by the gentleman from San Francisco, when a Court undertakes the examination of an Act of Congress, or a State Legislature, it immediately looks through the gauze of subterfuges by which you attempt to accomplish anything by indirection, and goes straight to the subject, and hence, no one can misunderstand or can be misled by this section, which provides for the deportation of the very persons whom we have no power to prevent coming in. If we have no power to prevent their coming, we have no power to deport them. Hence, the section offered as a substitute by the gentleman from San Francisco is answered by its own argument. I am opposed to that section for another reason, or I rather prefer the report of the committee, because it contains in better form the very same thing, but directed to another proposition. The substitute is deportation, pure and simple, without a reason. Section one of the report of the committee provides that vagrants, paupers, mendicants, criminals, and persons afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being and peace of the State, may be removed from the State. There is a reason which comes directly within the doctrine of the Passenger cases, and directly within the doctrine of the Slaughter-house cases, and within subsequent decisions following those, and within the doctrine laid down by the gentlemen in debate here. If you will turn to section seven you will find another branch of the same subject:

"SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared hereby to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation or otherwise, for the expense of such exclusion. It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. It shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns."

It says, "the Legislature shall discourage their immigration by all means within its power." I do not know how they will do that. Here are certain classes of persons declared by the power of the State—the only power that has a right to judge—to be dangerous to its well-being, and then it shall have the power to deport or remove them from the State, or to remove them to different places within the State, if it so sees fit. Now, the reason I am in favor of the report is, that it provides these reasons. It tells why it undertakes to do these things; and thus, so far as it can be effective at all, it is quite as effective as the substitute could be if it could be adopted.

And the reason why I am opposed to the substitute is because it puts off the time for any attempt to enforce any of its provisions four years. The report of the committee may be enforced at any time after the adoption of the Constitution. So far it may be made effective, if effective at all, within a reasonable time. The substitute will delay action, if there is anything in it at all, for four years. I do not intend to say a word about the inconsistency of the gentleman from San Francisco in section two that he has offered here, with his remarks upon the subject. He said that he was opposed to any act of cruelty towards this class of persons; that the right to live here and the right to stay here implied the right to earn a living, and he was opposed to depriving them of the right to fish. I understood him to say that he was opposed to anything that looked towards depriving the Chinaman of earning a livelihood, or laboring wherever or whenever he could.

MR. BARNES. I did not say that. What I said was this: I was opposed to these queue-cutting ordinances, and this saying that a man should not fish.

MR. REYNOLDS. That does not better it any. He follows up these remarks by proposing:

"SEC. 2. After this Constitution takes effect no Mongolian shall carry on or maintain any business, occupation, profession, or mechanical trade for gain, or perform any usual manual labor for reward in this State; and it shall be unlawful for any person or persons, bodies corporate or politic, to employ, contract with, or harbor such aliens except for temporary accommodation, shelter, or charity."

Well, if a Chinaman is entitled to make a living in the State, how is he going to do it if he shall not be employed? Where is the consistency? Mr. Chairman, I listened with a great deal of pleasure to the gentleman's remarks. They were able and eloquent, but it seems to me, as we have heard it said of another, that the performance did not come up to the proclamation; that when we come to read his proposition there was nothing in it except what is in the report in a better shape. The fact is, his proposition drives directly at the law, as it has already been settled, and amounts to a system of deportation. I undertake to say that you might as well meet the Chinaman at the wharf, and say that he shall not land, as to undertake to say boldly and plainly that you will deport him the next minute after he sets his foot on the wharf, unless you can establish some reason, some power, some unquestionable power within the State that will give you the right to deport him. [Cries of "Time."] And then, when it comes to the other section, that no Mongolian shall be employed, that he shall not work, the same proposition is in better shape in the report, in section six, with a slight amendment.

THE CHAIRMAN. The gentleman's time is up.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I will not detain the house but a few moments. I should not speak at all, but I wish to state just what part of this report I can support. The first section I think we ought to adopt, and I believe it will be adopted. Section two reads:

"Any corporation incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises, and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation."

That section I shall not support. I shall not support it because, among other reasons, it would be perfectly futile if it is intended to reach the railroad company. That railroad company exists under higher authority than the corporate power of this State, and we could not make them forfeit their charter if we tried to. Secondly, I think it is barbarous. I confess that I agree with the gentleman when he says that the Chinese after they are here have a right to work just like anybody else, and not under circumstances by which they cannot earn an honest living. I do not believe "the Chinese must go," but I think the point is that the Chinese shall not come. I do not believe in this idea that the Chinese must go. I think that howl that has been going over the State has delayed action on this great subject at least two or three years. The threats that have been made everywhere that blood would flow in the streets have caused the people of the East to doubt our sincerity. I wish to read a few words from Vattel's Law of Nations, page 173, in regard to this subject:

"The sovereign ought not to grant an entrance into his state for the purpose of drawing foreigners into a snare; as soon as he admits them he engages to protect them as his own subjects, and to afford them perfect security, as far as depends on him. Accordingly, we see that every sovereign who has given an asylum to a foreigner, considers himself no less offended by an injury done to the latter, than he would by an act of violence committed on his own subject. Hospitality was in great honor among the ancients, and even among barbarous nations, such as the Germans. Those savage nations who treated strangers ill, that Scythian tribe who sacrificed them to Diana, were universally held in abhorrence; and Grotius justly says that their extreme ferocity excluded them from the great society of mankind. All other nations had a right to unite their forces in order to chastise them.

"From a sense of gratitude for the protection granted him, and the other advantages he enjoys, the foreigner ought not to content himself with barely respecting the laws of the country; he ought to assist it upon occasion, and contribute to its defense, as far as is consistent with his duty as citizen of another state. We shall see elsewhere what he can and ought to do, when the country is engaged in a war. But there is nothing to hinder him from defending it against pirates or robbers, against the ravages of an inundation, or the devastations of fire. Can he pretend to live under the protection of a state, to participate in a variety of advantages it affords, and yet make no exertion for its defense, but remain an unconcerned spectator to the dangers to which the citizens are exposed?

"He cannot, indeed, be subject to those burdens that have only a relation to the quality of citizens; but he ought to bear his share of all the others. Being exempted from serving in the militia, and from paying those taxes destined for the support of the rights of the nation, he will pay the duties imposed upon provisions, merchandise, etc., and, in a word, everything that has only relation to his residence in the country, or to the affairs which brought him thither."

Vattel is a recognized authority upon the law of nations. I apprehend that the gentleman proposes now to create a new law of nations, and to fight the whole world upon a proposition of such gravity. I am, therefore, opposed to the proposition in this report that would prohibit a Chinaman from earning an honest living. I think it is barbarous; I think it is cruel. I say that when they come here under the laws of the country they have a right to earn their living, just as any other foreigner has when he comes here—a legal right—and it would be barbarous, in my opinion, to assume any other position. Now, so much for that. The third sections provides:

"No alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution."

That I shall favor. Let that work be done by those who will defend it in time of war and maintain it in time of peace. Section four I should be very glad to support if it did not contain the word "Chinese," because as it is it will come in direct conflict with the treaty. I would support it upon the proposition that if the Government of the United States declare they are ineligible to become citizens of the United States, there is something about that people that renders them unworthy of the confidence of the people of the State, and we have the right to prohibit their coming. The Supreme Court of the United States have held that the police powers of the State are to advance the safety, and happiness, and prosperity of the State, and that under that proposition the people have a right to provide for the general welfare. They have a right to say that the United States having refused to allow a certain class to become citizens of the United States, that that class of people would not advance the general welfare, and that the United States had passed upon the question of fact by declaring that they were unworthy of citizenship. In the case of Chi Lung, the Court says:

"We are not called upon to decide for or against the right of a State, in the absence of legislation by Congress, to protect herself by necessary and proper laws against paupers and convicted criminals from abroad; nor to lay down the definite limit of such right, if it exists. Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity. When a State statute, limited to provisions necessary and appropriate to that object alone, shall, in a proper controversy, come before us, it will be time enough to decide that question."

I can probably support sections three, four, and five, and that part of section six which relates to the owning of real estate. It is not a debatable proposition that the State has the right to prohibit any class owning real estate. That is settled by law and by decisions. I will call your attention to an authority, though I have not time to read it. It is not an American authority, but it will be taken, I think, as good law. It is a book written by the Right Honorable Alexander Cockburn, Lord Chief Justice of England. I maintain that the States have a right to impose that authority, and I hope that the States will do so. I would be very glad to support the last part of section six; the first part I cannot. These people are a great injury to the State. We ought to adopt all means we can to keep them from coming here and sending them away within the law. But I am not one of those who believe that the streets will run with blood. I am not one of those who believe that the people are going to rebel against law, or against the organized authority of this State, or of the General Government. I believe this people are capable of self-government. I believe that they are capable of meeting any and all great questions——

MR. JOYCE. Do you think the people are capable of competing with Chinese labor?

MR. ESTEE. I do not think so; but I propose to get rid of the Chinese in a legitimate way—in a legal way.

MR. BARNES. What is a legitimate way?

MR. ESTEE. I would answer, first, by adopting section one, that discourages their coming; section three prohibits their employment on public works; section four, by making it general so that it would not stand in direct opposition to the treaty, would discourage their coming. Adopt a memorial to the President of the United States and to both houses of Congress, and I would have it signed by every member of this Convention, to show that the people of this State are unanimous, and I think it would have a very marked effect upon the opinion that Congress might have relative to this great subject. I do not believe in this proposition in section six: "Foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State;" but I would support that portion of the section which would not allow them to hold real estate, because that comes within the bounds.

MR. GRACE. What good would it do them to have the right to be sued?

MR. ESTEE. I am not prepared to say. I am not prepared to say that there are not a great many white men who would get along better if they had not the right to be sued.

MR. KLEINE. Is it more barbarous or more cruel to drive the sons and daughters of American citizens out, or to deprive coolie serfs of employment?

MR. ESTEE. What can we do here against the whole civilized world? I say if you want to bring this thing into disgrace, if you want to be cruel, and do wrong, you will be condemned by the best thinking people of the world, and then you will have this planted upon you forever. The way to do is to approach it in a dignified, solemn manner; approach it in a legal manner; do only those things which we can do, and do it earnestly, and we will accomplish the result.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: It has not been my purpose to discuss this question, nor is it now my intention to go into any general discussion of the question. It is apparent to all that there is really but one question to be legitimately discussed here. As to the question of this being a great evil, there is but one opinion. We all agree that it is an evil that threatens law, order, society, and civilization itself. Upon that proposition we are all agreed. The real question, Mr. Chairman, that should be discussed here is that great question that has been fought since the foundation of the government—the limits and boundaries of State and Federal authority. It is a legal question. It is a great question, that has engaged the greatest minds of modern times. It is a question that has been fought on the grandest arena, the grandest rostrum, of modern times, and by intellectual giants. For that reason I have preferred to listen to a discussion by our great constitutional lawyers, knowing, as I do, that they were best qualified to give us light upon this great subject—practical light, and light that we need, to act intelligently. My purpose, Mr. Chairman, in rising, is to call attention to some pertinent historical facts bearing upon this great question. The distinguished gentleman from Marin, a day or two since, in alluding to this great question of the power of State authority and Federal authority, alluded to a very celebrated authority. After the struggle had gone on from the foundation of the government down to the year eighteen hundred and sixty-one, it was submitted to the arbitrament of arms, and the gentleman tells us that the whole question was decided by Chief Justice Grant, at Appomattox. I do not propose to controvert the assertion of the gentleman, for it is eminently true. It is the simple fact of the case; but I desire to call attention to the patent fact that that great court is the court of last resort; and I assert in this presence that all human institutions, all political rights, are based upon the sword, and are maintained by the sword, and that that court to which the gentleman referred is in fact the supreme court, or court of last resort. And, in this connection, I would say to my distinguished friend from Los Angeles, that it might not be the part of wisdom to ignore this decision and its result upon the Congress and upon the public opinion of the American people, because it is a stubborn fact. My friend from Marin no doubt said right, "this decision is final." All right. Very well. It was our neighbor's ox that was gored then; but to-day we find ourselves, here upon this floor, confronting a question as broad as society, as civilization, and this time the boot is on the other foot. It is our ox that is

gored this time. I am sorry it is so, but such is the fact; and, as I suggested, it may not be wise in us to ignore that great decision of that court of last resort.

MR. AYERS. I would like to ask the gentleman whether that great court of last resort wiped out the right of the States to protect themselves from dangerous classes?

MR. CAPLES. I did not propose to discuss this question, but only to call attention to pertinent historical facts, and to suggest to my friend from Los Angeles to take into consideration the bearing of that decision upon popular opinion in these States of the American Union. I do not undertake to say to what extent that decision goes, but I do undertake to say that it has had an important bearing upon the judicial decisions of our highest Courts, and that it has had a marked influence upon popular opinion. And right here is the point at issue, the point which I desire to call the attention of this committee to. We expect to frame a Constitution here; we desire that it should be adopted by the people; we have already arrayed against us the great monopoly of the country; we have already arrayed against us a power that is perhaps equal to that of the people, and it is an open question whether we shall be able to carry it or not, and the point is this: can we afford to array against us two important classes of the community upon this issue—the over-conservative and the timid? Because, gentlemen, talk as they may, they may say that this is but a judicial question that will be decided by the Courts, and there will be no collision with the Federal power; but could they convince the people of California that there would be no collision? They might convince some. I have no doubt that they would, but there would be a large class that would not be convinced and would vote against your Constitution through fear or ultra conservatism. I submit that it would not be wise in us to adopt propositions and measures that would array against us that class. However ill or well founded their objections may be, it would tell against the adoption of the Constitution without a doubt.

Mr. Chairman, there is a legal way, a right way, and a proper way in everything, and there is another way that is illegal, that is wrong, and that is impolitic. The object, the desire, the aim of this Convention should be to do the very best that we can do to relieve the State of California and the Pacific Coast from this great curse that is upon us. Can we do it best by proceeding regularly, legally, legitimately, or can we do it best by an impotent exhibition of anger, passion, and violence?

There is another phase of this question, to which I desire to call the attention of the gentlemen of this committee. It was remarked by a distinguished gentleman on this floor, within the last day or two, that the reason for conferring the franchise and ballot upon the negro was, not that we considered him capable of a just and wise and equitable exercise of that power, but simply as a matter of self-protection; protection against oppression. Now, I think, he was right. I think, perhaps, that that was the controlling idea with the American people when they conferred the ballot upon the negro. Now, Mr. Chairman, I suppose we proceed under the impulse of passion or prejudice, however well founded it may be. Suppose we persecute these people, and by lawless measures attempt to free ourselves from this great evil, would not the logic of the gentleman to whom I refer lead us to fear, at least, that the same reasons that operated in conferring the franchise upon the negro would, in the end, induce the Federal Government to confer the franchise and ballot upon the Chinaman? Now, Mr. Chairman, it is not wise to hide from ourselves the danger that menaces us. The wise and just course to pursue is to proceed within the limits of law, and, after we have exhausted every effort and have represented our case fully, and shown that our society and our civilization depends upon our being freed from this great curse; if, after we have exhausted every effort, the Federal Government should remain deaf to our appeals; if this fair land and these beautiful valleys that we had hoped to leave as a legacy to our children, are to be taken by this brood of Mongolians, then I would say, and if it were in my power to do so, I would speak it in tones of thunder that would shake the earth, that every impulse of humanity, every instinct of our natures, would impel us to prevent it, though we perish in the attempt.

MR. AYERS. Mr. Chairman: I do not rise to make a speech upon this subject. I merely wish to call the attention of the committee to the term which is used in the amendment offered by Colonel Barnes. He uses there the term "Mongolian."

MR. BARNES. I desire to say that, after looking into it, I recognize the impropriety of the word, and propose to ask leave to make a correction. I think myself that the word is improper there.

MR. AYERS. I merely wished to call the attention of the committee to it so that we could alter it at present. The term "Mongolian" is one of the great divisions of the human race, and includes the American Indian, according to the best authority that we have.

MR. WEST. Mr. Chairman: I have listened with a great deal of patience to the speeches that have been made on this question. I admit that it has been necessary that speeches should be made, and that the general principles connected with this subject should be discussed, and I am of the opinion that that time has passed. I think henceforth the speeches should be made directly to the question before the committee, and I shall oppose any further general speeches, on general principles, made perhaps more for buncombe than for anything else. It is presumed now that every gentleman has made up his mind. Let the remarks in future be practical and applied to the questions under consideration, and not for such suggestions as the wisdom of the members may suggest for the general question under consideration. Believing now that a different system of tactics should be adopted in order that this Convention may finish its deliberations, I shall in the future move the previous question upon all occasions, and I, therefore, move the previous question now upon the two amendments pending before the committee.

The call for the previous question was seconded by Messrs. Schell, Stedman, Howard, Ayers, and Laine.

A division was called for and the main question was ordered by a vote of 73 ayes to 26 noes.

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

MR. AYERS. I took my seat with the understanding that the word "Chinese" should be substituted for the word "Mongolian."

The substitute was rejected.

THE CHAIRMAN. If there be no further amendments to section one the Secretary will read section two.

THE SECRETARY read:

SEC. 2. Any corporation incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises, and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation.

MR. TERRY. I propose the following substitute for section two.

THE SECRETARY read:

"No corporation now existing or hereafter formed under the laws of this State shall, after the adoption of this Constitution, employ, in any way, any Chinese or Mongolians. The Legislature shall pass such laws as may be necessary to enforce this provision."

MR. WEST. I offer the following amendment.

THE SECRETARY read:

"No alien shall ever be employed in any State, county, municipal, or other public work in this State after the adoption of this Constitution."

MR. BEERSTECHER. I would ask the gentleman from San Joaquin, Mr. Terry, whether his amendment does not relate merely to corporations formed under the laws of this State? What harm could it do to take in all corporations?

MR. TERRY. You can provide for that in another section. The committee have already provided that they shall not be employed by public corporations. I do not believe, with some of the gentlemen who have spoken upon this question here, that we have the authority by a statute of our State, or by our Court, to abrogate a treaty made by the treaty-making power of the United States. I do not believe that we can prevent these people landing or residing here, or that we can prevent any citizen from employing them; but corporations are the creatures of the statute. They exist by the will of the State, and we can control corporations, and prevent them from employing any class of laborers we choose. We can make it a condition of the existence of their charter. It is a fact pretty well known that perhaps two thirds of the Chinese employed in the State are employed by corporations. I propose to discourage their immigration here by all legal means. I do not propose, so far as any vote of mine is concerned, to bring the State of California into conflict with the power of the government. I tried that on once when I had a great deal better backing than now, and I proved my faith by my works. I went to where the fighting was going on, and felt some of the missiles. I was whipped, and I had sense enough to know it after it was done. I do not propose to provoke any more conflicts of that kind. [Laughter.] I propose to exercise all the power we have got, and no more.

MR. SMITH, of Fourth District. I would like to ask the gentleman a question. I would like to ask him whether he has anticipated that corporations will employ them through contractors and sub-contractors?

MR. TERRY. I am perfectly willing to accept an amendment that no Chinese shall be employed by any contractor or sub-contractor of any corporation.

MR. BEERSTECHER. Mr. Chairman: I am in favor of the amendment offered by the gentleman from San Joaquin, Judge Terry. Section two provides for the forfeiture of the franchise of the corporation. You cannot forfeit the franchise of a foreign corporation doing business in this State, because we have not granted them the franchise. I am in favor of leaving the matter of penalty entirely with the Legislature. That is the proper place to leave it. Therefore, I will vote for Judge Terry's amendment.

SPEECH OF MR. FARRELL.

MR. FARRELL. Mr. Chairman: It seems to be a desire of some persons on this floor to rush this matter through without a proper investigation, and I am sorry to see it.

These same gentlemen who are desirous of so doing, have occupied the time of this Convention for over three weeks, on the subject of corporations, which, sir, is of no importance whatever when compared with this great evil, and I hope and trust that a free and general discussion will be allowed upon this question for the benefit of the people of this State, and of the United States.

Why, sir, they talk about Congress not taking any action in this matter. What can you expect from Congress, when gentlemen of this Convention, who were elected pledged to try and remedy this evil, above all others, attempt to rush it through under a false plea of economy. Mr. Chairman, this is the first time that I have attempted to occupy the time of this Convention, and I hope the same privilege will be given to me as has been granted to others to speak upon this question in general.

I hold, sir, that it is now the duty of the members of this Convention, as representatives of the people of this State, to take such steps as will protect the people against this Mongolian importation.

It is only a pity for the rising generation, a love for my country, and the principles of my party, that compels me to urge the arrest of this great curse. The question at present is: Have we no power to prevent the introduction of these leprous serfs who come here for private speculation, and who are driving our children into idleness and crime, and our laboring men to destitution and starvation.

Mr. Chairman, I was astonished to hear the gentleman from Sonoma, Mr. Stuart, take the part of these leprous Mongolians, notwithstanding the fact that he was elected to this Convention by the so-called Nonpartisan party, whose platform loudly proclaimed reform upon this particular subject. He talks about tramps! Who has been the cause of making these men tramps? Why, sir, it is such men as he and the managers of the Central Pacific Railroad, who employ them, and they are the parties who will be held responsible for the downfall of these poor men, who are now classed as tramps. There are hundreds of stalwart young men, wandering along the lines of the Central Pacific Railroad, from house to house, and from farm to farm, who are ready and willing to do the commonest kind of work in order to gain an honest living. But, sir, how sad and alarming it is to know that the sons of men who contributed millions of dollars to build that road are set aside for these leprous coolies. And yet, sir, the gentleman from San Francisco, Mr. Estee, objects to prohibiting railroads from employing them.

Why, sir, it would be better for the people, and better for the people of the State of California, that the ground would open and swallow up the whole outfit of the Central Pacific Railroad, than to have them continue this practice of employing these moon-eyed lepers, thereby driving these poor laboring men to desperation and starvation, and then branding them as tramps.

My impression is, although I am by no means a lawyer, or versed in the finely drawn lines which separate and mark the boundary between the jurisdiction of the sovereign State of California and that of the General Government, that without trenching upon the paramount rights of the latter, we can still insert such proscriptive clauses, and make such proscriptive distinctions, as will make their continued stay in our midst unprofitable to them; and God knows, when a country becomes unprofitable to a Chinaman, he won't stay in it; this, too, notwithstanding the formidable character of the Burlingame treaty is thrown in our face as the great stumbling block over which they say it is impossible for us to go. I am in favor of the report of the committee with but few exceptions. To the first, second, and third sections of the report, I have but one objection to urge. There seems to be among the many legal opinions which have been brought to bear upon this question, a general agreement, that by the use of the terms "foreigners who are ineligible to become citizens" a complete escape has been effected from the much quoted clause of the Burlingame treaty giving Chinese coming to our country the same rights as those of the most favored nations.

And yet our daily papers have recently contained telegrams announcing the naturalization of several of the class which the terms here used, "foreigners ineligible to become citizens," is intended especially to reach. It seems as if this question of eligibility is by no means settled as yet, and in view of the uncertainty of anticipating what the decision of the higher Courts will be, it strikes me as dangerous to the measures which we are discussing to leave them entirely at the mercy of the future, where, too, an adverse decision may make all the sections nugatory. I should and do favor, in these three sections at least, and wherever else possible, the striking out of these equivocal terms, and boldly inserting therefor just what we mean: "No Chinese or Mongolians."

As to our right to do this, irrespective of that magnificent monument erected on the ruin of our mechanical vocations and the dire distress and prostituted morality of this coast to the memory of Anson Burlingame, the question of corporations, as discussed for the past three weeks, has settled one thing beyond any question of doubt, and that is, the unqualified right of the State to control private corporations. And, sir, where can that control be exercised to a more salutary purpose than in restricting them from using a class of labor, no matter of what nationality, no matter of what treaty regulations, which is, in itself, the cause of all this discontent and distress among our laboring classes. As to the other points, the right of the State to exercise all necessary police regulations, and to control the character of labor to be employed upon State or public works, I don't think any one has, as yet, been able to bring forward any treaty prohibition which could, for a moment, object. And as to the policy of the exercise of all these rights in our self-protection, it is unnecessary for me to argue, at this time, in the State of California. The cry of "the Chinese must go," much as it has been derided by some gentlemen of the opposition parties, has become so identified with the future of our State, if it is to have any future worthy of record, that all now recognize that it has met with a responsive throb in the heart of every well meaning citizen of the Pacific Coast. I am only anxious, therefore, Mr. President, that what we do say in this Constitution will be comprehensive, explicit, and to the point.

Personally, I am here representing a party whose ambition is to secure reform in this particular instance, and I stand here ready and willing to vote for the most radical and sweeping provisions which will remedy this great evil. And I am most concerned to feel that if we do not effect some practical remedy, the temper and control of a long and sorely tried people will, after a time, lose that reverence for law and order which is now their greatest honor. And now, in conclusion, Mr. Chairman, I offer the following as a substitute for section two, of the report of the committee, and I hope it will be adopted:

"No corporation incorporated by or under the laws of this State, shall employ any Chinese or Mongolians in any capacity whatever. And a violation of this provision shall work a forfeiture of the franchise of the corporation so offending. It is hereby made the duty of the Legislature to enforce this provision by appropriate legislation."

MR. HITCHCOCK. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

The Convention will take a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at one o'clock and thirty minutes P. M. President Hoge in the chair.

Roll called and quorum present.

CHINESE IMMIGRATION.

MR. CONDON. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Joaquin, Judge Terry.

MR. SMITH, of Fourth District. Mr. Chairman: I now offer an amendment to the proposition of Judge Terry.

THE SECRETARY read the amendment:

"Amend the amendment by inserting after the word 'employ,' the words 'directly or indirectly.'"

THE CHAIRMAN. The question is on the amendment.

MR. TERRY. I accept the amendment.

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I deem this proposition the most important one that has been offered here, for the reason it seems to me to be a matter which is subject to the least doubt as to the power of the State against the Chinese. I have no desire to make any argument, for I think we have had sufficient arguments and authorities—able arguments on both sides of the question. As far as I am concerned, I am willing to take the law and arguments of Mr. Wilson, and apply it to the position I shall take as against the position he took.

Now, it seems to me, according to the arguments and authorities cited, that we are hedged in by three propositions of national law—the power to regulate commerce, the provisions of the treaty in regard to residence and travel, and the provisions of the Fourteenth Amendment in regard to equal protection under the laws. Now, it seems to me we are restricted by the treaty only as to residence and travel; and, if you remember some authorities that were read some time ago, they were to the effect that treaties are construed, like Constitutions, strictly, and anything expressed therein is law. As far as it has any application to the domestic affairs of the State, it seems to me it must be expressly done. Now, there is a difference between the domestic powers and political powers, so far as the treaty is concerned. There are certain powers, as Mr. Wilson acknowledged, which our State cannot violate or infringe upon; but there are certain other powers, domestic powers, which are expressly given to the State, which cannot be taken from the State. And he cited the instance in the Fifth California in regard to real property. I do not know anything in this treaty which will prohibit us from preventing the employment of Chinese by corporations or individuals. And I therefore think it is perfectly right for this State to take advantage of all the power it has, of a domestic or any other nature, to protect itself against this evil. Allow them for the purposes of residence and travel to have full sway. Let the Chinese have their pound of flesh, but not one drop of blood. A corporation is the creature of the State, controlled by the State. And for that reason it seems to me, because there is less chance for doubt, and because corporations have employed a great many Chinamen, that this is one step in advance, and this measure should be adopted. As to waiting upon Congress, I have not much faith in that plan. We here are absorbed in that question, and the people of the other States are absorbed in the question of commerce, and I am inclined to think we are in danger of being overruled by the greater interest of commerce. I am in favor of doing everything we can do, and taking every chance, where there is no settled opinion against us.

SPEECH OF MR. SMITH.

MR. SMITH, of San Francisco. Mr. Chairman: I consider, sir, that we have spent time enough in arguing this question, and from the able arguments that have been made I cannot hope to say anything new on this subject, but, sir, it is my duty to raise my voice against this, the greatest evil in the State. According to the Constitution of the State slavery cannot exist. But, sir, I think it is well known by every gentleman on this floor that slavery does exist in the very worst form. Slavery in the South was broken up by law, but in this State to-day it is upheld by a power above the law, by the power of the Central Pacific Railroad Company, Colonel Bee, and the Chinese companies, and they will bid defiance to the law in the future as they have in the past. Now, sir, the coolies imported by these companies are never free men. They always have to contribute to these companies, and when they fail to do so they are put out of the way.

Now, sir, Congress has been petitioned and memorialized time and again in regard to this matter, but to no effect, with the exception of a few Senators from this coast making a few anti-Chinese speeches. And why? Not for the benefit of the people on this coast, or the State itself, but for the express purpose of making political capital out of this question. But that day is past. The people of California cannot be kept by demagogue speeches any longer, and they intend to take this matter into their own hands, and apply their own remedy, and Congress must be blind not to see this question in its right light. This Burlingame treaty is a one-sided treaty, and hence is no treaty at all. It is a treaty that was made for the benefit of the Chinese, and against the working class of this State, and the State itself, and our brothers in the East will find it so to their cost some day.

Now, we claim we have the constitutional right to protect ourselves as a State by prohibiting these people from coming here. Aye, if even we have to come in direct conflict with Congress to do it. It is a con-

stitutional right. Section four of article four of the Constitution reads as follows:

"The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion."

Now, who is the best judge of this invasion. I think the people of the State. When this State is being overrun by a foreign foe, shall we not defend ourselves? They are driving our laborers out of employment. They are stealing away our business. Is this not an invasion? I claim that it is. It is immaterial to me what form the invasion takes. When I see these things I hold it to be my duty to raise my voice against it, and to do all in my power to protect myself and my family and the State. I certainly do not propose to be driven out of this State by this tide of humanity.

Now, the treaty does not say that slaves shall concentrate in any particular number in this country, and as one of the people I shall insist upon the rights of the State. Now, there seems to be but one way out of this difficulty. If Congress continues to bring the Chinese into this golden State, then, sir, it is the duty of the people of this State to drive them out of the State in defiance of Congress. I hope we will adopt section four of this report, and show Congress that we are in earnest on this matter, and if it leads to riot and violence Congress will have itself to blame.

It is claimed that a person has the right to employ whoever he sees fit, and that it is essential to employ Chinamen in order to develop the resources of the State. I deny it. I should like to know of these Chinese lovers, to whom do they sell the produce of the State? if it is taken and consumed by the Chinese? The truth is these men are of a grasping, greedy mind; men without souls; men who do more to hold back the progress of the State than the Chinese themselves. It is better that free labor be employed. If it had been, the State would be far in advance of what it is to-day. Why? Because these white laborers would become a part of the State, and own homes and enter business on their own account. The Chinese do not build up the State, and if I had the power I would make them leave.

Now, sir, they say this fourth section conflicts with the Constitution of the United States. I claim there is a difference of opinion in regard to the Constitution. I claim that it does not conflict. That instrument recognizes the police power of the State to wipe out this evil, treaty or no treaty. I hope this section will be adopted, and this matter brought before Congress, so that the people will know how much to expect from the government, and apply their own remedy.

As regards section three, it ought to be adopted. The Legislature passed a law that no Chinese labor should be employed on the City Hall in San Francisco, but that law has been violated. So long as we have unfaithful officers, so long will our laws be of no avail.

SPEECH OF MR. KLEINE.

MR. KLEINE. Mr. Chairman and gentlemen of the Convention: I like to be right in the middle of the hall, and speak always right in the face of men. The gentlemen have said on this floor, and especially the lawyers, that we are helpless. That we have the Burlingame treaty, and therefore we are helpless. To listen to these gentlemen one would imagine we were in the Empire of China. Now, gentlemen, under the Constitution of the United States the people have the right to make laws. The people send their servants to make laws, and they have a right to make the kind of laws they should make. The people of the State of California have sent you here to get rid of these Mongolians. It is very strange, indeed, to hear these gentlemen say, O, the poor Chinaman, what shall we do with him? [Laughter.] The gentlemen better say, What shall we do with our poor boys and girls who are walking the streets in idleness? It is a rare thing in San Francisco to find a servant girl in a family. These families have swapped the servant girl for the coolie, and they have them in their families to make beds and do everything which God intended for women to do, because they say: "O, these girls are too sassy." [Laughter.]

Gentlemen, if we have no right to protect ourselves; if we are helpless; if our sons and daughters of the rising generation must be made hoodlums; if they must be driven into crime, the sooner we know it the better. We want to know it. We have a right to defend ourselves. Let us know it, and let the law of self-preservation rule.

Now, gentlemen, you remember in eighteen hundred and fifty-six there was a vigilance committee organized in San Francisco. The government said, you must not do so, but they raised it, and gave warning to these political vagabonds and loafers that they must quit, and they strung up several of these scoundrels, and the rest escaped the country, and the vigilance committee subsided; but some of them are here to-day, in this State, ready to answer the call of duty again.

Now, gentlemen, is it possible that we have no protection against this curse? You say we must appeal to Congress. Haven't we been appealing to Congress for the last ten years, and what has Congress done for us? Nothing at all. Nothing at all. They have poked fun at us, and give us no releif. And these lawyers tell us we can't do anything. Well, I tell you to pay very little attention to what these lawyers say, because the lawyers disagree among themselves. Only a few months ago they made out that this was not an office, because Judge Fawcett wanted to retain his seat. They can make white black, and black white, so pay no attention to these lawyers whatever. [Laughter.] Now—just look, listen. These gentlemen have said, what are we going to do with the poor Chinaman; Better say, what are we going to do with these poor white people; Who is going to care for them? Go down to San Francisco and see these poor boys and girls tramping the streets day after day, because they can't get work; all on account of this cheap labor. Gentlemen, don't you know what this cheap labor means? It means extravagance and luxury for the capitalists. That's what it means. We have a class of capitalists that want cheap labor, they want coolies, they want slaves. According to testimony taken before the Commission, these Chinamen can live for eight cents a day. That's what capital wants. They want to bring us down to the level of the coolie himself; to a level with slave labor. Now they employ them for servants.

There's no hope that Congress will do anything for us on this question, unless this State takes a step to represent ourselves before Congress. We can't expect anything from Congress. Don't you remember two years ago, Congress sent a committee out here and took all the testimony of our respectable citizens of California, lawyers [laughter], merchants, business men, mechanics, and they all said the Chinese were ruining the State, that they were a curse; and did they do anything? No, sir, not a thing; and the Chinese come, and come, day after day, and now the gentleman from San Francisco wants to give them four years more before we commence doing anything. Don't you know there are over forty thousand of them in San Francisco? Do you remember some years ago, when these Chinamen rose and massacred over seven hundred white men, women, and children; and not a single word said about it? Not a word said. And we will have the same riots here some day. It is only a question of time.

Now, let me read something—listen. [Laughter.] The old slaveholders used to declare slavery a divine institution, and it was a favorite text, "Servants, obey your masters." I suppose Stanford, and all the rest of them, will say the same thing about Chinese coolies. These preachers say the same thing. They seem to love these coolies.

MR. ROLFE. The gentleman's time is up.

MR. REYNOLDS. Mr. Chairman: I hope, sir,——

THE CHAIRMAN. The question is not debatable. Those in favor of permitting him to proceed will say aye.

Carried.

MR. KLEINE. I tell you, I speak because my duty compels me; because I see the future of this now. I know some of you gentlemen may think I am talking excited. [Laughter.] No. I can see the future, and I predicted three years ago that this slavery would overturn republican institutions.

Now, I shall tell you that in San Francisco only a few Chinese have been converted, while hundreds of white men, women, and children have been forced into crime. Charity begins at home. The good book tells us, he that don't provide for his own home is not a Christian. The time will come when these Chinese will drive out your wives and children, if you don't drive out the Chinese. Let me tell you that many of your rich men will become poor. I know a rich man whose sons and daughters are to-day poor miserable scrubs, making a living by day's work, and perhaps some of your sons and daughters will commit murder, because forced to do it, and they will curse you and say: our fathers protected this Chinese treaty and compelled us to come in competition with these coolies, who live for eight cents a day, and that is a fact. You know it is true. [Laughter.] I won't say no more now. I tell you the people have sent you here to relieve them, and if you don't do it the the people will do it for themselves. Our white citizens will not come down to the level of the Mongolian slaves. They will not live on six cents a day. Don't tell us we have no power to remove this curse, for I know better. I tell you if they had these coolies in New York or Washington, they would not stand it twenty-four hours. The Chinamen here are criminals and paupers. Now, why do you tell us we are helpless? Then we have no government, for self-preservation is the first law of nature.

[Cries of "Go on!" "Go on!"]

THE CHAIRMAN. The question is on the adoption of the amendment to the amendment.

Lost.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from San Joaquin, Judge Terry.

The gentleman from San Francisco moves to amend this amendment by adding the following: "No corporation incorporated by or under the laws of this State, or doing business in this State, shall employ any Chinese or Mongolians in any capacity whatever. A violation of this provision shall work a forfeiture of the franchise of the corporation so offending. It is hereby made the duty of the Legislature to enforce this provision by appropriate legislation."

Lost.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Joaquin, Judge Terry.

Adopted.

THE CHAIRMAN. There being no further amendments, the Secretary will read section three.

THE SECRETARY read:

"SEC. 3. No alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution."

MR. REYNOLDS. Mr. Chairman: I offer the following amendment to section three:

THE SECRETARY read:

"No alien ineligible to become a citizen of the United States shall be employed on any State, county, or municipal, or other public work."

THE CHAIRMAN. The question is on the amendment.

MR. REYNOLDS. Mr. Chairman: I wish merely to note the fact that it leaves out some unnecessary words, and makes it read better. There is no necessity for the words, "in this State after the adoption of this Constitution."

MR. MILLER. I accept the amendment.

THE CHAIRMAN. The gentleman cannot accept it. The question is on the adoption of the amendment.

MR. WYATT. I offer an amendment to the amendment.

THE SECRETARY read:

"No Chinese, except for punishment of crime, shall ever be employed on any State, county, municipal, or other public work in this State,

and neither contractors nor sub-contractors, nor their agents, nor any other person or persons, who shall do any work or render any service whatever to the State, county, or municipality, or other public work under its direction, shall employ, or caused to be employed, in any capacity, directly or indirectly, any Chinese in the prosecution of said work or services. The Legislature shall provide for the enforcement of this section by appropriate legislation.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: This amendment, I believe, embodies the idea presented in section three. I intended that it should, except the words "aliens ineligible to become citizens." As I understand it, we do not intend to discourage the immigration of anybody at the present time except the Chinamen. And I do not think it is a good idea to whip the Chinese over the backs of other people. In other words, to place disabilities upon other people for the purpose of reaching the Chinese. I therefore leave out the word aliens, and say Chinese, the very men we are talking about, and attempting to discourage so that they will not stay with us any longer. I think it is more manly to do whatever we propose to do, directly rather than indirectly. It is always safer to pursue a direct course than to take a roundabout way. I think the amendment important in another respect, in that it might be held that the Chinese cannot be worked upon public works as a penalty for crime, under the section as reported by the committee; and we should certainly reserve to ourselves the privilege of working these Chinamen upon any of our public works, as a punishment for crime, if it becomes necessary. I like it better, because it comes nearer to being self-executing, and because it says neither directly nor indirectly. I therefore hope the amendment will be adopted, as I believe it is more full, and more completely carries out the idea of the committee than either the report of the committee or the amendment offered by the gentleman from San Francisco, Mr. Reynolds.

MR. HERRINGTON. Mr. Chairman: I hope the gentleman from Monterey will consent to allow the amendment to remain as the other sections read, "Foreigners ineligible to become citizens," for the reason that every person who comes here will be exempt from its provisions except the Chinese. I think the provision is better in that shape. I hope the gentleman will leave it. As it is reported it covers the whole thing, and I hope the gentleman will see the propriety of leaving it stand.

THE CHAIRMAN. The question is on the adoption of the amendment to the amendment offered by the gentleman from Monterey, Mr. Wyatt.

Lost.

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

Adopted.

MR. HAGER. Are there any other pending amendments.

THE CHAIRMAN. No, sir.

MR. HAGER. I move to add the words, "Except in punishment for crime."

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from San Francisco, Judge Hager.

Adopted.

MR. BARBOUR. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

Strike out the words in line one "alien ineligible to become a citizen of the United States," and insert the word "Chinese" in lieu thereof.

MR. BARBOUR. The object is to make it conform to the section already adopted.

THE CHAIRMAN. The question is on the adoption of this amendment.

It was adopted by a standing vote of 45 ayes to 40 noes,.

MR. HAGER. Mr. Chairman: I have a substitute for section four.

THE CHAIRMAN. The Secretary will read section four first.

THE SECRETARY read:

SEC. 4. All further immigration to this State of Chinese, and all other persons ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation.

MR. HAGER. I offer a substitute.

THE SECRETARY read:

"After December first, eighteen hundred and eighty, unnaturalized resident foreigners who have not legally declared their intentions to become citizens of the United States, excepting the diplomatic and commercial agents of foreign governments duly accredited and acknowledged by the Government of the United States, shall neither hold nor inherit property, nor do business, nor engage in any employment in this State, unless they shall first obtain a special license therefor, and pay into the State treasury annually the sum of five hundred dollars. The moneys so paid may be appropriated for the maintenance of such foreigners as may become a charge upon the State, and for disposing of any who may be convicted of crime, or insanity, or who, upon moral grounds, may be unsafe or unfit citizens of this State. Without such employment no person shall give employment to such foreigners. The Legislature shall enforce this section by penal and other proper laws."

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: I think this amendment will be effectual in checking Chinese immigration. It is not in conflict with the Burlingame treaty, not in conflict with the laws of the United States. It applies to all classes, and therefore it does not come in conflict with the provisions of this treaty which puts the Chinese upon an equality with the people of the most favored nations. There is the ground where every effort we have made to exclude the Chinese has failed. The treaty says that Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions in respect to travel and residence as may there be enjoyed by the citizens and subjects of the most favored nations. Now, this section does not apply to the Chinese alone, it applies to all foreigners, until they declare their intention to become citizens of the United States. If a person, not born here, lives in this country, all he has to do is to declare his intention to become a citizen, and this provision ceases to apply to him. But the Chinaman does not have the right to declare his intention, and therefore it applies to him. But he is placed in the same category as all others. Now, an Englishman cannot come here and do business, if he does not declare his intentions, unless he takes out a license. That is right enough. Why should a foreigner come here that does not intend to become a citizen, unless he takes out a license. We have to do it in China. No American can go to China unless he takes out a license. So with many of the nations of Europe; a foreigner cannot come there unless he takes out a license. Now, we must do something to protect our people from this Chinese immigration, and I have come to the conclusion that this is the only way we can reach them by making a provision applicable alike to all foreigners, but at the same time all other foreigners are placed on an equality with us as soon as they declare their intentions to become citizens. If the Chinaman can declare his intention to become a citizen, why, of course, he has to go and get a license, and pay five hundred dollars a year, and that constitutes a fund for the maintenance of those who may become a charge upon the State, or those convicted of crime. Isn't that good? Isn't it right that we should do so?

Mr. Chairman, I cannot talk to-day. I did intend to speak upon the question. This whole thing hangs upon a thread. At the time I was in Washington they left out the clause with regard to the white race. The committee reported it back. I suppose they thought that inasmuch as Congress had extended the naturalization laws to the African race, even to those not born in this country, it was no longer any use to keep the word there. Therefore it was reported back. It was left out. Afterwards, when it was discovered, I think it was Mr. Page in the House offered an amendment in which he says, section two thousand one hundred and sixty-five, "amend by inserting in the sixth line, after the word 'alien,' 'being free white persons and aliens of African descent.'" The amendment was to section two thousand one hundred and sixty-nine. If it had been to two thousand one hundred and sixty-five it would have been all right. As it now reads, there is a doubt as to the construction of this statute as to whether it applies to Mongolians or Chinese, or not. The treaty says, "but nothing herein contained shall be held to confer naturalization upon citizens of China," etc. Now, our many projects, as far as excluding the Chinese is concerned, hangs upon that little amendment. When it came into the Senate Mr. Sargent and myself consulted together in regard to it, but we didn't attempt to change it, because we were fearful that it would be thrown out altogether. We did not dare to raise the question in the Senate and send the matter back to the House, for fear it would not be tolerated at all. They were so thoroughly imbued with the brotherhood of man theory, that they would not listen even to argument in regard to the Mongolian race not being equal to any other race, inasmuch as it was decided that the African race was equal to any other. It was inconsistent with the action of the party to say that Chinese did not belong to the common brotherhood after the African had been received into fellowship. Therefore we did not raise the question, and it was passed in that imperfect shape, and it is very imperfect.

Now, the amendment to this section merely provides that unnaturalized resident foreigners—it does not apply to those who do not reside in the State, and therefore, if a man from England or France is doing business in California, and not a resident here, it does not apply to him—but resident foreigners, unnaturalized, who have not declared their intentions of becoming citizens, must take out a license in order to pursue any business, and pay into the State treasury five hundred dollars a year, in order to constitute a fund for the purpose of sending those out of the State who are guilty of crime, or unfit to live here, and for the purpose of supporting those who may become a charge upon the State. As I said before, it is impossible for me to undertake to address the Convention at length, and I submit the amendment for the consideration of the Convention.

SPEECH OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I confess I am at a loss to understand the object of this amendment proposed by the gentleman from San Francisco, Judge Hager. The amendment proposes that after the year eighteen hundred and eighty, no foreigner shall engage in any employment, or the pursuit of any business, without first paying five hundred dollars into the State treasury. Now, it must be apparent to all practical men, that it is equivalent to an absolute prohibition. It would have been quite as rational to have said five hundred millions, because the one as much as the other amounts to a prohibition; and so the proposition simply is, that after the first of December, eighteen hundred and eighty, no Chinese shall engage in any work by which he may earn his bread. Let us for a moment consider what would be the result of the adoption of a law like this. We have something like one hundred and fifty thousand of these people here now, and they would practically be debarred from earning their bread. What would be the result? We would have one hundred and fifty thousand starving human beings in our midst. Even supposing we might get rid of a few of them, we would still have, perhaps, one hundred and twenty thousand left, starving, because they would not be permitted to earn a living. That would be about the result. Now, I cannot bring myself to believe that the gentleman ever contemplated such a condition of things as this. Surely he could not have reflected upon the result of this plan he proposes. I do not doubt we are all in favor of applying some remedy, but I submit to the candor and common sense, whether we are prepared to adopt such a course as this, even if we have the power. It is an absurd proposition.

MR. ROLFE. Mr. Chairman: Is an amendment in order?

THE CHAIRMAN. You may amend the substitute, or the original section.

MR. ROLFE. I offer an amendment to strike out the whole section. Strike out section four, with the proposed amendments.

THE CHAIRMAN. The question is on the motion to strike out section four, and the proposed amendments.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I suppose we might just as well test the sense of this Convention now on this proposition which some of us think is clearly contrary to the Constitution—in direct conflict with the Constitution of the United States. I am not opposed to the exclusion of the Chinese, and I do not suppose there is a gentleman on the floor who is. But while I am not opposed to that, I am opposed to running our heads right against the Constitution of the United States. I do not propose to take a course that will bring us into contempt, and expose us to the ridicule of the country.

Now, I do not see as the proposed amendment gets around the objections which are made to discriminating laws. The treaty places a Chinaman on the same plane with other citizens of the most favored nations, and gives to them the same privileges; and this same treaty expressly provides that no Chinaman shall have the right to become a citizen of the United States. That is left to Congress. But with that exception it places the Chinese upon the same footing with other nations—the same as Englishmen or Frenchmen. Well, under the laws of the United States it is not the right of a Chinaman to become a citizen; and then we have that provision of the treaty as an exception to the rule as to citizenship. Now we propose to get around it by not allowing aliens who cannot become citizens to do business without procuring a license, which is exactly the same thing as a prohibition. That, I say, is putting the Chinaman upon a different footing, and it will be so held by the Courts. Well, the Chinamen not being permitted to become citizens, if we say none but those who have declared their intentions may labor or do business in the State, we are putting him on a plane different from the citizens of the most favored nations, and therefore we are coming in conflict with the treaty and the Constitution of the United States, under which the treaty was made. I say such enactments as this are foolish. If we want to get at it we must do it in some other way. Instead of putting these provisions into the Constitution, which will make us the laughing stock of the world, I say we can get at it through the Legislature. You say the Legislature will not do anything. I say such fears are unfounded. Why, the last Legislature passed an Act submitting the question to the qualified voters of this State, to vote whether they are in favor or against Chinese immigration. Any gentleman may turn to the statutes and find it. They are called upon to vote for or against Chinese immigration. And upon the result of that the Governor and Secretary of State are to memorialize the President of the United States as to what that decision may be.

Now, we can only memorialize Congress through the State at large. Some gentlemen suggest that we pass around a petition and get every man to sign it. That would be very well, but the Legislature has adopted a better plan. We can have a vote of the people of the State of California, which will, I trust, be overwhelmingly unanimous against Chinese immigration. That will be a memorial to send to Congress which they will be bound to respect. They cannot help but respect it. Under the treaty this last amendment offered by the gentleman from San Francisco is in no better shape for the purpose of getting around the Constitution than this section four, and I made up my mind to move to strike out the whole thing, believing as I do that it is an open violation of the Constitution to pass this section, and it will fall dead on our hands. You will scarcely get a Justice of the Peace who will be willing to enforce it.

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I seconded the motion to strike out, because I wish to get a vote of this Convention upon this proposition. I am entirely opposed to it for the reason so ably stated by the gentleman from San Bernardino, Judge Rolfe. I am opposed to it, believing as I do that it is entirely unconstitutional, and if adopted could not be enforced. I believe the end aimed at can be arrived at by the section already adopted, by means of the Legislature. This section, in my opinion, is clearly unconstitutional. It is already embraced, so far as the State has any power, in the clause already adopted, "and aliens otherwise dangerous or detrimental to the well-being of the State," etc. That part is included within the scope of legislative power. We can impose conditions upon which certain classes can reside in the State, and to provide means for their removal from the State in case of a failure to comply with such conditions. Now, if the Legislature desires, it can do so under the provisions of the first section, and fix the conditions upon which they may reside in the State. If they desire to make up a case to be passed upon by the Courts, the Legislature can do it just as well as to put something in this Constitution which a majority of us believe to be unconstitutional. I hope this motion to strike out will prevail.

MR. REYNOLDS. Mr. Chairman: I desire to ask what question is pending?

THE CHAIRMAN. The question is on the motion of the gentleman from San Bernardino to strike out section four, and the proposed amendment.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I hope the motion to strike out will prevail, and I also hope a similar motion will prevail as to section five, for the reasons which I gave this morning concerning the adoption of the substitute of the gentleman from San Francisco, that the section and substitute were directly in conflict with the doctrine as laid down by the Courts, as to the power of Congress over such subjects. And, now, by the adoption of sections four and five of this report, we are attempting to go over the same ground. I should like to see these two sections stricken out for the reasons already given, and, because, when I look at the work already adopted, I find we have practically covered the ground in section one. We have provided for the deportation of alien criminals; that is one thing. Section seven of the report will strike out another thing, and with section six, if we adopt it, we shall have covered all the ground that it is possible for us to cover without flying directly in the face of the treaty stipulations.

MR. WHITE. I should like to ask the gentleman what there is in Judge Hager's amendment that is opposed to the Constitution, or in violation of the treaty?

MR. REYNOLDS. I say I desire to strike out sections four and five and leave it stand as we have adopted it, with, perhaps, a portion of the last sections, in regard to denying aliens ineligible to become citizens of the United States the right to fish in the waters under the jurisdiction of the State, nor to purchase land or hold any real property in this State, etc., that covers one of the most vital points in this whole report. If we can prohibit them from purchasing or holding land we can make it almost impossible for them to live here. There is no question of the power of the State as to conferring the right to hold land—no question about it at all. The State can decide who shall hold real estate, and who shall not, even as to our own citizens; how much more then has the State the right to exercise this control over foreigners.

MR. BARNES. Does the gentleman know of any instance where a Chinaman has ever invested in real estate?

MR. REYNOLDS. I know they have, largely; and it makes no difference whether they buy or lease lands. One is as broad as the other. The use of the land is sufficient for their purposes, and if we can deprive them of the privilege of leasing real estate they cannot stay and do business here.

MR. BARNES. Do you say you can put a provision in the Constitution that will prevent them living in houses?

MR. REYNOLDS. That is what some of the gentlemen have asserted. I have not argued any such proposition. I propose to prevent him from leasing real property.

MR. BARNES. Why?

MR. REYNOLDS. Because we wish to discourage immigration and encourage deportation.

MR. BARNES. Why do you wish to prevent them from leasing real property?

MR. REYNOLDS. For the purpose of preventing them from going into such branches of business as require the use of real property. I do not desire to be interrogated and catechised during the brief time that is allotted to me on this question.

MR. BARNES. I spent nearly the whole time answering questions when I was on the floor, and I thought that I might be permitted to ask one or two questions in order to have a better understanding of the gentleman's arguments. I wanted to know the gentleman's reasons. I understand the objurgation in respect to myself, but I wanted the reasons of the gentleman.

MR. REYNOLDS. I am sorry the gentleman so considers my remarks, for they were not so intended. I am opposed to these provisions which have already been passed upon. If we prohibit Mongolians from purchasing real estate, he cannot enter into competition with the granger and fruit grower. He cannot enter into competition with the wheat grower as he can now. I say, sir, that the Chinaman can enter into competition with the white man in the raising of wheat, because Chinese labor is cheaper than white labor. He can go into your valleys and beat you raising wheat, because he employs Chinese labor at five dollars a month for a long term of years, and you are compelled to pay white men thirty dollars a month. They can raise grain and other crops at about half the cost now, because they can employ this cheap labor for a term of years at a very low rate of wages, which the white man cannot do. So with every other crop. Hence, if you can cut him off from leasing real property, he cannot then go in and compete with you in the raising of fruit and grain. I am sorry to see so much objurgation, so much argument against the Chinaman because he is a Chinaman. That kind of argument proceeds upon a false assumption. He is a superior man in many respects. He is superior, I say, in many respects to the white race. He is superior as a laborer, as an economist, to which fact dozens of members on this floor can attest to their sorrow from their own experience. There is no use in declaiming against him, he is our superior when it comes to economy.

MR. LINDOW. Let me ask you a question. Will you allow me to ask you a question?

MR. REYNOLDS. I hope we will avoid the absurdity of attempting to legislate against that which it has already been decreed we have no power to do, and confine ourselves to what we may do; and there is no doubt as to the right of the State to say who shall and who shall not own and lease real property. I hope we shall strike out sections four and five, and then adopt these clauses in regard to the right to fish and hold real property. There is more in these two provisions than in all the rest of the stuff in this article. I am willing to adopt anything that can be made of any avail; but there is the whole business. It is not deportation. It is in no way in conflict with the treaty, or the Constitution, or laws of the United States. It is not contrary to any decision of the Supreme Court that I am aware of, nor against any treaty stipulations. It runs against no settled doctrine of law.

MR. MURPHY. I move the previous question. [No second.]

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: I have no serious objections, as far as I know, to the amendment offered by Judge Hager, in itself, but I do object to it as a substitute to section four. As a separate section I would

probably be in favor of it. If the gentleman will hold on until we get to the sixth section, where his proposition will be germane to the subject-matter, I think I can favor his amendment. Now, sir, there is a disposition here to treat the arguments and authorities introduced here in favor of exclusion in an unfair manner. Our arguments and our authorities have not been answered. They have been sneered at, but they have not been answered. I say we have shown on this floor that the Supreme Court has held, time and again, that the States have the power undoubtedly to protect themselves from the importation of injurious and dangerous classes of persons, persons who are dangerous and detrimental to the best interests and welfare of the State. And in my argument, and in that of my worthy colleague from Los Angeles, General Howard, we not only introduced the authorities in the Passenger cases, of a majority of the Judges in that case, and also of the minority, in support of these measures, and their reasons, in my judgment, were conclusive. They have asserted that Judge McLean sustained their proposition. Gentlemen have forgotten, or ignored entirely, the fact that in the debate on this question, as regards the powers of the State, I read from the decision of Judge McLean, which has never been overruled or qualified. In Graves vs. Slaughter, (p. 568, 15th Peters), the decision is to this effect:

"Each State has a right to protect itself against the avarice and intrusion of the slave dealer; to guard its citizens against the inconveniences and dangers of a slave population.

"The right to exercise this power by a State is higher and deeper than the Constitution. The evil involves the prosperity and may endanger the existence of a State. Its power to guard against and to remedy the evil rests upon the law of self-preservation, a law vital to every community, and especially to a sovereign State."

That authority has never been answered. It is the law of the land, and upon that we base section four of this article, that we have a right to preserve ourselves from this curse. We have a right to protect ourselves from an inundation which threatens to destroy all our industries, and to destroy the morals of the State. It has never been answered. I say if we take this case to the Supreme Court, taking into consideration all the circumstances of the case, taking into consideration the character of the people that are being thrown upon us, the Supreme Court of the United States will follow their decisions in the cases I have mentioned and decide this measure to be constitutional. If the gentleman from San Francisco, Judge Hager, will withdraw his substitute and offer it when we reach section six of this article, I will support it. I will not support it as a substitute to this section.

MR. HAGER. Mr. Chairman: I have no objection to withdrawing it, to be offered at some other time. I did not know that section four had so many friends here. I thought perhaps it was a proposition which would not be insisted upon. I think it is in contravention of the treaty. But I will withdraw my substitute, and offer it to some section that has not so many friends.

THE CHAIRMAN. The gentleman withdraws his substitute. The question is on the motion to strike out section four.

MR. LINDOW. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"All further immigration to this State of Chinese, ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation."

THE CHAIRMAN. The motion is to strike out section four.

MR. RINGGOLD. Mr. Chairman: I desire to refer to the remarks of the gentleman from San Francisco, Mr. Reynolds. I wish to say that if he had expressed the sentiments which he has here, in regard to the white race, before the nineteenth of June, he would have been elected to stay at home. I hope, sir, that section four will remain just as it is. I don't desire to occupy the time of this Convention in discussing it. If it is defeated it will be heard from. I now move the previous question.

THE CHAIRMAN. The committee is ready to vote. The question is on the motion to strike out section four.

Division being called for, the motion to strike out the section prevailed by a vote of 54 ayes to 51 noes.

MR. WHITE. I offer a section in place of section four.

THE CHAIRMAN. It is not in order. The Secretary will read section five.

THE SECRETARY read:

SEC. 5. No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution.

MR. ROLFE. Mr. Chairman: I make the same motion, strike out the section. I will only state that it is the same in substance as the other. It comes under the same objections.

THE CHAIRMAN. The question is on the motion to strike out section five. Is the committee ready for the question?

SPEECH OF MR. CROSS.

MR. CROSS. Mr. Chairman: I had not intended to speak on this question, for two or three reasons. One was that I thought we were unanimous upon the question. Another reason was that it seemed to me we were consuming too much time. But when a motion has been made and carried to strike out a previous section, and another motion is pending to strike out section five, I deem it my privilege and my duty to state briefly to this Convention one or two reasons why I support these measures which seem so radical. Now, sir, to me it seems that the real strength of the propositions in opposition to Chinese immigration has not been stated on the floor of this Convention. The gentleman from Marin, Judge Shafter, stated the proposition of the other side in about these words: he said the Chinese should be prevented from coming here because they fill the labor market and are a moral pest. Sir, there is such a thing as a peaceable struggle for the possession of the soil. There is such a thing as a peaceable struggle for the possession of the country. And the laws which govern these things are just as well established as any of the laws of nature; and they act, sir, with unerring certainty. Now, sir, there is one rule which will act here, which we are bound to look at and consider in our action here. Sir, when two races struggle peaceably for the possession of any soil, or any country, or any land, that race, sir, will prevail in that struggle which is most capable of supporting itself upon any given portion of the soil. That is the history of the world. That is the experience of all civilized races.

Now, sir, experience has shown that four or five Chinamen can wrench from the soil a living where only one white man can make a living. Then, sir, this brings us right back to the question that it is not a question as to whether these people are moral pests or not. It is not a question as to whether they pack the labor market, and take the labor from white men; it is a question as to whether in a few years from now there shall be a Mongolian race or a Caucasian race to dominate this land. It is a question, sir, as to whether this country shall be covered by the homes of freemen of our own race, or whether it shall be filled with Chinese slaves. It is a question, sir, as to whether in every hamlet there shall be a Christian church or a joss house. It is a question as to whether the future schools of this land shall be schools in which shall be taught the principles of science and progress, or whether they shall be schools in which shall be taught merely the writings of Confucius. It is more, sir. It is a question as to whether our descendants shall occupy this country, or whether it shall be occupied solely by the Chinese race. It is a question, sir, as to whether in the near future the descendants of the Caucasian race can find a place in this beautiful and fertile land which God has given to us, in which to plant their feet.

Now, sir, if clover and hay be planted upon the same soil, the clover will ruin the hay, because clover lives upon less than the hay; and so it is in this struggle between the races. The Mongolian race will live and run the Caucasian race out, because it requires less from the soil to live upon. It was not the superior intelligence of the white man that took this country from the Indians and made it a prosperous agricultural country; it was the great law of nature, acting in that case, that enabled many white men to draw support from the same piece of soil from which one Indian could draw support, and the Indians were forced to retreat again and again, and to-day are almost extinct. And, sir, we must take this question as it is, and we must deal with it as it is. It is a question as to whose land this shall be. Now, viewing this question in this strong light, I am disposed to support some measures which will be of some avail. I am free to say that I have a stronger love for my own race than I have for the Mongolian race. I am frank to say that I will support such measures as I believe will make this land in future the home of white men, rather than the home of a Mongolian race. I know there are religionists who believe that these rowdy Chinese who come here will be Christianized. But, sir, I assume that the law of nature will prevail over these creeds and beliefs. I believe the creed of a nation will always prevail.

Now, sir, perhaps some of these measures seem a little rash. But it is better that we should make a strong effort, even if it be a mistaken one, than that we should make none at all. Let it be understood in Washington that we attempted to put some anti-Chinese measures into the Constitution of this State, and that they were defeated by a strong vote; let it be understood that they were defeated only by a vote of fifty-five to fifty-one, as was the case with the vote taken a few moments ago, on the motion to strike out section four, and the members of the United States Senate will say, as has already been said, that the majority of the people of California are anxious to have these Chinese to remain among them. I say that all this clamor, and all this opposition against the Chinese, amounts to nothing in Washington, and you know it. You know what President Hayes' proclamation was. He did not dare to say anything touching this subject, and yet he is Chief Executive of this great nation. And, sir, allow me to say—and perhaps it is a little out of order here—that his actions in thus ignoring our wrongs will certainly damn the Republican party in this State. [Applause.]

Now, sir, this question of citizens ineligible to become citizens of the United States has cut some figure here, and gentlemen well versed in the law have differed upon it. Allow me to say that the United States Congress has recognized a marked difference between those who are eligible to become citizens and those who are not. In all the laws of the United States with regard to public lands, Congress has so fixed the matter that no Chinaman can acquire from the United States any kind of right to land. He cannot locate at all. He cannot file a homestead. He cannot file a preëmption claim; cannot get any right or title to mining land; and the authorities are there in the Revised Statutes of the United States. And that being the case, Congress having made this distinction in these matters, I believe we have the right to make a distinction in the laws of this State, and to say that this country shall not pass into the possession of Chinamen; that we have a right to prohibit them from leasing the land, or buying land, and that no man of Chinese descent shall have the right to the possession of any land. I am in favor of this fifth proposition. I know it is radical. If it shall conflict, why, the United States will simply prevail, and we will acknowledge ourselves in error. We will have done what we could. It is better than to make no effort at all. I believe these provisions are right. I hope when we have adopted these provisions, those offered by Colonel Barnes will be brought up and given a full consideration. Now, sir, let us make a provision here so that if the Burlingame treaty should be repealed during this Winter, there will be power given by the Constitution to do something in this matter.

SPEECH OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: In regard to the motion to strike out section five I shall detain this Convention but a very few moments. I do not propose to argue the question of evils arising from Chinese immigration. I say this section ought to be adopted. This section is now in

the Constitution of Illinois and Indiana, and has been for years. The section there was made to apply to negroes and mulattoes, and a fine imposed for coming into the State, and conditions upon which they may be transported from the State. It existed to the time of the adoption of the Fourteenth Amendment to the Constitution of the United States, and the Supreme Court sustained that provision. That was in relation to negroes born in the United States; and, sir, there is a class of men here now who are far more objectionable to the people of the United States than ever the negroes were in any State. I believe this right has been established. I believe we have not the right to prohibit their settlement, their right to travel, or to come here for commercial purposes. But the right to prevent them from owning any land, or leasing any land, or engaging in any business here, I believe we have. I have offered a proposition here, which the committee have seen fit to change in form, but the substance of it is in section five, and the last clause of section six. I believe this to be a good provision, and I believe if we adopt it the Supreme Court will sustain us, and uphold it as constitutional.

SPEECH OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I wish first to correct a statement made by my colleague from San Francisco, Mr. Freud. He gave the Chinese residents of San Francisco credit for paying taxes upon one million five hundred thousand dollars, while they really pay on the small sum of four hundred and nineteen thousand seven hundred and thirty dollars, as shown by the Assessor's reports published in the Post of December second, eighteen hundred and seventy-eight.

I had no intention of punishing this committee by giving my opinions on this subject. I hoped that the legal members would explain to us all the rights we had, and that we would be able to arrive at conclusions intelligent and satisfactory; but, after a four days' debate, I am as much at a loss as ever. I have heard some of our best lawyers advocating measures as strong as any of the demands of the opponents of Chinese immigration; and others, again, on the other side, as fully learned, assert that we have no rights whatever. Now, I am one of those who think that something should be done, and that something means to abate the evil, for the evil is admitted by all.

Now, Mr. Chairman, I take a different view of this matter from that expressed by many of our delegates. I look upon the present influx of Chinese as a something to be dreaded, and an evil to be prevented by all the means within the power of the State, and even expanding the powers to make them reach beyond what they seem to reach by the present interpretation. I am anxious to go to the very extreme measures of legal lengths, and even to the seemingly un-American ideas, to remove them from our midst. Some people think we should merely petition the treaty-making powers, and there let the matter rest. These gentlemen seem to forget that California has sent petition after petition to Washington. And let the Chinamen answer what good they have done. We have sent our members to Congress; and our Senators have laid our claims before the authorities at Washington, and they have been treated with scorn. California has sent up a cry from the pulpit and the press, and the cry has been supported by all classes of our citizens, and we were answered that it was an Irish alarm. And as for these gentlemen keeping their word with the people, why, the President—Mr. Hayes—promised some relief, and then passed it with silent contempt in his message. And in the face of all this, we are told to memorialize and be patient. Yes, memorialize and be patient, say these well-fed, well-clad, well-housed fortunate few, who are not suffering yet; but the time will come—and if nothing is done to prevent it, those fortunate and very patient gentlemen will cry as loud as the men who are now without house or home, and who are living like Digger Indians, degenerate and debauched.

I look upon this question not merely as a conflict between labor and capital; I view it in a broader light. I see in it a struggle between two races—the ancient civilization, better named Asiatic barbarism, like a tidal wave lashing upon our shores, it meets the modern Christian civilization following after the setting sun. The modern, in its course, carries all that is useful and good; the ancient, everything that is degrading. The question now is for us to choose between the two kinds of civilization, modern Christian, or ancient Barbarism. Why, this question reaches down to the very foundation of republicanism itself, and threatens it with destruction. Our grand institutions are in danger of being overthrown: our churches will soon become joss houses, and our schools Chinese dwellings, as paganism has no use for schools or places of learning. We have our choice now; yield to barbarism or support the modern civilization. I mean to support the modern, even if it should require a resort to the extreme and doubtful contest of war. The Administration which refuses to answer the call of the people for protection from an enemy, is an Administration not worthy of our support or confidence, and it is the duty of the people to retire it by their votes, and set up one that will come up to the demands of the times, and by fair and determined measures remove a threatening evil.

More than thirty years ago the people in Illinois, by force and violence, drove the Mormons from their State, and everybody approved the act. The same Mormons moved West and settled in the desert, forming a new and strange government, and defying the laws of the land. And why has the government been so silent upon the subject? There a degrading custom of polygamy is carried on in open defiance of the established law, and our authorities at Washington are blind to the whole subject; and we are threatened by dire calamity if we try to rid our State of a degraded race which is destroying our very existence.

Do these gentlemen who, in their mild and humiliating way, mean to tell us that the government will only bolster up and defend the worst form of degradation that can be practiced? Polygamy in Utah and paganism in California! Do these gentlemen mean to say that the Administration can look with an approving eye upon these degrading things and feel that it will only punish those who try to suppress them, and by such acts approve them? We may well ask if the gold of James Q. Cannon, and the mysterious heavy boxes of Chin Lan Pin, of the Chinese Embassy, has anything to do with these things; and while all this is going on we are told to have patience and send another memorial. You might as well wait for leave to put out the fire that was consuming your house as send another petition.

I hope this measure will pass, even if it seems un-American. We have the vague hope that the President will yet move in the matter, as the political party scales are so nicely balanced that the little western State of California will be of some importance in the next Presidential election, and on the ground of selfishness, which seems to move men more than reason, the government may abrogate the treaty, and then the measures would all come good; and even if they deny us this, the Courts can only decide those parts unconstitutional, and the remainder would stand.

The gentleman from Sonoma, Mr. Stuart, made a speech which was only valuable as showing the gentleman's courage. He would destroy all our naturalization laws, and, from his standpoint, thinks the Chinaman a very desirable immigrant; he seems to think that he is the only man in California who raised a family, and without Chinamen we would have nothing; he says they have created all the wealth, and built all our cities. Now, they may have cultivated his farm, and helped raise his family, for all I know or care, but I have seen most of the cities of California, and I have yet to see the first house built by a Chinaman.

MR. STUART. May I ask the gentleman a question?

MR. WELLIN. Yes, sir.

MR. STUART. I called upon the farmers around me to see if they were not in favor of the Chinese, and if not, to rise and say so; and, as they made no reply, I considered they approved my position.

MR. WELLIN. Sir, one gentleman, Mr. White, of Santa Cruz, rose in his place, made a speech, and did not approve—he condemned your course, and he is a farmer of twenty-five years' experience in California, and never employed a Chinaman. And I inquired of those who have seats around me—Mr. Boucher, Mr. McConnell, Mr. Schomp, and others—and not one of these gentlemen, all farmers, support you. You, sir, stand singly and alone. But he would, if in a National Constitutional Convention, vote to abolish all naturalization laws. We may all feel happy that the Constitution of the nation was made by men of more liberality. Have people the right to remove an objectionable thing from among them? We have shown that Mormonism was driven out of Illinois by violence, and we may remind you of a memorable tea party in the Harbor of Boston; and not many years ago, in Staten Island, the New York quarantine buildings were considered dangerous to the health of the people, and after the usual waiting and petitions, one night a great fire swept them all away, and the danger was removed forever. Suppose a great fire should occur in San Francisco, and a nuisance abated. Fire is a good purifier; but we hope that it will not be required by a free people. I do not advocate insubordination, but if all relief is denied, and the evil of which we complain is protected; if the laws we make are only to be used to support an evil, then the people must remember the Boston tea party and the people of Staten Island.

Our learned lawyers have been as much at sea in this matter as the men from the field and workshops. Now, I am losing some of my good opinion of our legal gentlemen on constitutional matters, when a simple case was placed in their hands to bring an appeal by this Convention from the State Controller, on the payment of a bill, and the matter was done in such an unprofessional manner that their case was thrown out. I believe the report of the committee should be adopted with very little amendment, and await the action of the Courts, and then do whatever the times may demand, and I am fully convinced that if the presence of the Chinese was as injurious to the rich as it is to the poor, a remedy would soon be found.

A year ago last June, some Chinamen located in the fashionable part of New York and built their wooden shanty, engaged in the laundry business, and were doing well; but one morning a gang of men came and tore down the house, threw its contents on the ground, stacked the material on their wagons and drove off. Now, if this was done in San Francisco, what name would they get, and what would be done? They would be called hoodlums, and be punished by the law. But this was done in New York by the police, and the materials of the building carried off to the corporation yard. And the people approved of the act.

Wait till the Chinamen get to going East in considerable numbers, and we shall see a revulsion of sentiment that will cause these proposed measures to be regarded in a very different light. There is not a city in the Union that would have stood what San Francisco has. The people have been patient and long suffering, and they are looking to this Convention for some legal redress. And now it is proposed to strike out first one section and then another, until there will be nothing left of the report. I say, let us adopt these provisions, and let their constitutionality be tested before the Courts. If the Courts shall decide them to be unconstitutional, all we have to do is to submit. But let us see how far we are permitted to go. It is our duty to try every means within our power to do away with this curse, and if we do not make the attempt we will never accomplish anything.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I will do as much as any member on this floor to remedy this matter. Section four has already been stricken out, because it was considered to be in contravention of the treaty between China and the United States. Section five, notwithstanding the eloquent argument of the gentleman from El Dorado, I consider to be in contravention of section five of the treaty with China, which recognizes the right of men to change their residence. I am, therefore, in favor of striking it out.

SPEECH OF MR. WHITE.

MR. WHITE. Mr. Chairman: I offer an amendment to section

five. I offer it for the reason that the Convention seems to be rather tender-footed on the proposition to prohibit Chinamen from residing here, and I am willing to put something in that will qualify it. I am astonished, after the universal expression of opinion on this floor, that the Convention should be so tender-footed. I am astonished that the Convention should have rejected section four, contrary to the expressed desire of its members. I cannot understand the difference between section four and section five, though my friend Larkin voted in favor of striking out section four. I think they are exactly the same, and I am in hopes my amendment will suit the gentlemen, because it provides that no force shall be used. Now, sir, I mean to support the amendment of Judge Hager with all my energy when the time comes for it to be introduced again. I believe it does the whole business, while I believe it does not conflict with the laws, or the treaties, or the Constitution of the United States. I think he has already shown that it does not conflict. It will, of course, be some inconvenience to white immigrants arriving here, but we must do something if we wish to accomplish anything. They will be put to some inconvenience, but it will only be temporary. That, in my opinion, will end the matter. I believe it will accomplish more than the entire report of the committee towards driving the Chinese out of the country. I offer this as an amendment:

"SEC. 5. The Governor shall, by proclamation, forbid the entrance into this State, after the first day of January, eighteen hundred and eighty, of any Chinaman or Mongolian. Any such person arriving in this State after the first day of January, eighteen hundred and eighty, may be expelled from the State by such means as may be prescribed by the Legislature; *provided*, that nothing in this section, nor any law passed in pursuance thereof, shall authorize the Governor, or any State officer, in the expulsion of any such Chinese or Mongolian, to forcibly resist the civil or military power of the United States. If the Governor shall be prevented from enforcing this section, or the laws made in pursuance thereof, by the Government of the United States, then it shall be the duty of the Governor to take such action as will enable him to contest the right of the United States to prevent the execution and enforcement of this section, and the laws made in pursuance thereof, before the Supreme Court of the United States."

SPEECH OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: Now that the Convention has stricken out section four, I am in hopes they will not strike out section five. I don't see why the motion was made to strike out section four, because, in my view, section four was the best section reported by the committee. Why? Because it strikes directly at the evil. It was defeated because members thought that it was going beyond the powers of the State. I claim that it is an open question as to the power of the State. Notwithstanding the authorities that have been cited here, and the arguments that have been made, I claim that this is an open question, and that if it ever is determined, it will be determined in favor of sections four and five. Mr. Chairman, I will read you a paragraph from the decision of Justice McLean, in the Passenger cases, which has not yet been read, page one hundred and thirty-two, seventeenth of Curtis:

"No one has yet drawn the line clearly, because, perhaps, no one can draw it, between the commercial power of the Union and the municipal power of a State. Numerous cases have arisen, involving these powers, which have been decided, but a rule has necessarily been observed as applicable to the circumstances of each case. And so must every case be adjudged."

Now, sir, from the discussion on this floor, I believe it will be conceded as a fact that we must stop this Chinese immigration, or the civilization of this country will be destroyed. We must stop this Chinese immigration, or our State will be destroyed. That, sir, is the proposition, and I believe that nine tenths of those on this floor are of that opinion. It is admitted to be a fact, and I believe it to be a fact as much as I believe that I am standing on this floor. I believe it to be a fact that this immigration must be arrested, or our civilization will be destroyed—that being an admitted fact, let us see what this same decision says:

"In giving the commercial power to Congress the States did not part with that power of self-preservation which must be inherent in every organized community. They may guard against the introduction of anything which may corrupt the morals or endanger the health or lives of their citizens."

I say this, sir, that if the question involved in these two sections ever was decided, it was decided in favor of the State having the power to regulate this matter. This is a question that must be met, and I am in favor of meeting it squarely, and for that reason I was in favor of section four. It becomes us, in view of the surroundings, to meet these questions as Americans ought to meet every question, fairly and squarely, and the question was squarely met in section four, which has been stricken out. What is our position? We are the advance guard of civilization. We are here at the front, at the western margin of the empire. We are here, sir, meeting and facing this evil, that if it cannot be met and overcome here will not only destroy American civilization on the Pacific Coast, but it will destroy American civilization throughout the land.

Now, sir, certain gentlemen talk as though the friends of these measures were advocating revolution. Nothing of the kind. I do not understand that when we are standing here contending for our right to deal with this question, independent of the Federal Government, that we are advocating revolutionary measures. This, at least, is an open question, and it is a question that ought to be tried by the highest tribunal in the land. We arguing, not in the spirit of a revolution, but in a spirit that becomes American citizens, and if the decision is against us we will accept it in the same spirit. I regret to hear any threats of riot and revolution. I concur with the gentleman from San Francisco, Mr. Beerstecher, that this government is drifting into absolutism. I concur with him in that. But riot and revolution and violence only tends to make absolutism. It will have no other effect. And I am satisfied that if the remedy proposed in sections four and five should fail, that the Federal Government will help us out. I hope section five will not be stricken out. I am sorry that section four has been stricken out, for I would like to see a test case made up on these two sections. The same question is involved in section five that was contained in section four, and I hope that the Convention will not strike it out.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: My opinion is that members of this Convention who found themselves unable to support section four, will, upon examination of section five, discover sufficient difference in the two sections perhaps to enable them to support section five. The one might have been of questionable character and in conflict with the federal power in prohibiting immigration. The other relates to the power of the State acting within its own jurisdiction. And gentlemen who could not support section four on account of their construction of the Federal Constitution, may safely support section five to bring this question to a judicial determination. Now, what is it we are seeking to accomplish here? The first thing is to obtain the judgment of this Convention, as the judgment of the people of the State of California, and to have that judgment recorded in the Constitution, because there can be no better test of the sentiments and wishes of the people of a State. All the authorities are that a Constitutional Convention represents the sovereign people of a State in a sovereign capacity better than any other body. We obtain a list of the members representing them, and then send the work back to them for their ratification. This Convention must put these declarations in the Constitution in order to comply with the pledges they made to the State. We expressly pledged ourselves to bring the whole power of the State to bear for the eradication of this evil. How is it, sir, that these gentlemen speak here day after day, declaring themselves opposed to Chinese immigration, and then, when we ask them to put themselves on record in favor of using some of the admitted powers of the State to suppress this evil, they suddenly become religious and refuse us their aid? We are soon to be called upon to vote upon a proposition here which is based upon the powers of the State, which powers have never been denied, and cannot be denied, by any gentleman upon this floor. The State is clothed with this sovereignity in regard to the regulation of its internal affairs. As a proposition of law this cannot be controverted. I endeavored to obtain from gentlemen here a declaration that they were in favor of going to the very verge of constitutional law. I wanted to obtain from them an express declaration that they were in earnest in using these powers which are not questioned to prohibit this immigration, the powers which the State does possess over its internal affairs, in the regulation of its business, its governmental affairs, its public works, and everything of that kind, which powers have never been denied.

You have adopted a provision forbidding corporations from employing Chinamen. But do you think that is a sufficient remedy? Do you expect that the people will be satisfied with that alone? Suppose you do forbid them; what is the result? You drive them out of one employment into another. When they overrun one line of industry they will take up another. When they cannot cook and wash they will make shoes. We all know that. They came to California to dig gold. That was what they came for in the beginning. But their imitative powers are such that they have worked themselves into nearly all our factories, and they can resort to various pursuits when the corporations cease to employ them. But that provision amounts to something. It is good as far as it goes, but it will not be satisfactory to the people of this State, I can most solemnly assure you. We must do more than that. If you drive him out of one branch he will enter others, and still come in competition with white labor. It is as broad as it is long. And this trifling will not satisfy the people. They ask for bread, and they will not be satisfied with a stone. I am in favor of adopting this section. Of course it only declares that they shall not be allowed to settle here. But it is the basis upon which legislation is to be built. I therefore hope the Convention will adopt the section.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: When last on the floor I had a few words to say in reference to sections four and five. I have no particular objections to sections five and seven, if they are to be adopted as a declaration of principles, though one is a repetition of the other. I do not know that there is any particular objection to it.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I wish to say that the position taken by the gentleman from El Dorado, Mr. Larkin, is somewhat confused as regards the Constitution of Illinois. The Constitution of the State of Illinois, of eighteen hundred and forty-eight, says:

"The General Assemply shall, at its first session under the amended Constitution, pass such laws as will effectually prohibit free persons of color from immigrating to and settling in this State, and to effectually prevent the owners of slaves from bringing them into this State for the purpose of setting them free."

I will ask the Secretary to read a portion of article thirteen, of the Constitution of Indiana, of eighteen hundred and fifty-one.

THE SECRETARY read:

"SECTION 1. No negro or mulatto shall come into or settle in the State after the adoption of this Consitution.

"SEC. 2. All contracts made with any negro or mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such negro or mulatto, or

otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars."

There seems to be a large number of gentlemen in this Convention who are in the position of the man down East in regard to the Maine liquor law. He said he was in favor of the law but against its execution. [Laughter.] They all deprecate this evil, and admit that it is monstrous—a terrible thing. But they say they can't do anything; that we are tied up; that we have no power. Now, sir, that was before the Supreme Court of the United States, and they decided that the State had the power, as a matter of self-defense, to exclude a population deemed injurious, notwithstanding it was an interruption of commerce. That is what Judge McLean said; that is what Judge Wayne said. As a matter of self-defense the State has a right to exclude an obnoxious population. Now, Mr. Chairman, I must say that it is a little extraordinary that, with this great evil hanging over us, we are not willing to go to the extent that the States of Illinois and Indiana were willing to go to in relation to mulattoes and negroes. It shows one thing, I think, conclusively, that if the United States had not been reinforced by these Western men, she never would have won the fight, and that the men of the West have at least some courage, moral and physical, and they are willing to take some of these consequences, be they what they may. Now, are we not willing to act when we are supported, as I say we are, as I say the Supreme Court of the United States has decided we are, are we not bound to act? For, in almost every case, that has been cited here by the other side, relates to a tax which was levied before the immigrants had landed.

Mr. Chairman, there is and always has been in this State a party in favor of Chinese immigration, and there is now. They have not all got the frankness of my friend from Sonoma, Mr. Stuart, but while they do not care to acknowledge it, they are none the less in favor of it. They are in favor of it, but have not the courage to say so. These large corporations are in favor of this cheap labor. The man who cultivates thousands of acres is in favor of this cheap labor; the more he can get of it the larger his profits will be, and the more he is in favor of it. That is the position we are in to-day, sir.

MR. JOYCE. Don't you think the majority of this Convention are in favor of it?

MR. HOWARD. I do not know what they are in favor of. To my mind the principle of section five is the same as section four. I shall support it because I believe we have the constitutional right to do it; because the Supreme Court of the United States, which is the final arbiter on constitutional law, has said so. And even if the State Constitutions to which I have referred, were in some respects contrary, they are entitled to great weight with me. But it so happens that they are quite the contrary.

Now, sir, it has been said by my friend from Sacramento, Doctor Caples, that this question has been construed and settled by Judge Grant, and that since then, the States have no rights. Well, sir, I prefer the decisions of the Supreme Court of the United States to that of Judge Grant——

MR. CAPLES. If the gentleman will permit me, he is mistaken. I did not say that the States had no rights since. I did say that I believed that great decision had colored and influenced the opinions and decisions of Courts and changed popular opinion.

MR. HOWARD. I am glad to hear the gentleman admit that the States have still some rights left, notwithstanding the decision of Chief Justice Grant. As I was about to say, I acknowledge that Chief Justice Grant is weighty on nepotism, the third term, and imperialism; but on questions of constitutional law, the gentleman will excuse me for preferring the authority of the Supreme Court of the United States, and especially as expressed in their judgments since the rebellion. They have put an end to bayonet government, I trust never to be revived in this country. It is due to that Court to say, that amid all the bitterness and violence of party and sectional conflict, it has maintained the true principles of the government, and as a general thing the rights of the States.

Now, sir, I say that the fifth section is supported by the Constitution of the United States; supported by the decisions of the Supreme Court of the United States; and for that reason I shall vote against the motion to strike out. I shall also vote for Judge Hager's proposition, with some amendments that are necessary. But the fifth section is clear, and is supported by the decisions of the highest tribunals in the land.

MR. WHITE. I withdraw my amendment for the present.

THE CHAIRMAN. The gentleman from Santa Cruz withdraws his amendment temporarily.

SPEECH OF MR. CAPLES.

MR. CAPLES. I am sorry to be engaged in the thankless task of tearing down the beautiful air castles built by the distinguished gentleman from Los Angeles. I am really surprised to hear the distinguished gentleman from Los Angeles draw a parallel, or assume to draw a parallel, between the provisions of the Constitution of Illinois of eighteen hundred and forty-eight, and the Constitution of Indiana, in excluding the free negroes and mulattoes from that State. Why, the gentleman knows very well that there was no Burlingame treaty in existence at that time. We had no treaty with the King of Dahomey, or with the Southern States. It was years and years before, and there is no parallel at all in the cases. The section declares that the Chinese shall not reside in California. The treaty declares in express terms that they shall reside in California if they want to. Now if my distinguished friend from Los Angeles had, like the Pope, fulminated a bull against the Burlingame treaty, I would have joined him with all my heart.

MR. HOWARD. The gentleman will excuse me, but that is precisely what I have done. I say the treaty, so far as it conflicts with our power to exclude this class of people, is totally void.

MR. CAPLES. I took an oath, when I entered upon my duties here, to support the Constitution of the United States, and the Constitution of the State of California. The Constitution of the United States declares that the Constitution, and the laws enacted in pursuance thereof, and the treaties made in pursuance thereof, are the supreme law of the land. The treaty—and I am free to say that it is the sum of all villainies—nevertheless the treaty is the supreme law of the land, and I have sworn to support it. And I say it declares in plain specific language, that these people shall have the right to come and reside here, while this fifth section says they shall not reside here.

MR. AYERS. I desire to ask a question.

MR. CAPLES. Yes, sir.

MR. AYERS. If the treaty violates the Constitution of the United States, then it cannot be constitutional, and by adhering to the treaty we would be violating the Constitution of the United States, which is higher than the treaty.

MR. CAPLES. The gentleman raises a constitutional question that must be determined by the Federal authorities and the Courts. It has not been declared unconstitutional, and like a law is binding until it is repealed or declared unconstitutional. I am free to concur with the gentleman that the treaty is in conflict with the letter and spirit of the Constitution of the United States. But until it is so declared and set aside it is binding.

MR. AYERS. Allow me to ask how we can make a case in order to test the question as to whether it is constitutional or not, if we cannot make it in this way. What we want is to make a case to test that very question.

MR. CAPLES. A case can be made—there is no difficulty in that respect. But I think there could not be a worse way than to incorporate a provision that is clearly in direct conflict with the laws and treaties of the United States. The gentleman asks how we are going to make this test. Let the Legislature enact a law, and if it is set aside as being unconstitutional, there is no harm done. But if we put in the Constitution of the State a provision that is clearly in conflict with the Constitution of the United States, we cannot repeal it, and that is where the principal objection comes in. It will defeat the Constitution and swamp it out of sight. I desire that we shall make a Constitution that shall be adopted by the people. If we load it down with things of this kind, it will be rejected. I am, therefore, in favor of the motion to strike out section five.

THE CHAIRMAN. The question is on the motion to strike out section five.

SPEECH OF MR. WEST.

MR. WEST. Mr. Chairman: A few weeks ago the people of California were surprised that an individual of some note, and of some reputation for truth, having something of a position in the political world, should assert in Washington that the people of California were not opposed to Chinese immigration; that only Kearney and some of the ignorant Irish followers were opposed to the Chinese. Now, sir, this Convention is supposed to represent the public sentiment of California. It is supposed, by its acts, to reflect the will and sentiments of the people of the State. Now, if the vote taken by this Convention upon the motion to strike out section four of the report of the Committee on Chinese Immigration is a correct criterion of the opinions of the members of this Convention, then the people of California are not properly represented, and there will be a seeming verification of Mr. Bee's statement, that it is only the ignorant Irish who are in favor of stopping Chinese immigration.

Now, one word in regard to the decision of Chief Justice Grant. I was one of the jurymen who helped to decide the question upon that occasion, and I speak for the balance of the jury when I say that the question there decided was that a State of this Union could not secede, and that the laws of Congress, made in pursuance of the Constitution of the United States, should be obeyed, and the citizens of this government who believed in those principles defended them with their lives, and by their sacred honor. But, sir, I deny in toto the assumption that any part of the question was in issue. I say, as my colleague has said, that the only way to try the constitutionality of that treaty is to make up a case and take it before the proper tribunal. I say this is one of the highest rights of an American citizen, and I shall vote in favor of retaining section five. Therefore I hope that the motion made by the gentleman who represents the equinoctial line will be voted down by this Convention, and that we shall retain it simply as a proposition declaring that the further immigration of the Chinese into this State as citizens, becoming citizens, shall not be allowed. By striking it out you give the lie to the assertion that the people of this State are opposed to Chinese immigration. If we put that declaration in the Constitution, we simply declare, as the representatives of the people of this State, that the further immigration of Chinese into this State is subversive of the best interests of the people, and that therefore we enter our solemn protest against it. Upon that provision we will go to the Courts and appeal to them to protect us, and defend us in our rights. It will be valuable as an official protest, even if for no other purpose.

MR. CAPLES. Allow me a question.

MR. WEST. Certainly.

MR. CAPLES. Is the gentleman not aware that the Committee on Chinese have under consideration, and in course of preparation, a memorial to Congress on this subject, in which it is expected there will be universal condemnation of this evil?

MR. WEST. I am aware of that fact, and I know that so long as we content ourselves with drafting memorials so long will we be left without aid. You know the axiom—"the gods help those who help themselves." How will our memorial be received by Congress, and the people on the other side of the mountains, when the record of the vote by which this Convention has stricken out section five has gone along

with it? I hope that we shall show to Congress that we are trying to do something to help ourselves, for so long as they believe we are not in earnest they will do nothing in the matter. I hope this section will be adopted. You need have no fears about this being a load for the Constitution to carry, it will commend itself to the good judgment of the people of this State, and they will adopt our Constitution.

REMARKS OF MR. ROLFE.

MR. ROLFE. I hope this section will be stricken out, for if section four was unconstitutional, this section certainly is none the less so.

MR. BEERSTECHER. Mr. Chairman: I rise to a point of order.

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

MR. BEERSTECHER. I believe we have a rule which says that no gentleman shall speak more than once. The gentleman from San Bernardino has already, I believe, spoken to this section.

THE CHAIRMAN. The point of order is not well taken. If any other gentleman desires the floor he can have it, if not the gentleman will proceed.

MR. ROLFE. I say we have already had test cases. The Legislature made a test case and got defeated, and the Burlingame treaty was sustained. Now, I say, the gentlemen are doing an injustice when they say that the vote on this section will reflect the sentiment of the Convention or the sentiment of the State at large upon the Chinese question. I say they are mistaken. It does not reflect the sentiment of this Convention, as to whether they are in favor of or opposed to Chinese immigration. It is merely a question of constitutional law. I am as much opposed to Chinese immigration as any man on this floor, but my conscience tells me that this is an open violation of the Constitution of the United States, which I have taken an oath to support, and I will not vote for any such provision. It is clearly a violation of the supreme law of the land, and I am not ready to place myself in any such attitude.

THE CHAIRMAN. The question is on the motion to strike out section five.

Division being called, the committee divided, and the motion to strike out was lost—ayes, 43; noes, 60.

MR. STEELE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. GREGG. Mr. Chairman: I move we do now adjourn.

Carried.

And, at five o'clock and seven minutes P. M., the Convention stood adjourned.

SEVENTY-EIGHTH DAY.

SACRAMENTO, Saturday, December 14th, 1878.

The Convention met in regular session, President Hoge in the chair. The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Grace,	Moffat,
Ayers,	Gregg,	Moreland,
Barbour,	Hager,	Morse,
Barnes,	Hale,	Murphy,
Barry,	Hall,	Nason,
Barton,	Harrison,	Neunaber,
Beerstecher,	Harvey,	Noel,
Belcher,	Heiskell,	Porter,
Bell,	Herold,	Prouty,
Blackmer,	Herrington,	Reed,
Boggs,	Hitchcock,	Reynolds,
Boucher,	Holmes,	Rhodes,
Brown,	Howard,	Ringgold,
Burt,	Huestis,	Rolfe,
Caples,	Hughey,	Schell,
Casserly,	Hunter,	Schomp,
Charles,	Inman,	Shurtleff,
Condon,	Johnson,	Smith, of Santa Clara,
Cowden,	Jones,	Smith, of 4th District,
Cross,	Joyce,	Smith, of San Francisco,
Crouch,	Kelley,	Soule,
Davis,	Keyes,	Stedman,
Dean,	Kleine,	Steele,
Dowling,	Laine,	Stevenson,
Doyle,	Lampson,	Stuart,
Dudley, of San Joaquin,	Larkin,	Sweasey,
Dudley, of Solano,	Larue,	Swenson,
Dunlap,	Lewis,	Swing,
Edgerton,	Lindow,	Terry,
Estey,	Mansfield,	Thompson,
Evey,	Martin, of Santa Cruz,	Tinnin,
Farrell,	McCallum,	Townsend,
Filcher,	McComas,	Tully,
Finney,	McConnell,	Turner,
Freeman,	McCoy,	Tuttle,
Freud,	McNutt,	Van Voorhies,
Garvey,	Miller,	Walker, of Marin,
Gorman,	Mills,	Walker, of Tuolumne,
Webster,	West,	Winans,
Weller,	Wickes,	Wyatt,
Wellin,	White,	Mr. President.

ABSENT.

Berry,	Hilborn,	Pulliam,
Biggs,	Lavigne,	Reddy,
Campbell,	Martin, of Alameda,	Shafter,
Chapman,	McFarland,	Shoemaker,
Eagon,	Nelson,	Vacquerel,
Estee,	O'Donnell,	Van Dyke,
Fawcett,	Ohleyer,	Waters,
Glascock,	O'Sullivan,	Wilson, of Tehama,
Graves,	Overton,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Ohleyer, Chapman, Nelson, O'Sullivan, Lavigne, and O'Donnell.

Indefinite leave of absence was granted Mr. Estee, on account of sickness.

Six days leave of absence was granted Mr. Waters.

THE JOURNAL.

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

Carried.

PETITION.

MR. CONDON presented the following petition from the Carpenters' and Millmen's Association, signed by several hundred citizens of California, against the employment of convict labor by contractors:

CARPENTERS' AND MILLMEN'S ASSOCIATION.

Resolutions passed by the Carpenters' and Millmen's Association of San Francisco.

To the members of the Constitutional Convention:

WHEREAS, The employment of convict labor by private individuals or corporations in industrial pursuits is a crime against the laws of political economy, as it thereby comes in competition with free labor, and reduces the wages to such a point that it is impossible to exist as a human being; and whereas, there is at present in the State Prison at San Quentin a large number of prisoners employed in making sash, doors, and blinds, by contractors, at fifty cents per day; therefore, be it

Resolved, by the Carpenters' and Millmen's Association of San Francisco, That we petition the delegates of the Constitutional Convention, now in session at Sacramento, that they adopt a clause in the new Constitution that will forever prohibit the employment of convict labor in any pursuit detrimental to the interest of free labor.

Resolved, That a copy of these resolutions be sent by the Secretary of the Carpenters' and Millmen's Association to the President of the Constitutional Convention.

Referred to the Committee of the Whole.

REPORTS.

MR. SMITH, of Santa Clara, presented the following report from the Committee on Lands and Homestead Exemption:

MR. PRESIDENT: Your Committee on Lands and Homestead Exemption, to whom was referred amendments number six, by Mr. Evey; number ninety, by Mr. Dowling; number one hundred and four, by Mr. Freeman; number one hundred and seventy-nine, by Mr. Ayers; number four hundred and thirty, by Mr. Barton; number five hundred and twelve, by Mr. Davis, have had the same under consideration, and recommend that no further action be taken thereon.

Also, amendment number one hundred and forty-three, by Mr. O'Sullivan; number five hundred and eleven, by Mr. E. O Smith, part of which has been reported by the Committee on Chinese, and on the part not reported we recommend that no further action be taken.

Amendment number four hundred and six, by Mr. E. O. Smith, the committee have embodied in the accompanying article, and recommend its adoption.

E. O. SMITH, Chairman,
JOSEPH C BROWN,
GEORGE OHLEYER,
J. SCHOMP,
W. J. SWEASEY,
THOMAS McCONNELL,
J. M. CHARLES.

RELATIVE TO LANDS AND HOMESTEAD EXEMPTION.

SECTION —. Hereafter the homestead, consisting of the family dwelling house, outbuildings, improvements, and lands appurtenant thereto, of each head of a family resident in this State, of the value not exceeding five thousand dollars, shall not be alienated or incumbered, except by the consent, in manner to be prescribed by law, of both husband and wife, where that relation exists, and such homestead shall be exempt from seizure or sale for the payment of any debt or liability, except for the purchase money and the payment of taxes, laborers' and mechanics' liens, and obligations contracted for the improvement of such homestead, and for debts incurred before the adoption of this Constitution. And in case of the death of the husband and wife, the surviving member or members of the family, if any, shall succeed to the title and possession of such homestead with the like exemption herein prescribed in favor of such head of the family. And the Legislature shall, by general law, not inconsistent with this section, effectually secure the benefits of such homestead exemption.

MR. SMITH, of Santa Clara. Mr. President: This is a report of the majority, and I understand that Mr. O'Sullivan desires to make a report for the minority. He is not present, and I move that this report be laid on the table and not printed until the minority report is in.

Report received, and the proposed amendment read and ordered to lay on the table until the minority report shall be presented.

CHINESE MEMORIALS.

MR. BARNES presented the following:

MR. PRESIDENT: Your committee appointed to draft memorial to be forwarded to the Governors of Oregon, Nevada, and Washington Territory, most respectfully

submit the following, and recommend its adoption, and also that it be printed in the Journal.

For the Committee:

W. H. L. BARNES,
VOLNEY E. HOWARD,
P. T. DOWLING.

CONSTITUTIONAL CONVENTION OF CALIFORNIA,
SACRAMENTO, December —, 1878.

To the Governors of Oregon, Nevada, and Washington Territory: Your attention is respectfully invited to a resolution adopted by this body, on the 9th instant, of which the following is a copy:

Resolved, That a committee of three be appointed by the Chair to draft petitions to be forwarded by this Convention to the Governors of Oregon, Nevada, and Washington Territory, requesting their Excellencies to memorialize the President of the United States and the Senate, on behalf of their States and Territory, for a modification of the Burlingame treaty, now existing between the Chinese Empire and the Republic of the United States of America.

This body entertains no doubt that the people of Oregon, Nevada, and Washington Territory are in full accord with the people of California in desiring to prevent the further immigration of the Chinese, and to compel the removal of those now domiciled upon the Pacific Coast. It believes that your Excellencies have recognized the evils which have resulted from the presence of the Chinese, and that your Excellencies will cheerfully unite with us in the expression of the existing universal sentiment of hostility to its continuance, to the President and Senate of the United States, to the end that the treaty now existing between the United States and the Empire of China may be abrogated, or so modified as to permit the prevention of further immigration of a vicious and non-assimilating population.

You understand, doubtless, as we do, that these people have no respect or regard for our government, either as to its form or administration; that they govern themselves by a system of laws peculiar to themselves, and have their own tribunals for the administration of law; that twenty-five years' experience has shown that they are incapable of assimilation, either in sentiment, habits of life, or religion; that they are rapidly absorbing all branches of mechanical and manual labor, and expelling from most ordinary pursuits the middle and poorer classes of our citizens; that the destitution thus caused is developing a race of American paupers, criminals, and tramps, instead of a race of industrious, virtuous, and intelligent American citizens; that the existence of either an aristocratic or servile class is a perpetual menace of free institutions, and that both these deplorable results of Chinese immigration are imminent, and have already manifested themselves; that the habits of the Chinese, the absence of the family relation, of fixed homes, and of decent social life among them, enable them to support themselves and accumulate money upon wages which would starve an American citizen, and that their accumulations are very rarely expended or invested in the communities where they are domiciled, but are transmitted to the country of their nativity, and that they are therefore enabled to avoid taxation and any considerable share of the burdens of government, and to drain the circulating capital of the coast; while their criminal habits and utter immorality are filling our prisons, jails, almshouses, and places of refuge for the destitute, and debasing, by example and intercourse, the rising generation. We believe that these considerations, and others that may occur to your Excellencies, should be pressed upon the attention of the President and the Congress of the United States.

This body will take occasion to express the views indicated above to the President and Senate of the United States, and respectfully request your Excellencies to officially address the treaty-making power of the government and Congress to the same effect, to the end that they may understand the wishes, necessities, and demands of the people of the Pacific Coast in reference to the question of Chinese immigration.

MR. DOWLING offered the following resolution:

Resolved, That the Secretary be and is hereby directed to cause the memorial to the Governors of Oregon, Nevada, and Washington Territory to be suitably engrossed for the signature of the President of the Convention, and transmit the same by mail to the Governors of said States, and also that a copy of the same, when executed by the President, be printed and forwarded to the Governors of all the States of the United States.

MR. DOWLING. I move the adoption of the report and the memorial.

MR. ROLFE. Mr. President: It seems to me that the resolution is rather premature. We have not adopted the memorial yet. I believe that the Chairman asked that it be printed in the Journal. I am not able to give it sufficient consideration now.

MR. TINNIN. Mr. President: I would ask if it would not be proper to amend it so as to include Arizona Territory? We could insert after Washington Territory, Arizona Territory.

MR. BARNES. Mr. President: I would like to say, in reference to the suggestion of the gentleman from Trinity, that the resolution directed the memorial to be addressed to the Governors of these States and Washington Territory, and that was the limit. If it is to be amended now, it may perhaps be well, as suggested by the gentleman from San Bernardino, Mr. Rolfe, to have it printed and submitted to the examination of the Convention. I move that it be printed out of order, and laid upon the desks of members.

The motion prevailed, and the report and memorial were laid on the table and ordered printed.

MR. MILLER, from the Committee on Chinese, presented the following report:

MR. PRESIDENT: The Committee on Chinese, to whom was referred the resolution of the Convention instructing the committee to prepare and report memorials to the President, Senate, and House of Representatives of the United States, praying for the modification of the treaty with China, and the necessary national legislation for the prohibition of Chinese immigration, begs leave to submit herewith the draft of two memorials upon this subject—one to the President, and one to the Senate and House of Representatives of the United States—with the recommendation that these memorials, if approved by the Convention, be properly engrossed and prepared for the signatures of the members of this Convention, and that all members be requested to sign the same.

Your committee respectfully returns herewith the draft of a memorial on the same subject, which was referred to the committee on the twelfth instant, the committee having failed to adopt it.

Respectfully submitted.

JOHN F. MILLER, Chairman.

SACRAMENTO, December 14th, 1878.

To the President of the United States:

We, the members of the Constitutional Convention of the State of California, respectfully represent that the continued immigration of Chinese to this coast endangers the health, peace, and prosperity of the people. This representation we make upon our own knowledge of the facts, and therefore earnestly request such Executive action in respect to the existing treaty with China as will afford relief from the evils of such immigration.

To the honorable the Senate and House of Representatives of the United States:

We, the members of the Constitutional Convention of the State of California, respectfully represent that the continued immigration of Chinese to this coast endangers the health, peace, and prosperity of the people. This representation we make upon our own knowledge of the facts, and therefore earnestly ask that the necessary national legislation be promptly had to prohibit their further immigration.

REMARKS OF MR. MILLER.

MR. MILLER. Mr. President: The committee instructed me to explain to the Convention that it was thought best to make these memorials as short as possible, and merely expressive of the sentiment of the people of California as represented by the delegates of this Convention, that the Chinese immigration ought to be prohibited. There have been a number of memorials sent to Washington to the President and to Congress, in which the whole Chinese question has been elaborately argued. The committee thought that if this Convention, or the members of this Convention, who represent the whole people of the State of California, in this brief manner expressed their views or their belief that Chinese immigration was an evil that ought to be prohibited, and state that they do it from their own knowledge of the facts, that argument would be unnecessary in such a document; that the argument had better be left to our Representatives in Congress: that we merely reinforce them by this expression of the popular will of the people of California. Representations have been made, as we understand, that the opposition to Chinese immigration in this State is confined to a limited class of our people. By this act we mean to show that it is not confined to a single class of our population, but the dissatisfaction was universal. The memorial that has been submitted here this morning by my friend from San Francisco, Mr. Barnes, of the Special Committee, addressed to the Governors of certain States, does argue the question, I think, very clearly and well. A memorial was sent last Winter, at the last session of the Legislature, I think by the Senate, which goes into an elaborate argument upon the subject. It might be well to send these memorials to the different Governors as well as Senators and Representatives. I merely rose to state that opinion of our committee that it was best to present a brief memorial to the point, as we have done, and it is for the Convention to decide whether they will adopt them.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. President: I do not understand that the memorial presented by the Special Committee appointed to prepare an address to the Governors undertakes to argue the question at all. I understand it rather to be a statement of facts from which the arguments may be adduced that this treaty ought to be reformed or abrogated entirely. I think that the ground taken by the Committee on Chinese is hardly tenable. We must admit no question that the recommendation of a body of this character, abroad at least, if not at home, is such as to entitle it to respect, and it is hardly enough to address a communication to the President and Senate of the United States as long as an invitation to dinner, or a dunning letter, saying, in effect, that this claim against the government has been put in our hands for collection, and they had better speedily attend to it. I think it would be fairer, in the sense of making the case plainer, if this body were to take the trouble, and the committee were to take the time, to state, as it could be stated in very much better language, and more concisely, I think, upon careful consideration, a full review of the subject; for, indeed, when one undertakes to consider the facts, they go on until it gets to be a very large subject for consideration. A suggestion was made to me that it ought to be a statement of the effect of this system of peonage that exists among us; the fact that it is a system of slavery worse than the one that has been abolished in this country, from the fact that the owner is not a resident; that the result of this labor is transmitted to another country. That, of itself, is a very important question. I think it all ought to be considered. After taking up this question, and giving it considerable attention, I found myself drifting naturally into a very radical view of the subject, but a radical view that, I think, can be sustained upon the principles of law and upon the principles of justice.

The gentleman from Alameda, Mr. Van Dyke, in falling back upon his constitutional objections, remarked that he did not intend to be a demagogue or a fool. I would suggest to all gentlemen of his sentiments that while it is easy enough to avoid being a demagogue, as I understand the word, instead of attempting to strike any blow for popular rights by keeping still, or falling back on constitutional objections, when you come to the question of being a fool, man proposes on that subject, but God disposes. [Laughter.] I do not know whether the gentleman is in his seat. If he is, he must be doing what the gentleman from Marin alluded to the other day—sitting upon his head.

MR. SCHELL. [Sotto voce.] That's good sand lot talk.

MR. BARNES. The gentleman to my right says that is good sand lot talk. I want to be understood, and I do not intend to be changed in my course by enemies in the field, nor by side-bar remarks, and I will say to my friend from Trinity—[examining the card on the member's desk]—Mr. Schell, well, remarks of that kind come from a shell that has nothing in it. In pressing this matter upon the consideration of the Convention I wish to say once for all, for myself, that I have no part nor lot with the sand lots, nor with anybody else; but I am free to say this, that if the sand lot has an idea that is a good idea, I am willing to help it. There is a great deal about the sand lots that is right, and there is a great deal about the sand lots that is wrong—villainously wrong—and I regret for the sake of themselves that some of the gentlemen who represent what we have come to call the sand lots, because they meet out of doors to discuss grievances, real or fancied, have got up here and made speeches, like Mr. Wellin, and talked about the streets of San Francisco running in blood, and about fire and rapine.

MR. WELLIN. I do not think I used any such language. Dr. O'Donnell made some such remark, but he is not the mouthpiece of the sand lots.

MR. BARNES. I understood several of the gentlemen to make allusions of that kind. The principle is right, but that sort of discussion is

wrong and out of place. I have insisted from the first, and I insist now, that the arguments to go into these memorials and communications, or the statement of the facts, ought to be as broad as the subject itself, and it ought not to be left to a simple and bald statement of two lines. There is no need to argue the question. We can argue the question there, but to state the facts, I do not understand to be an argument. If I were going to argue it, I would take the declarations of the witnesses, and then take the Constitution itself. I would take this view of the treaty-making power in its legal aspect, and I believe that whenever that question comes to be fairly considered by any Court it will be decided that this Burlingame treaty is an outrage, and a violation of the inherent rights of the people, and upon the very principles upon which this government must depend. I believe that no treaty-making power has the right to strike a blow at republican government, and to undertake to override and destroy the principles laid down in the Constitution of the United States, and that is the reason why, in connection with these fixed principles, it would be advisable to make that representation. It is a great question, and ought not to be passed over in this brief and crude way. I think the committee would do the people of the coast a greater justice if they would undertake to give a clear statement of facts, and not an argument in favor of the restriction of the Chinese coming to the coast. I would recommend that this memorial be recommitted to the Convention, with instructions to submit another report which shall contain a statement of the facts. Now, we will suppose, for instance, that this memorial goes to the President of the United States. I regret, as much as any Republican can regret, the course that the President of the United States has taken in respect to that matter, as well as in respect to a good many others. Suppose this memorial goes there to the President of the United States. It is said that he can refer to those that have gone before for the facts. I suppose that they have disappeared in the waste-paper baskets and down the vaults of the various departments, and the President would find it very difficult to hunt them up. We could send such a statement of facts that, without any trouble to himself, he could make it the basis for a special message to Congress upon the subject. He could say, I have received from the Constitutional Convention of California a statement of facts, as follows, and then give the facts, and they would have it all right there for action. We all know that a want of understanding, either accidental or designed, must be the reason why the people of this State have not been able to have any relief upon this subject. We have got to press it, and press it as fully and as strongly as it can be pressed, in order to be heard at all.

Now, I wish to say one word in respect to myself, as I have been somewhat censured for going so far in this business. I took the same ground before I came here at all, and before there was any question here upon this floor, and at a time probably when there were few men in this State more unpopular or more thoroughly disliked—as the fellow says in the play—I got myself disliked pretty thoroughly by some people. I did not care anything about it then, and I do not care anything about it now. But if anything is right, I propose to advocate it as strongly as I know how, and not dodge the legitimate result. I hope that this memorial will go back to the committee, and that we will have one reported that the President can make a basis for a special message to Congress.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I must admit that the witticism got off at my expense was good; and I know it is only one of the many good things which the gentleman from San Francisco has been getting off in this body. I do not complain of that, sir, so far as I am concerned, nor did I complain or intend to complain, in my little side remark to him, of the position he has taken upon this Chinese question, by any means. I believe, so far as that is concerned, I will go as far as I legitimately can—as far as I believe the Constitution, the paramount law of the land, will allow—in the restriction of Chinese immigration; and I sympathize with him in feeling that Chinese immigration is an evil. What I intended to say, and what was intended for him alone, and which he has seen fit to bring before this body, was in reference to the remarks made by him, which I deemed unparliamentary to be made in this body, in reference to a gentleman who is not present. Because he did not see fit to go as far, or believed a little more or less than his Chinese gospel, he supposes that he sits upon his head in his seat. That was the only thing I referred to, and of course I got a butt over the head. I want to say that whether there is anything in the shell or not, I believe it received as honorable indorsement as did the gentleman from the people of this State. I had the honor of receiving several thousand more votes in indorsement for this position than did the gentleman himself. And I will be permitted to remark that I sometimes think that the gentleman himself, instead of the gentleman from Alameda, has been sitting upon his head. I have watched his course here for the reason that he was elected upon a ticket called the Non-partisan ticket, and it was intended that those elected on it would act without reference to party, and for the purpose of making the best Constitution that could be made. I say I have watched his course and thought perhaps he had been sitting upon his head, and have often been forcibly reminded of an old doggerel poem which I read some years ago, and which reads like this—I do not intend to make any personal application, but will repeat it to this honorable body:

"A man so various, that he seem'd to be
Not one, but all mankind's epitome;
Stiff in opinions, always in the wrong,
Was everything by starts, and nothing long,
But in the course of one revolving moon,
Was soldier, fiddler, statesman, and buffoon."

[Laughter.]

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: As a member of the committee reporting the memorial, I express the hope that the Convention will not recommit it, but that if it does do so that it will add the gentleman from San Francisco, Colonel Barnes, to the committee, in place of Dr. O'Donnell. [Laughter.] Some of us in the committee thought that we should try some rhetoric and fine writing, but there were others of us that were in favor of quitting when we got through. The point was to get testimony from the Convention—direct and positive testimony upon the subject. The committee believed that if they attempted to branch out into rhetoric that they would strike somebody's sensitiveness and not be able to obtain the signatures of all. We believe that all of the members will sign this. There have been many memorials sent and they are never read. If a long document appears there it will not be read. We sent a memorial from the City of San Francisco when we saw that a Chinese Embassy was going there. They were not yet officially known at Washington, but it was known that such an embassy was on the way, and we saw in that a design to encourage the immigration of the subjects of China. I drew up the memorial, and I flattered myself that I had got in some good rhetoric and facts, and the statement was only a little over half a column of a newspaper, and yet a gentleman who called upon the President in reference to that thing was informed that he had forgotten entirely that such a thing had been presented—he did remember something of the kind, but it was thrown in some waste paper basket—it looked too long to read. Therefore, I favor a brief statement, signed by every member of the Convention. I think that is the best plan.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: I do not know what is before the Convention except the memorials generally. It does seem to me if we take any more action on these memorials that we are putting ourselves in the ridiculous position of blowing hot and cold in the same breath. Here in one breath we memorialize the President and Cabinet to repeal the Burlingame treaty, or to modify it, so as not to allow Chinese immigration. The same breath we petition the Governors of our contiguous Pacific States and Territories asking them to do the same thing. We send memorials or petitions to Congress asking them to relieve us—taking it for granted that it is a matter within the jurisdiction of the United States Government exclusively; and then in the same breath we vote to the effect that the Congress and Government of the United States has nothing to do with it. Last night we refused to strike out section five of the report of the Committee on Chinese, which reads as follows:

"SEC. 5. No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution."

It was argued by eminent men, whose opinion I have respect for, that this is a matter not within the jurisdiction of the United States, that it is a matter which this State alone can deal with, and upon such arguments this Convention refused to strike out the section. I disagreed with it, but that is the action of this Convention. Now, if we have the jurisdiction over this matter, why ask Congress to act? Why ask that the Burlingame treaty be rescinded when that treaty is void and of no effect. Let this section five stand as this Convention has decided it must stand, then this State will keep out the Chinamen. That is the answer that will come from the Cabinet and from the United States Government. That is the answer we will get. That is the answer you would get if I was President. That is the answer we will get from Congress. They will say, you have taken the matter in your own hands. Now, I do not say I am opposed to these memorials. I say that this is the proper course to take. I can vote for these memorials consistently, but I cannot just as consistently vote for these, as I consider, unconstitutional measures, in this report of this Chinese Committee. Therefore, I will ask gentlemen to pause and consider, not because I care particularly for the consistency of this Convention, because I would rather be right than consistent, but I will ask gentlemen to pause and consider the inconsistent position they are taking. Here is a matter we are taking into our own hands, and then putting ourselves in the ridiculous light of asking Congress to act in it. Would it not have a bad effect? I say either do one thing or the other. I would not object to taking a dozen different courses to reach the same thing if they were not inconsistent and directly opposed to each other; but I say that the very fact this Convention has refused to strike out section five, if the decision of this Convention is worth anything at all, will put a construction on this Constitution so far as this Convention can pass upon it. When we memorialize Congress they will turn to us and say, according to your own decision, if your decision is worth anything, we cannot act in the matter, and what action we take would be useless. Therefore, I do say that we ought to take one or the other, and that alone.

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

MR. HOWARD. Mr. President: I wish to say that I hope it will not be referred, but that it will be adopted. I think it is long enough, too, as brevity is the soul of wit; and as for the two horns of the dilemma, as my friend from San Bernardino has hung himself on both, I leave him there.

MR. BARTON. Mr. President: I desire to second the motion of the gentleman from San Francisco, Mr. Barnes. I heartily concur with the views and sentiments expressed by him. I desire to sign my name to a memorial to go to Congress that will express fully and emphatically the wishes and wants and demands of the people of this State. Therefore, I second the motion of Mr. Barnes to recommit.

THE PRESIDENT. The Chair did not understand that the gentleman made any such motion at all.

MR. LARKIN. Mr. President: As a member of the Committee on Chinese I concur with the recommendation of the Chairman of that committee. I hold in my hand a report of a committee of the Senate of the last session, procured by able men who devoted a long time to it. They have a special memorial to Congress of seven pages in here, and

it might be submitted again. They have here a report of three hundred and two pages, the most conclusive document we could offer to the Congress, or the people of the United States, on this subject. If any change should be made I would move to substitute this, and I believe this would satisfy any gentleman on this floor. But I believe our report is sufficient. Our own delegations in Congress, in both houses, are familiar with this subject. We thought that the main object would be to have each member of this Convention subscribe to the report. Such a report was made, as we did not believe any man could hesitate to sign. The main object was to have a unanimous vote of this Convention.

MR. BARNES. Mr. President: I move that it be recommitted to the committee, with a request that they insert a brief statement of facts. I do not understand that we want a statement of all the facts and evidence of the subject at all, but that there shall be a statement of something more than that we believe the presence of the Chinese is injurious to the health, the prosperity, and the peace of the State. I think that is hardly enough. If brevity is the soul of wit, why, that is the wittiest thing on a big subject that was probably ever written. It is too brief, I think. I do not know whether the Convention will agree with me, of course. I intended to make a motion to make it a little more ample. I do not know that there is any occasion for writing. We do not want figures of speech, but a very plain statement of facts, setting forth some of the salient points. We all know that the ground taken by those in favor of the Chinese in the East is, that the opposition to them is confined entirely to the uneducated portion of the people of this State; therefore, when a representative body like this speaks, what it says will be read and will be considered, and I think it ought to be something longer than that which has been presented.

MR. WHITE. Mr. President: The object of the committee was to draw such a document that every member would sign it. I think the committee acted judiciously. I am very certain that it will commend itself to very nearly every man in the Convention.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I hope this motion to recommit will not prevail, and that if it is recommitted, it will be to some other committee than the Committee on Chinese. This memorial, as I understand it, meets with the ideas of that committee unanimously, and, Mr. President, I do not think that the objections raised by the gentleman from San Francisco are well taken. That memorial expresses that Chinese immigration is an evil, dangerous to the peace, happiness, and prosperity of the people of this State. I do not remember the language, but it expresses it, in my opinion, sufficiently. Could we have expressed more, even if we adopted the language of the gentleman from San Francisco? We express, as we believe, the sentiment of the people of this State, and express it fairly and fully, and I do hope, if it is to be recommitted, it will be recommitted to some other committee, or that it will be recommitted to the gentleman from San Francisco, Colonel Barnes.

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. President: As a member of the committee I would say that I supported this memorial because it is short. There have been many memorials sent from this State that have not been considered, and it is a well known fact that matters that come before the President and Cabinet are not considered if they are couched in lengthy terms. This, I admit, and we all feel, is a great national question. It is a question that concerns the people of the United States, but it has not made its mark yet, as it should have done, upon the councils of the nation. I am glad to see that some statesmen are cognizant of this matter, and that great men are paying their attention to it and are drawing conclusions, among them Senator Bayard, of Delaware. He speaks of it as a statesman grappling with a great issue. The evils are set forth there briefly, and I think sufficiently, and I believe it will meet the attention of the President and Cabinet. The long documents that have been sent from here have not had the attention that they should have had, but I believe this sets forth the evils, and the arguments will be presented by our delegation in Congress. I support the memorial because it is short.

REMARKS OF MR. CASSERLY.

MR. CASSERLY. Mr. President: I confess that when I saw the memorial, reported by the Committee on Chinese, I experienced a feeling of disappointment. Of course no sensible person would be in favor of a memorial so long that the average man would not have time to read it and carry it in his head, but there is certainly a distinction to be drawn between a memorial so very short as this is and one of the length I have just described. We must remember that it will be scrutinized by men who are familiar with documents, and with the expressions of men who feel that they are suffering great wrong. When this is printed it will make about two lines and a half of ordinary print. Shall I be told that a people feeling that they are struggling with an enormous wrong can satisfy themselves by a complaint of two lines and a half in print? Why, sir, it is not reasonable on the face of it. I am in favor of recommitting this memorial. I believe that a memorial properly drawn, with sufficient fullness to cover all the cardinal facts, would be a great help to us, and for one I should not consider the time spent in recommitting the memorial lost. I think it is a very critical movement. If I did not think so I would not rise at this time to interfere in the slightest degree in its disposition; but feeling as I do, I think the best disposition that can be made of it is to recommit it to the committee. Then I shall ask leave to amend the memorial as it now is by inserting the word "morals" after the word "place." I want that inserted, if the Convention will allow it, because, in common with a very great number of the people of this State, I consider the moral aspect of this Chinese question as a predominant one.

MR. RINGGOLD. Mr. President: I hope it will be recommitted. If the only point is to have it brief, why, just put in "The Chinese must go!"

MR. STEELE. Mr. President: I hope the motion will prevail. As I understand it the memorial merely gives the deductions from facts, and does not set forth the facts. No one wants one of the length referred to by the gentleman from El Dorado, Mr. Larkin, but we want one that will set forth the facts clearly and distinctly.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I do not think, sir, that it is of so much consequence what the language may be in this memorial, provided it goes far enough to indicate what public sentiment is in this State. When I was at Washington I had the privilege of presenting a memorial upon this subject in the Senate. It was looked upon as the expression of opinion of a political body, to a certain extent, and in course of time—in about two weeks—as soon as the report of the remarks I made on the memorial came to California, a pamphlet from some of those in favor of Chinese immigration was placed upon the desk of every Senator. I have one somewhere. The pamphlet favored Chinese immigration on humanitarian grounds, for the purpose of converting this great people to Christianity. It stated that the matter was engaging the attention of the religious men here, and looked forward to the conversion of that people; that they might be sent back to China as Christians to Christianize that country. After this pamphlet came Senators came to me and said: "Why, they tell me these people are all to be converted to Christianity." That is the influence brought to bear. It does not matter about words. What we wish to effect is to convince the authorities at Washington that the people of the State of California are opposed to Chinese immigration, not as individuals, but that the public sentiment throughout the State is opposed to it; and when we produce that effect there we perhaps will be able to get something done for our relief here. Now, I would prefer—I care not how short it may be—but I would prefer that it should be presented to this body and voted upon with the ayes and noes recorded at length, and certified, with the request that it be forwarded by the Governor, under the seal of State. Give it some official consequence, in accordance with the sentiment of this body. I would suggest this in preference to every member signing his name. Let every member's name be recorded "yea," or "nay." Let it appear that the "ayes" and "noes" were called, and the "ayes" recorded, and the "noes" recorded, and then certified by our officers here, and forwarded by the Governor of the State, under the official seal, with the "ayes" and "noes." There our names would be in print. I think that if it should pass this body unanimously, as I hope it will, and it should state that the ayes and noes were called, and that it passed unanimously—"ayes, one hundred and forty, or one hundred and fifty; no noes"—it would have more effect than if we undertook to put our sign-manual there, which perhaps they could not read. My friend in front writes very well, but it is hard to read his handwriting. I write very well, but some people complain that they cannot read it. They would see, then, that it is the act of the Convention, and I would prefer that course in order that it may speak as the act of the Convention, instead of the act of us as individuals. Let it be forwarded either by the Governor or the Secretary of State.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I hope that the motion to recommit the memorial to the committee will prevail, for several reasons. I desire, Mr. President, that this memorial be presented in the shape of something more than a mere formal State paper, that contains nothing but a few glittering generalities. I desire that this memorial shall contain a few concise reasons why we are opposed to the further incoming of the subjects of the Emperor of China. I desire this, Mr. President, because I am convinced that there never has been any honest work done in Washington on this subject. We have sent committees there, and we have Congressmen there who have pretended to scratch around the edges of the question, but they have only done so much as seemed to be necessary to affect public opinion at home, and not to accomplish the objects which they pretend to be working for in Washington—the abrogation or the modification of the treaty. And, sir, the resolutions and memorials that have been sent from this State and from the Legislature contain within themselves their own repudiation. Why? Because they were couched in terms that meant nothing, or because they gave reasons that nobody of any sense would ever believe that we meant. They were made up of glittering generalities, and were a good deal like scolding the Chinaman for his vices, and condemning him because he was an inferior man, or something of that sort of stuff. Why, we must take the broad ground and oppose the Chinaman because we know he is essentially a slave, and because there is an eternal and unending conflict between free and slave labor. We know that he is a slave in many instances, and to a great extent, and when he is not so his ancestry, his condition, his relations, his capacity for labor, his capacity to live on next to nothing, makes him, in comparison with our white laborer, essentially a slave. Now, let us set forth these honest reasons in this memorial. Do not let us pretend that he is a man of so many vices that we cannot endure him. That is not true. It is on account of his virtues that we fear him. Let us say so. That is why I want some of these fair, square reasons, showing that there is heart in it; that we believe in it; statements that do not carry on their own faces their own repudiation. Such has been the character of the memorials that have been sent to Congress heretofore. Do not let us trifle away the time reading any more such. State what we mean. Admit that the Chinaman can outwork us; admit that he can live on less; but don't scold at him because he is an inferior man, or because of his vices. It is all folly to talk about such stuff. It is because he is essentially a slave, and because his civilization and his ancestry make him so. I understand, Mr. President, that while he was on the floor, the gentleman from San Francisco, Mr. Ringgold, stated that if I had uttered such sentiments before the nine-

teenth of June last, I would have been elected to stay at home. So be it, if such be the case. I desire to state the truth, if there is not another man from the sand lot who dare. I want to see this opposition to the Chinamen put on the true ground; on the ground that free labor cannot compete with him. We all remember the four years of carnage that this country has endured, with all its subsequent train of evils, for what? To settle the conflict between free and slave labor. We thought, Mr. President, when that conflict was settled that all our evils would disappear. It is not true. Each question is confronted with evils that tax its energies and are as difficult to solve as the last. We find ourselves face to face now with an evil no less in magnitude than African slavery, which has cost us so much. Now, let us not scratch around the edges of it; state the true reasons; something that cannot be misunderstood, and show to everybody that we mean what we say; that we do not undertake to obtain action from Congress, nor from the Administration, nor from the government, on any false reasons, but for the true one, and let this be sufficiently stated. Do not be afraid to cover a half page of foolscap with print in order to state it.

Now, Mr. President, in a wandering way I have stated a few of the reasons why I would like to see that report recommitted, in order that it may be made to state the case a little more clearly and more fully. I want to disclaim any intention to reflecting any disrespect on the committee at all. I think they thought they were acting wisely; but it seems to me that we ought to go a step farther, and that we can do so with profit.

MR. HOWARD. Mr. President: I demand the previous question.

Seconded by Messrs. Freud, Herrington, Wyatt, McComas, and Wickes.

The main question was ordered, on a division, by a vote of 70 ayes to 16 noes.

THE PRESIDENT. The question is on the motion to recommit the memorials to the Committee on Chinese, with the request that they insert a brief statement of facts.

The motion prevailed.

ARTICLE ON CHINESE.

MR. HOWARD. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section five is under consideration.

MR. BLACKMER. I have an amendment to offer.

THE SECRETARY read:

"Add to section five the following: 'Except such settlement be by virtue of rights derived from treaties made by the Government of the United States with foreign nations.'"

MR. BLACKMER. Mr. Chairman: Then the section would read as follows:

"SEC. 5. No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution, except such settlement be by virtue of rights derived from treaties made by the Government of the United States with foreign nations."

I think that is the ground that we ought to take; that we should say distinctly that it is only to be prohibited when these rights are not stated in the treaty made by the Government of the United States with a foreign nation. I do not believe, and I am not yet convinced by any argument, or any cases that have been cited here, that this fifth section is a constitutional provision, and I cannot support it in its present shape, but with this amendment I can support it. Then, of course, if their settlement be by virtue of rights derived from treaties made by the Government of the United States, the State can have nothing to say about it. I cannot go beyond that.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I do not desire to say anything further than to call attention to this amendment. The amendment says, "Add to section five the following: Except such settlement be by virtue of rights derived from treaties made by the Government of the United States with foreign nations."

If we add that amendment to section five, then section five means nothing at all. You might as well strike it out, because it is in express words recognizing the authority of the United States to bind us in our internal concerns by a treaty when they cannot bind us by a law of Congress. Where a law of Congress would be unconstitutional, a treaty would be unconstitutional, because it is nothing more than a mere Act of Congress. If we desire to declare that that shall be the supreme law of the State, then we in effect declare that the Burlingame treaty is a part of our Constitution. It is the most ridiculous and absurd proposition that has been brought here, and especially by a gentleman who desires to see the Chinese go. I respect the gentleman from San Francisco for the opinions he has brought before the committee, but it seems to me that the method that he desires to have us adopt here is a very strange one. We have been contesting against the rights of the government to bind us by a treaty where they could not bind us by an Act of Congress. I hope the amendment will be promptly voted down, because if we put that in the Constitution we had better adjourn sine die, and go home.

MR. BLACKMER. Do you recognize that the Burlingame treaty has any authority over the citizens of this State at all?

MR. BEERSTECHER. Yes.

MR. BLACKMER. It recognizes the right of people to settle here.

MR. BEERSTECHER. It recognizes the right to dwell here.

MR. BLACKMER. There may be a distinction between settling and dwelling.

MR. BEERSTECHER. I have never contended that we could prevent the Chinese from coming here, but I believe we can regulate them after they get here. I believe that among the reserved powers of the State is the right of internal regulation.

MR. ROLFE. If we cannot prevent them from coming here, can we prevent them from settling here?

MR. BEERSTECHER. Yes; we can. We can prevent them from engaging in business, from being employed by corporations, from earning a living, and prevent their settling by starving them out. That, sir, was admitted by the gentleman who was the Chairman of the Committee on Chinese. He says we can starve them; and that is what we desire to do, if we cannot get rid of them in any other way.

MR. MILLER. I did not say I was in favor of starving them.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I would like to answer fifteen or twenty questions. This Convention, it seems, does not understand my ground of opposition to the Chinaman.

MR. BEERSTECHER. No; we don't.

MR. REYNOLDS. I am sorry for the gentleman. I have stated it times enough, and it is on the ground that he is essentially a slave. Beyond that, Mr. Chairman, I pity the gentlemen who have not yet found out that if we ever succeed in ridding ourselves of the curse, so called, of cheap Chinese labor, it must be upon the ground that it is slave labor, and to that it must come. You cannot exclude him because he is a Chinaman; nor because he smokes opium; nor because he eats rice; but you can exclude him because he is essentially a slave. I hope this amendment will be promptly voted down, because we have a right to protect ourselves against slave labor, and upon that we have authorities. In Groves vs. Slaughter, 15 Peters, the Supreme Court said:

"Each State has a right to protect itself against the avarice and intrusion of the slave dealer; to guard its citizens against the inconvenience and dangers of a slave population."

The Chinese population is a slave population. I hold it is all the more dangerous because it is voluntary. And further the Court says:

"The right to exercise this power by a State is higher and deeper than the Constitution. The evil involves the prosperity, and may endanger the existence of the State. Its power to guard against or remedy the evil rests upon the law of self-preservation; a law vital to every community, and especially to a sovereign State."

It is higher and deeper than the Constitution, and so it is higher and deeper than any treaty. Upon that ground I am willing to stand in opposition to the treaty; because it is a higher right than any treaty or any Constitution to protect ourselves against the avarice or intrusion not only of slave dealers but of slave labor.

MR GRACE. I want to know if you mean to say that the Chinese are slaves?

MR. REYNOLDS. It has been ascertained that he is essentially a slave, and in some cases it is proved that he is a slave. I cannot furnish the gentleman with brains to understand, but I can state a thousand times that he is essentially a slave.

REMARKS OF MR. HALL.

MR. HALL. Mr. Chairman: I think that we have reached the point which constitutes the limit to which we are authorized to go under the existing laws of the land. We have declared in the first section of this report the power of the State to pass all needful laws and regulations for the protection of the people of this State against the presence of a dangerous class of people. That power is fully expressed in the first section. We have gone further and imposed a prohibition upon which are the creatures of authority of the State against the employment of this obnoxious class. We have gone further, in section three, and declared that the State shall not employ this objectionable class, nor permit any of its political subdivisions to do so. Now, it seems to me that we have reached the point to which we are permitted to go. Howsoever much I may desire to go further, the oath which I took when I was qualified to take a seat here prescribes the bounds beyond which I do not feel at liberty to go. As I view the matter, Mr. Chairman, there can scarcely be a reasonable doubt as to the validity and the operative force of what is known as the Burlingame treaty. If the question were dependent upon that alone it would be decisive of our right of action here. But even independent of that, as it occurs to me, the Government of the United States had the power to exclude or receive the people of foreign nations at its will and at its pleasure. It is an incident to the sovereignty of the National Government, and I maintain, respectfully, that even if there were no treaty here at all, a foreigner, not eligible, if you please, to become a citizen of the United States, would be entitled to the protection of this government in the absence of any treaty on the subject; and that seems to be the opinion of the Supreme Court of the United States in some of their decisions. It is a protection which the government shall give to a foreigner independent of any treaty with the Government of the United States. Now, sir, I believe that the Government of the United States has the absolute control over this subject. There is but a single limitation, and that limitation is in the first article of the Constitution of the United States, wherein it is said:

"The immigration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year eighteen hundred and eight."

I know very well that that provision was directed exclusively to the slave traffic at that time which the States were receiving within their limits; but it announced a power and principle. It forms the power of the Federal Government to exclude such people as the State may choose to admit, and by necessary implication it forms the power of the government to authorize to be received such people as the State Government may choose to exclude. In other words, it forms the absolute sovereign power of the Federal Government over the whole subject.

Now, as to the decisions referred to and the arguments before this committee, it seems to me that they leave no doubt upon this subject; with all due deference to the able and the plausible arguments which have come from the members of the profession upon the other side. It seems to me that the Courts have defined very clearly the powers of the General Government and the powers of the State Government on this subject, declaring in the broadest terms the entire power of the Federal Government over this subject, save and except the remnant which is left to it called the power of police regulation, and defining that so that the power of the State shall extend to the right to exclude paupers, vagrants, and criminals from its borders—people of that class who are dangerous to its prosperity and its peace; expressing the general power of the Federal Government over the subject, and defining with clearness and precision the narrow limit of the powers of the State over this subject.

Entertaining these views, I believe that this provision, unless it be amended as is suggested by the gentleman from San Diego, will be a violation of the Constitution of the United States, and an infraction of a treaty made in pursuance thereof. As we have taken an oath here to support the Constitution of the United States, it necessarily carries with it an obligation to support this treaty. It must stand, and it must be operative until it is set aside. It must govern any action here until it is set aside by some action of the government. That is my rule of action, and howsoever strongly I might desire to go farther against what I believe in common with the delegates on this floor generally, to be a great evil, threatening the peace and prosperity of the people of this State, I do not feel at liberty, sir, to pass beyond the boundary which has been fixed for the exercise of my official functions, by the oath which I took at that stand. Hence, sir, this amendment will receive my approval, but the provisions of the section without it cannot receive my assent.

If I am permitted to go farther for a few moments I will direct attention to section six. We find there a provision to the following effect: "Foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State." Now, there is a provision which it seems to me will operate to confiscate the property of this objectionable class. We have had this people among us since eighteen hundred and fifty. They have been coming here in large numbers for the last twenty-eight years. It is admitted that they have acquired a very considerable amount of property, estimated from four hundred and fifty thousand dollars up to a million and a half of dollars. It has been acquired by these people who have come here by the invitation of the Federal Government, under and by virtue of the sanction and authority of the Burlingame treaty.

They have come here and acquired property under a declaration in our Courts, declaring all men are free and independent, and having and possessing the right to acquire, possess, and protect property. They have come here under laws declaring that foreigners becoming bona fide residents shall have the rights of possessing, enjoying, and inheriting property as native born citizens. Now, under these provisions these people have been among us and acquired property to the amount above named, possibly the higher amount being nearer the truth than the lesser amount. Now, sir, we propose what? To say in section six that they shall not be permitted to sue or be sued. That is about equivalent to uncovering this property from the protection which it is entitled to by our own laws, independent of Federal recognition of the subject. They have acquired this property in a legitimate way, and yet we propose to say in this section six that they shall not be permitted to sue or be sued; that they shall not be admitted to the exercise of those remedies which are enjoyed by every other member of the community. Pass this provision and does it not expose this property to rapine and plunder? Is it not an invitation to strip them of the property which they have acquired by the authority of the laws of the land, Federal as well as State? What would property be worth, if the owner or the claimant of it is not allowed to resort to the Courts, and to the remedies prescribed by law for security and protection. To a provision of that kind I cannot give my assent. I think, sir, that the objections which I have stated here, hastily and in a general form, will apply to each and every one, in a greater or less extent, of the provisions which follow section six. For these reasons I will support the proposed amendment of the gentleman from San Deigo, Mr. Blackmer, and when the time comes for recording our votes, I must record myself against every subsequent provision in this report.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I do not intend to occupy the time of this Convention, because I think there has been enough discussion upon this question to proceed to vote upon it. I shall vote in favor of section five, but having on yesterday voted against section four—in favor of striking out section four—I propose to give my reason. There is a difference between the two sections, to my mind. The Burlingame treaty, to my mind, was a commercial treaty. It allowed their landing in the country, and it was believed that that was the sole purpose of that treaty. And if they had had any intention of making them citizens and giving them residence—permanent residence in this State; if that had been intended, that they should have a permanent residence and possess the rights of the most favored residents—they would have declared that they should have the right of citizenship; because the policy of our government is, if they desire them to be permanent residents, to give them the right of citizenship. That has been the policy of this government from its foundation. This proposition in section five is upon the question of settlement. We are here in Sacramento as residents. We have not settled. We are temporary residents. We are not settlers. A man settles by removing his home and his tools here, and settling down here. The Chinese, under that treaty, have the right of residence for commercial purposes, but they have no right to enter in and take possession of our land. That is a right that belongs to American citizens, and it is a right reserved to the State, and which we propose to declare here. Even the Republican party has gone back on "the universal fatherhood of God and brotherhood of man," and come to the conclusion that this is a white man's government, made for the white man. This State should be a State for white men, without any respect to the treaty, or misinterpretation of any treaty. The State has the right of self-preservation. It is the same right that a man of family has to protect his house and home. The State has the right to say that our people have a right to the land and the water, and to control the destiny of the State. Allow one million of these people to come in here, and the country would be taken possession of by them. That is a right that belongs to us, and that has never been transferred. It is a right that New York declared—that a certain element from Europe should not settle there. This amendment of the gentleman from San Diego seeks to nullify that. That right, I claim, has never been denied by the Supreme Court of the United States—that no treaty with any country in the world has forbidden a State to exercise the right to say as to who shall settle and become permanent citizens of the State. I hope that the amendment will be voted down, and that the section will stand as it is, for the protection of ourselves and our children. When one race is mixed with another, it does not elevate the lower grade to the level of the higher, but it lowers the higher grade to the level of the lower.

MR. FILCHER. But how is the word "settler" to be defined?

MR. LARKIN. The common use of the word, as used in law and in language, "settler" means a permanent resident. It is so recognized in the use of the word whether in law or in a conversation. I hold that this is a vital question, and still further, I would have an amendment to the Constitution of the United States providing that no person, unless he be a white man, be permitted to settle in the United States, after the adoption of that amendment. We want no other race here. The future of this republic demands that it shall be a white man's government, and that all other races shall be excluded. The whole future of this country rests upon propositions like this fifth section, and they must be embodied in the whole foreign policy of the Government of the United States under our system.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: I do not desire to travel over the ground again that has been traveled over several times in this Convention, but in answer to the gentleman from San Joaquin, whose conscience is arrested at the threshold of the treaty power, I would like to say that the friends of this section, and the friends of this principle of the Constitution, plant themselves on the ground of the reserved rights of the States guaranteed to them by the Constitution, and which no treaty can override without becoming unconstitutional and void. In the beginning of this debate I think that our side fairly, clearly, and plainly pointed out the position which we occupy with reference to this branch of the subject, and I may say that in the decision of the Supreme Court of the United States in the case of Holmes vs. Jennison et al., I think this principle is clearly illustrated. In that decision the Court says:

"The power to make treaties is given by the Constitution in general terms, without any description of the objects intended to be embraced by it, and consequently, it was designed to include all those subjects which in the ordinary intercourse of nations had usually been made subjects of negotiation and treaty, and which are consistent with the nature of our institutions, and the distribution of powers between the General and State Governments." (14 Peters, 569.)

And I will here say, parenthetically, that my friend from San Diego was altogether wrong when he charged that I tried to impose upon this Convention a reading of law which was not in good faith.

MR. BLACKMER. I beg the gentleman's pardon, I did not take that position.

MR. AYERS. He stated, if I recollect right, that I had not read the entire substance of the matter alluded to in the authority, and that I left it unfinished, and therefore I took advantage of the Convention, or seemingly took advantage of the Convention, by not giving in good faith the whole substance. That is, that in arguing upon the powers of the State I had quoted from page forty-eight, of 5th Wheaton's reports, a paragraph which related entirely to the commercial powers of the States. I made that quotation simply for my argument in reply to the Chairman of the Chinese Committee and suggestions in this Convention. He had said that the section was repugnant to that portion of the Constitution which gave the regulation of commerce to Congress, and that is simply what I quoted from Wheaton, to show where it was not prohibited in express terms to the States, where it was not exclusive in its nature, and where it was not granted to the Federal Government in express terms.

Now, Mr. Chairman, with reference to this treaty argument, I say that where a treaty transcends the reserved powers of the States it is unconstitutional and void; that it is inconsistent "with the nature of our institutions and the distribution of powers between the General and State Governments." We claim that the President of the United States and the Senate have no power to make a treaty with China, the effect of which would be to infringe upon and overturn the reserved rights of this State, as they claim they have done in this treaty with China, to the material injury of the people. I will also refer to the opinion of Justice Baldwin in the same case, published in the Appendix to fourteenth Peters. He says:

"It is but a poor and meager remnant of the once sovereign power of the States; a miserable shield and patch of independence which the Constitution has not taken from them, if, in the regulation of its internal police, State sovereignty has become so shorn of authority as to be incompetent only to exclude paupers, who may be a burden on the pockets of its citizens; unsound infectious articles, or diseases which may affect their

bodily health, and utterly powerless to exclude those moral ulcers on the body politic which corrupt its vitals and demoralize its members. If there is any one subject from which this Court should abstain from any course of reasoning, tending to expand the granted powers of the Constitution so as to bring internal police within the law or treaty-making power of the United States, by including it within the prohibition on the States, it is the one now before us. Nay, if such construction is not unavoidable, it ought not to be given, lest we introduce into the Constitution a more vital and pestilential disease than any principle in which the relator could be rescued from the police power of Vermont, would fasten in its institutions, dangerous as it might be, or injurious its effects. Should an adjudication, so fearful in its consequences, be made in a case of kindred nature with this, the people and States of this Union will 'plant themselves' on the 'impregnable positions' taken in the opinions of this Court, in the cases quoted; and, standing on grounds thus consecrated, refuse to surrender those rights which we had declared to be complete, unqualified, and exclusive."

I say, Mr. Chairman, that the treaty with China only cuts this figure in this argument, that wherever Congress had the right to enact a treaty with China, giving them the rights of immigration to this country or to this State, that it did not extend to the right of giving them the power of immigration as to effect a result which would be disastrous to the people of this State. And I will further say, that there is an element in this Chinese population; there is an element in this question which I believe, when taken to the Supreme Court, will cut a very large figure in their decision, and that is that they do not come here voluntarily as immigrants, but that they come here under contract; that they are in effect slaves; and that they are not the character of people that it was ever contemplated that the hospitality of our territory should be extended to.

REMARKS OF MR. RINGGOLD.

MR. RINGGOLD. Mr. Chairman: I will be proud when the time comes when men will stop taking middle ground. If the State has no right to regulate its internal commerce, it is no longer a State but a dependency. I wish to refer to the statement of the Chairman of the Committee on Chinese. If I understood the Chairman right, he said that the reason the ballot was given to the freedmen of the South was because of fear of its turbulent spirit and as an act of justice. From my own standpoint of American politics it was nothing of the kind. If it had been anticipated that the freedmen of the South would have voted the Democratic ticket and put them in power, we would never have heard of any such sublime virtue. It was given for the purpose of offsetting the Democratic party of the South, and perpetuating the reign of the Republican party in the councils of the nation. It seems to me that the diversity of interest in the American Union is so wide that if we do not stand by the principle of popular sovereignty, it will result in the destruction of the nation, and I hope that the gentleman will withdraw such a miserable attempt at a compromise as he has offered this morning.

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

The call for the previous question was seconded by Messrs. Tinnin, McComas, and Smith of Santa Clara.

The main question was ordered.

THE CHAIRMAN. The main question has been ordered. The question is on the amendment offered by the gentleman from San Diego, Mr. Blackmer.

The amendment was lost.

MR. MCCALLUM. I offer a substitute for section five.

THE SECRETARY read:

"No aliens who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, shall be permitted to settle in this State after the adoption of this Constitution."

MR. FILCHER. I raise the point of order that the amendment is out of order, because it is covered by the provisions of a previous section.

THE CHAIRMAN. That does not make it out of order.

MR. WHITE. I move the previous question.

MR. MCCALLUM. I withdraw the amendment.

MR. MCCONNELL. I move to amend section five by striking out the last four words, "adoption of this Constitution," and inserting the words "year eighteen hundred and eighty-five," so that it will read "no person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the year eighteen hundred and eighty-five."

The amendment was lost.

THE CHAIRMAN. If there be no further amendments to section five the Secretary will read section six.

THE SECRETARY read:

SEC. 6. Foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State, and any lawyer appearing for or against them, or any of them, in a civil proceeding, shall forfeit his license to practice law. No such foreigner shall be granted license to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person or corporation employing them. No such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State; and all contracts of conveyance or lease of real estate to any such foreigner shall be void.

MR. LARKIN. I move to strike out all down to line seven, so as to read "no such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State; and all contracts of conveyance or lease of real estate to any such foreigner shall be void."

MR. REYNOLDS. I have a substitute for section six.

THE SECRETARY read:

"No alien ineligible to become a citizen of the United States shall be permitted to catch fish in any waters under the jurisdiction of the State, nor to purchase or hold any real property in this State, and all contracts of conveyance or lease of real property to any such aliens shall be void."

MR. LARKIN. I accept that as an amendment, and withdraw my amendment.

MR. HERRINGTON. I have an amendment to offer.

THE SECRETARY read:

"Amend section six as follows: Strike out the first part of the section down to and including the word 'license,' in line five, and insert in lieu thereof the words 'no license shall ever be granted to any Mongolian or Chinese.' Also, strike out the word 'foreigner' in the remaining part of the section wherever the same occurs, and insert instead 'Mongolian or Chinese.' Also, after the word 'State,' in line eight, insert the words 'nor kill or take game at any place therein,' so that the section shall read: 'No license shall ever be issued to any Mongolian or Chinese to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person or corporation employing them. No such Mongolian or Chinese shall have the right to catch fish in any of the waters under the jurisdiction of the State, nor to kill or take game at any place therein; nor to purchase, own, or lease real property in this State; and all contracts of conveyance or lease of real estate to any such Mongolian or Chinese shall be void.'"

MR. HERRINGTON. Mr. Chairman: I think that embraces all that was intended to be embraced by the committee when they made that report. Thus it corresponds with the provisions of the section which have been adopted by striking out the word "foreigner," giving it conformity and consistency with the sections already adopted. I hope the amendment to the amendment will be adopted as read.

The amendment was lost, on a division, by a vote of 41 ayes to 51 noes.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from San Francisco, Mr. Reynolds.

MR. WEBSTER. I move to amend section six so as to read as follows:

"Foreigners ineligible to become citizens of the United States shall not have the right to purchase, own, or lease real property in this State, and all contracts of conveyance or lease of real estate to any such foreigner shall be void."

I have had nothing to say on this question so far. I do not desire to say but a few words now. I have been satisfied to sit here and listen to the arguments which have been presented. It is the legal bearing of the subject which we want; and I believe that it has been fully shown that this amendment is legitimate and can be sustained. I am in favor of going to the extent of the law, and no further. I believe, sir, that this amendment is sustained for several reasons. It is claimed that by a provision in the treaty the inhabitants of China shall have the right of travel and residence in the State of California. The idea of residence is transient, as I think, and I am borne out in this statement by the definition given by Bouvier's Law Dictionary, second volume, page four hundred and sixty-eight. There is a difference between a man's residence and his domicile. He may have his residence in Philadelphia, and he may have his residence in New York; for although a man can have but one domicile he may have several residences. A residence is generally transient in its nature; it becomes a domicile when it is taken up as permanent. Now, sir, I hold that under that treaty, and the exceptions that are made to it, we can prohibit them from holding or leasing real estate in this State. So far we can go, if no further. There are exceptions, although it is claimed in the body of the instrument that they are entitled to all the rights, privileges, and immunities of the most favored nations. There are exceptions, because it turns round and says that they shall not be entitled to the same rights and immunities, for it expressly prohibits their naturalization.

Now, sir, I have said nothing on this subject, but I fully concur as to the evil to the fullest extent which has been claimed here. I have seen it in San Francisco to the fullest extent. And there is one thing there, sir, that fully convinced me that the Chinamen are able to live and prosper upon the fare of horses and run the country besides, for this reason: they learned to pool their issues when Kearney was a boy. You can go into the markets there in San Francisco and in every basket of turnips they pool their issues and buy in quantity. They tax a Chinaman for the same material less than one half what the citizens of San Francisco pay for the same material. I have seen it there. You can see women and children, half naked and starving, following the Chinamen around with the baskets picking up the refuse. You can see it any day.

I will turn for a moment to another part of the subject which has not been touched upon. The great farmers of the country have not felt this evil yet. Their time will come by and by. The horticulturists of the country are driven to the wall by them. I have been one, and my vocation is gone, because I cannot compete with them in raising any kind of product. They can rent land right under my nose and pay twenty dollars per acre per annum and run me out of my business. That is the condition of the horticultural interest of the State to-day. It is to that extent that the farmers of Santa Clara are driven out of business.

MR. STUART. I would like to ask the gentleman if the Italians or any other foreigner does the same thing?

MR. WEBSTER. The Italians are the only people that they don't compel to leave. I know that they are raised in such a way that their living costs them very little. It is only because they fully understand their business that they can compete with them at all.

MR. BEERSTECHER. The amendment that you offer is substantially the same as that offered by the gentleman from San Francisco, Mr. Reynolds, with the exception that you do not include the inhibition

upon the Chinese to fish in the waters of the State. I would ask you if there is any objection to including that inhibition in the section?

MR. WEBSTER. I do not believe that we have the power to do it. I say when you do that you go beyond the authority of this State. Now, sir, I believe that a revolution in sentiment everywhere is coming upon this as well as the people East of the Rocky Mountains. I believe that the election which will be holden here next Fall upon this question will have a great bearing upon the action of Congress, where the vote upon this direct question—Chinese or no Chinese—is to be taken. And I believe that a memorial to Congress will also have its influence; and I believe when it is understood that distress has overtaken this State, which in the last thirty years has added more wealth to the commerce and the coffers of the nation than any State in the Union, or country in the world—according to its size; that when the people of the North, with whom we stood shoulder to shoulder in the great struggle for national life; when the South in their great calamity, which occurred just a few months ago, and we poured out our money and sympathy as freely as the gentle dews fall from heaven; and when the people of the whole country see as we stand here driven to the verge of constitutional law, and now upon the line between constitutional, State, and national rights—that when they see us in this position, with one hand pressing back the hordes of Asia, and with the other upholding and defending the Federal Constitution, that they will meet us at the threshold and assist us in driving this curse from the land.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I do not desire to speak on this subject to any extent, but I favor the amendment proposed by the gentleman from San Francisco, Mr. Reynolds, for the reason that he embraces the inhibition against the Chinese fishing in the waters of this State, as the fisheries are gradually passing into the hands of Chinese, and in a few years the Chinese will be the only fishers in the State. There is no doubt in my mind about our right to control the fisheries and say who shall fish in the waters of this State. I call the attention of the committee to a note to section one thousand and seventy-three of Story on the Constitution, the last edition by Judge Cooley. It is there stated:

"The State may control the fisheries within its limits and confine the privileges thereof to its own citizens."

He cites a number of cases in support of the statement. Mr. Cooley, in his Constitutional Limitations, on page 524 says:

"The rights of which we here speak are considered as pertaining to the State by virtue of an authority existing in every sovereignty, and which is called the eminent domain. Some of these are complete without any action on the part of the State; as is the case with the rights of navigation in its seas, lakes, and public rivers, the rights of fishery in public waters, and the right of the State to the precious metals which may be mined within its limits."

There is no doubt about the right of the State to say who shall fish within the waters of this State. The amendment offered by Mr. Webster is the same as the amendment offered by Mr. Reynolds, with the exception that Mr. Reynolds says that no Chinese shall fish in the waters of this State. I believe that we have a right in law and in justice to put this inhibition in the Constitution, and therefore I am in favor of the amendment of Mr. Reynolds in preference to that of Mr. Webster. It includes an inhibition that we can legally make.

MR. RINGGOLD. Mr. Chairman: Neither the original nor the amendment covers the question. Both say "foreigners ineligible to become citizens." The Chinese are not so. There are Chinese naturalized now.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I seconded the amendment offered by the gentleman from Alameda, Mr. Webster. As has been said by many gentlemen, I would be willing, for one, to go just as far toward the exclusion of Chinamen from residence and from all classes of employment in the State of California as I think we are able to do consistently with the oaths we have taken to support the Constitution of the United States. I have no desire, sir, to attempt a discussion of the question broadly; suffice it to say that, after listening to many eloquent gentlemen on this subject, I believe that the judgment of the men, women, and children of the State of California, and of the whole Pacific Coast, can be epitomized in one brief sentence, that they are prepared to do all within their power to prevent in the future the increase of Chinese population on this coast. Now, sir, taking this view of it, I take it that it is the united voice and wish of the people of this State who sent us here, to frame an organic law, to do all in our power consistent with our allegiance to the Government of the United States, and to the laws and treaties of the United States, to avert the evils of Chinese immigration. I believe, sir, that it is within our power to prohibit foreigners not eligible to become citizens of the United States from purchasing or leasing real estate within the State. I am not unaware, Mr. Chairman, that there is some doubt upon legal authority, and high legal authority, upon this proposition; yet, after having examined this question in the past, and having listened with such attention as I have been able to, to the arguments made upon the subject, I have yet to hear that which changes my previously formed opinion upon the subject, and that is that it is within our power to make that prohibition effective.

An objection may be raised in regard to the obligation of the State not to interfere with the power of the General Government to dispose of public lands in this State; but, sir, it may be noted in the laws of the United States providing for the alienation of the public lands belonging to that government within our limits, there are no provisions by which these lands are provided to be sold by the government, except to citizens of the United States, and those who have declared their intention to become such. For instance, it will be remembered by the lawyers on the floor that until eighteen hundred and sixty-six, no provision was made for the alienation of any of the lands generally known and classed as mineral lands, being part of the public domain. By a series of Acts, commencing July twenty-sixth, eighteen hundred and sixty-six, and running down to either eighteen hundred and seventy or eighteen hundred and seventy-two, the last Act upon the subject, the right to occupy the public lands of the United States for the purpose of mining, for delving for minerals, the right of occupancy, and the right to purchase ultimately and to take title by patent, is limited to citizens of the United States, and those who have declared their intentions to become such. And, sir, if you will look through the body of our law providing for the alienation of agricultural lands, by preëmption and homestead, you will find that the right is nowhere extended to any others than citizens of the United States, and those who have declared their intentions to become such. I, therefore, take the view of this policy as manifested by the government of the United States, that we are not in want of harmony with the government, that we are not in conflict with the spirit or letter of the Constitution when we put into the framework of our Constitution a prohibition equally applicable to all foreigners who are not eligible to become citizens of the United States. Now, if we look through the body of our Federal law, we will find that there is nowhere an authorization to acquire property from the government except in favor of citizens, and those who have declared their intentions to become such. We are, therefore, within the limits of that rule, because we only prohibit those from acquiring title to real property who are ineligible to become citizens.

Mr. Chairman, I should be very glad to vote for the amendment offered by the gentleman from San Francisco, Mr. Reynolds, if I believed that we could safely go so far. I am not satisfied that we could do that. I do believe, however, that we can go to the extent of prohibiting those persons ineligible to become citizens from acquiring a title, either in fee or by lease, to real property in this State; and if we do that we shall have effected some direct relief, something very potent towards the exclusion of this class of people from our coast. I hope the amendment of the gentleman from Alameda, Mr. Webster, may be adopted by the committee.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: I do not wish to occupy the time of the committee further than to say that I do not think we can rightfully prohibit this element from leasing any real estate. You say we cannot prohibit their coming here nor their residing here, but we may prohibit their leasing property. If they have a right to come here, even for the purpose of commerce, I am unable to see how they can come here for the purposes of commerce or temporary residence unless they can lease some property on which to live. You may say, in a hotel. That does not meet the question. If China has the right of commercial intercourse with us, if she has a right to have commercial business here, Consuls and other officers, they have the right to lease something to do business in, and a right to lease a place to live in. It seems to me that we are going too far when we say that no foreigner ineligible to citizenship shall be permitted to lease any real property in the State. I know the evil that is attempted to be cured—these men leasing gardens, raising vegetables, and all that—and the end is a desirable one; but while we are attempting to do something we ought not to go too far. It seems to me that we cannot say that no foreigner ineligible to become a citizen shall ever lease any real property.

MR. HAGER. Our people go there and cannot lease property or hold property, under our treaty.

MR. BELCHER. I do not know how it may be in China; but I know we permit the citizens of other nationalities to lease and occupy real property here, and we permit the inhabitants of China to come here under this treaty and to have all the privileges of other nations. Now, how they are to come here, and live here, unless they can occupy real property, lease real property, and hold real property for the time, is more than I can see. I am in favor of the clause that prohibits the Chinaman from fishing in the waters of the State. I think we can do that, where they are engaged in fishing. I am in favor of prohibiting that; and I am in favor of prohibiting their purchasing or holding land. I would be in favor of prohibiting the leasing, if I thought we could do that. Now, of course, back of this is the question as to the mass of the people coming here; but if they have the right to come here and settle, and live here, then they have the right to lease property to live upon, and must occupy it for the time. I think we go too far in saying that no land shall ever be leased by any of these men. I suppose no one here is in favor of this section six. I hear nothing in favor of it, and therefore shall say nothing against it.

REMARKS OF MR. DUDLEY, OF SOLANO.

MR. DUDLEY, of Solano. Mr. Chairman: This committee has in its wisdom refused to strike out section five. That section reads: "No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution." It seems to me, Mr. Chairman, that is going nearly as far as the most radical would deem it necessary to go. It is an acknowledged fact by everybody that these Chinamen are here. It is generally conceded by all citizens that they are obnoxious to the interests of the State; that they are obnoxious to the people of the United States generally, from various causes. But they are here. One gentleman stated here several years ago, and made himself very obnoxious by saying it, that these Chinamen must either work, beg, starve, or steal. Now, it has been argued upon this floor that this Convention ought to so hamper these Chinamen that they cannot obtain a livelihood; that we ought to force them into the class of paupers and vagrants in order to make them come within the law. They propose to make them a burden upon the State of California—to make them an absolute burden upon the taxpayers of California. I would like to know how many of the taxpayers of California are willing to accept them. As to whether they should fish or

not, I do not know whether it is a matter of any great importance, but I presume that the power to exclude them from fishing is the power to exclude them from any other business. Now, I am inclined to think that in the way of market gardening they come in more direct competition than they do in fishing. They must do something. The gentleman from San Francisco says they must go home, but many of them are totally unable to go home. They have not got the means to go home. They have come here on the invitation of the United States, and there was a time when the people of the United States looked upon them as desirable immigrants—as a desirable labor element. I recognize the fact that that was a mistake—I believe that it was a mistake.

MR. HERRINGTON. Haven't they got ample room in the other States?

MR. DUDLEY, of Solano. Undoubtedly they have; but the question is, whether the State authorities have the power to drive them from one point to another. They have been invited here by the people of the United States. The United States entered into treaty stipulations with them, guaranteeing them certain rights and privileges. As an enlightened nation, as a civilized people, we ought to be content with testing our power under section five, without attempting to make paupers of them, and place them as a burden upon the State treasury of California. As to this matter of leasing land, I think the gentleman from Yuba, Judge Belcher, is certainly correct in his view of that case, and I doubt if any measure of that kind will relieve us in any way whatever. The only relief that can be had is to stop their coming, and await the time when time shall remove them from among us. Their general disposition to get home as soon as possible, and the fact that they die off rapidly, will relieve California perhaps as fast as desirable, even to the labor element of California. As to the argument of the gentleman from Alameda, that they run him out of business; that they can cultivate small fruits and market gardens, and sell their produce for less than any other class of people, then, of course, that class of produce is furnished to consumers at vastly less rates than it would be without them. That is true. Let them be swept away within a week, or within a day, and all these places left vacant, what is the result? Why, sir, the gentleman from Alameda, instead of cultivating his orchard and vineyard, would take it up and plow it and sow it to wheat; and every person, like the mechanic, who produces no vegetables, and who consumed this produce largely at the late prices, would be compelled to pay once, twice, or three times the price, or go without them. The demand will be good, however. The lands that are now used for this purpose will be used for something else.

I desire to say that it does seem to me that after refusing to strike out section five we have done enough. We have placed ourselves in a position to test the question of our rights under the treaty. Now, then, as to the objection to this class of people, the gentleman from El Dorado, Mr. Larkin, has taken the position that they are obnoxious on account of color. I think them obnoxious, as he does, but not on account of their color, but because of their non-assimilative qualities. They cannot become of us, nor a part of us. They cannot assimilate with the American people.

MR. HOWARD. Mr. Chairman: I hope that the committee will rise now and take a recess, and that before we adjourn to-day we will dispose of this business. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

The Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

CHINESE IMMIGRATION.

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

Carried.

IN COMMITTEE OF THE WHOLE.

MR. BARNES. Mr. Chairman: I would inquire if there is a quorum present.

MR. CROSS. Mr. Chairman: I move, for the purpose of determining that question, that the Secretary be directed to call the roll.

MR. BLACKMER. Mr. Chairman: I move that the committee rise, for the purpose of determining whether there is a quorum present.

MR. HUESTIS. I raise a point of order.

THE CHAIRMAN. The Convention has resolved itself into Committee of the Whole. There can be no roll call in Committee of the Whole, as I understand it.

MR. NOEL. I move that the committee rise, in order to see if we have a quorum present.

THE CHAIRMAN. The motion is that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT pro tem. The Secretary will call the roll.

The roll was called, and seventy-eight members found present.

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

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment to section six.

THE PREVIOUS QUESTION.

MR. HUESTIS. I move the previous question on the pending amendment.

Seconded by Messrs. Moreland, Noel, and Evey.

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

Carried.

[MR. TINNIN in the chair.]

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Francisco.

The vote was taken, but objections being made that there was no quorum voting, it was put again.

Division being called, the committee divided, and the amendment was adopted—ayes, 72; noes, 8.

THE CHAIRMAN. The Secretary will read the amendment offered by the gentleman from Alameda, Mr. Webster.

THE SECRETARY read the amendment.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Alameda, Mr. Webster.

Lost.

THE CHAIRMAN. The question is on the substitute offered by Mr. Reynolds.

Adopted—ayes, 43; noes, 35.

MR. SMITH. Is an amendment in order?

MR. LARUE. Mr. Chairman, I send up an amendment to section seven.

MR. SMITH. First I have an amendment or substitute for section six.

THE SECRETARY read:

"No Chinese, or foreigners ineligible to become citizens of the United States, shall be allowed to fish in any of the waters of the State, nor to purchase or own any real property, nor any interest therein, nor to lease, rent, hold, or use any land for the purpose of agriculture, horticulture, grazing, or other means of profit, and all contracts or conveyance of any right or interest in real property, and any lease of any land for the purposes of agriculture, horticulture, or grazing, or other means of profit, to or with any such foreigners, shall be void and not entitled to record."

THE CHAIRMAN. The amendment is out of order, as I understand it is offered as a substitute.

MR. SMITH. Allow me to explain what the amendment is. The amendment as adopted, it seems to me, will defeat the whole matter. One of the most important objects is to prevent the Chinese from leasing land. For fear it might defeat the whole matter, I have provided that they shall not lease or rent any land. Now, this is an important matter, which it seems to me should be attended to, and if we cannot do it any other way, we ought to reconsider the matter in order to get this provision in. Where I live the Chinamen do all the gardening, and lease a great deal of land, and take the place of a great many white laborers. If this amendment is in order, I hope it will be adopted.

THE CHAIRMAN. I rule the gentleman's amendment out of order, for the reason that a portion of the substitute already adopted would be stricken out by it, and it covers part of the same ground adopted by the Convention.

MR. SMITH. I then move to reconsider the vote by which the substitute was adopted, in order to have a chance to put in this amendment.

THE CHAIRMAN. That can only be done by the unanimous consent of the house. The Chair hears objections.

MR. BURT. Mr. Chairman: Will it not be in order for the gentleman to add to the substitute already adopted by the Convention? If his amendment only adds to it, is not that in order?

THE CHAIRMAN. By the rules the gentleman can do so with the unanimous consent of the Convention. The Convention has adopted a substitute for the section, and the gentleman now offers a substitute, which strikes out a portion of what has already been adopted by the Convention. It is therefore ruled out of order.

MR. NOEL. Mr. Chairman: I have an amendment which I wish to offer as an addition to the section.

MR. HOWARD, of Los Angeles. He can offer it as an additional section after we get through with the article.

MR. NOEL. I wish to offer it now.

MR. HAGER. I understood the Chair to rule that we cannot reconsider the vote by which the substitute was adopted at this time.

THE CHAIRMAN. It cannot be reconsidered without one day's notice being given, except by unanimous consent of the Convention.

MR. HAGER. That only applies to a final vote, not to the Committee of the Whole. This is not a final vote. We may at any time move to reconsider without going through the formula of one day's notice.

MR. LARUE. Mr. Chairman: I rise to a point of order.

THE CHAIRMAN. State your point of order.

MR. LARUE. We are acting under the previous question.

THE CHAIRMAN. The previous question only goes to the amendment. The point of order is not well taken.

MR. HAGER. We have exhausted the previous question. I wish a correct ruling in regard to the progress of the business, as we pass upon these sections here. If we adopt an amendment and afterwards find that we have made a mistake, it seems to me very strange that we have to give notice and wait until the next day before we can get at it to make the correction. That rule only relates to a final vote.

MR. LARUE. Mr. Chairman: I rise for information——

MR. NOEL. Mr. Chairman: I rise to a point of order.

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

MR. NOEL. My point of order is that the gentleman is not directing his remarks to any question pending before the Convention. There is no question before the Convention.

THE CHAIRMAN. The point of order is not well taken.

MR. ROLFE. Mr. Chairman: I rise to a point of order.

THE CHAIRMAN. State your point of order.

MR. ROLFE. My point of order is that the Chair has already ruled the motion out of order, and there has been no appeal taken from the ruling of the Chair, hence any further discussion is out of order.

THE CHAIRMAN. The Chair rules the point of order well taken, unless there is an appeal from the decision of the Chair.

MR. HAGER. I wish to call the attention of the Chair to the fact——

MR. ROLFE. Mr. Chairman: I insist upon my point of order.

THE CHAIRMAN. The Chair rules that the adoption of the substitute for section six was a final vote, as far as the Committee of the Whole is concerned.

MR. REYNOLDS. If I understand the Chair correctly the decision is that the adoption of the substitute is a final vote. And I understand there are gentlemen here who desire to amend that substitute without striking out or destroying anything that has already been adopted, or altering the substance of what has been adopted. It seems to me the effect of the ruling of the Chair is to prevent a measure from being perfected. Now, if we have adopted a substitute, and amendments are offered which do not change the character of the substitute, they ought to be entertained. They are certainly in order, and I think the ruling of the Chair is wrong.

MR. NOEL. Mr. Chairman: I rise to a point of order. The Chair has ruled on the question and no appeal has been taken; this debate is therefore out of order.

THE CHAIRMAN. The point of order is well taken. The Chair will entertain any motion to amend section six, which does not strike out the substitute, or any portion of it.

MR. REYNOLDS. Mr. Chairman: I understand that the amendment of the gentleman from Kern does not strike out any portion of section six, but is simply a further amendment.

MR. NOEL. Mr. Chairman: I insist upon my amendment being read.

THE CHAIRMAN. The Secretary will read the amendment.

THE SECRETARY read:

"No Chinese shall be allowed to catch fish in any of the waters of this State, nor to take game within the limits of the State; *provided*, immature tadpoles and pollywogs shall not be considered fish, nor tomcats and mud hens as game."

[Laughter.]

THE CHAIRMAN. The amendment is out of order.

MR. NOEL. Mr. Chairman: I contend that my amendment is cognate to the subject under discussion.

THE CHAIRMAN. The amendment is frivolous, and will not be entertained.

MR. NOEL. It seems to me it is germane to the subject under consideration.

MR. ROLFE. Mr. Chairman: I have an amendment to the substitute.

THE SECRETARY read:

"Insert between the words 'no' and 'alien' the words 'Mongolian or'."

MR. WEST. I rise to a point of order.

THE CHAIRMAN. State your point of order.

MR. WEST. The committee have already adopted the substitute. It has been adopted as a whole and cannot be amended. Amendments were in order to the substitute before it was adopted, but having been adopted as a whole it cannot be amended.

MR. HAGER. We have taken a final vote by adopting the substitute, and how can it be subject to further amendment? The Chair has decided that the adoption of the substitute was a final vote, and how are you going to amend it?

THE CHAIRMAN. As far as it went, additions can be made. No portion of it can be stricken out.

MR. ROLFE. I claim the floor.

MR. SMITH, of Fourth District. Mr. Chairman: Not one word is stricken from the substitute by my amendment; it only adds to it.

MR. ROLFE. Mr. Chairman: Have I the floor or not?

MR. WEST. Mr. Chairman: I insist upon my point of order, that the committee have adopted the substitute, and thereby have exhausted their resources for amending it. It is a final action, and no further amendment can be allowed.

THE CHAIRMAN. The point of order is not well taken. The committee have a right to perfect the substitute by adding to it.

MR. WEST. The right to perfect a proposition is exhausted when that proposition is adopted, therefore we cannot proceed to further amend it after it is adopted.

THE CHAIRMAN. The point of order is not well taken.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I suppose all this talk will not count on my fifteen minutes. I do not offer this amendment by way of a joke, or as a frivolous proposition, or in any manner to impair the section. I do it in good faith. Now, if there is anything in this section six, if we can sustain it under the treaty—and I am in hopes we can—I am under the impression if there is any part of the article that can be maintained under the treaty, I think it is section six, as it has been finally adopted. Therefore, I offer this amendment for the purpose of obviating what I am afraid may be an obstacle in the way of its execution, by inserting the word "Mongolian," so that no Mongolian or alien shall have these privileges; because it may be finally decided that there is nothing in our naturalization laws which will preclude them from becoming citizens, in which event the provision, as it now stands, would be of no avail whatever. That is as yet an open question, and some of the Courts are naturalizing the Chinamen; therefore, if that should be the result; if it should finally be determined by the highest Court in the land that the Chinese may become citizens, or if Congress should pass a law to that effect. But if you put the word "Mongolian" in there, that includes them, whether they become citizens of the United States or not. Then, if this has any force at all, we can at least exclude those who are not citizens of the United States—who are not actually citizens—and if they are aliens and Mongolians too, we can exclude them just the same; and if they should be decided to be eligible to citizenship, if this provision will hold water, we can still exclude them. I think it is important that this amendment should be made to the substitute.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I wish briefly to give my reasons for objecting to the use of this word "Mongolian" in the Constitution. The term Mongolians does not apply exclusively to the Chinese. It is a generic type of the human family, and some of the leading authorities on ethnology have divided the species into three classes—Mongolian, Caucasian, and Negro. Some of them claim that the word Mongol embraces the American Indian. Now, if you are going to put that term into the Constitution, and the Courts come to construe it, where will you be? You are not confining it to the Chinese, and they are the people aimed at. Why not come at it directly and say Chinese? I opine that almost every gentleman on this floor was sent here for the purpose of procuring legislation that will prevent the immigration and settlement of the Chinese. Not Mongolians, but Chinese. If you place the word Mongolian there for the purpose of reaching the Chinese, you may find yourselves badly mistaken when the Courts come to construe it. I hope the gentlemen of this Convention will not place a word in there that will be capable of having a double meaning placed upon it. We all know that we mean the Chinamen, and why not say Chinamen?

MR. REED. Mr. Chairman: It seems to me this is altogether too important a measure for us to undertake to pass upon here with a slim house. I think we ought to adjourn. There is scarcely a quorum present. I move that the committee rise, report progress, and ask leave to sit again.

MR. HOWARD, of Los Angeles. I hope the committee will not rise. We are here for business, and if members absent themselves that is not our fault. We are not responsible for their running away.

THE CHAIRMAN. The motion is that the committee rise.

Lost.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from San Bernardino, Mr. Rolfe, to insert the words "Mongolian or."

Lost.

MR. SMITH, of Kern. I move to insert in the same place the words "Chinese or," so as to read "no Chinese or alien," etc.

THE CHAIRMAN. The question is on the adoption of the amendment.

MR. HARRISON. That part of the amendment relative to fishing, if it is adopted, will prevent the Chinese representing the Empire of China from going fishing for pleasure. He can be arrested for fishing for pleasure. I think it ought to be qualified.

MR. AYERS. I will inform the gentleman that the Chinese who represent the Empire of China are here under the law of nations, and this provision would not affect them in any way.

MR. BARNES. I think that is an error.

MR. WELLIN. Mr. Chairman——

MR. HERRINGTON. Mr. Chairman——

MR. REYNOLDS. Mr. Chairman ——

MR. WELLIN. Mr. Chairman: I ask the gentleman if he ever knew a Chinaman to go fishing for pleasure?

MR. HERRINGTON. Mr. Chairman: I wish to call the attention of the Convention to the fact that whoever offered that amendment is intending to defeat the whole section. It is no friend of the section who offers such an amendment as that. It practically allows every Chinaman to fish whenever he pleases. It leaves out the most essential part, and practically allows the Chinaman to do whatever he pleases. It does not follow, as a matter of course, that they are all aliens. Lots of them were born right here, and they are not aliens. They are citizens of the United States. If the word aliens covers the Chinese, what is the use of putting the word Chinese in there?

MR. TULLY. I offer an amendment.

THE SECRETARY read:

"Any minister of any religious denomination who shall teach or read the Scriptures, or attempt to convert to the Christian faith, any Mongolian resident of this State, shall be deemed guilty of a felony, and, upon conviction thereof, shall forfeit his privilege to preach and forever be disqualified from citizenship, and, upon conviction for the second offense, shall be imprisoned for life, and every such converted Mongolian shall be arrested and banished from the State as more dangerous than the pagan himself."

THE CHAIRMAN. Out of order.

MR. TULLY. I offer another amendment.

THE SECRETARY read:

"Any physician or surgeon who shall willfully render any medical or surgical aid to any person not entitled to become a citizen of the United States" ——

THE CHAIRMAN. Ruled out of order as frivolous.

MR. WHITE. Mr. Chairman: I wish to express my regret that so many members are willing to turn this subject into ridicule, when the whole people of the State are watching it with such deep solicitude.

MR. SMITH, of Fourth District. One moment, Mr. Chairman——

MR. CONDON. I move to insert the word "Chinese" after the word "alien."

MR. AYERS. I suggest "Chinese or other aliens."

MR. BLACKMER. It is very evident that the amendment is not understood.

THE CHAIRMAN. The question is on the adoption of the amendment.

[Cries of "Division," "division."]

The Convention divided, and the vote stood: Ayes, 36; noes, 27.

THE CHAIRMAN. No quorum voting.

MR. CONDON. There are members present who do not vote on either side. The rules call on all to vote.

MR. LARKIN. I rise to a point of order.

THE CHAIRMAN. State your point of order.

MR. LARKIN. Unless the ayes and noes are called it is not possible to determine whether there is a quorum voting or not.

MR. CONDON. Undoubtedly there seems to be a misapprehension about this amendment. I ask for the Chair to direct the Secretary to read it again.

MR. WELLIN. I would like to know what the difference is between the other amendment and this one? Can the Chair point out the difference?

THE CHAIRMAN. The question is on the adoption of the amendment.

The vote stood: Ayes, 41; noes, 21.

THE CHAIRMAN. There is not a quorum voting.

MR. AYERS. I move that the word "other" be inserted after the words "Chinese or." Now, how is the Chair to know whether there is a quorum voting? In the Convention you call the ayes and noes. It is evident that there is a quorum here. If there is a quorum present we can transact business.

MR. STUART. I have an amendment to offer.

MR. AYERS. Does the Chair decide that there must be a quorum voting.

THE CHAIRMAN. Yes, sir.

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

THE CHAIRMAN. Gentlemen: On the amendment offered by the gentleman from Kern, Mr. Smith, division was called for, and on that division there were 41 ayes and 21 noes, not being a quorum of this body, and the Chair ruled that there not being a quorum voting, there was no vote. From this decision of the Chair the gentleman from Los Angeles, Mr. Ayers, appeals. The question now is, Shall the decision of the Chair stand as the judgment of the Convention?

MR. STEDMAN. Mr. Chairman: I rise to ask a question. What is the effect on this section when there is no quorum voting—is it lost, or does it go over? Can we go on with any other business, and adopt any other section?

MR. HOWARD, of Los Angeles. I rise to a point of order.

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

MR. HOWARD. While the Chair is putting the question to the house, no discussion is in order.

THE CHAIRMAN. The Chair had not put the question. That is the custom that has prevailed here.

MR. HOWARD. There is no book on earth that will sustain any such practice.

MR. STEDMAN. I shall vote to sustain the Chair, because he is right. There is no quorum present.

MR. DAVIS. Mr. Chairman: I ask if there are not gentlemen present who have not voted on either side?

THE CHAIRMAN. I cannot answer that question, because I have no way of knowing.

MR. HEISKELL. Mr. Chairman: There is no way of determining unless the roll is called.

MR. CROSS. Our rules provide that the Committee of the Whole shall be governed by the same rules as in the Convention, except as to the roll call.

MR. WELLIN. Mr. Chairman: I am satisfied that there is more than a quorum present, and if we do not make the members vote, the rules amount to nothing. If we insist upon members voting, we will have more than a quorum.

MR. BARNES. Mr. Chairman: I understand the rule to be this: that having gone into Committee of the Whole, a quorum is supposed to be present. If a vote is taken and a quorum does not vote, we take no notice of it, but go on with the business. There is no means of compelling members to vote unless you call the roll.

MR. STEDMAN. Cushing's Law and Practice of Legislative Assemblies——

MR. BARNES. My friend Stedman is going to give us something useful, and I give way.

MR. STEDMAN. Cushing says, paragraph 1991, that if at any time there is not a quorum present, the Chairman of the Committee of the Whole must immediately leave the chair and the Speaker must resume the chair, and the House must then proceed to ascertain if there is a quorum present. If a quorum appears to be present, the House may then resolve itself into Committee of the Whole again, and proceed with the business. If a quorum does not appear to be present, the Speaker adjourns the House.

Now, I hold that a question has been raised whether there is a quorum present or not. I do not want to instruct the Chair, but I merely give my opinion, and I hold, sir, that it is your duty to immediately go into Convention and order the calling of the roll to see if there is a quorum present, and if there is, we can go back into Committee of the Whole again.

MR. LARKIN. Mr. Cushing's Manual lays down a proposition which I never saw questioned before. It is the duty of the Chair to ascertain, by counting or otherwise, whether there is a quorum present. The Secretary can count and see if there is a quorum present. It is not necessary to vote. Section nineteen says that no business can be done when the number is reduced below the number, and the Chair may decide that fact. If the Chair decides that there is a quorum present, by count, we can proceed, and if the Chair determines that there is a quorum present, it is not necessary for the quorum to vote on each proposition. It is not material whether the quorum votes or not, if there is a quorum present, for a majority can do business, without any regard to whether there is a quorum voting or not. If the Chair will refer to Cushing he will find that it is not necessary on division, in Committee of the Whole, to determine whether there is a quorum voting, because members might or might not vote. You can demand that members shall vote when the roll is called, but you cannot demand it on division. Therefore a majority vote, when there is a quorum present, determines the question at any time.

MR. STEDMAN. The language is very plain. When the Speaker is thus informed that there is no quorum present, he immediately proceeds in the same manner to determine whether there is a quorum present. The question has been raised now, and it must be determined, so that we will know what rule we are going to follow.

MR. AYERS. I ask the Chair if there is a quorum present?

THE CHAIRMAN. The Chair has no way of judging except by the vote taken.

MR. AYERS. Except by counting.

MR. HALL. Mr. Chairman: Section six says that a majority of the Convention shall constitute a quorum to do business. I understand that rule applies to the Committee of the Whole as well as to the Convention. I assume that there must be a majority present in order to do business.

THE CHAIRMAN. As far as the Chair is concerned, it is immaterial what the decision of the house is. I desire to state that the Chair has ruled that it requires a majority of a quorum to pass upon any proposition. The Chair ascertained that a majority of a quorum had not voted on the question, and for that reason ruled that it had not been carried. From that decision the gentleman from Los Angeles, Mr. Ayers, appeals. The question now is, Shall the decision of the Chair stand?

MR. ANDREWS. I understand that the Chair decided that a quorum must vote in the Committee of the Whole.

THE CHAIRMAN. Yes, sir.

MR. ANDREWS. I believe the appeal is well taken. I do not believe it is necessary for a quorum to vote in the Committee of the Whole.

MR. BARRY. Mr. Chairman: It seems that Saturday afternoon gets to be like a school boy's day, and there is a great deal of confusion here. Things do not go right at all, and I do not think we had better proceed any further. I think it is better for the interests of the Convention, and better for the interests of the people of the State, that we go no further. I, therefore, move that the committee rise, report progress, and ask leave to sit again.

MR. STEDMAN. I rise to a point of order. When there is no quorum in the Committee of the Whole, the committee becomes dissolved.

THE CHAIRMAN. The motion is, that the committee rise, report progress, and ask leave to sit again.

The vote stood 43 ayes to 36 noes.

MR. CROSS. Mr. Chairman: There is no quorum voting.

THE CHAIRMAN. Yes, sir, there is a quorum voting.

IN CONVENTION.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again. What is the pleasure of the Convention?

A CALL OF THE CONVENTION.

MR. LARKIN. I move a call of the House.

THE CHAIR. The gentleman from El Dorado moves a call of the House. The question is on the motion.

Carried.

THE CHAIR. The Secretary will call the roll.

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

PRESENT.

Andrews,	Gregg,	Miller,
Ayers,	Hall,	Moffat,
Barbour,	Harrison,	Moreland,
Barry,	Heiskell,	Morse,
Barton,	Herrington,	Nason,
Bell,	Holmes,	Neunaber,
Blackmer,	Howard,	Noel,
Boggs,	Huestis,	Porter,
Brown,	Hughey,	Prouty,
Burt,	Jones,	Reed,
Caples,	Joyce,	Reynolds,
Charles,	Kelley,	Rhodes,
Condon,	Kleine,	Ringgold,
Cross,	Laine,	Rolfe,
Davis,	Lampson,	Shurtleff,
Dean,	Larkin,	Smith, of Santa Clara,
Dowling,	Larue,	Smith, of 4th District,
Dunlap,	Lewis,	Smith, of San Francisco,
Estey,	Mansfield,	Soule,
Evey,	Martin, of Santa Cruz,	Stedman,
Filcher,	McCallum,	Steele,
Finney,	McComas,	Stevenson,
Freud,	McConnell,	Stuart,
Garvey,	McCoy,	Sweasey,
Gorman,	McNutt,	Swenson,

Thompson,	Tuttle,	Weller,
Tinnin,	Van Voorhies,	Wellin,
Tully,	Walker, of Tuolumne,	West,
Turner,	Webster,	White—87.

ABSENT.

Barnes,	Grace,	O'Sullivan,
Beerstecher,	Graves,	Overton,
Belcher,	Hager,	Pulliam,
Berry,	Hale,	Reddy,
Biggs,	Harvey,	Schell,
Boucher,	Herold,	Schomp,
Campbell,	Hilborn,	Shafter,
Casserly,	Hitchcock,	Shoemaker,
Chapman,	Hunter,	Swing,
Cowden,	Inman,	Terry,
Crouch,	Johnson,	Townsend,
Doyle,	Keyes,	Vacquerel,
Dudley, of San Joaquin,	Lavigne,	Van Dyke,
Dudley, of Solano,	Lindow,	Walker, of Marin,
Eagon,	Martin, of Alameda,	Waters,
Edgerton,	McFarland,	Wickes,
Estee,	Mills,	Wilson, of Tehama,
Farrell,	Murphy,	Wilson, of 1st District,
Fawcett,	Nelson,	Winans,
Freeman,	O'Donnell,	Wyatt,
Glascock,	Ohleyer,	Mr. President—63.

THE CHAIR. The Secretary will call the absentees.

THE SECRETARY called over the absentees.

MR. NOEL. Mr. President: I would like to inquire if the Convention has voted to have a call of the house.

THE CHAIR. Yes, sir; the question was put to the house.

MR. AYERS. I move that the Sergeant-at-Arms be instructed to bring the absentees before the bar of this house, except those who are absent with leave.

MR. HOWARD, of Los Angeles. I move as an amendment to the motion that they be brought here on Monday, at two o'clock, under arrest, by the Sergeant-at-Arms. I think it is perfectly disgraceful such proceedings as we have had. I think when men abandon their duty that they should be brought up and exposed before the country. I think the people of the State ought to be informed of it.

MR. NOEL. I raise a point of order, that the vote just taken shows there is not a quorum present, and it is not competent to do any business.

THE CHAIR. A quorum has a right to send for absent members.

MR. LARKIN. I move that the Secretary be instructed to furnish the Sergeant-at-Arms with a list of the absent members who have leave of absence.

MR. BARRY. I move that the Convention do now adjourn.

MR. HOWARD. There is already a motion pending.

MR. FILCHER. I rise to ask if there is a quorum present. I protest against this sort of demagogy and humbuggery, and demand that we go on with our work.

MR. NOEL. I don't see why the gentleman don't go to work.

MR. REYNOLDS. I would like to inquire whether the Chair knows whether there is a quorum present or not. I move that this foolishness stop, and that further proceedings under the call be suspended, and that we proceed to business.

THE CHAIR. The question is on the motion to adjourn.

Lost.

THE CHAIR. The motion now is that the Sergeant-at-Arms be sent after the absentees, to be brought here at two o'clock on Monday.

MR. TULLY. I hope the gentleman from Los Angeles will withdraw his motion. It is impracticable. Many of the absent members are in remote parts of the State, and it will involve a great deal of expense to bring them here out of the Convention Fund. I don't see any practical good to result from such a proceeding. I hope it will be withdrawn, and that the Convention will settle down and dispose of as much of this Chinese question as possible. I think it would be more profitable to ourselves, and give better satisfaction to the people of the State. I hope the motion will be withdrawn by the gentleman from Los Angeles.

MR. WHITE. I hope a resolution will be presented to have the Sergeant-at-Arms go after these men and bring them in, or as far as it is practicable, because the conduct of some members on Saturdays and Mondays is entirely inexcusable, and if we do anything, we ought to do something determined; and if we lose the whole of the rest of the day in bringing these men here, I am in favor of it, because we have a great deal of work before us, and every week it is the same old thing. They run out of the room on purpose, and then when we call the roll they come in again. I think this thing should be exposed, and the people should know who it is.

MR. REED. Mr. Chairman: It seems to me that the exigencies of the case do not require such rigorous measures, and when you consider the matter the Sergeant-at-Arms is going to incur considerable expense in carrying out this resolution. How is that expense to be paid? We cannot pay it. We have no authority to order it paid. We have no authority to take it out of the fund. And I think we had better look at what we are doing.

MR. HOWARD, of Los Angeles. There is no necessity of going out of town. The officer can take them, and on Monday morning bring them before the bar of the House. I want to bring them here and give them a chance to make their excuses.

MR. JOYCE. I offer an amendment, that the Sergeant-at-Arms be instructed to get what he can find in the city, so as not to incur any expense.

MR. AYERS. I accept that amendment.

MR. LARKIN. What is the question before the Convention?

THE CHAIR. That the Sergeant-at-Arms be sent out after the absentees, and bring them in at two o'clock on Monday, all that he can find within the limits of the city.

MR. McCALLUM. I desire to ask leave of absence for Mr. Martin, of Alameda, on account——

THE CHAIR. It is not in order. The question is on the adoption of the amendment.

MR. REYNOLDS. Mr. President: My understanding of the law is that a motion to dispense with further proceedings under the call of the house is always in order, and I insist upon my motion to dispense with further proceedings under the call.

MR. CROSS. Mr. Chairman: Is a motion in order?

THE CHAIR. No, sir. It is moved that further proceedings under the call be dispensed with.

MR. LARUE. I move to lay the whole subject-matter on the table.

MR. CROSS. I move we go into Committee of the Whole.

THE CHAIR. The question is on the motion of the gentleman from Sacramento, Mr. Larue, to lay the whole subject-matter on the table.

Carried.

MR. LARKIN. I move we go into Committee of the Whole, to take up the Chinese article.

A QUESTION OF PRIVILEGE.

MR. SMITH, of Fourth District. Mr. President: In the correspondence to the Chronicle, I have been somewhat misrepresented as to my opinions upon this Chinese question. I suppose it is an error, but, at the same time, that paper has a large circulation, and I do not wish to be placed upon the side of Mr. Stuart and Mr. Wilson upon this matter. I understand from the correspondent that the misrepresentation was not made at this end, so it must have been changed at the other end of the line. I will state here, in regard to Mr. Wilson's statement of the law, as I then stated, that it was correct——

MR. AYERS. I rise to a point of order——

MR. TULLY. I move that the Chronicle be directed to correct it, and that further proceedings be dispensed with.

THE CHAIR. That motion is out of order.

MR. SMITH. That law, as stated by Mr. Wilson, does not interfere with these domestic powers of the State, which still remain, and that under those powers——

[Noise, objections, and general confusion.]

I believe this Convention have given other members a chance to set themselves right; and I ask them to extend the same courtesy to me. I have no doubt this Convention understands how I stand on this matter, but I think I have a right to set myself right before the people of this State——

MR. AYERS. I rise for information. Is the gentleman speaking to a question of privilege?

THE CHAIR. Yes, sir.

MR. SMITH. As I stated then, I hold, with Mr. Wilson, that the State has certain reserved powers that the Fourteenth Amendment, nor the treaty, nor any other provision, can take away, and that under these powers we have authority over the Chinese in this State.

RESOLUTION.

MR. LARKIN. I desire to offer a resolution.

THE SECRETARY read:

Resolved, That the Sergeant-at-Arms is hereby requested to furnish the Convention the number of employés now employed in the Convention, and to state if there are any that are not required for the performance of the work in the future; also, if there are any employed that are not authorized by law.

THE CHAIR. The question is on the adoption of this resolution.

MR. HUESTIS. I would like to hear the gentleman assign some reason why this resolution should be adopted before I vote on it. I want to know what it is for.

MR. LARKIN. As the time expires next week in which there will be money in the treasury for us to draw on, the Controller will not pay any attachés unless they belong to the Convention, as authorized by law. We have some attachés that the law authorizes. I want to know whether there are any that we can get along without. This resolution simply calls for information. The Convention can then determine whether to act upon that information or not. The Sergeant-at-Arms will report the number, and we can see whether we are employing more than we are authorized to do. I hope the resolution will be adopted.

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

It was adopted.

MR. LARKIN. I move that the house now resolve itself into Committee of the Whole, to further consider the report of the Committee on Chinese.

MR. GREGG. I move we do now adjourn.

MR. LARKIN. Ayes and noes.

MR. HOWARD. Ayes and noes.

MR. FILCHER. Ayes and noes.

MR. HUESTIS. Ayes and noes.

THE CHAIR. The question is on the motion to adjourn.

Lost.

MR. CONDON. I ask the Chair if, when we go into Committee of the Whole, and a vote is taken, and it is found that no quorum has not voted, whether the Chair will hold, as he did this afternoon, that it is not a vote, because no quorum has voted?

THE CHAIR. Yes, sir.

MR. CONDON. Then, sir, in that view of the case, I move that this Convention do now adjourn to meet next Monday, at ten o'clock.

Lost.

THE CHAIR. The question is on the motion to go into Committee of the Whole.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIR. The question is on the pending amendment, which the Secretary will read.

THE SECRETARY read:

"Insert between the words 'no' and 'alien,' in the sixth line, the words 'Chinese or,' so as to read 'no Chinese or alien,' etc.; and also in the last line, the same amendment."

The amendment was lost.

MR. TULLY. I offer an amendment.

THE SECRETARY read:

"Strike out and insert: 'No foreigner can catch fish, if he is addicted to the profession of swearing.'" [Laughter.]

THE CHAIR. Out of order.

MR. SMITH, of Fourth District. I move to amend by inserting in line eight, after the word "alien," the words "to use for the purpose of agriculture, horticulture, gardening, or other purposes of profit."

MR. LARKIN. That would leave open every avenue except agriculture. It allows them to go into the mines, and to rent land for all other purposes. It allows them to go into the towns and rent houses, and I am opposed to the amendment, and I shall vote against it.

MR. SMITH. The gentleman misunderstands the object and purpose of the amendment. It says "or other purposes of profit." It includes all business of profit.

MR. LARKIN. My criticism is that you name certain purposes, and therefore that leaves all other avenues open to them.

THE CHAIRMAN. The question is on the adoption of the amendment.

Lost.

THE CHAIRMAN. The Secretary will read section seven.

THE SECRETARY read:

SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared hereby to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within their power. It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation or otherwise, for the expense of such exclusion. It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. It shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns.

MR. HERRINGTON. Mr. Chairman: I move an amendment.

MR. LARUE. I have an amendment.

MR. HERRINGTON. Mr. Chairman: Is my amendment in order?

THE CHAIRMAN. Yes, sir; send it up.

THE SECRETARY read:

"Strike out all of lines one and two and insert: 'The presence of Mongolians or Chinese in this State is declared hereby to be dangerous to the well-being thereof;' and also strike out all the section after the word 'power' in line four, so as to read: 'The presence of Mongolians or Chinese in this State is declared hereby to be dangerous to the well-being thereof, and the Legislature shall discourage their immigration by all the means within their power.'"

THE CHAIRMAN. The question is on the amendment.

MR. LARUE. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Strike out all of section seven after the word 'power,' in line four."

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I am in favor of the amendment to the amendment, as it is precisely the same as one I had prepared to offer. I believe that is all we can do, and all we ought to do. It is an outspoken statement by this Convention, assembled here for the purpose of framing an organic law for the people, that we believe the presence of this class of persons to be dangerous to the welfare of the State; and we say that the Legislature shall do all within its power to prevent their immigration and settlement within the limits of the State. I am anxious to have that statement in that form, or stronger, if it is possible to get it, and embodied in the work of this Convention. And I do this to be consistent with what I have done before. I second the motion to strike out all the latter part of that section. If you will remember, I strove to take out of this article section four, and also section five. Section four was stricken out by a small majority, but section five was retained. I then made an effort to bring section five within the scope of the Constitution of the United States and of the treaty. That also failed; and if the members of the Convention want to meet that responsibility, and say that the treaty is not binding upon this Convention, I am willing they should do it; but in regard to this section, we should certainly strike out all after the word "power," and let this matter of fact declaration stand. While I am anxious to do all that is legal, I do believe that even the Chinaman, obnoxious as he is, has some rights that the white man is bound to respect. I do believe in going behind the treaty, and saying that the Chinese should not be invited to our shores; but as long as that treaty stands as the supreme law of the land, I do not believe it should be violated. Until that treaty is repealed, they have some rights which we are bound to respect.

THE PREVIOUS QUESTION.

MR. STUART. I move the previous question.

The motion was duly seconded.

MR. ANDREWS. Mr. Chairman: In case the previous question is not sustained, will the Chair rule that the section will have to go over one day?

THE CHAIRMAN. Yes, sir. The question is, Shall the main question be now put?

The vote resulted in 55 ayes—noes not called for.

MR. HUESTIS. I rise to a point of order.

MR. GREGG. I rise to a point of order. The majority did not vote.

THE CHAIRMAN. The Secretary will read the first amendment.

MR. HERRINGTON. I ask leave to withdraw my amendment.

THE CHAIRMAN. If there is no objection the gentleman will have leave. The Secretary will read the amendment of the gentleman from Sacramento.

THE SECRETARY read:

"Strike out all of section seven, after the word 'power,' in line four."

Division was called for, and the vote was announced: Ayes, 59, and the Chair declared the amendment adopted.

MR. CROSS. Mr. Chairman: Is there a quorum voting? The other side has defeated our amendment by this means, and I want to know whether there is a quorum voting or not.

MR. BARBOUR. Mr. Chairman: I insist upon it, that what is sauce for the goose is sauce for the gander. It was sought to defeat the will of the majority here by subterfuge, and I want to know if the Chair is going to sit there and refuse to tell us how many voted in the negative? I demand to know it.

THE CHAIRMAN. The gentleman has not asked the Chair to do it before. I will inform him that fifty-nine voted in the affirmative and six in the negative.

MR. BARBOUR. That is not a quorum.

MR. CROSS. It takes seventy-five to make a quorum.

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

MR. CROSS. Yes, sir.

THE CHAIRMAN. Then the Chair will rule that the amendment is not adopted, because there was no quorum voting.

MR. WEST. I protest against absent members voting on these propositions. [Laughter.]

THE CHAIRMAN. The Chair is not aware as to who are delinquent members. The Chair will put the motion again.

The next vote, on division, resulted in 55 ayes to 4 noes.

MR. WEST. Mr. Chairman: I notice there are a number of members who do not vote either way, and I protest against their invalidating the action of those who are trying to do their duty.

MR. HOWARD. Mr. Chairman: I rise to a point of order.

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

MR. HOWARD. It having been officially ascertained that there is a quorum present, that settles the whole question. The fact that members refuse to vote does not have any bearing.

MR. ROLFE. Allow me one word. If there is a quorum present, and if a majority of that quorum vote one way, that is all that is necessary. It makes no difference whether the negative is called for or not. For instance, seventy-seven constitutes a quorum, and if a majority of seventy-seven vote aye a measure is lawfully carried. That is the rule.

MR. JOYCE. I would like to raise a point of order that the Chair cannot decide whether there is a quorum present or not, without having a call of the house. The other Chair never has went back on this rule.

THE CHAIRMAN. We will try the vote again.

The vote was taken again, with the same result, and the same ruling.

MR. STUART. I would suggest if the Chair would enforce his decisions we would get along very well.

THE CHAIRMAN. There is no quorum voting. The Chair has ruled that a quorum must vote, and from that decision an appeal has been taken.

MR. JOYCE. I move that the appeal be laid on the table.

THE CHAIRMAN. The question is on the motion to lay the appeal on the table.

Division was called, and the motion to table was lost—ayes, 23; noes, 48.

THE CHAIRMAN. The noes have it.

MR. JONES. Unless there is a quorum, there can be no decision again. The Chair has so ruled all along, and I think the ruling should be carried out.

MR. TULLY. A point of order.

THE CHAIRMAN. State it.

MR. TULLY. That there is no question before the house.

MR. LARKIN. I move we pass section seven temporarily, and proceed to the consideration of section eight.

MR. NOEL. I call for the ruling of the Chair on the question before the house.

THE CHAIRMAN. The Chair decided that the amendment was not adopted.

MR. MCCALLUM. I rise to a point of order.

THE CHAIRMAN. State your point of order.

MR. MCCALLUM. The appeal is still pending, and I call for the question on the appeal.

THE CHAIRMAN. The point of order is not well taken. The question is now on the appeal from the ruling of the Chair. The question is, Shall the decision of the Chair stand as the judgment of the house?

MR. STEDMAN. Mr. Chairman——

THE CHAIRMAN. Mr. Stedman will take his seat. The question is, Shall the decision of the Chair stand as the judgment of the Convention?

MR. STEDMAN. I rise to a point of order. A motion was made to lay the appeal on the table, and as there was no quorum voting I want to know how that motion was lost.

MR. HEISKELL. It is evident that there is but one way to settle this question, and that is by calling the roll. Now, I understand that if there are but six persons voting on a proposition, three in the affirmative and two in the negative, that the man who refuses to vote gives his assent to the measure, and it is just that way here. The members who are here refuse to vote, and under this ruling they can balk the work of this Convention.

MR. CROSS. I cannot see any good that will result to this Convention,

nor to the people of this State, for us to stay here this afternoon, and I therefore move that the committee rise, report progress, and ask leave to sit again.

THE CHAIRMAN. The appeal is pending. The question is, Shall the decision of the Chair stand as the judgment of the house?

MR. LARUE. I desire to ask a question. This house is composed of one hundred and fifty members, and seventy-six constitutes a quorum of the house. Now, we resolve ourselves into Committee of the Whole, and there are seventy present. Then two gentlemen go away, and according to the ruling of the Chair we cannot do anything, because there is no quorum present. They refuse to vote. I hold if there is a quorum present it is all sufficient.

THE CHAIRMAN. The question is, Shall the decision of the Chair stand as the judgment of the Convention? The Chair has no preference in this matter; in fact, as far as I am concerned, I hope the Convention will overrule the Chair.

MR. WALKER, of Tuolumne. Mr. Chairman: I desire to read this to sustain the decision of the Chair——

MR. HOWARD. I raise the point of order that the reading at this time is out of order.

THE CHAIRMAN. The point of order is well taken. The question is on sustaining the decision of the Chair.

Ayes 15, noes 45; and the decision of the Chair was overruled.

MR. BARBOUR. I raise the point of order that there is no quorum voting. [Laughter.]

MR. VAN VOORHIES. Mr. Chairman: I would inquire whether or not, when a quorum is present, and a vote is taken, it is necessary that a quorum should vote?

THE CHAIRMAN. The Convention has just decided that it is not.

MR. VAN VOORHIES. Then I think the Convention is wrong.

THE CHAIRMAN. The Secretary will take up the amendment to strike out all after the word "power."

MR. REYNOLDS. Mr. Chairman: If this amendment to strike out section seven——

MR. LARUE. I rise to a point of order. We are acting under the previous question on this amendment, and the gentleman has no right to discuss it.

THE CHAIRMAN. That is the way the Chair understands it, and consequently is out of order. The question is on the adoption of the amendment offered by Mr. Larue.

Division being called, the amendment was adopted by a vote of 56 ayes to 18 noes.

MR. CROSS. Mr. Chairman: I wish to give notice that at the next meeting of the Committee of the Whole, I shall move to reconsider the vote by which this portion of section seven is stricken out. I will also state that I voted aye on the motion, in order to have a chance to make this motion.

MR. BARBOUR. I second that motion, and I wish to call the attention of this Convention to the fact that you are stultifying yourselves by voting that the Chinese shall not settle in this State, and then voting down a proposition that the Legislature shall oppose them by all the means in its power.

MR. BARRY. Mr. Chairman: I offer an amendment to section seven, by way of a substitute.

THE SECRETARY read:

"Substitute for section seven the following: 'The presence of Chinese in this State is declared herein to be dangerous to the well-being of the State. The importation of Chinese coolies, being a form of human slavery, is forever prohibited, and all contracts for coolie labor shall be void, and all contractors for coolie labor shall be liable to the pains and punishments provided by the law of Congress against importers of African slaves. In all trials under State jurisdiction for violations of this section, the jury shall be the judge of the law and the facts in each case. This section shall be enforced by appropriate legislation.'"

THE CHAIRMAN. It is out of order, as the Convention has adopted a portion of section seven, and you cannot now strike it out.

MR. BARRY. I move to amend section seven as amended by adding my amendment.

THE CHAIRMAN. That is in order.

MR. BARRY. Mr. Chairman: In offering this amendment to section seven it will be unnecessary for me to dwell upon the evils of Chinese immigration. All that has been said by the learned and eloquent gentlemen, and it is more than sufficient to convince this committee that this is an evil which should be curbed, and that it is within the power of this Convention to curb and restrain the further extension of this evil within this State. As regards section five, I voted for it because I believed it was within the power of the State to do this, even though gentlemen speak of the sacredness of treaties made between this country and China. As far as that is concerned, this amendment refers only to those who come here as coolie slaves. It is well known that slavery does exist in this State in the form of Chinese coolieism. Now, sir, provided the Supreme Court of the United States should hold section five to be unconstitutional, we will still have something to fall back on. We would still have this section seven. It provides that Chinese coolieism, in this State, is a form of human slavery, and shall be prevented, and that those who import Chinese here, they being slaves—being a form of human slavery—shall be forever prohibited in this State. Now, sir, if the Convention does not have the power under the powers of the State—under its police powers—to prevent it from being overrun by a class of that character, then it certainly does have the power to adopt a section like this. I don't think there is any fear about its not being constitutional. It is well known, and admitted by eminent gentlemen on this floor, that human slavery does exist in this State. Chinese slavery does exist. That being the case, I presume no gentleman will deny that a proposition of this kind is legal.

MR. REYNOLDS. Mr. Chairman: I have an amendment to the section merely for the purpose of correcting the phraseology. In the second line I move to strike out the word "herein," and insert before the word "declared" the word "hereby."

THE CHAIRMAN. The Convention has adopted a portion of the section, and it is not in order to move to strike it out. The question is on the amendment offered by Mr. Barry.

MR. REYNOLDS. I make the same point of order against that as the Chair has just made against me. I propose merely to strike out one word and insert another, not for the purpose of changing the sense, but merely the phraseology for the purpose of improving it a little, and now comes an amendment to strike out two entire lines of the amendment already adopted. If I cannot strike out one word without being out of order, how is it that another gentleman can strike out two whole lines and still be in order?

THE CHAIRMAN. This amendment don't strike out anything.

MR. REYNOLDS. It strikes out all of the third and fourth lines.

MR. AYERS. I wish to say this: I would like to see all these amendments in such language that they will mean something. The last amendment offered says that the importation of Chinese coolies is a form of human slavery. The importation is not a form of slavery. Therefore there is no sense to the amendment.

MR. CROSS. I raise the point of order that there is not a quorum present.

THE CHAIRMAN. Not well taken.

MR. REYNOLDS. Now, sir, I am opposed to the amendment that has been offered here, and I insist upon a ruling upon my point of order. If I understand it, the section now ends at the word "power." Am I correct?

THE CHAIRMAN. Yes, sir.

MR. REYNOLDS. Very well; now the Chair has just ruled that to strike out the word "herein" is not in order, because that has been adopted, and now here is an amendment which strikes out more than one whole line.

MR. MCCALLUM. Will you allow me to explain a moment. The gentleman offered his amendment to strike out. The Chair ruled that he could not do it. Then he said he offered it as an addition, which the Chair said he could do. This is not to strike out at all, it is in addition. It is a mere repetition of the former language.

MR. REYNOLDS. Well, sir, as I heard the amendment read, it commences at the beginning. Section seven as adopted reads:

"The presence of foreigners ineligible to become citizens of the United States is declared herein to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power."

Then you propose to add to that the amendment that:

"The presence of Chinese in this State is declared herein to be dangerous to the well-being of the State," etc.

The absurdity of this amendment appears by reading it; and it strikes out a portion of the amendment in reality, and that is as much out of order as mine, and more.

MR. BARRY. I ask leave to strike out the first portion of my amendment.

THE CHAIR. If there is no objection it will be stricken out.

MR. BARRY. There is a mistake there; I don't know whether it is mine or not. In place of "importation," it should be "presence."

MR. STEDMAN. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried—ayes, 34; noes, 29.

IN CONVENTION.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. TULLY. I move we now adjourn.

Carried.

And, at four o'clock and twenty-five minutes P. M., the Convention stood adjourned until Monday morning.

EIGHTIETH DAY.

SACRAMENTO, Monday, December 16th, 1878.

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

ASSISTANT SECRETARY THORNTON. Gentlemen: The President and President pro tem. being absent, the first business in order will be the election of a temporary President.

MR. LARKIN. Mr. Secretary: I nominate Mr. Tinnin, of Trinity.

Mr. Tinnin was elected, took the chair, and called the Convention to order.

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

PRESENT.

Andrews,	Biggs,	Condon,
Ayers,	Blackmer,	Cowden,
Barbour,	Boggs,	Cross,
Barnes,	Brown,	Crouch,
Barry,	Burt,	Davis,
Barton,	Campbell,	Dean,
Beerstecher,	Caples,	Dowling,
Belcher,	Chapman,	Doyle,
Bell,	Charles,	Dudley, of Solano,

Dunlap,	Kleine,	Schomp,
Edgerton,	Laine,	Shoemaker,
Estee,	Lampson,	Shurtleff,
Evey,	Larkin,	Smith, of Santa Clara,
Filcher,	Larue,	Smith, of 4th District,
Finney,	Lewis,	Smith, of San Francisco,
Freeman,	Mansfield,	Soule,
Freud,	Martin, of Santa Cruz,	Stedman,
Garvey,	McCallum,	Steele,
Glascock,	McConnell,	Stevenson,
Gorman,	McCoy,	Stuart,
Grace,	McNutt,	Sweasey,
Gregg,	Miller,	Swenson,
Hale,	Moffat,	Terry,
Harrison,	Moreland,	Thompson,
Harvey,	Morse,	Tinnin,
Heiskell,	Nason,	Townsend,
Herold,	Neunaber,	Tully,
Hilborn,	Noel,	Turner,
Hitchcock,	O'Donnell,	Tuttle,
Holmes,	Ohleyer,	Vacquerel,
Howard,	O'Sullivan,	Van Voorhies,
Huestis,	Porter,	Walker, of Tuolumne,
Hughey,	Prouty,	Webster,
Hunter,	Reddy,	Weller,
Inman,	Reed,	Wellin,
Johnson,	Reynolds,	West,
Jones,	Rhodes,	Wickes,
Joyce,	Ringgold,	White,
Kelley,	Rolfe,	Winans,
Keyes,	Schell,	Wyatt.

ABSENT.

Berry,	Hall,	Overton,
Boucher,	Herrington,	Pulliam,
Casserly,	Lavigne,	Shafter,
Dudley, of San Joaquin,	Lindow,	Swing,
Eagon,	Martin, of Alameda,	Van Dyke,
Estey,	McComas,	Walker, of Marin,
Farrell,	McFarland,	Waters,
Fawcett,	Mills,	Wilson, of Tehama,
Graves,	Murphy,	Wilson, of 1st District,
Hager,	Nelson,	Mr. President.

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. Dowling, O'Sullivan, McFarland, Lindow, Farrell, and Nelson.

Three days leave of absence was granted Mr. Boucher.

Leave of absence for one week was granted Mr. Swing.

Indefinite leave of absence was granted Messrs. Herrington and McComas, on account of sickness.

THE JOURNAL.

MR. SMITH, of Santa Clara. I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

VACANCIES.

MR. JONES. Mr. President: I present a petition from the people of Mariposa County, and two others from the people of Merced County, asking that this Convention fill the vacancy made by the death of J. M. Strong, by an election, and recommending W. J. Howard as their choice to fill such vacancy. The petitions, which may be read by the Clerk, are signed by the leading representative men of the two counties, to the number of something like one hundred and fifty. There is nothing that a committee could act upon in the matter unless it be simply to verify the signatures. As the law provides that this Convention may fill vacancies, and as a respectable number of very respectable citizens from these two counties ask that the vacancy be filled, I ask that W. J. Howard be appointed to fill the vacancy. I do not see that there is anything which should require a reference, and I therefore propose that when we come to the head of miscellaneous business we proceed to fill that vacancy by an election. I shall then nominate W. J. Howard to fill the vacancy.

The petitions, omitting the signatures, were as follows:

To the honorable Constitutional Convention of the State of California:

The undersigned, citizens of Merced County, would most respectfully petition to your honorable body to appoint the Honorable W. J. Howard to fill the vacancy occasioned by the death of the late J. M. Strong. Mr. Howard is one of the oldest citizens of this section of the State, and fully understands the wants of the people, and if appointed to the position we feel assured that he will represent the interests of the people with ability and fidelity.

To the honorable Constitutional Convention of the State of California:

We, the undersigned citizens of Mariposa County, would respectfully petition your honorable body to appoint Wm. J. Howard, a citizen of Mariposa County, to fill the seat in Constitutional Convention made vacant by the death of Col. J. M Strong. Mr. Howard has been a citizen of this and Merced Counties about thirty years, and has heretofore served the people of this section in several official capacities, in which he acquitted himself with honor and satisfaction to his constituents. If appointed, we feel satisfied that he will represent the interests of the people with ability and fidelity.

THE CHAIR. The petition will lie on the table.

MR. LARKIN. I am in favor of suspending the rules and considering that resolution now. The people of that district are entitled to representation. I move that the rules be suspended, and that the motion of the gentleman from Merced and Mariposa be considered at the present time, and that this Convention proceed to fill the vacancy caused by the death of Mr. Strong.

Carried.

MR. JONES. I move now that this Convention proceed to fill the vacancy made by the death of J. M. Strong.

MR. JOYCE. Haven't we passed a resolution declaring that place vacant for the balance of the term, and granted the per diem to his widow?

MR. HOLMES. We all know that the resolution was inoperative. We cannot draw the per diem.

MR. HEISKELL. The Controller would not draw his warrant for it.

MR. JOYCE. The rest of the resolution would operate.

MR. FILCHER. Mr. President: I would like to ask what the incentive is that has given rise to this sudden movement? It is, no doubt, just to the people of Mariposa and Merced Counties that they should be fully represented on this floor. Of course I recognize that fact, and yet I know how indifferent people, as a body, will be to matters of this kind. The people of Mariposa and Merced, as a body, may feel that the matter is all right, that the result will be just as good without any representation as with. I know how easy it would be for a man to arrange a plan to secure a seat on this floor. If I was home and desired to be a member of this Convention, under similar circumstances, it would be no trouble for me to obtain one hundred and fifty signatures of very good men. I do not know of any good man, hardly, but could get up a petition, in the first place, setting forth that the position ought to be filled. It seems to me as though this might have been a movement on the part of an individual rather than a spontaneous movement on the part of the people. I simply rise to inquire, for I want to know the incentive of this movement so suddenly sprung upon us.

MR. MARTIN, of Santa Cruz. I would like to make this the special order for to-morrow, at two o'clock. I do not wish to vote for any gentleman of whom I have no knowledge; I would like a little time, therefore I move that it be made the special order for to-morrow, at two o'clock.

MR. CAPLES. Mr. President: I hope that that motion will prevail. It does seem to me that this matter is being sprung in haste, and is not, to say the least, in good taste. Now, while I am in favor of electing some gentleman to fill this vacancy, I do not think that it is the proper thing here, when we have barely a quorum, to require us to vote for some gentleman to fill this vacancy without one moment's notice, and vote blind. I for one object to voting upon a matter of such magnitude and importance without any consideration, without any thought, without any knowledge of whom we are voting for. And we wish some little time to inform ourselves of the fitness of the various aspirants who may present themselves. I therefore suggest and submit to the gentlemen of the Convention that we ought to have a little time, and to-morrow, at two o'clock, will be certainly little time enough.

MR. HOLMES. Mr. President: I have no objection in the world to putting it off until to-morrow, at two o'clock, but if you do, what more information can the gentleman get than they can get from the gentlemen now present, who are acquainted with Mr. Howard?

MR. BEERSTECHER. Isn't it just to sixty or seventy absentees to have it put over?

MR. HOLMES. I have no objection whatever.

MR. TULLY. Mr. President: If there are fifty or sixty absentees, it is their fault and not the fault of this Convention. I am pretty well acquainted in Mariposa and Merced Counties, and have known Mr. Howard a long time. I have received letters from prominent gentlemen of that county, among them the County Judge, stating to me that Mr. Howard was the choice of the people. I do not know how the gentlemen are to get any information. I think that from the fact that Judge Jones vouches for him, and that he has lived in that county for a quarter of a century, is sufficient evidence for me that Mr. Howard is a proper man to occupy a seat here, and that he is a worthy and true man. I do not see what further information we can have. I hope that we will go into the election and dispose of the question.

MR. HEISKELL. Mr. President: I hope that we will go on. This excuse about absentees exists every Saturday and Monday. It is their own fault that they are not here. Those people have not moved in this matter of filling up the vacancy before because they were willing, if the widow of the deceased member could get the per diem, that she should have it. They have found that such is not the case, and they now desire to be represented. These petitions and the statements of gentlemen here are all the information we can get, and that is sufficient.

MR. JONES. Mr. President: I wish to say simply that there is no desire nor design that anything should be sprung upon this Convention. These petitions were here on Saturday last, and I spoke to the President of the Convention upon the subject of presenting them then, and he advised that they should not be presented on the last day of the week and in a thin house. Upon that suggestion, I failed then to present them. Saturday, Sunday, and Monday—there is nearly half of a week, and now there is a thin house, it is true. We can wait until to-morrow, and there may be a thinner house then. Wednesday there may be a full house, and in the meantime this Convention will pass upon the most important matters—the matter of Chinese, of corporations, and all that. I think it is not proper to suggest now, or to insist, that there is not more than one half of the week in which a number of the people of the State can ask that they be represented in this body. As to the matter of these petitions, they can be read, and it will appear that in the most urgent manner the people of Mariposa and Merced Counties ask that they have a representative for their Assembly district. As to the names signed to these petitions, they are not all the voters in this case, but, then—and other gentlemen here can guarantee to this body that—they are the names of the leading and substantial citizens of these counties. There are other good citizens there, but the names of the men who are signed to this petition are the names of men substantially the leading citizens of these counties, without regard to partisanship—leading merchants, leading lawyers, leading farmers, and leading stockmen—men of all classes. Now, if there is anything which can

be ascertained for the information of this Convention between now and to-morrow, I have not the least objection in the world that the matter go over until to-morrow, at two o'clock, but I am unable to see what there is in the world that the Convention can get posted on between now and to-morrow, or between now and next week, in regard to the matter. All there is is three petitions—one from Mariposa County and two from Merced County—containing the names of about one hundred and forty or one hundred and fifty men. That is all there is to see. As to the man himself, W. J. Howard, I do not know how they will find out anything about him, except by coming to the men that know him; and if they come to men that know him—to Mr. Heiskell, Mr. Holmes, myself, and I do not know who else—they will be satisfied. I have known him for some twenty-nine or thirty years, as a resident sometimes of Merced and sometimes of Mariposa County. Other gentlemen have known him the same length of time, I presume; and during that time he has been a man respected in the county where he resided. He has been a member of the Legislature, some years ago. He was appointed, in Mariposa County, two or three years ago, by the Board of Supervisors, as District Attorney, to fill a vacancy, and he filled that vacancy with credit and honor. Now, I do not wish to insist upon an immediate election at all, if it seems to the members of this body that anything is to be gained by a delay of a day or two days. I have no objection at all that the matter should go over until two o'clock to-morrow, or any other time, if there is anything to investigate; but what strikes me is this: I do not see what further or other information it is possible to obtain.

MR. FILCHER. I would like to ask the gentleman if the delegation knows whether these petitions are the work of Mr. Howard, or some of his friends, or whether it comes spontaneously from the people?

MR. JONES. I cannot answer the question any further than this: that I have looked over the names on the petitions. The names are signed in the handwriting of the business men of these counties. I recognize their handwriting, and could swear to their signatures in any Court. I recognize that most of these men are men that do not do anything at the dictation of anybody else. They would not sign a petition for anybody unless they thought it a right thing and a good thing to do. As to whether Mr. Howard ever asked them to sign anything or not I do not know, and I submit that that is a point of no consequence at all, provided it be true, as I assert, that the men are men who do not sign papers because men go and stick them under their noses. I am one of that kind, too.

MR. ROLFE. Mr. President: It seems to me that if we go on with this election now we shall be acting with indecent haste. I have no doubt but what this applicant is a perfect gentleman. I do not have any reason for thinking otherwise, but it is only within the last ten minutes that I have heard that there was an intention to fill this vacancy. I want a few hours time to think it over, otherwise I shall be compelled to ask leave to decline voting. If we allow this to be brought up this morning in this shape we must allow it again, and although this may be perfectly fair and honest this morning, and nothing like a trap that is sprung upon us, yet there may be a dishonest applicant hereafter. I do not say there will be, but there might be. We will establish a precedent which we will be pained to look to. I do not think we ought to take action on it to-day.

MR. JONES. I accept the amendment for Tuesday, at two o'clock P. M.

MR. GRACE. Mr. President: I think this is a very hasty matter. I want to lay the whole matter on the table, and I now move that this matter be laid on the table.

[Cries of "No!" "No!"]

The motion was lost.

MR. GRACE. I move to amend that we also fill the vacancy caused by the death of Bernard F. Kenny, of San Francisco.

MR. JONES. I rise to a point of order. The amendment is not cognate to the motion.

THE CHAIR. The point of order is not well taken.

MR. LARKIN. I think that the amendment of the gentleman from San Francisco should be a separate motion. His motion will be in order after this motion is disposed of.

MR. GRACE. I am not certain that the motion is in order, but my opinion is that it is. I do not see why this motion cannot be amended as well as any other.

MR. REYNOLDS. Mr. President: If I understand the position it is this: the gentleman from Mariposa moves that we proceed to fill the vacancy caused by the death of Mr. Strong, and the gentleman from San Francisco moves to amend so that we also fill the vacancy caused by the death of Mr. Kenny.

THE CHAIR. The Chair has decided it to be in order.

MR. HUESTIS. Mr. President: With all due respect to the Chair, I shall have to dissent from the ruling. I appeal from the decision of the Chair. The appeal is that the Chair rules that it is in order to incorporate an amendment that the vacancy from San Francisco shall be filled at the same time.

THE CHAIR. The Chair sees no second to the appeal.

MR. LARKIN. Mr. President: There is no petition here from the people of San Francisco to fill a vacancy. If a majority of the delegation require it I will support it. The people of Mariposa and Merced have requested it. If the people of San Francisco so desire it let them show it, and I will support it. But I think that it should not be connected with this matter.

MR. WHITE. Mr. President: I hope that the amendment will prevail, and I think it highly proper that if one vacancy should be filled that the other should be. This is not a matter that concerns one section alone. This is a matter that concerns the people of the whole State, and if we go to filling vacancies I see no reason why we should not fill all the vacancies.

MR. KLEINE. Mr. President: I do not see why the Workingmen's party should not have the same right to elect another delegate in the place of Mr. Kenny. Haven't we got as much right to one of our delegates as the gentleman from Merced? I say if a majority of the delegates vote against filling the vacancy of Mr. Kenny, they ought to vote against filling the vacancy of Mr. Strong.

MR. WELLIN. Mr. President: I would not have taken the floor except to reply to Mr. Larkin. I would say to that gentleman that the general understanding has been that they would not ask to fill the vacancy caused by the death of Mr. Kenny, because it was understood that the vacancy caused by the death of Mr. Strong would not be filled. But now the matter has come up, and as it is proposed to fill one vacancy, we will ask also to fill the other. I will also state to the gentleman from El Dorado that while in San Francisco a large number of people came to me, and to various delegates, and asked us to have the vacancy filled, naming some persons, and we agreed that as there were two vacancies to be filled, to let the matter rest. But now if a disposition is felt to fill one vacancy, we shall name you a gentleman who is worthy of a place upon this floor.

MR. JONES. Mr. President: The matter of filling the vacancy caused by the death of Mr. Kenny is one that had not occurred to my mind as being connected with the question of filling that from Merced. I perceive now that it has a bearing upon the matter in the minds of members of the Convention. I do not believe the amendment of the gentleman from San Francisco to be a proper amendment, under parliamentary rules, to a motion to fill the vacancy from Merced, and upon an appeal I shall be bound to vote against the ruling of the Chair that the motion to fill the vacancy from San Francisco is properly an amendment to the motion to fill the vacancy from Merced. But I say this, that while that is my opinion, it is simply in regard to the order of things, and that whenever members of this body from San Francisco nominate any man to fill the vacancy made by the death of Mr. Kenny, and guarantee to this body that the candidate is a proper man for the place, I will recognize the so called Workingmen of San Francisco as having a majority in this body from that city, and shall vote readily and cheerfully for the man that they nominate. I shall vote that the vacancy be filled, in the first instance, and that it be filled, in the second instance, by the man they nominate. There is no desire to get a vote one way nor the other in this matter; and I have no doubt that all my friends, and all those who are acquainted with Mr. Howard, feel as I do in regard to that; that when the people of San Francisco ask to have a vacancy filled that we shall take the opinions of these men as entirely satisfactory to us. The gentlemen from San Francisco, who by all right and precedent are to be regarded as the representatives of that city and county, shall have my vote for any man they name to fill any vacancy that has occurred or shall occur in their representation here. I say there is nothing at all in the line of gaining an additional vote one way or the other, and I cannot say in what direction the vote of the person that I nominate to fill the vacancy from Merced and Mariposa will be given, except from mere inference, from a knowledge of his life and character for many years. I have had no pledge, no assurances upon the subject at all. I simply know him as a business man, as an old Californian, who knows, or ought to know, as much about the wants of the people as anybody else, and who can be trusted to exercise his judgment properly, honestly, and well in assisting this body to conclude the labors that are before them. The main object for which I have spoken this is to assure members of this Convention that there is no claptrap, that there is nothing to be sprung at all, and if they want more time than until to-morrow at two o'clock, let them make it Wednesday, or Thursday, if there is anything to investigate. If there is anything to investigate, all right. But if there is nothing to be suspected as being wrong, why then, having accepted the amendment of the gentleman from Santa Cruz that we proceed to an election to-morrow, at two o'clock, I hope that may be done. But simply as a technical matter and nothing else, I do not see how a motion to fill a vacancy from Mariposa and Merced has any connection whatever with a motion to fill a vacancy from some other place, and I do not understand that a motion to fill the vacancy from San Francisco is a matter cognate to the motion to fill the vacancy from Merced and Mariposa; but it does not matter, in a practical sense, for if the decision of the Chair be sustained, I shall certainly vote with the gentlemen from San Francisco in regard to filling their vacancy, if they wish it filled, and shall vote for the candidate they name when they name him.

MR. REYNOLDS. Mr. President: I wish to set the gentleman's heart at rest by informing him that we seek not to interfere with his filling the vacancy at all, but that the question of vacancy having been raised, and there being still other vacancies to fill, that it is entirely proper that an amendment be made to the motion to go into an election on a certain day to fill other or all vacancies. We seek not to interfere with filling the vacancy from Merced, but we desire to fill the other vacancy at the same time. But in regard to the hypercriticisms of the gentleman from El Dorado, I do not see why he should be so wonderfully hypercritical as to whether the people of San Francisco want to fill the vacancy. It is enough that the Convention has the power, and it should be enough for the gentleman from El Dorado that the gentlemen from San Francisco indicate their wish. If he wants to vote against it let him do so. If he wishes to oppose filling the vacancy, let him undertake it if he wants to.

MR. LARKIN. I will support it if the people of San Francisco wish it.

MR. HEISKELL offered the following as an amendment:

Resolved, That the Convention, on Tuesday, at two o'clock, proceed to fill the vacancies caused by the deaths of J. M. Strong, of Merced and Mariposa, and B. F. Kenny, of San Francisco.

MR. MARTIN, of Santa Cruz. I accept that amendment.

MR. WICKES. I move that the whole matter be indefinitely postponed.

MR. PROUTY. I second the motion.

The motion was lost.

MR. NOEL. I move the previous question.

Seconded by Messrs. Howard, Smith, of Santa Clara, Evey, and Rhodes.

The main question was ordered.

THE CHAIR. The question is on the amendment offered by the gentleman from Stanislaus, Mr. Heiskell.

Adopted.

THE CHAIR. The question recurs on the adoption of the amendment as amended.

Adopted.

RESOLUTION.

MR. BEERSTECHER offered the following:

Resolved, That speakers shall confine themselves to the immediate subject under consideration. The report of standing committees shall be considered by sections, and the speaking shall be confined to the immediate section under consideration.

MR. LARKIN. I move the adoption of the resolution.

MR. BEERSTECHER. Mr. President: I offer this resolution because I believe that we can get along with the business much faster if the speakers are confined to the immediate section under consideration. When the report of a committee comes in here in the shape of an article of the Constitution, speakers getting up here traverse over all the sections, and speak, perhaps, fifteen or thirty minutes, and then when the separate sections come up they can speak to the separate sections. This resolution will confine every speaker to the immediate subject, the section under consideration. Gentlemen have been called to order here as not speaking to the subject under consideration, and the Chair has been required to rule, by reason of the existing rules of order, that in the Committee of the Whole gentlemen could speak upon any subject, whether it was pertinent to the question under consideration or not. I think if we do this we will certainly save a vast amount of time.

MR. STEELE. Mr. President: I wish to ask the gentleman whether he would have any objection to amending the resolution so that the Chairman of the committees would have the privilege of traversing the whole report?

MR. BEERSTECHER. There will be no objection to his adding that.

MR. JONES. I move as an amendment that Chairmen of committees may traverse the whole subject.

MR. LARKIN. There is no necessity for that amendment. The house is willing to concede to Chairmen that privilege at any time.

MR. NOEL. I rise to a point of order on the resolution. The resolution proposes to change a standing rule of this house, which cannot be done except by one day's notice.

THE CHAIR. The point of order is well taken. The amendment is out of order.

MR. HUESTIS. I suggest that there is no need of the amendment. It is already in the rules.

MR. BEERSTECHER. I take an appeal from the——

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

The resolution was adopted.

CHINESE IMMIGRATION.

MR. MILLER. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, Mr. Tinnin in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

MR. STEELE. I rise to a point of order. I see that it is the custom of various members on this floor to leave their seats and go nearer the desk to speak, to the disadvantage of those who set back here. Rule Forty-one says: "Every member, when about to speak, shall rise and respectfully address the President, shall confine himself to the question under debate, and avoid personality, and shall sit down when he has finished. No member shall speak out of his place without leave of the President." I move that the rule be strictly enforced after this.

THE CHAIR. The Secretary will read the first amendment to section seven.

THE SECRETARY read:

"Asiatic coolieism, being a form of human slavery, is forever prohibited in this State, and all contracts for coolie labor are null and void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to the penalties and punishments provided in the law of Congress against the importers of African slaves. In all trials under State jurisdiction for violations of this section, the jury shall be the judge of the law and the facts in each case. This section shall be enforced by appropriate legislation."

MR. MILLER. Mr. Chairman: This amendment seems to be against coolieism—that coolieism is a kind of slavery. I would like the gentleman to explain what he means by coolieism.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: I will state to the gentleman that in some of the ablest debates in Congress Mr. Sargent made one of the ablest arguments that was made, I presume, at any time, and he referred to the term coolie very freely; he referred to the Chinese being here in the form of coolies; that there was no doubt but what they were coolies. I presume, as I interpret it, that it means really Chinese slaves. I presume the gentleman will not deny that that is what they really are, used in the sense that they land on this coast. And Mr. Sargent particularly, in his argument, speaks of them in that respect, as Chinese coolies; in other words, Chinese slaves. He referred to the slavery system existing in this State on account of the Chinese being brought here by those who were desirous of making money, and particularly by the Six Chinese Companies, and I did not think there was any doubt as to what the word coolie meant, and I think it is a proper word to be used in this case with reference to the Chinese in this State—that is, that they are Chinese slaves.

REMARKS OF MR. MILLER.

MR. MILLER. Mr. Chairman: If coolieism means slavery, or is a synonymous term with slavery, then there is no necessity for any such provision as this, because slavery cannot exist in the United States. The Constitution of the United States forbids it. But I think the definition of the word coolie by the gentleman is hardly correct. The word coolie, as I understand it, had its origin in India, and means a porter, or, as applied to Chinese in this country, it means a laborer. It is not a word of such definite meaning, or the word coolieism would not be a word of such definite meaning, as could properly be placed in a Constitution. If the gentleman desires a prohibition against slavery in any form, I have no kind of objection, but I think in making a Constitution we ought to certainly approximate, in the use of words, something like certainty. I think that the section as it originally stood would be much preferable to the amendment offered by the gentleman from Sierra, Mr. Barry. I believe on Saturday we struck out all this section after the word "power" in the fourth line. Notice was given at that time of a motion to reconsider the vote by which that part of the section was stricken out. I do not know whether it is the intention of the gentleman who gave the notice to make the motion or not.

MR. CROSS. It is my intention.

MR. MILLER. Then I have a word or two to say in respect to this section. The next four lines after the word "power," read as follows: "It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation or otherwise, for the expense of such exclusion." Now, the substance of that portion of the section is included in section five, which has already been agreed upon, and if we were to adopt that portion of this section it would probably be necessary to strike out section five, because it would be unnecessary to place in the Constitution two sections or paragraphs meaning the same thing. Further on it reads: "It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. It shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns." Now, there can be no great objection made to the latter part of this section. It is merely the intention of it, I think, that the Legislature should have the power to delegate to incorporated cities the power to abate the nuisance; that is, to say that the Legislature may delegate to the incorporated cities the power to declare any particular quarter or portion of that city a nuisance and abate it. Take for example Chinatown of San Francisco. The municipal authorities, as the law now stands, could not, perhaps, declare the whole of Chinatown to be a nuisance and abate it. They would be obliged to proceed against the individual to make a case against each particular house, or each particular Chinaman, and remove or abate the nuisance in that manner. I think the intention of this was whether it can be done under this section, or whether the intention fails, I am not exactly prepared to say; but I think the intention of this part of this section was to confer upon the incorporated cities the power to declare the Chinese quarter, so called, in any city or town, a nuisance, and abate it; that is to say, remove these people who create this nuisance by their vile habits and their conduct generally, outside the limits of the city. I cannot see any great objection to that; and if section five were stricken out I should not object, but would be in favor of this section as it was originally drawn instead of section five.

MR. BLACKMER. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Strike out the words 'in all trials under State jurisdiction for a violation of this section the jury shall be the judge of the law and the fact in each case.'"

MR. BARRY. Mr. Chairman: As there are some gentlemen who will vote for the amendment if we strike out these words, being a little sensitive on the libel matter, that is, claiming that these should be stricken out of the Constitution, and I claim that they should be left in, I am willing to let it stand as the law is in other cases, so that I shall accept the amendment offered by the gentleman from San Diego, Mr. Blackmer.

MR. BLACKMER. Then the section will read:

"Asiatic coolieism, being a form of human slavery, is forever prohibited in this State; and all contracts for coolie labor are null and void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to the penalties and punishments provided in the law of Congress against the importers of African slaves. This section shall be enforced by appropriate legislation."

REMARKS BY MR. CROSS.

MR. CROSS. Mr. Chairman: I do not know that I should have had anything to say upon this proposition, were it not for the disagreement, as to the definition of the word coolie, between the gentleman from San Francisco, Mr. Miller, and the gentleman from Sierra, Mr. Barry. Now, let me premise by saying that it seems to me that no man has made his views more clear, or has maintained a more just and consistent course, than has the Chairman of this committee. If any man has failed to understand the real intention of the Chairman, or has failed to see that he has pursued a consistent course, then I cannot understand what he has failed to say. It seems to me that the course of the Chairman, from first to last, has been just and consistent. After listening to him closely, I understand him to be a careful constitutional lawyer. If I understand his position it is this: that while he feels anxious to abate

this Chinese curse, he is equally anxious to act within what seems to him constitutional limits, as fixed by the Constitution of the United States. Now, this word coolieism, here introduced, it seems to me, has, among those who are familiar with this Chinese question in its later phases, a well defined meaning. I think the word has its origin as the Chairman stated, or very nearly so; yet this word has come now to have a very definite meaning, and is used with as exact a meaning as almost any term. Now, sir, the word slavery is not a synonymous term. Coolieism is a contract by which the Mongolian is imported from his native country to some foreign country, there to work a certain period of time to pay his passage. Now, that is the meaning of coolieism, as treated even in our popular magazines—a word which has come to have, in our literature, with regard to the Chinese, especially, a definite meaning. If a Chinaman pays his own way to the United States, or to the British Colonies, or to Australia, and there goes to work, receiving his own pay, he is not a coolie. But if under a contract, made previous to his importation, he engages to work a long period of years for his importation price, then, as I understand this clause, he is a coolie. They exist in the British Colonies and Australia, and they are numerous in California. A large portion of them have worked out their time. A large portion of them here are not coolies. We have come by some means to use the word coolie for Mongolian. Just how the word has come in use here I do not know. In California our Chinese have already passed the period of coolieism. I think the period of coolieism is about six years. That is, a Chinaman from Hongkong is brought from China under a contract that, in consideration of being landed here, he will work a period of six years, and pay all, or a certain portion of all, that he earns during that time to those who import him, but during that time the latter will have absolute care of him, take care of him in sickness, etc.

The Six Companies bring nearly all of the Chinamen here under such contracts. As a rule, those who want to come here go to the agents of these companies and make their arrangements with those agents. When they come over here they find out that it is a hard bargain, that they have made a hard bargain, and by the time their period of coolieism expires a large portion of them are used up. If we put this in the Constitution we shall be doing this race an act of justice, to say that these contracts should not be binding upon them when they reach our soil, for it is a stage of slavery, although not involuntary slavery, because they sign these contracts of coolieism. Now, if we pass an Act or adopt a constitutional provision which shall make these contracts of coolieism void, then I think we will interfere with the importation of Chinese in this way, that the companies will not bring them here if the law of this State is such that they are no longer bound by these coolie contracts; and I will attempt to say that they are very hard contracts, such as we would not allow an American citizen to be bound by; and these contracts are the very means of bringing nearly all of the Chinese to this State that come here.

MR. MILLER. Does the gentleman believe that the word "coolieism" has such a well defined meaning that a Court could determine what it meant?

MR. CROSS. I think it could. I do not think it is so much a word in law as it is in this particular branch of affairs. Now, one word as to the remarks of General Miller as to this section and section five. It seems to me that there is quite a difference between the latter part of section seven and the section five of which the gentleman speaks.

MR. MILLER. The first four lines.

MR. CROSS. Section five is as follows: "No person who is not eligible to become a citizen of the United States, shall be permitted to settle in this State after the adoption of this Constitution." Section seven says: "It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation, or otherwise, for the expense of such exclusion." It seems to me that we have three points to attempt to reach in this matter; whether we shall gain them, is really a question which we might consider, but I feel bound to make the attempt. One is to prevent their coming, by an attempt to prevent immigration; next, adopting such provisions, not amounting to direct prohibition, as will discourage their coming; and third, adopting such regulations as will make them less injurious to the interests of the State, and less liable to come in contact with our civilization when they are here. Section five is a direct prohibition to their coming; and I will say that I have some doubt as to whether it is not in violation of the Constitution of the United States. I mean an honest, unrebellious attempt to have it determined as between the State and the United States. This portion of section seven is this: that there are places in the United States more dangerous to have them reside than in other places. Two years ago there came the scourge of diphtheria, and the deaths without exception were confined to the families and children who lived in the neighborhood directly surrounding Chinatown. Dr. Caples and those who are physicians here will understand that directly in that vicinity were the places where the scourge took death to almost every individual that was attacked, and yet other portions of the city located in the same way, but not near Chinatown, were entirely untouched by it. Now this section provides that the Legislature may provide for their exclusion from the city to such localities as they see fit: and that they may require them not to settle in such places. It may provide for excluding them from the State. I am not sure that the word would be more apt if it had said "deport" them from the State.

MR. MILLER. The treaty permits of their residence in the State, and as I looked at it they could not be excluded from settling in the State.

MR. CROSS. Perhaps it would have been a little better if the word "settlement" had come first. "Residence" is an intention to remain. But the words in a Constitution do not always come as they should, and so this word "residence" has come first. It says it may exclude them from residence. It seems to me that this reaches a point not reached by section five. They may prevent them from acquiring a settlement or being settled, it may break up their residence and compel them to go. Now, sir, if the Burlingame treaty were abrogated to-day, and we had none of these provisions, the Chinese could come and settle here. But suppose we had the fifth section, that there should not be any more immigration, the result would be that we would have about one hundred and twenty thousand of them in the State, but no more could come. Now we want more, that we may be freed from the injuries of those who are here; that we may be permitted to exclude them from the localities where they may be most injurious. If the treaty should be repealed, and this Constitution adopted, then we would have these provisions so as to go right to work and protect ourselves against those who are here. The fifth section provides that no more shall come, and this portion of the seventh section provides the means by which we can regulate those that are here.

THE CHAIRMAN. The gentleman's time is up.

MR. FREUD. Mr. Chairman: I hope that the amendment of the gentleman from Sierra, Mr. Barry, will be adopted. It embodies in it measures which, if ratified by the people, may tend to repress this Chinese immigration. In regard to the word "coolie," it has at present attained a well defined signification. Moreover, it has been used in some of the various States of the Union. Section one, of article twenty-two, of the Constitution of Texas, uses the word, and prohibits the importation of coolies; so we see that it has obtained a signification that can be construed by the Courts.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I will merely take two or three minutes. After hearing the explanation of the gentleman from Nevada, Mr. Cross, I am inclined to concur with him in his views, but I am afraid that the amendment of the gentleman from Sierra, Mr. Barry, does not cover it. The idea is to nullify these contracts by which aliens bind themselves to be transported to this country and work for a certain length of time to pay for their transportation; that these contracts shall not be binding on them whenever they come here. But if we do that it seems to me that we should frame a section directly to the point, and expressing that such contracts shall be null and void, and those who enter into those contracts when they come here should be free from them. But if this is coolieism, and I will admit that I am not very well versed as to the meaning of the word, then coolieism, in my mind, is not slavery. If this is coolieism, then thousands of California miners were coolies. I know of my own knowledge hundreds; I have no doubt thousands of men came here in eighteen hundred and forty-nine, eighteen hundred and fifty, and eighteen hundred and fifty-one under contracts. Some of them were honest enough to fulfill their contracts, and I do not know whether such contracts are immoral or evil. But if we want to annul such contracts, I will ask the gentleman if, instead of calling that slavery, and then, in a roundabout way prohibiting it, it would not be better to say directly what we mean. Slavery is already prohibited. Anybody who comes here as a slave, the minute he strikes American soil he is free, under the Constitution and laws of the United States and this State, and saying that anything is slavery does not make it so. Still, I have no objection to prohibiting this importation of coolies or Chinamen in this manner if we can, and I am inclined to think we can, read it in that way; but I would suggest if it would not be better to frame a section and specify it in so many words, and that it shall be a crime to enforce them. I am not sure that it would not be a good idea to go that far; but name the contracts. I am afraid the Courts will say if coolieism is slavery, then the contracts are not coolieism.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: As the amendment offered by Mr. Blackmer was accepted, I understand that the amendment is now subject to amendment, and I offer the following amendment to the amendment:

THE SECRETARY read:

"The Legislature shall delegate all necessary power to the incorporated cities and towns of this State, for the removal of Chinamen without the limits of such cities and towns, or for their location within prescribed portions of those limits."

MR. WINANS. Mr. Chairman: As I understand while I was temporarily absent on Saturday afternoon, and was about to be made the object of a peculiar visitation by the Sergeant-at-Arms, the Committee of the Whole struck out all of section seven after the word "power." Now, my amendment looks to a restoration, in a modified form, and with more extended application, of a portion of that section. By proposing it in the form in which I submit it, I leave out that portion which provides for their exclusion from the State. As that is a matter involving legitimate debate as to its constitutionality, it would be well to present that separately on the reconsideration, and meet the proposition squarely, face to face, upon the constitutional idea. But, in the meantime, if that should perish from the constitutional scruples of certain gentlemen upon this floor, which I think, in many instances, are unduly strained and carried beyond the reasonable boundaries: still I wish, in deference to that idea, to protect from its application the section which I now introduce in the form of an amendment, and which is clearly exempt from any constitutional inhibition or objection. Now, sir, in regard to the term coolie, I consider that it is sufficiently definite to answer the purposes of this section or this amendment. It does not mean slavery in its actual form, pure and simple; it does not mean such slavery as constituted the system under which the African was the subject of his owners. As I understand, it constitutes a system of peonage. I conceive that the Courts can always determine the meaning of words by giving to the word the general and received acceptation which

belongs to it at the time. I do not conceive, therefore, that there would be any difficulty in determining the meaning of the word, which would become a question of fact for the determination of the jury, provided the Court was unable to give a definite meaning to the term. Considering that the amendment has that objection, I desire to have added, if the committee will consent, this other provision, which is, in my mind, of great importance.

Sir, these men not only come among us, but they are arrogant and aggressive in their habits. They locate in the very central parts of cities; they locate upon the most desirable lands, and where they come, population begins to recede, and falls back as the waves of the sea before the blasts of the tornado, or as the rush of men before the invasion of a pestilence. Now, sir, I wish that the corporate authorities of the various cities in this State should have the power, which they do not now possess, to regulate this population, and place it either without the cities altogether, where it is such an evil as requires that extremity to remedy it, or place them within such limits as to protect the rest of the population, and allow the rest of the interests to thrive. Sir, not only is their presence in those portions of the cities which they choose and select, injurious to the working men, but to the interests of real estate holders; and wherever they come property depreciates just as surely as life falls before the blast of the destroyer.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: I accept the amendment. I think the amendment makes my amendment fully complete. I think that, in order to make it more effective, the amendment of the gentleman is a good one, and therefore I will be willing to accept it. Without referring to the evils of the presence of the Chinese, that have been referred to so often, I would say we all realize the necessity of the most stringent provisions in our Constitution to endeavor to remedy the evil so far as we possibly can. And if section five of the report of the Committee on Chinese should be held nugatory, then section seven, as provided by myself, and the amendment of the gentleman from San Francisco, would stand. There is no doubt about its constitutionality; that is, that the State has the power, as a matter of course, to remedy evils of this character; that as far as slavery is concerned of course it can be punished under the laws of Congress; that Chinese coolieism being a form of human slavery, we can punish those who bring coolies to this State. They shall be punished the same as provided by the law of Congress for the punishment of those who bring African slaves. There is no trouble about establishing the fact that they are Chinese coolies; that they are imported here under a form of contract, which in its nature partakes of human slavery. I had included a clause that the jury should be the judge of the law and the facts, but consented to strike that out to meet the views of some gentlemen. I thought it would be a good provision, yet, on reflection, I had no doubt but that the jury would in a case of this character, when it was brought before them under the proper instructions of the Court — I had no doubt but what a conviction would be had, and was willing to have that provision stricken out. Without taking up the time of the committee, I believe we all realize the necessity of this amendment; that so far as section five is concerned, there being a doubt as to whether they can become eligible to become citizens of the United States; there being a doubt whether Chinese would be excluded under that section—a great many holding that it is possible or probable that Chinese may be naturalized, and may enjoy all the rights and privileges of citizens—if the higher Courts of the country, the Supreme Court, should hold that the Chinese may properly become naturalized, when a case should come from a Circuit Court, or a District Court, then section five would be null and void, and section seven, if this Convention should adopt it, would stand, and we would be able to reach this evil. It would at least cover three fourths of the Chinamen in this State who are held here under a form of slavery; and we would be able to get rid of these, and prevent any more of that class coming to this State. I believe that in that way we can prevent the evil in a measure, if we cannot wholly remove it from the State. I think the committee should agree upon that amendment, and I do hope and trust that it will become a part of the Constitution of this State.

MR. MILLER. Mr. Chairman: It is important that we should understand now how this section will read. As I understand the amendment of the gentleman from Sierra, as amended by the gentleman from San Francisco, it is intended to take the place of that which was stricken out on Saturday.

MR. WINANS. Yes.

MR. MILLER. If the gentleman is correct in that statement, that the word "coolieism" has such a definite signification as to enable the Courts to determine what it is, I see no objection to the amendment, and it makes the section consistent and harmonious with those that have been adopted. I see no objection to the adoption of the amendment.

REMARKS OF MR. HARRISON.

MR. HARRISON. Mr. Chairman: When the English Government done away with slavery in her dominions they had a system of coolieism in the West India Islands. They brought negroes there from other parts of the world and made them serve out a term of years for the advantage of bringing them there — for their passage money — notwithstanding there were free negroes in the island; and I think the Island of Bermuda is one. The free negroes rebelled against this. It throwed them out of employment; and the case was referred to the Home Government, and they declared it slavery on the face of it, and stopped it. The question arose again in the Colony of Queensland, in Australia. I happened to be there at the time mining. They introduced the same system; they fetched Kanakas there—negroes that were called Kanakas—to work on cotton plantations, and the large sheep stations. They sent agents to the islands down here in the Pacific and decoyed these men out there, promised them large wages, and these men not understanding the value of money, in reality they agreed to go there for four pounds a year, just twenty dollars of American money. The white people there got up and objected to this. It threw all white men out of labor, and this case was referred to the Home Government also. I believe it came before what is known as the Privy Council, but as it is over twenty years since I left England I forget what department it came before. They declared it slavery on the face of it, and they stopped it. And it is only a few years ago, I see in a San Francisco paper, where there was a vessel captured having a cargo of the Kanakas bound for that colony. The captain and other officers were thrown into jail, and the Kanakas sent home to their island, and the captain punished, and I believe his term of punishment is not up yet. I think we can assert nothing in our Constitution too strong to meet this case. As to being in conflict with the Constitution of the United States, I think there will be no trouble about that. The proposition of Colonel Barnes was pretty strong, but I do not see that the papers have anything to say to it. They say that he has raised the issue, and that is all he has done. I believe that the Burlingame treaty will be modified and nothing else, and that this coolieism will be stopped. If the white people is driven to desperation I don't know what they might do. They might do what they have done before under similar circumstances.

MR. WHITE. Mr. Chairman: I think the section now is a very excellent section; the whole section as it now reads, amended.

MR. AYERS. Mr. Chairman: I have an amendment to come in after Mr. Winans' amendment.

THE SECRETARY read:

"Insert after Mr. Winans' amendment the following: 'It shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution.'"

MR. FREUD. I second the amendment.

THE CHAIRMAN. I understand that Mr. Winans' amendment was accepted by the mover of the amendment.

MR. WINANS. Mr. Chairman: I wish to insert in my amendment the word "Chinese" in place of the word "Chinamen."

THE CHAIRMAN. The Chair hears no objection. The gentleman will have leave.

MR. HOWARD. Mr. Chairman: If the amendment offered by the gentleman from Sierra, Mr. Barry, is adopted, I shall vote against the whole section, because that makes the importation of coolies punishable according to the Act of Congress, which is death. We used to have a phrase in Texas about running a thing into the ground, and I am opposed to that.

MR. WEST. Mr. Chairman: I cordially agree with the sentiments of General Howard. I believe we have already passed in Committee of the Whole a sufficient restriction on this question, and the idea of repeating and repeating what we have already asserted seems to me to be absurd. I believe in adopting the section as it was amended on Saturday, by striking out all after the word "power." That, with the other sections adopted in Committee of the Whole, covers the whole question, and gives the Legislature all the power that they may have within their jurisdiction, under Congress and under the treaty laws, to control and regulate this matter. I think any further additions to our work on this article is surplusage, and will only cumber it up, burden it, and add to the probabilities of swamping the whole thing.

MR. HOWARD. Mr. Chairman: I may perhaps be mistaken about the punishment being death, but I am opposed to the amendment.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I do not agree with my colleague from Los Angeles, that by inserting such amendments as commend themselves to this committee, we will weigh down and injure the Constitution. We are dealing with a very serious and intricate question, and if we can surround it in every possible manner, both directly and indirectly, with a fire that will destroy it, we ought to do it. Now, every gentleman on this floor, with one exception, has pronounced the presence of the Chinese in this State an evil and a curse that ought to be abated. The people of this State feel it severely. We know that it has generally been supposed among the people that our power in this respect was very limited; that we were hampered by the Federal Constitution and by the treaty, but since we have been in this Convention, and have discussed the question in all its bearings; since we have heard the members upon the powers of the State; since we have seen that some of our ablest lawyers have taken the stand that the States have the power; I say that we should take the step to test this power; that we should provide every means, direct and indirect, for the purpose of putting down and curing this great evil. The amendment of the gentleman from Sierra possesses great merit, in my opinion. It brings up this question in another of its forms, and I may say, in one of its most pernicious and ugliest forms, that of coolieism.

I look upon coolieism as being even a worse form of slavery than slavery itself, as it existed with the African race. It reaches the same end that African slavery reached, but in a cheaper way. It gives one man or company of men a power over the services of their fellows for a series of years. Then it is invested with peculiarities which render that power perpetual, and it is safe to say that in ninety-nine cases out of a hundred where a coolie contract has been entered into, that the coolie, from the vices which grow up and which are inherent in the system, never frees himself from the shackles. We know that peonage, which is a cognate system, has existed in Mexico; that it has been in a few families for centuries, and that a class of people exist there now known as peons, attached to the estate of the hidalgos, working out the ransom which their ancestors incurred. It is one of those things which grows upon that which it feeds on. It becomes so imbedded into the system, it becomes so irremediable, that the longer a peon is in that position the longer he and his posterity must remain in it. It creates vice itself. It encourages the vice of gambling, which pervades the vice of

peonage. I am glad that the gentleman from Sierra has thought of this subject, and has so ably presented thought in his amendment. If we surround this subject with all the prohibitions we possibly can; if we make it difficult, or even impossible for the Chinese to remain upon our soil; if, while they are here, we prevent them from enjoying all the immunities which they now enjoy, and freeze them out; if we render their labor unprofitable to their masters, we will help to cut the Gordian knot. Then, again, I say that the power of the State is supreme for exclusion. I say it, and eminent gentlemen on this floor have said it, and produced the authorities to show it. Then I say we would be false to our trust and false to ourselves, unless we place certain provisions in here that can be tested and can be decided in the highest Courts of our land, so that we can draw the lines.

MR. WHITE. Mr. Chairman: I hope that the amendment will be adopted, because it really means something. Those who are opposed to doing anything of course they will object, and they ought to vote against it; but those who are in favor of doing something effective ought to vote for the section as amended now. All of the amendments are excellent.

REMARKS OF MR. THOMPSON.

MR. THOMPSON. Mr. Chairman: In my mind this question of Chinese immigration is of greater and more vital importance than any other that will come before this Convention during our deliberations, and yet when we look at it in an intellectual and legal point of view, we see at a glance that our powers are very limited to deal with this great subject in the way we would all like to without coming in direct conflict with the Constitution of the United States, or some of the provisions of the Burlingame treaty. Yet, Mr. President, I am willing to go as far as any gentleman on this floor by way of police, sanitary, criminal, or vagrant regulations, or refusing to license this class of aliens to carry on any trade or business whatever, if we can in any way, by statute or otherwise, prevent the same. And I would go further and continue to hamper them in every way that human ingenuity could invent, so that the "heathen Chinee" himself would see that it was getting too hot for him to attempt to try to make a living here, and would consequently leave for his own or some other more genial climate for him at least. There has been so much said on this question, Mr. President, that I shall not attempt to delineate to this Convention all the numerous causes why the vast hordes of this insignificant and loathsome people should be prohibited from swarming amongst us in untold thousands, unless the powers at Washington provide, and that quickly, some sure and wholesome measures to prevent it. Therefore, I shall be brief, and allude only to a few of the most injurious and evil consequences that this people are bringing upon us in various ways. I hold, Mr. President, that unlimited Chinese immigration is a blight and a curse to our fair State, from the fact that it is in the first place coming in direct competition with the free labor of our own white population, to that extent that it will ere long be next to impossible for a white man or woman to procure work at all, even at the present starving prices of Chinese wages. You may say that we have already arrived at this state of affairs pretty generally throughout the length and breadth of this great State. It requires no argument to convince any candid mind of this fact. If it does, go with me through the streets of our cities, look at the hundreds of poor, anxious, wan, careworn faces of the laboring classes, seeking, day after day, in vain for an opportunity to get a day's work at any price, and unable to obtain it. Look at our cities again in another and more humiliating aspect either by gas or daylight, anywhere on the Pacific Slope; visit the public brothels, behold the woful sights that meet you there. Why, you see scores and hundreds of once beautiful, lovely, and virtuous females who have been driven to the vilest sinks of iniquity, and the lowest grade of female degradation, and shame, all for the want of the opportunity of making an honest living in the numerous vocations that these Chinese hordes are in every direction usurping and taking away from them. Behold the spectacle! Is it not enough to make one's heart shudder to contemplate the scene? Again, look at it in another serious aspect and see the hundreds of youths who have contracted from the above, and the miserable Chinese prostitutes, the most loathsome and almost incurable diseases that humanity is heir to, in addition to having their minds and morals corrupted peradventure beyond all future reformation.

Mr. President, how, I ask, in the name of humanity, can we improve this painful state of affairs, under existing circumstances, with the continued influx of unlimited Chinese immigration, with the treaty with that province staring us in the face? I see but one way, and that is by way of memorial to Congress, couched in the most respectful, yet impressive terms, the ingenuity of this Convention can devise, requesting them to take immediate action. If we cannot get relief in this way, I, for one, have not the faith of a grain of mustard seed that we can accomplish it in any way that has been proposed from the other side without coming in conflict with the Constitution of the United States, as I have before indicated. If we cannot accomplish anything in this way, anything that this Convention can do more than to adopt the first and perhaps the third section of the report of the committee would be vain and absolutely futile, and it would be only a matter of time when the Supreme Court would reverse all that we adopt beyond these sections.

As for State rights in the premises, I consider that but an empty bubble, long since exploded and settled by the sword, and confirmed by Chief Justice Grant, with one hundred thousand Associate Justices standing around him at Appomattox Court House, as has been well said by the gentleman from Marin. I hope, therefore, we shall hear no more foolish arguments of this kind, but abide the time that we may get relief from national authority. Now, Mr. President, I will add, in conclusion, that I do not believe that any gentleman on this floor is more opposed to the unlimited immigration of Chinese than I am, and I have never, in the twenty years that I have lived in this State, given a Chinaman a day's work, nor do I ever expect to. If everybody would do this it would go a long way towards removing this incubus; but everybody will not do it, so we are cut off from this source. I would like to, if I could, vote with my San Francisco colleagues for all of the most stringent propositions of the committee, if I could without it appearing puerile and silly; but as it comes, in my mind, in conflict with the national government, I must refrain from doing so, as I believe, with many others, that such a course would delay the object we all wish to attain. But if Congress does not grant us the relief required by prohibiting the Burlingame treaty, I fear, as a great statesman has said before me on another subject, some future bard may sing of California in this wise:

"The star of Hope shone brightest in the west,
The star of Liberty the last the best.
It, too, has set on her golden shore,
And life, hope, and freedom light up earth no more."

MR. WHITE. I move the previous question.

Seconded by Messrs. Ayers, Freud, Belcher, and Lampson.

The main question was ordered.

THE CHAIRMAN. The first question is on the amendment offered by Mr. Ayers.

The amendment was adopted, on division, by a vote of 47 ayes to 30 noes.

THE CHAIRMAN. The question now recurs on the adoption of the amendment as amended.

Adopted.

THE CHAIRMAN. Are there any further amendments to section seven?

MR. BELCHER. Mr. Chairman: Is an amendment to the part which is adopted in order now?

THE CHAIRMAN. Yes, sir; an addition.

MR. BELCHER. Mr. Chairman: The part adopted refers to an Act of Congress. It seems to me that whenever we legislate here we should legislate for ourselves, and not refer to the legislation of another government and another system of laws. The amendment which I have sent up is to this effect: Strike out the words "subject to the penalties and punishments provided in the law of Congress against the importation of African slaves," and insert "subject to such penalties as may be prescribed by the Legislature." Now, the Act of Congress provides as the punishment for that offense a fine not exceeding seven thousand dollars and imprisonment not less than three years nor more than seven years. That is the Act of Congress. Something might be said about that penalty. It is said that coolieism is the letting of labor or a contract by which a party agrees to perform services for a certain length of time. If the penalty prescribed is imprisonment at hard labor for not less than three years, it would seem a pretty severe penalty, and the penalty must be in proportion to the offense. Now, this penalty is the penalty applied for stealing men; but I object to it principally because it is a reference to the laws of another government, another system of statutes not under the control of this State, either its Legislature or this Convention. This law may be changed wholly. Instead of having this penalty, it might be repealed by Congress. I think we should refer here to such penalties as the Legislature may prescribe, and not such as the Congress of the United States may prescribe. The amendment, I think, should be adopted.

THE CHAIRMAN. The Secretary will read the amendment.

THE SECRETARY read:

"Strike out the words 'subject to the penalties and punishments provided in the law of Congress against the importation of African slaves,' and insert the words 'subject to such penalties as may be prescribed by the Legislature.'"

MR. WINANS. Mr. Chairman: I entirely concur in the views expressed by the honorable delegate from the Third Congessional District. I think we should do our own legislation and impose our own penalties. This objection struck me as a forcible one to the proposition of the gentleman from Sierra, Mr. Barry, when it was introduced, but I was not willing to oppose it then or suggest any change, because I was fearful that in the similitude of amendments the main proposition might be sacrificed and lost, but inasmuch as the proposition is now before us and has been adopted, I suggest that it would be directly in the line of right enactment for us to remove that one objectionable provision, and leave the matter entirely to State action and State control.

The amendment was adopted.

MR. HUESTIS. I would like to hear section seven, as adopted, read.

THE SECRETARY read:

SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared herein to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism being a form of human slavery, is forever prohibited in this State, and all contracts for coolie labor are null and void. All companies or corporations, whether formed in this country or any foreign country for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State, for the removal of Chinese without the limits of such cities and towns, or their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation.

MR. HOWARD. Mr. Chairman: I believe we are now on section eight.

THE CHAIRMAN. The Secretary will read section eight.

THE SECRETARY read:

SEC. 8. Public officers within this State are forbidden to employ Chinese in any capacity whatever. Violation of this provision shall be ground for removal from office; and no person shall be eligible to any

office in this State who, at the time of election and for three months before, employed Chinese.

MR. HOWARD. Mr. Chairman: I move to strike out section eight——

MR. BLACKMER. I second the motion.

REMARKS OF MR. HOWARD.

MR. HOWARD. I move to strike out section eight, which I consider entirely inadmissible, and insert the following: "The Legislature shall have power to impose a special capitation or poll tax on resident Chinese." My own observation is that the collection of taxes will be the most efficient way of getting rid of resident Chinese. It is undoubtedly true that our officers are quite energetic in the collection of taxes, especially the taxes of Chinese. I hold the provision, under the decisions, to be entirely unobjectionable in point of law. Mr. Cooley says, on the third page of his book on taxation:

"The power of taxation is an incident of sovereignty and is coextensive with that of which it is an incident. All subjects, therefore, over which the sovereign power of the State extends, are, in its discretion, legitimate subjects of taxation; and this may be carried to any extent to which the government may choose to carry it. In its very nature it acknowledges no limits, and the only security against abuse must be found in the responsibility of the Legislature, which imposes the tax, to the constituency who are to pay it."

In relation to capitation taxes, the same authority states that there is really no limitation. Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited where the subjects to which it applies are within her jurisdiction. The Supreme Court of the United States, in a recent case—in the case of the State tax on foreign held bonds—says:

"Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."

Our own Supreme Court has decided the same thing. Chief Justice Murray, in his opinion in the case of The People vs. Coleman, 4 Cal. Reports, 49, says:

"From this it follows that the power of the Legislature to tax trades, professions, and occupations, is a matter completely within the control, and, unless inhibited by the Constitution, eminently belonging to and resting in the sound discretion of the Legislature."

There may be possibly some conflict in our own State decisions about this matter, although I do not think there is much. In the case of The People vs. Naglee, 1 Cal., Mr. Justice Bennett, after reviewing the decisions of the Supreme Court of the United States, says:

"The power being conceded, the limitation and extent thereof must, as to subject-matter, persons, amounts, and times of payment, rest in the discretion of the government of each State; and if a State, enacting laws in pursuance of this acknowledged power, sees fit to impose the burden of taxation upon a portion of the persons within the sphere of its jurisdiction, and specially exempt others, its legislation, even though it might be unequal and unjust, would yet be no infringement of the Constitution of the United States."

For instance, we have a road tax law which holds the employer responsible for the tax, and I know that the employers of Chinese take the tax from their wages and pay the road tax. So I understand there is now a poll tax; and there is no doubt that the Legislature would have the power, under a provision of this sort, to levy such a tax upon resident Chinese as would make it profitable for him to go somewhere else.

MR. RINGGOLD. Mr. Chairman: I desire to know if it is the gentleman's opinion that section eight is unconstitutional.

MR. HOWARD. As it stands, I think so. I consider it unconstitutional, and very objectionable in every point of view.

MR. LAMPSON. Has the Legislature of this State the right to levy a capitation tax upon Chinese and not upon any other foreigner, under the treaty?

MR. HOWARD. The Supreme Court has held that way once and the other way another time; but there is no doubt that we would have the right to levy a different tax. Besides, so far as the treaty is concerned, I do not look upon the treaty, when it comes—and that is the fact in this case—when it comes to a tax imposed by the State on residents, that the treaty has anything to do with it.

MR. MILLER. How does this proposition of itself differ from the miners' license tax, authorized by the Legislature some time ago, and declared unconstitutional?

MR. HOWARD. Under the ruling of the Supreme Court of the United States, the miners' tax would be legal. In respect to the case of Lin Sing vs. Washburn, the majority of the Court held that it was unconstitutional, as interfering with commerce.

MR. MILLER. So I thought.

MR. HOWARD. A case obviously against the decision of the Supreme Court of the United States.

MR. MILLER. Did not the Circuit Court of the United States, in San Francisco, decide that that tax was unconstitutional?

MR. HOWARD. My understanding is that it decided it under the Fifteenth or Fourteenth Amendment, and the Supreme Court of the United States has held since, I believe, that the Fifteenth Amendment applied only to freedmen.

MR. MILLER. I think the case of Jackson, Sheriff of Trinity County, was decided before the Fifteenth Amendment was adopted.

MR. HOWARD. I have not seen that case. I did not know that it was reported. There is no doubt that under the decision of the Supreme Court of the United States, we have a right to levy a discriminating tax; and so far as the State case is concerned, the case of Lin Sing vs. Washburn, the dissenting opinion of Mr. Justice Field is perfectly conclusive, and I think we might say of that decision as we do of the kangaroo, that the strength is in the tail.

MR. LARKIN. I would state that in the case of Jackson, Sheriff of Trinity County, in the United States District Court, it was decided that we could not proceed to collect that tax.

MR. HOWARD. That is not the law now; and when you cite a case you should cite some supreme tribunal.

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

THE SECRETARY read:

"Amend by striking out all of section eight after the figure '8,' in the first line."

MR. McCONNELL. Mr. President: It occurs to me that there is no particular benefit to be derived from this section, and since they are here the Chinese must have labor. I can see no relief by driving them from one employment or calling to another. It appears to me that we are rather overdoing this thing. I think we have gone far enough. There is no good to be derived from this section and the next one, and I hope they will be stricken out.

MR. HOWARD. I rise to a point of order. Under a motion to strike out and insert, no motion to strike out is in order. There may be a division of the question called for.

THE CHAIRMAN. The Chair will sustain the point of order.

MR. MILLER. I call for a division of the question.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: If the proposition of the distinguished gentleman from Los Angeles is correct, we have a solution of this vexed question; and if the distinguished gentleman can show us that he is right, legally, we shall certainly be under infinite obligations to him, because it affords us an easy and complete, absolute, and radical solution of the whole question. We can get rid of the Chinaman, because we can tax him out of his rights, and out of his boots; and we would do it, too, but the trouble is, that we do not understand that the gentleman from Los Angeles is correct in his legal interpretation of the power with which we are invested. But I heartily and sincerely desire that he may be able to convince us that we have this exclusive power of taxation. For my part, I am unable to see that we have any such power; and it appears to me that the decision in the case of Sheriff Jackson, so far as it goes—it is true that it is not the decision of the great Supreme Court—but, so far as it goes, it shows conclusively to that extent that we have not this power of exclusive taxation, and I am heartily sorry that we have not got it.

MR. HOWARD. My proposition was to show that to Themis, not to Esculapius.

THE CHAIRMAN. A division of the question has been demanded. The first question is on the motion to strike out the section.

The motion prevailed.

THE CHAIRMAN. The Secretary will read the portion which is moved to be inserted in place of the section.

THE SECRETARY read:

"The Legislature shall have power to impose a special capitation or poll tax on resident Chinese."

The amendment was rejected, on a division, by a vote of 27 ayes to 54 noes.

MR. KLEINE. I offer an additional section, to take the place of section eight.

THE SECRETARY read:

"From and after the adoption of this Constitution, no Mongolian shall be allowed to have in his possession any firearms of any description, concealed or otherwise; and it shall be the duty of all county officers to enforce the law; and any and all such property found in any house or building occupied by any Chinese, in whole or in part, shall be seized. Any person selling any firearms to any Mongolian, under any pretense, shall be guilty of felony."

MR. NOEL. I rise to a point of order. The section was stricken out, and cannot be amended now.

THE CHAIRMAN. The point of order is not well taken.

MR. GRACE. Mr. Chairman: It is not often that I favor anything offered by Mr. Kleine, because he is a little too enthusiastic on the subject. He says to him it is a matter as solemn as death. In fact, it is a solemn matter with me. Now, Mr. Chairman, I wish to make a little statement. I remember that along last Summer there was a good deal of excitement, and I have to say that the Mayor of San Francisco tried to foist upon the State that the Workingmen's party was trying to instigate anarchy and riot in that city, and that that was not thought of by the party with which I have the honor to be connected. At that time it was intimated to me that the Chinese were armed in that city; that they were sold hatchets and bludgeons and instruments of warfare, for the purpose of defending themselves in case there was a riot. If there had been any riot there it would have been instigated there by those over whom the Workingmen's party had no control. I am opposed to arming any servile population, or any class, for the purpose of instigating anarchy; and I believe the best way is to adopt this resolution offered by Mr. Kleine.

MR. KLEINE. Mr. Chairman: I am aware that there are Chinamen in San Francisco armed; and to-day the Chinamen get muskets from white men. I know there are over forty thousand in the city all armed; and I think it is necessary to adopt this amendment.

MR. ROLFE. I offer a substitute for the amendment proposed.

THE SECRETARY read:

"The Constitution of the United States and the laws and treaties made thereunder, so far as the same may conflict with the Constitution of this State, are hereby declared null and void, and any Judge of any Court who shall hold otherwise shall be punished by death or imprisoned for life."

MR. AYERS. I move to amend so as to read so far as they conflict

with the laws of this State and the judgment of the mover of that substitute.

THE CHAIRMAN. The substitute is out of order. The question is on the amendment offered by the gentleman from San Francisco, Mr. Kleine.

MR. LARKIN. I move to lay the whole subject-matter on the table.

Carried.

THE CHAIRMAN. The Secretary will read section nine.

THE SECRETARY read:

SEC. 9. The exercise of the right of suffrage shall be denied to any person employing Chinese in this State, and it shall be a sufficient challenge that the person offering to vote is employing Chinese, or has employed them within three months next preceding the election.

MR. HOWARD. I move to strike out section nine.

Carried.

MR. BLACKMER. I move that the committee now rise, report this article back to the Convention, with the recommendation that it be printed.

MR. MILLER. Will the gentleman give way one moment?

MR. BLACKMER. I withdraw my motion.

MR. MILLER. I move that the committee rise, report this article back to the Convention, and recommend that nine hundred and sixty copies be printed of that part agreed upon.

MR. HOWARD. I move to amend that it be adopted.

MR. MILLER. My motion——

MR. HOWARD. You want the report of the Committee of the Whole adopted, don't you?

MR. MILLER. Yes, of course; my motion should include that.

THE CHAIRMAN. It is moved and seconded that the committee rise and report the article back to the Convention, with the recommendation that it be adopted as amended and printed.

Carried.

IN CONVENTION.

THE CHAIR. Gentlemen: The Committee of the Whole have had under consideration the article on Chinese, have amended the same, and recommended its adoption as amended, and that it be printed.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

MILITARY AFFAIRS.

MR. BARNES. Mr. President: I move that the Convention resolve itself into Committee of the Whole, for the purpose of considering the report of the Committee on Military Affairs.

MR. HOWARD, of Los Angeles. Mr. President: I move to amend by substituting the report of the Committee on Revenue and Taxation. We ought to dispose of that first.

MR. BARNES. Mr. President: With respect to the amendment of the gentleman from Los Angeles, I desire to say that the report stands in its order on the general file. It will not be a lengthy matter, and I understand that even if the amendment of the gentleman should prevail, the Chairman of the Committee on Revenue and Taxation is not in a state of physical health to permit him entering upon the debate to-day; and after consultation it was thought best to make this motion to have this report taken up and considered to-day.

MR. HOWARD, of Los Angeles. I think the gentleman from Sacramento, Mr. Edgerton, is well enough, and certainly we ought to dispose of this report on revenue and taxation before the holidays. It is now the most important thing we have to consider, and I trust we will take it up to-day.

MR. WINANS. Mr. President: I have an amendment to the amendment. I move that the report of the Committee on Revenue and Taxation be made the special order, to be taken up immediately after the disposition of the report on military affairs. I make that motion.

MR. HOWARD. I don't know why it should be postponed till after the report of the Committee on Military Affairs is disposed of. Our military affairs are not of very great importance, and the subject of revenue and taxation is of the utmost importance.

MR. EDGERTON. Mr. President: As far as I am personally concerned, it is utterly immaterial to me what time the report of my committee is considered. It will be utterly impossible for me to-day to participate in the discussion on the subject. The condition of my lungs is bad, and I have a very severe cough. Some days since an arrangement was made with the Committee on Legislative Department, by which the report of the Committee on Revenue and Taxation was to be considered after the disposition of the other question, as there were several questions embraced in the report that ought to be considered before the other was taken up. It was then generally understood that that report was not to be considered until after the report of the Legislative Committee was disposed of. That was the understanding with the Chairman of that committee, and several other committees, and I was under the impression that that was to be the order of procedure; but these other gentlemen are not here to-day. I hope, sir, in view of their absence, and the importance of having a full attendance, that the report of the Committee on Military Affairs will take precedence, and that the report of the Committee on Revenue and Taxation will not be taken up until to-morrow morning.

MR. HOWARD, of Los Angeles. I would not object to that.

MR. BARNES. I object to the pressing of the motion. There is a motion before the Convention to take up the report of the Committee on Military Affairs.

THE PRESIDENT pro tem. The motion is that the Convention resolve itself into Committee of the Whole for the purpose of considering the report of the Committee on Military Affairs.

MR. HOWARD. To that there was an amendment.

MR. BARNES. Mr. President: I arise to a point of order.

THE PRESIDENT pro tem. The gentleman will state his point of order.

MR. BARNES. Rule Fifty-three provides: "All propositions and resolutions embracing matter proposed to be incorporated in the Constitution, reported by a standing or special committee, shall be read when reported, and shall be placed on a general file, to be kept by the Secretary, in the order in which they are reported. They shall be taken from the file and acted upon in the order in which they are placed thereon, unless otherwise ordered by the Convention; *provided*, that engrossed propositions and resolutions shall be placed at the head of the file in the order in which they are received," etc.

THE PRESIDENT pro tem. It would be competent for the Convention to order any of these reports taken up specially.

MR. HOWARD, of Los Angeles. I accept the modification proposed by the gentleman from Sacramento, to take up the report on Revenue and Taxation to-morrow.

THE PRESIDENT pro tem. The motion then is that the Convention resolve itself into Committee of the Whole for the purpose of taking up the report of the Committee on Military Affairs.

Carried.

IN COMMITTEE OF THE WHOLE.

The President pro tem. in the chair.

THE SECRETARY read the report as follows:

ARTICLE VII.—MILITIA.

SECTION 1. Organizing and disciplining the militia.
2. Officers, how elected or appointed.
3. Removal of general officers.
4. Governor to be Commander-in-Chief, and to call out the militia.
5. Exemptions.
6. Provisions to be made for wounded and disabled members of militia.

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

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

SEC. 3. No general officer shall be removed from office except by the Senate, on the recommendation of the Governor, stating the grounds on which removal is recommended, or by a decision of a Court-martial in accordance with military custom. No officer of the militia shall ever be removed from office for political reasons.

SEC. 4. The Governor shall be Commander-in-Chief of the militia of the State. He shall have power to call them forth to execute the laws of the State, to suppress insurrections, and repel invasions.

SEC. 5. The officers, musicians, and members of the State militia, who comply with all military duties as provided by law, shall be entitled to the following privileges and exemptions, viz.: exemption from payment of poll tax, road tax, and head tax of every description; exemption from jury duty, and exemption from serving on any posse comitatus. All officers, non-commissioned officers, musicians, and privates, who have faithfully served in the military service of the State for seven consecutive years, and received the certificate of the Adjutant-General certifying the same, shall thereafter be exempted from further military or jury service, except in time of war.

SEC. 6. Every officer or member of the State militia, wounded or disabled in the service of the State, shall have reasonable expenses paid him; and the widows and children of members killed in the service of the State shall be provided for by the Legislature.

THE CHAIRMAN. The Secretary will read section one.

THE SECRETARY read:

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

SPEECH OF MR. BARNES.

MR. BARNES. Mr. Chairman: I may be pardoned if I open this debate—if there is to be any debate—by referring to it in a general way, in the hope that perhaps the consideration of the facts, and of the legislation by which the General Government, and the State Governments elsewhere, have been governed, may induce a consideration of the question here such as its importance demands. I have felt at all times since my appointment on this committee—and I have had good reason to feel it—that it was considered by the Convention rather in the light of a joke, and whenever there was anything funny to be said, it was said upon this subject. Everybody knows how it has been treated, and what the results have been. Let us now proceed to consider it temperately and seriously, and in the spirit in which the government has always regarded it. And I desire to say that, as early as seventeen hundred and seventy-eight, in the Articles of Confederation—in article six, it was provided that every State shall always keep up a well regulated and well disciplined militia. That article says:

"Every State shall keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage."

After the revolution and the formation of the Confederacy of States, the subject was still considered one of at least sufficient importance to

be inserted in the Constitution of the United States. Section eight, of article one, provides for this subject in prescribing the powers of Congress:

"To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress."

In addition to that I find in article two a declaration that a well regulated militia, being necessary to the security of free States, the right of the people to keep and bear arms shall not be infringed. Now, we know that this question was considered a very important one in the early organization of the government, and it is no less important now than it was then, because the people had their choice then as they have now between a well organized State militia in the several States and a standing army maintained by the central government, which, under our system of republican institutions, has always been considered an enemy to liberty, and when the people had their choice between maintaining a large standing army, maintained by the General Government as the great armies of Europe are maintained, at a vast cost to the General Government and to the people, they determined upon the plan which now exists, that is to say, to provide for the organization and equipment of a militia force.

The question as to the relation of the militia to the General Government has been deemed of sufficient importance to receive the construction and judicial determination of the Supreme Court of the United States, and the relations and duties of the General Government have been determined and fixed, not merely in the Constitution and by statute, but by elaborate decisions of the Court of last resort—the Supreme Court of the United States.

So important has this subject been considered, that at every session of Congress since this government was organized there have been appropriations made to the several States for arms and munitions of war. You are all aware, I suppose, that under the laws of the United States the only office required to be maintained in any State is the office and department of Adjutant-General of the State. He is the only person in the State who, by the operation of law, is required to make communications to and keep in correspondence with the General Government. Every year he makes up a roll which is sent to Washington, which shows upon its face the number of able-bodied citizens between the ages of eighteen and forty-five years who are capable of bearing arms. That roll, so returned, is made the basis upon which arms and munitions of war are distributed by the General Government to the several States. Therefore, under our duty to the General Government, the obligations which exist, the office and department of Adjutant-General cannot be abolished. Now, the theory of all this is, and of all the laws, that Congress shall prescribe the general rules for a uniform system for the State, secure the enrollment of all able-bodied males, etc., but all the details and all the management of the troops are left to the State, and they are only to be called upon when it may become necessary by reason of some public emergency. This power of calling out the military has been very seldom exercised. It was exercised to suppress the insurrection in Pennsylvania in seventeen hundred and ninety-four. It was also exercised during the war of eighteen hundred and twelve; the whole of the latter fight, and, indeed, I may say of the rebellion, being conducted by the militia of the States. Now, down to the time of the rebellion the militia was regarded with general disgust. It was considered an absurdity for a man to belong to a military company. He was the butt of everybody's jokes, and the object of public contempt, if nothing more. But ever since the rebellion, in all the States of this Union, at least north of the line over which the contending parties fought, as much attention has been given to the foundation and organization and disciplining of militia as to any other department of government.

I wish to call the attention of the committee to the State of New York. In that State they have an organized and armed militia of nineteen thousand nine hundred and ninety-one men, consisting of eight divisions, with all the arms, accouterments, ammunition, etc. A great deal of fault has been found at the extent of the appropriations for the support of the militia in this State. The report of the Controller of this State, which has been laid upon the desks of members, shows what has been done in this regard. I may here remark that the report of the committee as submitted, and which has been read, the first section of which we are considering, consists of six sections, upon which this committee has agreed. There is a minority report—I don't know that it can be called a minority report, because it is signed by a majority of the committee—which differs from this report as to what the appropriation shall be, and as to what shall be the limit of the militia force of the State. It is proposed in that report that the Legislature shall be limited by the Constitution, and that the entire appropriation for any one year shall not exceed twenty-five thousand dollars.

Now, sir, I desire to speak to the whole of this report; and, as far as my judgment goes, if it is worth anything this limitation should not be put upon the Legislature, either as to the extent of the appropriations which may be made for the support of the militia, or as to the number of the force. And we shall see, by looking briefly at what the other States have done, how little necessity there is for putting into the Constitution such a provision as this. Now, in the State of New York, the State supplies armories, arms, transportation, and supplies, and pays for all services rendered. The members of the National Guard are exempt from jury duty. Now, in that State, during the year eighteen hundred and seventy-seven, the appropriation for the support of the National Guard was seven hundred and forty-five thousand three hundred and forty-six dollars and thirty-three cents. This was something like two hundred and fifty thousand dollars above the previous appropriations, but it was made necessary, owing to the so called labor riots. And while commenting upon this I wish to call attention to this fact: that while in the State of New York where these labor riots—or whatever they were called—burst upon that city, as they did in Pennsylvania, the State of New York was in such a condition, and had such a force of men, that it only expended two hundred and fifty thousand dollars in putting down the riots which threatened the destruction of an immense amount of property, and if it had succeeded would have cut off communication between the great grain growing regions of the West and the State of New York. At an expense of two hundred and fifty thousand dollars they put a prompt end to it so that no property was destroyed and no lives.

Now, in the State of Pennsylvania, where they had no such system, where they relied upon mere volunteer companies, we all know what destruction there was upon the great railroads which cost the State of Pennsylvania not less than fifteen million dollars inside of forty-eight hours. This shows the difference between the two systems. No lives or property were destroyed in New York, while the destruction of life and property in Pennsylvania was terrible.

In the State of Massachusetts—and I remember hearing a good Irish friend of mine in San Francisco say, when his son asked how he should vote, watch Massachusetts vote, and vote that way. Now look at that State. That State maintains a force of thirty-six thousand and eighty. The State furnishes armories, arms, drill grounds, and target ranges. It exempts the members from jury duty after nine years of service. The expense for supporting these amounts to four hundred and fifty-four thousand two hundred and seventy-four dollars and sixty-seven cents. In addition to that the State receives from the United States for arms, six thousand two hundred and thirty-seven dollars and twenty-one cents.

Even in the State of New Jersey they have a force of forty-eight companies, or about three thousand five hundred men. The State furnishes armories, arms, transportation, etc., at an expense of seventy thousand dollars per annum. Then they receive from the United States four thousand dollars, and the members of organized militia companies are exempt from jury duty.

The State of Connecticut has a force of two thousand two hundred and ninety-three men. The State furnishes armories, arms, etc., and pays two dollars per day to each member of a company for seven days services in each year.

In the State of Maine they have a force of eight hundred and seventy-three men. They furnish armories, etc., have one armory, and one regiment of cadets. Even for that small force of only eight hundred men the State pays thirty-five thousand dollars per annum.

In Vermont the State furnishes the armories, arms, etc., and pays two dollars a day to each member for five days services in each year; encourages target practice, makes appropriations for it, furnishes all the money for that purpose, which is done in every State, I believe, except California. And, sir, while we are poking fun at the militia, I regard this matter with considerable State pride; and, notwithstanding the poor encouragement that has been given the marksmen of this State, have won the admiration of every State in this Union, and of every government in the world. The California marksmen have been taken from among the clerks, and shop boys, and those young men of San Francisco and elsewhere, who have been made the butt of laughter and sneers of so many men. These marksmen have been taken out of stores, and blacksmith shops, and various other callings, and I say they should be encouraged and not sneered at.

Now, sir, take the State of Rhode Island—even that little handful of dirt, Rhode Island—and she has a force of one thousand eight hundred men. They have arms, armories, etc., furnished them, and a muster of the troops is had every year, and each officer and private is furnished with transportation and one dollar and a half per day. The State receives two thousand dollars a year from the General Government, and the rest is raised by a general tax.

Now, in the State of Pennsylvania, where, I say, they had no such organization as in the State of New York, and no appropriations worth speaking of were made—no encouragement was given—the State of Pennsylvania was forced to expend, in addition to the enormous loss of property that was destroyed, to keep together the independent military companies of the State, the sum of seven hundred and ten thousand dollars for that one occasion alone.

In Ohio they have reorganized the militia, and they now have an effectual militia. The State furnishes arms, armories, etc., pays the members for services during a certain number of days, exempts them from jury duty, and also from the road tax.

In Nevada there is a force of five hundred men; the State furnishes arms, armories, etc., and allows five hundred dollars to each company.

Kentucky has recently commenced to organize her militia, and an annual tax has been levied which will place them on a good footing. The State furnishes arms, armories, etc.

Texas, of course, is an exception, because the militia are always liable to be called upon at a moment's notice. The State appropriates, I think, about six hundred and twenty-nine thousand dollars a year.

In Louisiana they have a total force of two thousand nine hundred and seventy men. The State furnishes arms, armories, etc., and annual appropriations are made.

In Florida they have a very creditable organization, and they appropriate about thirty thousand dollars a year.

Many of the other States I could name would make an equally good showing. Now, in the State of California you will see how meager, how utterly inadequate the means will be if this constitutional provision which is proposed here should be adopted. It is proposed to put a limit in the Constitution so as to leave no discretion to the Legislature at all, either as to the number of men or as to the amount of the appropriation. Now, sir, in view of what the other States have done, it seems to me it would be very unwise, upon the principle of economy, so called, for this

Convention to take such a course as that. In California we have a total force of two thousand seven hundred men. The appropriation amounts to forty-five thousand two hundred and sixty-four dollars a year. And instead of the State, as in these other cases that I have mentioned, furnishing arms, armories, etc., the companies themselves have to furnish them out of the allowance. The allowance for target practice amounts to about two days' pay for a policeman, and they save to the people of the large cities an enormous expense in the matter of a large police force, for a well organized militia stands ready at all times, at a moment's notice, to come to the rescue when property is in danger. Now, how paltry this appropriation seems when we come to compare it with the appropriations made by the other States. How little and trifling the sum seems for the government to pay for the maintenance of an institution for the protection of life and property, in case of riot and conflagration. Why, sir, the army of Germany costs two hundred and sixty-eight dollars and seventy-five cents per man; Russia, two hundred and eleven dollars; Italy, two hundred and twenty-four dollars; France, two hundred and seventy-nine dollars; and England, four hundred and seventy-eight dollars. Now, what a vast difference there is between the expensive system adopted by the nations of Europe and that adopted by this country.

As I said, sir, the report of the committee embracing these six sections embodies the views of the militia of this State, and are based on provisions of other State Constitutions. We have considered the best interests of the State; and, while some complaint has been made that a large portion of these appropriations go to San Francisco, I say it is not improper or unjust that so much of the militia force should be located in San Francisco, for there is where there is the greatest necessity. And I say now, to the gentlemen of this Convention, that any attempt to reduce the appropriation by constitutional provisions, will be an act of extreme unwisdom, which would have an encouraging influence upon disorderly persons in San Francisco. I know that gentlemen outside of that city—gentlemen connected with the agricultural interests of the State—look upon this matter of spending forty-five thousand dollars a year for the support of this establishment as a thing which is unnecessary. They hear the subject discussed to a considerable extent, and they think they understand it, but I think they will see the propriety of leaving this matter of the amount of money to be expended and the number of the force to the Legislature. Why, sir, every farmer on this floor knows as well as I do that last year the militia saved the City of San Francisco from riot and fire, which might have cost the city one hundred million dollars in property. We all know that there is a large class of persons there who feel—I doubt not with considerable justice—that the presence of the Chinese is sufficient cause for them to bring about a public disturbance. We know the public mind is greatly agitated upon this subject, and I cannot but regard the putting of such a restriction as this in the Constitution as an act of extreme unwisdom.

Who is objecting? Who is protesting against it? Why, sir, the people of San Francisco, who pay a large portion of the taxes of this State, are not protesting against it. I have not heard a single man from that city object to it. On the contrary, if petitions were of any use, if it was necessary, I could bring the unanimous voice of the property holders, men who have the interest of that city at heart, in favor of the position I have taken—not merely rich men, but poor men; not merely the men of large means, but those of small means; men who have their little homesteads; those families who feel that they cannot afford to suffer from riot, or conflagration, or disturbance of any character. We cannot afford to wipe out the militia system and leave property and life at the mercy of the mob. I submit that such a course is both unwise and indiscreet. This is a matter we can safely leave to the Legislature. It ought to be left to the Legislature. Why should we limit it for ten years? Is there any gentleman on this floor who can look forward ten years and say what the United States are going to do? I must say I cannot. I do not know what may be the result of a year, or a day, or a night. If the necessity should arise for legislative action, the Legislature ought to have the power to control this matter.

Now, I had intended running over, to some extent, the authorities on this subject, and quoting the views of some of the best military men of our own country who have given this subject attention, but I have not time now to do it. I simply ask that the report of the committee be adopted, and that this Convention will not decide to put in the limitations contained in the minority report.

MR. STEDMAN. I rise to a point of order—the majority report.

MR. BARNES. I have said so several times. As I said in the beginning, a majority of the committee saw fit to sign the adverse report, urging that the powers of the Legislature shall be restricted to giving ten companies support, not to exceed twenty-five thousand dollars a year. I know my young friend challenged my admiration when, on signing that report, he said he could take one thousand men and march from Siskiyou to San Diego (if nobody opposed him). It is simply a question of judgment, that is all. We have a very economical system in this State, when we come to compare the appropriations made by this State with those of other States. Notwithstanding that we have an organized force of militia in this State equal to that of any State in the Union, as far as efficiency is concerned, and it is superior to many. I ask that this article may be adopted, without speaking to it section by section, because I have read over legislative extracts from other States bearing upon the whole question. I say that the Constitution is no place to fix the amount of the appropriation; that should be left entirely to the Legislature, so that when occasions and exigencies demand it, they can act untrammeled by any constitutional limitation. They can reduce the amount if they see fit, or they can increase it if the exigencies demand an increase. I believe the present militia force is absolutely necessary for the safety and protection of the City of San Francisco, and men outside have no reason to complain, for they are almost as much interested in the prosperity of that city as the residents themselves. No part of the State can strike a blow at San Francisco without injuring every other part of the State. San Francisco desires that the militia shall at least be maintained at its present standard, and San Francisco pays a large portion of the taxes of this State.

SPEECH OF MR. MOFFAT.

MR. MOFFAT. Mr. Chairman: I believe ten companies are all that this State requires. What is the use of all this militia? Under the present system we have forty companies, which would make four thousand eight hundred men. What is the use of all this militia? What is the use of supporting it? It is taxing the people for nothing. Now my opinion is, that we reduce the number down to ten companies. That is all the State requires in my opinion. That would give six hundred men in San Francisco. I believe that is all that is required to perform all the police regulations of that city, and all that the people demand. I believe that an appropriation of twenty-one thousand dollars a year is sufficient to pay that number of men fairly for their work, and keep their arms in good repair. Now, in San Francisco, I know of my own knowledge, that there is many a man in San Francisco who is performing military duty that is doing himself and his family an injury, and appropriating money for these companies which his family should have. I know that to be a fact. Any amount of them. They are so infatuated that they go down in their pockets and always leave their families. I believe we ought to reduce it down to twenty-five thousand dollars a year—cut the whole thing down as the committee have marked it out, to about two hundred men, and reduce the appropriation down to twenty-five thousand dollars, and cut down the Adjutant-General to two thousand dollars a year. I don't see any use of taxing the people. I believe the proposition in the report of the committee is right. I understand that the Adjutant-General's salary is four thousand dollars. That makes an expense in that office of seven thousand dollars. That is more than many a man with fifty thousand dollars invested in a farm can make. There is too much time and money spent on military affairs. I believe it ought to be put in the Constitution so as to prohibit the Legislature from spending so much money. Put it in the Constitution, and that settles the thing for ten years, and that will be the end of it. Twenty-five thousand dollars is enough, and no member of the committee was in favor of cutting it down below that amount. Every man subject to military duty is taxed six bits. My friend Stedman is full of statistics, and he will give you this part of it. Let us take this thing away from the Legislature, and that is all that the people are willing to pay for.

MR. CAMPBELL. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Add to section one: 'Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections and repel invasions.'"

MR. BARNES. The same matter is embodied in sections two, three, and four of this article.

THE CHAIRMAN. The question is on the adoption of the amendment to section one.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: My object in offering this amendment is to place the Constitution on the same footing, in the same language precisely, as the Constitution has heretofore stood. And if this amendment is passed I shall then ask the house to strike out all the remaining sections, and that will leave the Constitution just as it is to-day. Now, sir, I am opposed to this tinkering with every section and every article of the Constitution. There are instances where we are called upon to legislate—all that class of cases where there are plain and acknowledged defects in the present Constitution. But as far as other portions of the Constitution are concerned—those which are not connected with corporations, Chinese, taxation, etc., I am in favor of leaving them as they are as far as possible. In those cases there are exceptions, because it is plain that something should be done in order to correct existing evils.

Now, this is a subject where the Legislature is not liable to do anything improper, and this is a matter that may safely be left to legislative discretion, so that they may regulate the matter according to the exigencies and circumstances of the case. So far as I know there is no general public complaint in regard to this portion of the Constitution. From the observations I have made I have found the opinion universally expressed that it is unwise for this Convention to attempt to tinker with and change every section in the Constitution; to subject every part of it to change and alteration. And further, that it is unwise and unreasonable for us to assume that we know everything, and that the Legislatures which are to assemble hereafter will know nothing. It is wrong for us to tie up the hands of the Legislature for ten years upon a subject that ought to be elastic, and about which there is no general complaint. Now, here we are on the seventy-sixth day of the session. If we go on with amendment after amendment amending everything in this Constitution, we shall not get through in time to enable the people to know what they are voting on. This Constitution has to be submitted to the people in May next, and we have been now nearly three months engaged here and have only finished three or four articles. Now, except whenever public experience and observation show that a radical change is required, let us adhere to the old Constitution. Let us leave something to legislative discretion. So far as I know there has been no complaint in this State in regard to this particular article in the Constitution. Why not leave it as it is? Why tinker with it, and spend day after day in debating upon a proposition which, if the people should adopt, they might regret within twenty-four hours after its adoption? I hope, sir, as far as possible, we will adhere to the old Constitution, and it is for this purpose that I have offered this amendment. There is no

change demanded, I am satisfied, as regards this portion of the Constitution.

MR. BARNES. I call the attention of the Convention to the fact that section one is precisely the same as section one of the existing Constitution, and the substance of the amendment proposed by the gentleman from Alameda is embraced in the other sections of this report.

MR. CAMPBELL. This makes the section embrace all there is in the old Constitution.

MR. BARNES. Then why are you tinkering the old Constitution?

MR. CAMPBELL. I am not tinkering it at all. I am adopting the language of the old Constitution precisely. This amendment makes it word for word the same as the old Constitution.

MR. BARNES. The other sections have not been read.

MR. CAMPBELL. No, sir, because section one is the section under consideration. I propose to add sections two and three of the old Constitution so as to make the language identical, and it will be there all in one section.

MR. BARNES. I don't deny that at all.

SPEECH OF MR. WHITE.

MR. WHITE. We hear the same lecture here that we have heard so many times before, that it is improper to correct anything in the old Constitution that appears to be right in the eyes of some gentlemen. I hope we will proceed to correct every part of it as we go along, whenever and wherever we can make any improvement in it. I insist upon it that there is a feeling in the State generally that there is a great deal of money wasted, and I am very anxious to see a clause, such a clause as is reported by the majority of this committee, as to exempting them from jury duty, and things of that character, I think that is entirely too broad and wholesale. Jury duty has got down, Mr. Chairman, very low, and I think it should not be done. I hope we will correct everything where we find we can make an improvement. We are sent here for that purpose, and we can settle it here ourselves as well as anybody else, and I hope we will do it. We are sent here for that purpose by the people of the State, and I hope we will do our duty.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: I believe, sir, that I am in favor of the amendment proposed by the gentleman from Alameda, Mr. Campbell. Now, as far as this matter is concerned, it does appear to me that it does not amount to a great deal, and I believe the old Constitution will give as general satisfaction as anything we will be likely to put in its place. I do not know that this change will amount to a great deal either way. I would have no very serious objections to determining the amount to be appropriated to the military companies of this State, but I do not think it is of sufficient importance to bother with it, especially when the Legislature can at any time reduce the amount for that purpose; and if there is a general public demand for such a reduction they will do it, no doubt. With this view of the subject, though I am in favor of low appropriations, I am in favor of the amendment. But there may be extreme emergencies, as there have been in almost every State, when it would be well for the Legislature to have this power. I hope we will settle this matter speedily, and I think the best solution of it is the amendment of the gentleman from Alameda, Judge Campbell.

MR. MORELAND. Mr. Chairman: An amendment to the amendment.

THE SECRETARY read:

"Add to the amendment, 'but no appropriation for the support of the militia shall in any one year exceed the sum of twenty-five thousand dollars, except in case of war, insurrection, riot, or invasion, when the public necessity may require it.'"

THE CHAIRMAN. The question is on the amendment to the amendment.

SPEECH OF MR. STEDMAN.

MR. STEDMAN. Mr. Chairman: I was not aware that this report would be taken up to-day. I expected to be prepared fully upon this question, but I understood that the legislative article was coming up, and so I am not fully prepared to discuss this article. I do not desire to make any special argument upon this question, but I wish merely to call the attention of this committee to the report which has been received from the Controller in answer to a resolution by this Convention. What I desire particularly to call your attention to is the figures. If members will notice these figures they will find that the appropriations under the present system have come to be fearful. In fact, sir, if we do not place some limit upon the Legislature in appropriating money for this fuss and feather business, why, I am satisfied the time will come when it will cost more to maintain the militia of this State than the total cost of the civil service. I will read the figures of that report to show the cost of maintaining the militia. For the year ending June thirtieth, eighteen hundred and fifty-six, it cost the sum of six thousand and eighty-four dollars and thirty-one cents; for the same period ending June thirtieth, eighteen hundred and fifty-seven, four thousand six hundred and ninety dollars and ninety-two cents; eighteen hundred and fifty-eight, six thousand eight hundred and sixty-three dollars and seventy-seven cents; eighteen hundred and fifty-nine, four thousand seven hundred and twenty-seven dollars and fifty cents; eighteen hundred and sixty, six thousand two hundred and ninety-six dollars and eighty-six cents; eighteen hundred and sixty-one, four thousand five hundred and fifty-eight dollars and eighty-five cents; eighteen hundred and sixty-two, two thousand four hundred and forty-two dollars and forty cents; eighteen hundred and sixty-three, fifteen thousand six hundred and fifty-nine dollars and sixty-eight cents, which also included deficiencies in former years, amounting to over six thousand dollars; eighteen hundred and sixty-four, three hundred and forty-one thousand nine hundred and sixty dollars and sixty-eight cents; eighteen hundred and sixty-five, sixty-three thousand three hundred sixty-two dollars and seventy-six cents; eighteen hundred and sixty-six, forty thousand and fifty-eight dollars and thirty-nine cents; eighteen hundred and sixty-seven, one hundred thousand four hundred and sixty-four dollars and eighty-one cents; eighteen hundred and sixty-eight, eighty-seven thousand six hundred and twenty-nine dollars and fourteen cents; eighteen hundred and sixty-nine, fifty-two thousand four hundred and forty-five dollars and fifty-five cents; eighteen hundred and seventy, thirty-nine thousand eight hundred and ninety-eight dollars and sixteen cents; eighteen hundred and seventy-one, thirty-seven thousand three hundred and twenty-seven dollars and twenty-four cents; eighteen hundred and seventy-two, forty-nine thousand nine hundred and thirteen dollars and seventeen cents; eighteen hundred and seventy-three, seven-two thousand one hundred and six dollars and sixty-five cents; eighteen hundred and seventy-four, sixty-six thousand three hundred and seven dollars and eighty-five cents; eighteen hundred and seventy-five, thirty-eight thousand four hundred and sixty-four dollars and eighty cents; eighteen hundred and seventy-six, thirty-nine thousand two hundred and fifteen dollars and ninety-six cents; eighteen hundred and seventy-seven, ninety-eight thousand one hundred and forty-three dollars and fifty-three cents; eighteen hundred and seventy-eight, thirty-eight thousand seventy hundred and seventy-two dollars and ninety cents; eighteen hundred and seventy-nine, fifty-one thousand four hundred and fourteen dollars; eighteen hundred and eighty, fifty-one thousand four hundred and fourteen dollars; making a total of one million three hundred and twenty thousand two hundred and twenty-three dollars and seventy-eight cents.

I don't know how these deficiencies came about, as I have not studied that matter. But I know there has been a great increase in the cost. What should cause this increase is more than I can say. There is no need that it should be increased. Why was it? For the years eighteen hundred and seventy-nine and eighty there is an appropriation of one hundred and two thousand eight hundred and twenty-eight dollars for the two years—fifty-one thousand four hundred and fourteen dollars a year. What for? I ask the gentleman from San Francisco, Mr. Barnes, what it was for, this fifty-one thousand dollars a year, what was it for?

MR. BARNES. For the purposes of the militia system of the State. I did not keep the accounts of the State. I don't know what it was expended for, and what is more, I don't care.

MR. STEDMAN. What benefit has this State received from the expenditure of this vast amount of money? We find that some five or six thousand dollars was appropriated for the expense of the militia while stationed at San Francisco, when they were called out to prevent a riot. I was there in San Francisco—I have been there a great many years—almost all my life, and I was there during the excitement at that time, and I saw no need of the militia. I am satisfied that the three hundred thousand people of San Francisco saw no need of it. There was no riot. Then what is this money appropriated for? Because they want to draw money out of the State treasury. That is what it is for.

Mr. President, I regard this in a great measure as a useless expenditure. I am radical enough to say that I would be in favor of abolishing the militia. At times they are a necessary evil, I suppose—something like a great many other evils we have. At times, probably, they would be useful—I don't know whether they would be or not. I notice when the civil war was raging, it was not the militia we depended on. No, sir, when the war broke out, they threw down their arms and fled the country. I say, sir, that the Seventh Regiment of New York, in the last war, did not attain much honor.

MR. HILBORN. Doesn't the gentleman know that the Seventh Regiment furnished more officers in the late war than it had men when it went into the war?

MR. BARNES. Let me ask you a question. Was the gentleman in San Francisco when the news came of the assassination of Mr. Lincoln?

MR. STEDMAN. Yes, sir; I know all about it.

MR. BARNES. Does the gentleman not know also that the first regiment that reached Washington after the war broke out, and saved that city, was the Sixth and Seventh Regiments of New York, which were militia?

MR. STEDMAN. I don't want to go into a history of the Seventh Regiment at this time. I wish simply to say that the Seventh New York Regiment, that did service in the war, was a reorganized regiment, and not the one that first started. I did not wish to hurt the gentleman's feelings.

Now I say, if there is not some restriction placed upon the Legislature, restricting them from appropriating vast sums of money, we will see the day that it will cost more to maintain the militia of the State than it does the civil service of the State. I think the time has come when such a clause as this ought to be put in the Constitution. I believe the people demand it. I shall vote to put it in there, and I hope the committee will adopt this amendment of the gentleman from Sonoma, Mr. Moreland.

SPEECH OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I have been a resident of this State for the last twenty-eight years, and a greater part of that time I have lived in San Francisco, and I have never yet seen any benefit derived from the militia. In eighteen hundred and fifty-six, when the Vigilance Committee took charge of the City of San Francisco, the militia was called out and one hundred and eight men answered roll-call. My friend Barnes knows that to be a fact. When their support was required they were not there.

MR. BARNES. Not where?

MR. O'DONNELL. Not ready to take hold of their arms and defend the State from invasion. Now, I am entirely opposed to the militia. I organized the second company that was ever organized in this State, and what was the result? Why, they were of no earthly account to the State. [Laughter.] They were the best companies ever organized here. Here last year in San Francisco there was a wash-house, a Chinese wash-house, where they had the smallpox, and they were spreading the disease over

the city. When the militia were called out the people of San Francisco had no confidence in them whatever, because they were all locked up in the armories, and so they ordered out the citizens with clubs and pistols. This was called the Pickhandle Brigade. Now, sir, that is the fact that the people of this State have got no confidence in the militia. Now, for a few days, as I said, they were compelled to remain at the armories. It cost the State for that service five thousand two hundred and two dollars. That large amount of money was taken out of the treasury for nothing. I had a conversation with one of the captains of one of the companies who occupied the armory on Montgomery street. He said all they wanted was an opportunity to fire into some of these workingmen. Now, if that had occurred there, if there had been a single shot fired there by one of the militia, the whole city would have been in flames. Every officer of the city, and his residence, was known, and they would have suffered for it, and a few dozen of them would have been killed maybe. But they were locked up in the armories. Never one of them was seen on the streets on that occasion. You all know that to be a fact. [Laughter.]

How did they have any tendency to quell the mob? There never was any mob. I have lived there for twenty-eight years and I never saw any signs of a mob. I never saw a city in better condition than San Francisco has been in since the Workingmen's party has been in existence. Never in my life. It was never in danger. The only way you could have got up a riot there was to get two or three of the militia to shoot some of the workingmen. I never saw any benefit they could be to the State, except to cause a riot. It is of no benefit whatever. The money appropriated for the militia at that time was a perfect waste, and was of no use in the world. Some of these big vultures, I don't care to name them, circulated protests in regard to certain measures, and that is about the extent of their usefulness. [Laughter.] They are used for political purposes, and nothing else. They are of no benefit to the State whatever; and if there is to be any appropriation at all, I would limit it down to five thousand a year. I hope, sir, that this section one will be stricken out altogether.

MR. HILBORN. Mr. Chairman: I wish to occupy one moment. I know something of this extra appropriation of five thousand dollars alluded to by the gentleman, and I will say that we paid this per diem to these gentlemen who were kept in the armories day and night in order to protect the property of the State from such men as Dr. O'Donnell and his friends.

MR. O'DONNELL. There was never any intention whatever to interfere with the arms of this State. There was not the least danger in the world, and you all know that to be a fact.

SPEECH OF MR. STUART.

MR. STUART. Mr. Chairman: I would not say a word on this question were it not for a remark made by the Chairman of the Committee on Military Affairs. He said, I believe, in his speech, that the farmers were opposed to voting a sufficient amount of money to support the militia of the State.

MR. BARNES. I did not mean to say that exactly. I said it was the expression in the committee that there was a sentiment among the agricultural portions of the State to that effect, and that I did not see why such a feeling should exist because they were all deeply interested in the welfare of San Francisco.

MR. STUART. I think, sir, that the farmers, the agriculturists, the producers of California, are as loyal as any set of men in the United States. I think they desire to have a military force that is sufficiently strong to protect the great City of San Francisco at any and all times, and under any circumstances. I think, sir, that there is no necessity for a change in the old Constitution in regard to that department of our government. I believe our citizens of our cities and towns should be protected. Lives and property must be protected from rioters and all other enemies, and I am therefore opposed to the amendment of my colleague from Sonoma. I believe that the people are well enough satisfied with the old order of things, and I shall therefore vote for the amendment of the gentleman from Alameda, Judge Campbell.

SPEECH OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: Perhaps it is not worth while for me to take up any time in this discussion, but several remarks have been thrown out in regard to the military, and it is nothing more than right that I should refer to them briefly, or at least one or two of them. So far as the gentleman upon the other side is concerned, and his statement that the Seventh Regiment of New York supplied so many officers, I wish to call the attention of the gentleman to one little fact in connection with that regiment—it is true it was the first to volunteer when the war opened, but they were also the first to return home. They volunteered as a three months regiment, and, sir, there was no fighting done until after the expiration of that three months, and then they marched towards the City of New York as fast as it was possible for them to travel. Sir, the Sixty-ninth New York marched to the field of battle, and were among the first to take part in the contest, and while they were fighting on the battle field at Bull Run, as the gentleman well knows, the Seventh New York were marching with all possible speed towards home. When they came back the regiment was reorganized, and new men enlisted, and then this new regiment marched to battle. But the gentleman makes a mistake when he gives to this first regiment the credit that history has given to the Seventh New York.

MR. BARNES. I do not intend to defend the character and fame of the Seventh Regiment, for it will live long after its traducers are forgotten. It was sent to the seat of war to protect the City of Washington. It did its duty there, and was recalled at the request of the Governor of the State of New York, for the purpose of preserving the peace of the City of New York, which was threatened by a class of persons whom my friend on the other side of the hall alluded to, who hissed and hooted them as they marched through the streets. It was brought back against its will, because the Governor of the State believed that the peace of the city was in great danger, and everybody who knows anything about it knows it.

MR. WELLIN. I lived in the city at the time, and I know there was no disposition whatever towards a riot at the time these men returned home.

MR. BARNES. I allude to these men who went on this four months service. That regiment bore a character for a military organization the like of which does not exist upon the face of the civilized globe. Now, [laughter]——

MR. AYERS. I raise the point of order that this discussion, as far as it relates to the Seventh Regiment of New York, is all out of order, and is not in any manner pertinent to the question under discussion.

THE CHAIRMAN. The point of order is well taken.

MR. WELLIN. I object to this position being taken, because the gentleman knows that not one of them went to the battlefield. I was there at the time myself, and I know something about it.

THE CHAIRMAN. The Chair ruled that the point of order made by the gentleman from Los Angeles was well taken.

MR. WELLIN. I do not care enough about it to appeal, but when assertions of this kind are made I think it is right that I should have an opportunity of replying. Now, the gentleman asks if I was in the city of San Francisco in eighteen hundred and sixty-five. Yes, sir, I was, and I did not belong to a military company either. I was at one of the armories where a company was supposed to be, and I will inform the gentleman that there were not five members of that company present.

MR. BARNES. What company was it?

MR. WELLIN. I don't remember—in one of the drill rooms on Market street.

MR. BARNES. Do you know the regiment?

MR. WELLIN. No, sir.

MR. BARNES. Nor the company?

MR. WELLIN. No, sir.

MR. BARNES. If you don't know the company, nor the regiment, how do you know that there were not five members present?

MR. WELLIN. I know from those who were present whether they were volunteers or not. I was with one of the owners of the drill-room. If the gentleman does not believe me, he can do as he pleases. I assert the fact, and let him prove to the contrary.

Now, the gentleman raises a serious question, when he says the expense of the militia last Winter was made necessary in order to keep down the Workingmen. The Workingmen do not need to be kept down. We propose to work within the law. It is the militia which needs to be put down. We ask for none of its protection. We will abide by the laws, and let them do the same.

MR. MANSFIELD. I offer an amendment.

THE CHAIRMAN. There are two amendments pending already. The question is on the amendment proposed by the gentleman from Sonoma, Mr. Moreland.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I rise, sir, for the purpose of deploring the spirit which exhibits itself here, and I must express my surprise when I see irreverent hands of iconoclasts laid upon such a valuable and time-honored institution as the militia. Is it not time to pause and inquire whither are we drifting? Do you propose to leave us stranded and defenseless? Do you propose to deprive us of the glorious fourth of July parade, and other parade days, and target days, and picnic days, when we see all the glories and pomp and circumstances of war? Do you remember that our homes and our firesides are sheltered and protected by them? What are we about to do? Do you propose to deprive the Major of militia of all his hard-earned glory—he whose soul swells and expands with joy when parade day approaches. I, sir, owe a duty to my constituents, which I feel it incumbent upon me to keep. I was desirous, after being made a candidate for this position, of being elected; and in speaking to the people of San Francisco, at Horticultural Hall, I was desirous of obtaining the votes of our country's brave defenders there, and I told them that I was going to advocate a provision in this Constitution that there should be nothing in the militia below the grade of Major of militia. I remember, when I was a small boy, and my father, a majestic Major of militia, took me out on muster day, how my soul exulted and swelled within me at the glorious things that I beheld on that occasion. I could not think of depriving the rising generation of the delights which I enjoyed at that time; and I made that promise to these gentlemen—who are the delight of the small boys—sometimes called, irreverently, "fuss and feathers," and all that sort of thing. I would be willing to give General McComb a feather two feet higher than anybody else, and that the Drum Major should have a seventy-five pound lead at the end of his stick—only that it would make these gentlemen too conspicuous on the field of battle. Their lives are too valuable to be thrown away. Suppose the Indians were to come in on us, what show would these men have? Sir, we must save them from the Indians, and everything of that kind. And if I can find an opportunity, I shall propose to this committee an amendment which will prevent them from being killed by Indians. I shall propose that the militia of the State shall not be permitted to depart from the State except in case of invasion. [Laughter.] I shall propose that they be protected from incursions of hostile Indians, and everything of that kind; and provide for calling out the old women, with their brooms, to protect us. I do not want to run any risk of their being destroyed. It has been contended here that they are not useful; but will any man rise in his seat and say that they are not ornamental? I pause for a reply. Do not the gentlemen want anything but that which is useful? Shall we have nothing in the Constitution of an ornamental character? I am not pretty; I have not got the shape nor the style for a glorious parade day; but shall I be jealous, and prevent those who have shape and style from riding through the streets of San Francisco, seeking to repel an invasion?

Now, sir, seriously speaking, are the militia companies any protection in this State? We are told that they are, but it is not true. They are no protection. The protection, sir, of the State, and of every State, is the patriotism of the people. A government which cannot rest upon that, cannot rely upon that, must give up the republican idea; must give up the idea of self-government, and must resort to the theory of all monarchical institutions. We do not, according to our theory of government, depend at all upon the hand of power, but upon the will of the majority. Now, the organized, uniformed companies, are not the real militia upon which the country depends for safety. The proper constitutional amendment would be that every able-bodied man in the State is a militiaman. That is the true militia of the State; that is the militia which the Constitution of every single State in the Union recognizes as the State militia. I am surprised at a report coming in here that fails to contain that provision, which is contained in every single one of the State Constitutions in the United States, and which is the only true theory on the subject. Now, we talk about the militia being called out by the Governor. We do not mean the organized militia force of the State alone, it is the citizens—the able-bodied citizens of the State that are meant. It is not those who join these companies for the purpose of show and parade, not those who belong for the purpose of learning to shoot at a target; not by any means, but the citizens who are devoted to the welfare of the State—the great body politic—the citizens, who are called upon, and all you need is enough of an organization to take care of the militia property, and to keep the books and records. It is the great body of citizens, the volunteers, who compose the militia. We want no more of such militia as we have had in this State—no more of such militia as we have had in San Francisco—not by any means. Allusion has been made to their services to the State, to the protection of property in San Francisco by the militia. Some have spoken of it as a matter of history. If history shows anything, it shows that the use of the militia in San Francisco was a dastardly and outrageous suppression of what was simply an honest and peaceable uprising. There was no single shadow of reason for calling out the militia at the time of that political excitement. And if they had been called upon to fire, they would have fired in the air. There was no reason for calling upon the militia by any possible construction that could be put upon it. It was done by the political tricksters for the sole purpose of quelling an honest, legitimate political uprising. If there had been danger, what would the militia have amounted to in the matter of protecting five thousand, or six thousand, or eight thousand people against twenty-five thousand? What folly to talk about such a thing. And then again, most of the members of these companies were in sympathy with this great political uprising, and had they been ordered to fire, they would have fired in the air. That is how it would have been done. Now, if I have an opportunity, I shall offer this amendment to section one:

"The militia of the State shall consist of all able-bodied white male residents of the State between the ages of eighteen and forty-five, except such persons as are exempt by the laws of the United States or of this State."

That is all that is proper, that is all that is necessary to put into the Constitution, and I shall offer that amendment as soon as it is in order.

SPEECH OF MR. HARRISON.

MR. HARRISON. Mr. Chairman: I wish to say one word or two, only for one reason, and that is to show why I shall vote as I do on this question. Mr. President, I lived on Rincon Hill during the time of the riot. When the bell struck the alarm of fire that night I went down to see what was going on, and I seen no disturbance whatever. The Mayor was willing to pander to the interests of the vultures, and that is why they were ordered out. I lived on Rincon Hill, and owned property there, and I was not at all afraid of getting burned out in San Francisco; I was not afraid of anybody setting fire to my property. I have a wife there, and I am not afraid of getting burned out. Now, the gentleman from Vallejo made some allusion to Dr. O'Donnell in connection with the Workingmen's party.

MR. HILBORN. No, sir, Mr. O'Donnell said he was there during that whole disturbance. I said the militia was called out to protect the property of the State from Mr. O'Donnell and his friends.

MR. HARRISON. An account of that riot and trouble was sent out through the country, it was circulated through the press, and these gentlemen all read it. As they are going to vote on this question, I wish to tell them there was no riot, only the disturbance caused by these vultures. I was there and saw it all. I saw them shoot indiscriminately at men, women, and children, and a poor man living in the city was killed on that occasion and died. He was a stranger in the city and had no friends. I stood right there and saw these cowardly fellows with their pistols. Now I like to see Fourth of July parades, and I always take my children down to see them. Last Fourth of July I took them down to see the procession. My little girl, about four years old, was in my arms, she saw the red lining on one of those hats and says she: "O, papa, see that funny hat!" Well, I thought it was worth all it cost to let her see the hat—it was a funny hat. Mr. President; I vote in favor of cutting down the militia and the money appropriated for their keeping. There is no need of any militia in San Francisco. The workingmen that owns property, like me, are not going to get up any riot, they will help put it down if there is any riots.

MR. STEDMAN. With permission of the committee I wish to make one statement. There are several States in this Union that do not appropriate money for the benefit of the militia.

MR. STUART. I call the gentleman to order. He has spoken twice on the same subject.

THE CHAIRMAN. The question is on the amendment.

SPEECH OF MR. MILLER.

MR. MILLER. Mr. Chairman: It was not my intention to say anything on this subject; but I think there is danger of being carried away by prejudice against the militia. It is true, as my friend from San Francisco, Mr. Barbour, says, that the real militia of the country are the independent freemen of the State—men who are ready, at the call of the country, to take up arms in the country's defense. It is true, that when the great rebellion came upon the United States in eighteen hundred and sixty-one, the several States—the Northern States—quickly raised and equipped from this militia the finest army that ever was seen on this continent, and perhaps the finest in the world. But it must be remembered that in every State there was a militia system. Every State had established laws for the organization of militia. I do not think we should take the narrow view of the subject which seems to have prevailed here. We had better adopt the experience of the other States of the Union. Now, if the militia have been unsatisfactory in this State, it does not follow as a logical conclusion that you need no militia hereafter. The militia system is the school for the military art in this country. And we found in eighteen hundred and sixty-one that those States which had paid some attention to the military art were better prepared to send forward organized troops than those States which had paid no attention to these matters.

Mention has been made of the State of Indiana. I have the honor to be a native of that State, and at the time of the breaking out of the war I was a resident of that State. It was the militia system of that State which enabled them to organize a large force at once, and directly after the war began the Legislature was convened in extra session, and a militia law was passed which authorized the Governor to organize additional regiments, which he did. Senator Morton—Governor at that time—would never have had the credit of being the great war Governor had it not been for the acts of the Legislature which I have mentioned. It is true he was a man of such determined character, and of such great ability, that he was capable of making the most out of the means given him. But he nor no other man could have done this had it not been for the acts of the Legislature.

MR. STEDMAN. This amendment provides that in case of war or insurrection we may do the same thing.

MR. MILLER. I do not know anything about that, but the State ought not to wait till the emergency arises before organizing a militia system. That would be a very short-sighted policy. I believe in fostering and encouraging the military art in this country. Under the policy of the General Government it can only be fostered by the States. The disposition is to cut down the regular army, and the art must be fostered by the individual States. I believe in a military nation. A nation that exhibits a military spirit has the respect of the world. There is such a thing necessary as force in the government of mankind. It behooves every nation, in order to occupy a position of equality among the nations of the earth, to foster a military spirit.

Now, as to what ought to be the cost in the State of California I cannot say. I do not know what the amount ought to be. Of course, it ought to cost the very smallest sum possible, because the taxes of the people are already high enough. But, can we not trust that matter to the Legislature? Does not the Legislature decide, from session to session, what the appropriations for the maintenance of the government shall be? It seems to me we can safely leave it to them. We cannot see into the future. We do not know what crisis may arise in this country, or what the State of California may be called upon to do, and it seems to me a very unwise and short-sighted policy to place any limitation upon the Legislature, in the Constitution. I think we had better leave it to the Legislature to determine, from session to session, what the appropriations shall be.

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I did not expect to discuss the military question, and would not now were it not for the purpose of correcting the erroneous impression which might be obtained from the remarks of some who have addressed the committee. There is a misunderstanding in regard to the report of the Adjutant-General and Controller in regard to the cost. It was stated by the gentleman from San Francisco, Mr. Stedman, that for the year eighteen hundred and seventy-seven the Legislature appropriated ninety-eight thousand one hundred and forty-three dollars and fifty-three cents for the support of the militia. It is true that was the appropriation, but he did not tell us that a part of it was to cover deficiencies for previous years. I will read the report, which shows all the deficiencies:

Expense of Maintaining State Militia, including Adjutant-General's Department, from July first, eighteen hundred and fifty-five, to June thirtieth, eighteen hundred and eighty, as shown by the Controllers' Reports:

YEARS.	Amount.
Year ending June 30th, 1856	$6,084 31
Year ending June 30th, 1857	4,690 92
Year ending June 30th, 1858	6,863 77
Year ending June 30th, 1859	4,723 50
Year ending June 30th, 1860	6,296 86
Year ending June 30th, 1861	4,558 85
Year ending June 30th, 1862	2,442 40
Year ending June 30th, 1863	* 15,659 68
Year ending June 30th, 1864	† 341,960 58
Year ending June 30th, 1865	63,362 76
Year ending June 30th, 1866	40,058 39
Year ending June 30th, 1867	100,464 81
Amount carried forward	$597,166 83

Years.	Amount.
Amount brought forward	$597,166 83
Year ending June 30th, 1868	87,629 14
Year ending June 30th, 1869	52,449 55
Year ending June 30th, 1870	39,898 16
Year ending June 30th, 1871	37,327 24
Year ending June 30th, 1872	49,913 17
Year ending June 30th, 1873	72,106 65
Year ending June 30th, 1874	66,307 85
Year ending June 30th, 1875	38,464 80
Year ending June 30th, 1876	39,215 96
Year ending June 30th, 1877	† 98,143 53
Year ending June 30th, 1878	‡ 38,772 90
Year ending June 30th, 1879	‖ 51,414 00
Year ending June 30th, 1880	‖ 51,414 00
Total	$1,320,223 78

* Includes deficiencies, $6,070 13, of 11th, 12th, 13th, and 14th fiscal years.
† For the equipment and expenses of organized militia.
‡ Includes deficiency appropriations, $71,359 38, for the 25th, 26th, and 27th fiscal years.
§ Includes deficiency appropriation, $3,564.
‖ These two appropriations have not as yet been expended, as they are for the present and coming fiscal years.

Members will see, by referring to this, just exactly what it has cost. Now, in regard to this proposed limitation, it does occur to me that we ought to leave the whole matter to the Legislature; and I am willing to allow that body to determine what the appropriations shall be, according to the emergencies that may arise. It is not in San Francisco alone that this system is of benefit. There is a long southern border to this State, where, whenever the time comes that the troops are taken away from that locality, there will always be need for a military organization. Now, I know last Winter the troops were taken away to fight the Indians, and a raid was immediately made upon the station down there, near the line, and the people of San Diego were obliged to organize and go out themselves and defend the lives and property of the citizens. I am in favor of leaving this matter to the Legislature. They are the people's representatives, just as much as we are, and will do their bidding.

Mr. STEDMAN. I wish to ask the gentleman a question. In that place they have riots, insurrections, and war?

Mr. BLACKMER. Yes, sir; and they made an assault upon a place down there near the line.

Mr. STEDMAN. Across the line?

Mr. BLACKMER. No, sir; and the gentleman reminds me of the men to whom Harry Hotspur refused to surrender his prisoners.

SPEECH OF MR. FILCHER.

Mr. FILCHER. Mr. Chairman: From the discussion, it appears that this is one of the most important questions that this Convention will have to deal with, and I wish briefly to state my views of the matter to this Convention. In the first place, though I have been edified and instructed by the remarks of the Chairman of the committee, that I am satisfied that the people of this State demand that this reduction be made in the number and cost of the State militia. This question has been universally discussed throughout the State by the press and among the people, and the universal sentiment seems to be that there should be a limit placed upon the expenditures for the support of the militia. There ought to be some change in the system. However, sir, I am opposed to any positive iron-bound restrictions, for the reason that we cannot foresee the events that may happen, and we must leave it sufficiently elastic to allow the Legislature to act if occasion should require it. I agree with the sentiments of the gentleman from San Francisco, Mr. Barbour, that the safety of American institutions rests upon the patriotism of the people. Hence, I also agree with the other gentleman from San Francisco, General Miller, when he says he believes in cultivating and fostering a military spirit. And to establish and carry out these ideas, I would advocate the adoption of this section as proposed to be amended by the gentleman from Alameda, Judge Campbell, providing how the militia may be organized, providing how the officers may be chosen, and conferring upon the Governor the power to call out this militia in case of emergency; and then to go further, and declare that all able-bodied male citizens of this State not exempt by law from military duty, between the ages of eighteen and forty-five years, shall form the militia of the State. Then, I think, it would be wise to adopt with that a provision restricting appropriations in time of peace to the payment of the Adjutant-General's expenses and salary, and of the officers in charge of the State armory, and for the purchase of arms. We are yet, to some extent, occupying rather a frontier position. We have seen the peace and quiet and safety of our citizens threatened within the last twelve months. The Indian tribes from Washington Territory overrun Oregon, and even touched California at one time, and disturbed the peace even of this State, and we sent arms and ammunition to the people of these threatened districts. Our State was in a condition to send them arms, and that was what was needed most of all. California is in a condition to-day to repel either invasion, insurrection, or to quiet disturbance in our own midst. The spirit is here, the military disposition is here; and all you have to do is to furnish the arms, and when occasion requires, there will be a vast army of volunteers. I think it would be wise for us to pass a provision here that appropriations may be made for the purchase of an ample supply of arms, and having done that, I would ask, what enemy dare invade us? It seems to me that would be the best system we could adopt. The people complain because they are taxed to support a lot of strutting peacocks, instead of having a militia that is adequate; and these men also are exempt from many of the burdens of government, which the taxpayers have to shoulder. Now, I do not believe in an armed militia; I believe the true militia of the State consists of the able-bodied citizens, not exempt from military duty by law. The people are tired of paying for uniforms and regalia for these strutting peacocks who are an insult to the men who pay the taxes. I do not believe in uniforming a State militia.

Mr. BARNES. The appropriations that are made by this State only provide for armories, and the mere expenses connected with transportation. The State does not pay for any uniforms.

Mr. FILCHER. I understood so.

Mr. BARNES. No, sir.

Mr. FILCHER. Then I am glad to learn the fact.

Mr. O'DONNELL. Didn't they appropriate money last year for dress uniforms?

Mr. BARNES. No, sir; not a dollar in any way.

Mr. FILCHER. That is a small matter. I contend that we do not require an organized militia in times of peace. Let the State furnish arms, so that if a company wishes to organize in any little town, for instance, they can get arms from the State Armory for the purpose of drilling, by giving good security for the safe return of the same. I believe in the general proposition, that it is enough that the able-bodied citizens of the State shall be subject to the call of the Governor in times of trouble, and I am satisfied that they will be better qualified to defend our liberties than the present militia of the State.

THE PREVIOUS QUESTION.

Mr. LAINE. Mr. Chairman: I believe enough of the time of this Convention has been taken up in the discussion of this question, and I therefore move the previous question.

The motion was seconded by Messrs. Brown, Barbour, Evey, and Wyatt.

The CHAIRMAN. The previous question has been moved and seconded. The question is, Shall the main question be now put?

Carried.

The CHAIRMAN. The first question is on the amendment of the gentleman from Sonoma, Mr. Moreland.

Division being called for, the committee divided, and the amendment was lost by a vote of 41 ayes to 56 noes.

The CHAIRMAN. The question is now on the amendment offered by the gentleman from Alameda, Judge Campbell.

Mr. EDGERTON. Mr. Chairman: I rise to inquire if this amendment of the gentleman from Alameda makes the section embrace everything that is in the present Constitution?

The CHAIRMAN. Yes, sir.

The amendment was adopted.

Mr. STEDMAN. Mr. Chairman: I offer an amendment.

The SECRETARY read:

"Except in case of war, insurrection, riot, or invasion, the Legislature shall not authorize to be expended or appropriated more than fifteen thousand dollars in any one year for organizing and disciplining the militia, which shall include all salaries, rents, and disbursements of every character relating to the militia of the State, and the care of the arms belonging to the State."

Mr. BARNES. I rise to a point of order.

The CHAIRMAN. State your point of order.

Mr. BARNES. That matter has already been disposed of.

The CHAIRMAN. The Chair will hold that it is in order.

Mr. MANSFIELD. Mr. Chairman: I wish to offer an amendment.

The SECRETARY read:

"All militia organizations provided for by this Constitution, or by any law of this State, shall, while under arms, either for ceremony or duty, appear only in the uniform prescribed for troops of the United States, and carry no device, banner, or flag of any State or nation, except that of the United States or the State of California."

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

Mr. VACQUEREL. I don't see why he put in the word "riot;" they can make a riot any day they like. Three men may get together, and the Legislature may call it a riot, and therefore they can order out the troops.

Division being called for, the committee divided and the amendment was lost by a vote of 35 ayes to 64 noes.

Mr. O'DONNELL. I offer an amendment.

The SECRETARY read:

"The appropriation made by the Legislature for the military companies, shall not exceed, in any one year, a larger sum than ten thousand dollars."

Mr. O'DONNELL. I want that added to Mr. Campbell's amendment.

The CHAIRMAN. The question is on the adoption of the amendment proposed by the gentleman from San Francisco, Dr. O'Donnell.

Lost.

The CHAIRMAN. The question is on the amendment of the gentleman from Los Angeles, General Mansfield.

Mr. FILCHER. Mr. Chairman——

Mr. CROSS. Mr. Chairman——

Mr. JOYCE. Mr. Chairman——

Mr. FILCHER. I believe I have the floor.

The CHAIRMAN. Neither one of you was recognized. The question is on the adoption of the amendment.

Mr. FILCHER. What is the amendment—that they shall not wear any but the United States uniforms? I want to vote intelligently upon this question.

[Cries of "Question," "Take a vote," "Vote it down," "Division," "Division."]

Mr. FILCHER. I would like to know what I am voting on.

Mr. JOYCE. Mr. Chairman——

Mr. BEERSTECHER. Mr. Chairman——

MR. JOYCE. Mr. Chairman: Mr. Chairman——

THE CHAIRMAN. The gentleman from San Francisco, Mr. Joyce.

MR. JOYCE. The reason I rise to make a remark or two is simply this: I appeal to any man if these regiments will not march to the very canon's mouth, carrying their own flag as well as the United States flag, and why should this insult be offered to these men? These German and Irish regiments, maybe once a year start out for target practice, carrying their own flag as well as the United States flag, and I don't see what harm it does. I don't see why this spirit should be shown here in regard to this matter. I hope this amendment will not be adopted. It is an outrage and an insult upon the age, and I hope the Convention will vote it down.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: It seems to me that this resolution is aimed directly at the foreign military companies and societies. It provides that they shall carry no flag, banner, or device when they are marching, either for duty or ceremony, and that they shall dress only in the uniforms prescribed for United States troops. I don't see any objections to any independent military companies carrying their own flag. We know that regiments nearly always carry battle flags, and if a society desire to carry their own banners in connection with the United States flag, what possible objection can there be to it? It seems strange that Germans, Irishmen, or Frenchmen, if they choose, cannot be allowed to carry the flag of their country in connection with the American flag. What harm is there in it? I hope this resolution will be promptly voted down by this Convention. If it is not voted down here I wish to see the ayes and noes taken upon it when we come into Convention, when I hope to see gentlemen put themselves on record upon that point. There are a number of independent organizations in San Francisco—independent military organizations—that are willing at any time to answer the call of the Governor of this State, and the only flag they recognize is the stars and stripes, and they calculate to stand under that flag, and fight for that flag, and at the same time if they desire to carry any other banner they should be allowed the liberty of doing so; but they do not desire to be coerced or bound down. I hope the amendment will be promptly voted down, for no such provision is necessary in the Constitution.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. Chairman: If I can have the attention of the Convention for a few moments, I would like to express myself upon this question. This, sir, is one of the American States of this American Union, and, sir, this is a Constitutional Convention being held to-day in the State of California, which is one of the States belonging to that Union. And, sir, while I recognize every citizen as an American, wherever he may be born, yet, when he adopts this as his country and becomes an American, I want him to work under the stars and stripes, and none other. I want them to go to battle under the stars and stripes, the flag under which we achieved our liberties, and I say that any man who claims a seat here who is not willing to go to battle under the glorious old stars and stripes, is not worthy the name of an American. He is not worthy of a seat upon the floor of this Convention. [Applause.] He has no business to occupy a seat in a body called for the purpose of framing a Constitution for one of the great free States of this American Union. Let him take his own flag and carry it where he pleases; but when the Governor of the State calls upon Americans for military services, let them march, as American citizens, to the field of duty under the stars and stripes, and none other. We know no other flag. We propose to stand as a solid phalanx of American citizens. I want to see nothing else established, nothing else recognized but the American flag, and, sir, I desire to place myself upon record in this matter. I am willing that my children and my grandchildren shall point to my vote upon this proposition, and I am sure they will never have cause to blush when they read the vote. [Applause.]

THE CHAIRMAN. The question is on the amendment.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I hope this amendment will be adopted. I believe the gentleman from San Francisco does not understand the full import and nature of the amendment. It does not prohibit independent organizations and societies from carrying any flag or device which they may desire to.

MR. BEERSTECHER. I would ask the gentlemen whether it would not be competent for the Legislature of this State, at any time, to frame a law so as to oblige every independent company in the State to organize pursuant to that law?

MR. WEST. Certainly. But if they wished to remain independent as a regiment of their own nationality, as an independent organization, there is nothing to prevent their carrying their own colors or banners, because they do not stand in the light of military companies acting under the laws of this State. Therefore, I hope the amendment will be adopted. It is proper and right, and I believe it is the sense of this Convention that it should be adopted.

MR. JOYCE. How would it be in case of invasion or war, when the whole foreign-born regiments are called into action. Would that prevent them from carrying their own native flags.

MR. WEST. When they are called into action they will be acting under the laws of the United States, and when they are called to duty to defend this State they will be acting under the laws of this State.

MR. TULLY. What is the objection to companies carrying their own flags?

MR. WEST. The objection is that the American flag is the flag that Americans ought to carry, and not the flags of other nations. I hope the amendment will prevail.

MR. HUESTIS. I move the previous question.

No second.

MR. O'DONNELL. There is no such clause in the Constitution of the United States as that. What is the idea of not allowing any other flag but the American flag to be carried in the streets? I see no necessity for any such provision as that.

THE CHAIRMAN. The question is on the adoption of the amendment.

Division being called for, the committee divided, and the amendment was lost by a vote of 35 ayes to 60 noes.

MR. STEDMAN. Mr. Chairman: I wish to offer an amendment.

MR. STUART. I move that the committee rise, report progress, and ask leave to sit again.

No second.

THE SECRETARY read the amendment:

"Except in case of war or insurrection, the Legislature shall not authorize to be expended or appropriated more than twenty thousand dollars in any one year for organizing and disciplining the militia, which shall include all salaries, rents, and disbursements of every character relating to the militia of the State, and the care of the arms belonging to the State."

MR. MANSFIELD. Mr. Chairman: I desire to offer an amendment.

THE SECRETARY read:

"SEC. 6. No appropriation for the support and maintenance of the militia of this State, except for the pay of the Adjutant-General and State Armorer, shall be made in time of peace."

MR. STUART. I move to lay it on the table.

THE CHAIRMAN. It is not in order to lay on the table in Committee of the Whole.

MR. HUESTIS. I move the previous question.

THE CHAIRMAN. The question is on the amendment of the gentleman from Los Angeles, Mr. Mansfield.

Lost on division, by a vote 38 ayes to 57 noes.

MR. FILCHER. I have an amendment to offer.

THE SECRETARY read:

"No appropriation of money shall be made by the State for militia purposes in time of peace, except for the purchase of arms and ammunition, and the salaries of Adjutant-General and State Armorer."

THE CHAIRMAN. The question is on the adoption of the amendment.

Lost.

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

Division being called for, the committee divided, and the amendment was lost by a vote of 44 ayes to 53 noes.

MR. MORELAND. Mr. Chairman: I have an amendment to offer to be added to the section.

THE SECRETARY read:

"No appropriation for the support of the militia shall, in any one year, exceed the sum of thirty thousand dollars, except, in case of war, insurrection, or invasion, public necessity may require it."

THE CHAIRMAN. The question is on the adoption of the amendment.

Lost on a division vote: ayes, 37; noes, 55.

MR. CAMPBELL. If it is in order, I will move to strike out all the succeeding sections, so that the Constitution will stand just as it now is.

THE CHAIRMAN. It is not in order. When we reach the next section you can move to strike it out. The Secretary will read section two.

THE SECRETARY read:

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

MR. CAMPBELL. Mr. Chairman: I move to strike out section two.

THE CHAIRMAN. The question is on the motion to strike out section two.

Carried, and the section was stricken out.

THE CHAIRMAN. The Secretary will read section three.

THE SECRETARY read:

SEC. 3. No general officer shall be removed from office except by the Senate, on the recommendation of the Governor, stating the grounds on which removal is recommended, or by a decision of a Court-martial in accordance with military custom. No officer of the militia shall be removed from office for political reasons.

MR. CAMPBELL. Mr. Chairman: I move to strike out section three of the report, for the same reasons given before.

THE CHAIRMAN. The question is on the motion of the gentleman from Alameda to strike out section three.

Carried, and the section was stricken out.

THE SECRETARY read section four:

SEC. 4. The Governor shall be Commander-in-Chief of the militia of the State. He shall have power to call them forth to execute the laws of the State, to suppress insurrections, and repel invasions.

MR. CAMPBELL. Mr. Chairman: I move to strike out section four, upon the same grounds.

Carried, and the section was stricken out.

THE CHAIRMAN. The Secretary will read section five.

THE SECRETARY read:

SEC. 5. The officers, musicians, and members of the State militia, who comply with all military duties as provided by law, shall be entitled to the following privileges and exemptions, viz.: Exemption from payment of poll tax, road tax, and head tax of every description: exemption from jury duty and exemption from serving on any posse comitatus. All officers, non-commissioned officers, musicians, and privates, who have faithfully served in the military service of the State for seven consecutive years, and received the certificate of the Adjutant-General certifying the same, shall thereafter be exempted from further military or jury service, except in time of war.

MR. TULLY. Mr. Chairman: I move to strike out section five of the report.

MR. BARNES. I wish to say a word in regard to this.

[Cries of "Leave!" "Leave!"]

MR. BARNES. I do not ask leave—I demand it. This is found in all the States having an organized militia.

THE CHAIRMAN. The question is on the motion of the gentleman from Santa Clara, to strike out the section.

Carried.

THE SECRETARY read section six:

SEC. 6. Every officer or member of the State militia wounded or disabled in the service of the State, shall have reasonable expenses paid him; and the widows and children of members killed in the service of the State shall be provided for by the Legislature.

MR. O'DONNELL. Mr. Chairman: I move to strike out section six.

MR. CROSS. I do not wish to make a speech, but I wish to say that I am in favor of this section, and I hope it will not be stricken out.

THE CHAIRMAN. The question is on the motion to strike out the section.

Carried.

MR. BARBOUR. Mr. Chairman: I offer a new section.

MR. CAMPBELL. There is a supplementary report here.

MINORITY REPORT.

MR. PRESIDENT: We, the undersigned, a majority of your Committee on Military Affairs, beg leave to report the following additional section for insertion in the article on militia, in the new Constitution:

SECTION —. Except in case of war or insurrection, the Legislature shall not authorize to be expended, or appropriated, more than twenty-five thousand dollars in any one year for organizing and disciplining the militia, which shall include all salaries, all rents, and disbursements of every character relating to the militia of the State, and care of the arms belonging to the State. Nor shall the number of uniformed militia in the State exceed ten companies of one hundred and twenty men rank and file each; *provided*, that at the expiration of ten years from the time of the adoption of this Constitution, the Legislature shall have the power, notwithstanding this section, to increase the allowance hereby made, and the number of uniformed militia hereby allowed.

JOHN C. STEDMAN,
E. V. SMITH,
J. C. BROWN,
WM. S. MOFFAT,
THOS. H. ESTEY,
HAMLET DAVIS.

MR. CAMPBELL. I desire to move to strike that out.

THE CHAIRMAN. It is not in order, as it is not before the Convention as an article. The Secretary will read the new section offered by the gentleman from San Francisco, Mr. Barbour.

THE SECRETARY read:

"The militia of the State shall consist of all able-bodied white male residents of the State between the ages of eighteen and forty-five, except such persons as may be exempt by the laws of the United States or of this State."

MR. AYERS. Mr. Chairman: I move that the word "white" be stricken out.

MR. BARBOUR. I accept the amendment.

MR. CONDON. I move to amend by striking out the word "resident," and inserting the word "citizen."

MR. BLACKMER. I would suggest to the gentleman to make the maximum fifty years. Too many members of the Convention would be exempt, if you put it at forty-five.

MR. TULLY. I hope this amendment will be voted down. I think the whole subject-matter ought to be left to the Legislature.

THE CHAIRMAN. The question is on the adoption of the section.

MR. GRACE. Mr. Chairman: I want to see every man who is protected by the flag come to the front and fight for it, and defend the country, and I want the Chinamen, if they are going to stay, to be made to fight in defense of the flag that protects them.

MR. CAMPBELL. Mr. Chairman: I hope we will stand by the old Constitution as it is. You have provided in this first section that the Legislature shall provide by law for the organizing and disciplining of the militia of this State. Now, if we go on and provide that that militia shall consist of all the able-bodied men in the State between the ages of eighteen and forty-five, you provide that the Legislature will have to organize and discipline over one hundred thousand men. Leave these matters of detail to the Legislature, where they belong. This is a suitable matter for the Legislature to deal with, and has no business in the Constitution.

MR. BARBOUR. As I explained before, we ought to define who are the militia of the State, and this is a very important declaration. There is nothing inconsistent whatever between this and the first part of the section, that the Legislature shall provide by law for the organizing and disciplining of the State militia. This merely defines who are the militia. Now, sir, I say this is a usual provision found in all the State Constitutions, and there is a necessity for it, because they may all be called on by the Governor. Not only those who organized into companies, but the whole body of able-bodied men in the State of the prescribed age. There is no inconsistency or absurdity in it at all. The Legislature may organize such portions of that militia as they in their wisdom may think best, but the true militia of the country is the great body of the citizens. It does not have any such meaning as that placed upon it by the gentleman from Alameda.

MR. AYERS. I object to limiting the power of the State to a certain age. In times of great emergencies the State may have exhausted its power and still not have enough men. I want that power left to the Legislature. I am opposed to the amendment.

MR. BROWN. I thought, sir, a few moments ago, that this thing was amended, but it seems not. Gentlemen keep springing amendments and new sections. I think the Convention is ready to vote, and the only way for us to do is to vote down all amendments and adopt the section in its present shape.

THE CHAIRMAN. The question is on the amendment.

Lost.

THE CHAIRMAN. The question is on the adoption of the new section.

Lost on division—ayes, 22; noes, 91.

MR. LARKIN. I move that the committee rise, report back the article with the amendments, and recommend that it be adopted as amended.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Military Affairs, have adopted certain amendments thereto, and report the same to the Convention, recommending the adoption of the report as amended. If there is no objection the usual number will be ordered printed.

LEAVE OF ABSENCE.

MR. BROWN. I ask four days' leave of absence for Mr. Casserly.

Granted.

ADJOURNMENT.

MR. HUESTIS. I move to adjourn.

Carried.

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

EIGHTY-FIRST DAY.

SACRAMENTO, Tuesday, December 17th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Bell,	Hager,	Murphy,
Berry,	Hall,	Noel,
Boucher,	Herrington,	Pulliam,
Casserly,	Jones,	Rolfe,
Dudley, of San Joaquin,	Laine,	Schell,
Eagon,	Lavigne,	Swing,
Edgerton,	Martin, of Alameda,	Walker, of Marin,
Fawcett,	McComas,	Waters,
Graves,	McFarland,	Wilson, of Tehama.
Gregg,		

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. McFarland, Noel, and Martin, of Alameda.

Leave of absence for one day was granted Messrs. Edgerton, Schell, and Jones, on account of sickness.

Indefinite leave of absence was granted Messrs. Pulliam and Murphy, on account of sickness.

THE JOURNAL.

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

Carried.

LAND AND HOMESTEAD EXEMPTION.

MR. O'SULLIVAN presented the following minority report from the Committee on Lands and Homestead Exemption:

MR. PRESIDENT: The undersigned, a minority of the Committee on Lands and Homestead Exemption, dissent from the report of the majority of said committee, in so far as they recommend that no further action be taken on amendment number one hundred and forty-three, "relating to land tenures and limitation of ownership," and beg leave to present their reasons for such dissent.

The subject of land monopoly we regard as one of paramount importance to the people of California. It is so from the generally admitted fact that it exists here as a gigantic evil, without a single redeeming feature. We hold that it is one of the first duties of a just government to abate an evil so great and threatening in its character as land monopoly confessedly is, by instituting reforms which will lead to the equitable distribution of the land among the people, and its general ownership by the actual tillers of the soil. Land is the basis and source of all wealth. Its possession gives power, and they who own the land of a country will inevitably rule that country. If ownership of the land is to be granted to and remain in the hands of a few persons, as is now actually the case in this State in a great measure, our theory of government is a delusive sham, and all our Fourth of July talk about human rights, equality, etc., a senseless mockery.

It will be well here to take a brief glance at the history of land titles in California, and, incidentally, at the origin and growth of land monopoly. At the period of the American conquest and acquisition of California, it was sparsely settled by a branch of the Spanish-Mexican race, each family occupying a large tract—generally several leagues in extent—granted to them by the Mexican Government. By the terms of the treaty of peace between our Government and that of Mexico, it was stipulated that all rights of property possessed by the inhabitants of the transferred territory should be respected.

The Mexican system of granting large tracts of land, however liberal it may appear, is undoubtedly a vicious system, for it leads directly to land monopoly—to a condition of things similar to that of feudalism in Europe, where the great mass of the people are landless and homeless in countries whose soil they and their forefathers have tilled for thousands of years. But simply considering the legality of their claims to the large grants held by them, the Mexican inhabitants of California, when it passed into our hands, are blameless for the vicious system of land-holding which originated under their former system of government. In the early days of our American settlement of the country, it was generally thought the evils resulting from the great size of the Mexican grants would decrease in the course of time, and that excessive holdings would gradually diminish through the subdivision and sale of the large ranchos. On the contrary, the curse of land monopoly has increased to an extraordinary extent. The pernicious example of the great Mexican grants has proved a legacy of evil to California. It stimulated the acquisitiveness of a certain class of our own people in the direction of land grabbing, and the peculiar facilities existing here for the promotion of their designs have enabled a few persons to become lords of more acres than were embraced in the largest of the old Mexican ranchos.

Data as to the exact amount, or even a near approximation to it, of land held by the inhabitants of California in eighteen hundred and forty-six, are not accessible to us. The Mexican grants, however, were mainly confined to the coast counties, and did not cover even a tithe of their area, as the numerous preëmption settlements subsequently made in those counties attest. It is safe to assert that but a small fraction of the valuable arable land of the State was covered by genuine Mexican grants. The great Sacramento and San Joaquin Valleys had few grants located in them; and the same may be said of all the western slope of the Sierra Nevada, which includes a large section of the State.

As the agricultural interest began to be developed, towards the close of the prosperous placer mining era, and land increased in value through the demand for its use, the monopolists commenced acquiring large tracts throughout the State, by one means or another, until now a few persons pretend to hold possession of vast estates—some of them containing from one-hundred thousand to four hundred thousand acres. We give a few of the figures from the Assessors' reports for eighteen hundred and seventy-two: Miller & Lux, three hundred and forty-three thousand acres; Bixby, Flint & Company, four hundred and thirty-four thousand acres; W. S. Chapman, two hundred and fifty thousand acres; the Railroad Company, two hundred and ninety-one thousand acres; Charles McLaughlin, two hundred and forty-nine thousand acres; Mrs. Beale, one hundred and seventy-three thousand acres; the Philadelphia and California Petroleum Company, one hundred and thirty-one thousand acres; H. W. Pierce, one hundred and six thousand acres; Dibblee & Hollister, one hundred thousand acres; and J. B. Haggin, two hundred thousand acres, assessed to him in Kern County in eighteen hundred and seventy-seven.

In addition to these, let us quote a few more facts and figures: From a tabular statement published by the State Board of Equalization in eighteen hundred and seventy-two, we learn that there were at that time twenty-seven thousand nine hundred and ninety-six farms of one hundred acres and upwards, assessed in the State, containing a total acreage of twenty-three million three hundred and forty thousand. These farms are classified into nine different classes. The first class, which embraces twenty-three thousand three hundred and fifteen farms, containing from one hundred to five hundred acres each, has a total acreage of four million six hundred and sixty-three thousand. The ninth class, which includes one hundred and twenty-two farms, containing twenty thousand acres and upwards, has a total acreage of eight million seven hundred and eighty-two thousand, which is an average of seventy-one thousand six hundred and forty-seven acres each. These one hundred and twenty-two large farms embrace double the quantity of land comprised in the twenty-three thousand three hundred and fifteen small farms of the first class—one of the most startling facts ascertained by examination of the figures furnished in the reports!

Further, the area occupied by our twenty-seven thousand nine hundred and ninety-six farms of one hundred acres and upwards, embracing twenty-three million three hundred and forty thousand nine hundred acres in all, is larger than the whole cultivated area of the State of Ohio. That State, with twenty-one million acres of land under cultivation, has one hundred and ninety-five thousand farms, the majority of which are below one hundred acres each. California, with twenty-seven thousand nine hundred and ninety-six farms, has already disposed of two million acres of land more than is under tillage in Ohio. In the latter State there are but sixty-nine farms exceeding one thousand acres. Here there are two thousand two hundred and ninety-eight of that class, and they embrace nearly seventeen million acres of land.

We supplement these figures, which are peculiarly startling and suggestive, with the following calculation: The twenty-three million three hundred and forty thousand acres of land in this State now occupied by only twenty-seven thousand nine hundred and ninety-six farms, if subdivided into holdings of one hundred and sixty acres each, would make exactly one hundred and forty-five thousand eight hundred and sixty-five farms; and reckoning that each family owning a farm would consist of at least four persons, this would give us a total agricultural population of five hundred and eighty-three thousand four hundred and sixty persons, or nearly quite as much as the present total population of California.

It is quite evident that such of the large landed properties of California as were not originally covered by genuine Mexican grants have not been honestly acquired through operation of the preëmption laws of the United States, the letter and intent of which aim to limit each person to the acquisition of one hundred and sixty acres of land. Indeed, from the numerous evidences of fraud perpetrated in the later acquirements of landed property here, and the dubious legality of the titles by which many large estates in this State are held, there is ground for the belief that a majority of these monopolies have grown up through a total disregard of strict law and justice.

Some of these outrageous robberies of the public domain have been engineered through specious but dishonest Acts passed by the State Legislature and by Congress, regarding swamp, timber, mineral, so called desert lands, etc. The audacity of these swindles is astounding, and yet the people and press of California have apparently looked on almost without a murmur, and certainly without any adequate attempt to prevent them. Forged Mexican grants have, also, in numerous instances, been floated over coveted portions of the public lands, and though some of these have been proved to be fraudulent, others have been successfully carried through the Courts. Deputies from the United States Surveyor-General's office have been bribed by purchasers of Mexican grants to make dishonest surveys, extending the boundaries designated in the original documents, and increasing the number of leagues claimed. The immense donations of lands by the General Government to the Central Pacific Railroad Company and its branches—seen when too late to have been a serious error of policy, if, indeed, it should not be termed a crime against the people by their public servants—has also alienated a large portion of the public domain from preëmption settlement and helped to swell the possessions and power of a monopoly which aims at nothing less than dominating and dictating to the government of this State.

From these various causes and the facts cited, it may be summed up as a positive fact that California is, to-day, the worst land monopoly-cursed State in the Union. After all the magnificent patrimony which she brought into that Union, the amount of good arable land within her borders unoccupied, unclaimed, and fit for settlement, is very limited indeed.

The indignation naturally aroused in our minds by contemplation of the damning facts relating to this question, which investigation brings to light, leads us to say that if the higher law of God's justice could only for a brief time hold sway among men, there would be a sure remedy for all the land stealing perpetrated in California—and that would be confiscation and immediate restitution to the State. But we are reminded that there is a wide divergence between God's equity and human law, and that through the imperfections of the latter the ends of justice are often defeated. So it is in this case.

The adoption of a system of limitation in the ownership of land—not to affect present lawful possessions, but to go into operation in the future—appears to us the most practicable means within the power of the State to remedy the evil of land monopoly. In accordance with these views, we recommend the adoption of amendment number one hundred and forty-three, introduced by Mr. O'Sullivan, as follows:

RELATING TO LAND TENURES AND LIMITATION OF OWNERSHIP.

SECTION 1. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailment ever be in force in this State.

SEC. 2. All lands within the State are declared to be allodial, and feudal tenures are prohibited. Leases and grants of land for a longer term than ten years, in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land hereafter made, are declared to be void. No lessee shall sublet any portion of the land held in his name.

SEC. 3. No persons other than citizens, or those who have declared their intentions to become such, shall ever acquire or own, either by purchase or otherwise, real property in this State; and in case any alien dies possessed of real property in this State, contrary to this provision, such property shall escheat to the State. Nor shall any land in this State be held in trust for any alien; but the creation of any trust in lands for the benefit of an alien shall at once escheat the land to the State.

SEC. 4. No person shall forever hereafter be permitted to acquire, in any manner, more than six hundred and forty (640) acres of land in this State. Copartnerships, joint, or other ownership of lands, shall not be allowed contrary to this provision. No person who dies possessed of landed property in this State shall have the right to will or devise more than six hundred and forty (640) acres of land to any one heir; otherwise the said will shall be void; *provided, however*, that all land over and above six hundred and forty (640) acres so devised to each lawful heir, of which such deceased person died lawfully possessed, shall be sold to the highest bidders for cash, in quantities not exceeding six hundred and forty (640) acres each, and the proceeds divided equally among the lawful heirs.

SEC. 5. Actual occupation and continuous use for agricultural purposes during a period of one year shall constitute a title to the ownership of land in this State. Tracts of land of over six hundred and forty (640) acres in extent, which shall remain unoccupied and unused for agricultural purposes during a period of one year, shall be open to the occupation and use of citizens of the United States, in quantities not exceeding one hundred and sixty (160) acres; *provided*, if it shall appear that any other person has previous title to such tract of land, the party occupying and using the same shall pay to said person the assessed value of the property.

SEC. 6. No more than one hundred and sixty (160) acres of land shall hereafter be granted or patented by the State, in any manner, to any one person. No grant or patent of lands by the State shall hereafter be made otherwise than upon the basis of actual settlement and use. No land scrip or land location certificates shall ever be issued in this State.

In conclusion, permit us to say that we have given this question the most careful consideration, and the further we have examined it the stronger have become our convictions that the whole land system of California is radically wrong, and that sweeping changes are demanded in the interest of the people and of good government. How to reach a solution of the question of land monopoly—which few deny to be an evil—may be considered the main point of difference between men. Some timid minds seem to look upon this question with a sort of sacred awe, as if there was something sacred in the monopoly of God's earth, and as if it were a dreadful thing to disturb what are called "vested rights," which in many cases are really "vested wrongs;" and we hear these timid ones cry out that all remedial measures are out of the question—that "there is no use locking the stable door after the horse has been stolen." But men who have honest convictions regarding the necessity of reform, and who earnestly seek the establishment of simple justice when it is demanded by the needs of society, will follow the path of duty to its logical goal, regardless of the objections of the timid, the blind, or the interested adherents of an infamous injustice.

Perhaps some may think the proposed limit of six hundred and forty acres too small—others, too large—an amount of land for the needs of one person. We believe it would afford an ample property for any reasonable family. Consider the effect which this limitation would have on the large estates of California if it became the supreme law. Through its operation land monopoly would gradually disappear throughout the State in the course of a generation, and where now there are leagues upon leagues of unimproved solitudes the dreary landscape would be changed into scenes of smiling farms and happy homes.

JAMES O'SULLIVAN,
JOHN P. WEST,
HAMLET DAVIS.

MR. O'SULLIVAN. Mr. President: I move that the majority report be taken from the table, and that nine hundred and sixty copies of each report be printed.

Carried.

REPORT.

MR. HILBORN, from the Committee on Mileage and Contingent Expenses, made the following report:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses have had under consideration the resolution offered by Mr. Overton, providing for the payment of ten dollars to J. J. Flynn, for services as Clerk of the Committee on State Institutions and Public Buildings, herewith report the same back, and recommend that it be adopted.

S. G. HILBORN, for the Committee.

THE PRESIDENT. The Secretary will read the resolution:

THE SECRETARY read:

Resolved, That the sum of ten dollars be and is hereby ordered to be paid out of the funds of this Convention to J. J. Flynn, for services rendered as Clerk to the Committee on State Institutions and Public Buildings.

The resolution was adopted.

MEMORIAL ON CHINESE.

MR. MILLER. I have the following report to make from the Committee on Chinese, and if the Convention will permit I will read it myself:

MR. PRESIDENT: The Committee on Chinese, to whom was recommitted the memorial to the President, Senate, and House of Representatives of the United States, on the subject of Chinese immigration, beg leave to report the draft of a memorial, accompanying this report, for the action of the Convention.

Respectfully submitted.

JNO. F. MILLER, Chairman.

SACRAMENTO, December 17th, 1878.

To the Senate and House of Representatives of the United States:

The people of the State of California, by their delegates now assembled in Constitutional Convention, respectfully present to the honorable the Senate and House of Representatives of the United States this memorial, the object and purpose of which is to invoke the exercise of the supreme national authority for relief from Chinese immigration, an evil of such magnitude and of a character so threatening to the highest interests of the State as to excite in the minds of our whole people the most serious dissatisfaction and alarm.

As became a people devoted to the National Union, and filled with a profound reverence for law, we have repeatedly, by petition and memorial, through the action of our Legislature, and by our Senators and Representatives in Congress, sought the appropriate remedies against this great wrong, and patiently awaited with confidence the action of the General Government. Meanwhile this giant evil has grown, and strengthened, and expanded; its baneful effect upon the material interests of the people, upon public morals, and our civilization, becoming more and more apparent, until patience is almost exhausted, and the spirit of discontent pervades the State. It would be disingenuous in us to attempt to conceal our amazement at the long delay of appropriate action by the National Government toward the prohibition of an immigration which is rapidly approaching the character of an Oriental invasion, and which threatens to supplant Anglo-Saxon civilization on this coast. If the facts relating to this immigration now patent to all observers—if the ascertained knowledge now within the reach of every intelligent man—will not serve to awaken an interest upon this subject in the minds of the governing power of the nation, we are tempted to despair of ever reaching a remedy. If it be supposed, as has been often said, that the hostility to Chinese immigration is confined to a small and ignorant class of our people, we protest against such an assumption The discontent from this cause is almost universal. It is not limited to any political party, nor to any class or nationality. It does not spring from race antipathies, nor alone from economic considerations, nor from any religious sentiment, nor from low hatreds, or mercenary motive.

We submit that our people, being interested to a greater extent in commerce with China than any other portion of the American people, the reasons for this hostility to Chinese immigration must be considered overwhelming when sufficient to array the whole body of our people against a treaty which was intended to secure to that people, more than to any other, the great benefits to be derived from Asiatic commerce. Our sincerity cannot, therefore, be doubted, since we are willing to forego all the benefits of commerce with China, if need be, rather than suffer the ills which this immigration must inevitably entail upon us and our descendants.

Among the many reasons for our opposition to Chinese immigration—all of which cannot be stated in a brief memorial—we submit the following:

1. The country being now stocked with a vigorous, intelligent, progressive, and highly civilized people, there is no need of immigration for the increase of our population—certainly not of the immigration of a non-assimilative and alien race.

2. That, considering the character of Chinese immigrants in respect to their habits, and modes of life, and physical peculiarities, this immigration operates as a substitution of Chinese for white men of the Caucasian race, and not as an addition to our population—the question being, shall Chinese ultimately occupy the country, or shall it be held for the homes of men of the Caucasian race?

3. There is danger of an immense increase of Chinese immigrants in the near future. The effect of the famine now unhappily prevailing in the northern provinces of China is certain to cause a migration of greater proportions than any known in the history of the human races. The fear of hunger will drive the survivors of this calamity forth in prodigious numbers in quest of food—eastward, because there is no other outlet—and California offers the most fruitful fields for their sustenance. The speculators in Chinese labor will, if permitted, seize this opportunity to augment their fortunes by the importation of these hunger-driven creatures into our ports. This invasion is to be dreaded by us more than a hostile invasion by armed men, for upon the first note of alarm from such a cause the nation would hasten to our rescue and defense.

4. The Chinese bring with them habits and customs the most vicious and demoralizing. They are scornful of our laws and institutions. They establish their own tribunals for the redress of wrongs and injuries among themselves, independent of our Courts, and subject the victims of such tribunals to secret punishments the most barbarous and terrible. In our cities they live crowded and herded like beasts, generating the most dangerous diseases. They introduce the ancient, infectious, and incurable malady called leprosy, the germs of which, when once distributed, can never be eradicated, but fasten themselves upon the people as an eternal consuming rot. They poison our youth in both mind and body. They build no homes. They are, generally, destitute of moral principle. They are incapable of patriotism, and are utterly unfitted for American citizenship Their existence here, in great numbers, is a perpetual menace to republican institutions, a source of constant irritation and danger to the public peace.

5. The system of labor, which results from their presence, is a system which includes all, or nearly all, the vices of slavery, without the conservative influence which is incident to the domestic or paternal relation between master and slave. It degrades labor to the standard of mere brute energy, and thus excludes the labor of free white men who will not and cannot endure the degradation of competition with servile labor. Chinese labor is, therefore, substituted for the labor of free white men, and the State is afflicted with a quasi-slave system, under which Chinese population supplants white American citizens, and drives them to other fields or to starvation.

The necessary brevity of this memorial forbids the further enlargement of facts and reasons for the almost universal hostility in California to this immigration. We beg the earnest attention of the Government at Washington to this subject, fraught with immense interest to us, and, as we believe, to the whole people of the United States. Whatever the State of California may lawfully do to abate or mitigate this evil it has resolved to do, declaring, however, our settled determination to avoid all conflict with the national authority, and to limit our action to the exercise of the police power of the State. We ask most earnestly and respectfully of the Congress of the United States such prohibitory legislation as will effectually prevent the further immigration of Chinese coolies or laborers into the American ports of this coast.

MR. O'DONNELL. I move it be adopted.

MR. HUESTIS. I move that it be printed in the form of a memorial.

The memorial was adopted.

MR. HUESTIS. My idea was to have time to read it. This is a grave question.

MR. SHAFTER. Mr. President: I move that the Secretary have the memorial properly engrossed and present it to each member of this Convention for his personal signature.

The motion prevailed.

LEGISLATIVE DEPARTMENT.

THE PRESIDENT. The next business on our file is the consideration of the report of the Committee on Legislative Department.

Following is the draft of the proposed article on the Legislative Department presented by the Committee on Legislative Department:

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

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

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday after the first Tuesday in January next ensuing the election of its members, at twelve o'clock M., unless the Governor shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than sixty days, except the first session called after the adoption of this Constitution, which may continue eighty days. And no bill shall be introduced, in either House, during the last ten days of the session, without the consent of two thirds of the members of said House.

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Tuesday after the first Monday in November, and their term of office shall be two years.

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State, and of the district for which he shall be chosen, one year next before his election.

SEC. 5. The Senate shall consist of thirty members, and the Assembly of sixty members, to be elected by districts, as hereinafter provided. The seats of the fifteen Senators from the odd numbered districts, chosen at the first election under this Constitution, shall be vacated at the expiration of the second year, so that one half the Senate, after the first election, shall be chosen every two years.

SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into thirty districts, as nearly equal in population as may be, and composed of contiguous territory, to be called legislative districts. Each district shall choose one Senator and two members of the Assembly. The districts shall be numbered from one to thirty, inclusive, in numerical order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of said districts no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust said districts and reapportion the representation so as to preserve them as nearly equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming the population of any district. Until such adjustment shall be made, the First District shall consist of the Counties of Del Norte, Siskiyou, Modoc, Lassen, Shasta, and Trinity; the Second, of the Counties of Humboldt and Mendocino; the Third, of the Counties of Tehama and Butte; the Fourth, of the Counties of Colusa, Lake, and Sutter; the Fifth, of the County of Sonoma; the Sixth, of the Counties of Marin, Napa, and Contra Costa; the Seventh, of the Counties of Solano and Yolo; the Eighth, of the Counties of Sierra, Yuba, and Plumas; the Ninth, of the County of Nevada; the Tenth, of the Counties of Placer and El Dorado; the Eleventh, of the County of Sacramento; the Twelfth, of the Counties of Calaveras, Alpine, and Amador; the Thirteenth, of the County of San Joaquin; the Fourteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at a point where Larkin street intersects the waters of the Bay of San Francisco; thence meandering along the shore of said bay, in an easterly and southeasterly direction, to the point where Market street intersects said bay; thence along Market street to California street; thence along California street to Kearny street; thence along Kearny street to Vallejo street; thence along Vallejo street to Larkin street; thence along Larkin street to the waters of the Bay of San Francisco, the place of beginning. The Fifteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Larkin street intersects Vallejo street; thence along Vallejo street to Kearny street; thence along

Kearny street to California street: thence along California street to Market street; thence along Market street to Kearny street; thence along Kearny street to Pine street; thence along Pine street to Larkin street; and thence along Larkin street to Vallejo street, the place of beginning. The Sixteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Franklin street intersects Pine street; thence along Pine street to Kearny street; thence along Kearny street to Market street; thence along Market street to Van Ness Avenue; thence along Van Ness Avenue to Tyler street; thence along Tyler street to Gough street; thence along Gough street to Geary street; thence along Geary street to Franklin street; thence along Franklin street to Pine street, the place of beginning. The Seventeenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Larkin street intersects the waters of the Bay of San Francisco; thence along Larkin street to Pine street; thence along Pine street to Franklin street; thence along Franklin street to Geary street; thence along Geary street to Gough street; thence along Gough street to Tyler street; thence along Tyler street to Van Ness Avenue; thence along Van Ness Avenue to Market street; thence along Market street to Ridley street; thence along Ridley street and said Ridley street produced in a direct line westerly to the Pacific Ocean; and thence meandering northerly and easterly along the waters of the Pacific Ocean and the Bay of San Francisco to Larkin street, the place of beginning. The Eighteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Market street intersects the waters of the Bay of San Francisco; thence meandering along the waters of said bay to the point where Channel street intersects the waters of said bay; thence along Channel street to Seventh street; thence along Seventh street to Harrison street: thence along Harrison street to Second street; thence along Second street to Market street; and thence along Market street to the waters of the Bay of San Francisco, the place of beginning. The Nineteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Second street intersects Market street; thence along Second street to Harrison street; thence along Harrison street to Sixth street; thence along Sixth street to Market street; and thence along Market street to Second street, the place of beginning. The Twentieth, of all that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Sixth street intersects Market street; thence along Sixth street to Harrison street; thence along Harrison street to Seventh Street; thence along Seventh street to Channel street; thence along Channel street to Harrison street; thence along Harrison street to Fifteenth street; thence along Fifteenth street to Howard street; thence along Howard street to Fourteenth street; thence along Fourteenth street to Mission street; thence along Mission street to Ridley street; thence along Ridley street to Market street; and thence along Market street to Sixth street, the place of beginning. The Twenty-first, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Channel street intersects the Bay of San Francisco; thence along Channel Street to Harrison street; thence along Harrison street to Fifteenth street; thence along Fifteenth street to Howard street; thence along Howard street to Fourteenth street; thence along Fourteenth street to Mission street; thence along Mission street to Ridley street; thence along Ridley street and the line of Ridley street projected westerly to the Pacific Ocean; thence southerly along the Pacific Ocean to the southern boundary line of the City and County of San Francisco; thence along said southern boundary line to the Bay of San Francisco; and thence meandering along the waters of the Bay of San Francisco to Channel street, the place of beginning. The Twenty-second, of Oakland Township, County of Alameda. The Twenty-third, of all that portion of the County of Alameda exclusive of Oakland Township. The Twenty-fourth, of the County of Santa Clara. The Twenty-fifth, of the Counties of Merced, Mariposa, Stanislaus, and Tuolumne. The Twenty-sixth, of the Counties of Tulare, Inyo, Fresno, and Mono. The Twenty-seventh, of the Counties of Santa Cruz, San Mateo, and San Benito. The Twenty-eighth, of the Counties of Santa Barbara, San Luis Obispo, and Monterey. The Twenty-ninth, of the County of Los Angeles. The Thirtieth, of the Counties of San Bernardino, San Diego, Kern, and Ventura.

SEC. 7. Each House shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

SEC. 8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

SEC. 9. Each House shall determine the rule of its own proceeding, and may, with the concurrence of two thirds of all the members elected, expel a member.

SEC. 10. Each House shall keep a Journal of its own proceedings, and publish the same, and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the Journal.

SEC. 11. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 12. When a vacancy occurs in either House, from any cause, during the session of the Legislature, the House in which said vacancy occurs shall proceed immediately to elect, from the constituency deprived of representation, a member to fill said vacancy for said session. If the Legislature is not in session at the time the vacancy occurs, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancy.

SEC. 13. The doors of each House shall be open, except on such occasions as in the opinion of the House may require secrecy.

SEC. 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 15. No law shall be passed except by bill. Any bill may originate in either House, but may be amended or rejected by the other, and on the final passage of all bills, they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each House.

SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter the same upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two thirds of the members of each House, it shall become a law, notwithstanding the Governor's objection. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

SEC. 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected.

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

SEC. 19. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which have been increased during such term, except such offices as may be filled by election by the people.

SEC. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia, to which there is attached no annual salary, or local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

SEC. 21. No person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of such embezzlement or defalcation as a felony.

SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 23. The members of the Legislature shall receive for their services a compensation per diem, and mileage, to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either House shall have been elected.

SEC. 24. Every law enacted by the Legislature shall embrace but one subject, which shall be expressed in the title, and no law shall be revised or amended by reference to its title; but in such case the Act revised, or section amended, shall be reënacted and published at length as revised or amended.

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of Courts of justice.

Fourth—Providing for changing the venue in civil or criminal cases.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Vacating roads, town plats, streets, alleys, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates belonging to minors or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or incumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officers.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—Authorizing the laying out, opening, altering, or maintaining roads, highways, streets, alleys, or public grounds.

Thirty-third—For limitation of civil or criminal actions.

Thirty-fourth—In all other cases where a general law can be made applicable, no local or special law shall be enacted.

SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any Stock Board, Stock Exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any Court of competent jurisdiction.

SEC. 27. When a Congressional District shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county or city and county shall be divided in forming a Congressional District so as to attach one portion of a county or city and county to another county or city and county; but the Legislature may divide any county or city and county into as many Congressional Districts as it may be entitled to by law.

SEC. 28. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation, and no person shall be selected who is an officer or stockholder in any corporation.

SEC. 29. Dues from corporations shall be secured by such individual liabilities of the corporators and other means as may be prescribed by law. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as the property of individuals, and the franchises of such corporations shall be assessed at their actual cash value, and taxed accordingly.

SEC. 30. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued in all Courts, in like cases as natural persons.

SEC. 31. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit of gold and silver and other lawful money of the United States; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

SEC. 32. The Legislature of this State shall prohibit, by law, any person or persons, association, company, or corporation from exercising the privileges of banking or creating paper to circulate as money.

SEC. 33. Each stockholder of a corporation or joint stock association shall be individually and personally liable for his proportion of all its debts and liabilities contracted or incurred while he was a stockholder, and the Trustees or Directors of such corporation or association, and each of them, shall be responsible, individually, for the misappropriation by the officers thereof of the funds or deposits of such corporation or association.

SEC. 34. It shall be the duty of the Legislature to provide, by general laws, for the organization of city, town, and county governments, and for assessing and collecting taxes for the support of the same; *provided*, that no city, city and county, town, or county shall ever incur a debt which, together with existing indebtedness, shall exceed two per cent. of the assessed value of the property therein. Such value shall be ascertained from the assessment roll for State and county purposes made immediately previous to incurring such indebtedness; *provided, however*, that a city, city and county, town, or county may borrow money under and in accordance with the following conditions and limitations in addition to any other conditions and limitations contained in the Constitution, namely: the debt must be for some single work or object only, and must be authorized by a resolution passed by a vote of three fourths of all the members elected to the Board of Supervisors, Common Council, or local Legislature. Such resolution shall also distinctly specify the single work or object for which the debt is to be created, and the amount of the debt authorized, and shall contain provisions for a sinking fund to meet the same at maturity, and requiring at least ten per cent. of the principal to be annually raised by taxation and paid into the sinking fund. Such resolution shall not take effect until it shall be ratified at an election held in said city, city and county, county, or town, at which no other matter is voted upon, and which shall be held within —— days after the passage of said order or resolution. The Legislature shall make such laws as may be necessary to provide for holding such election and ascertaining the result thereof.

SEC. 35. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

SEC. 36. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State.

SEC. 37. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

SEC. 38. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal, or other corporation whatever; nor shall it have power to make any grant, or authorize the making of any grant, of any public money or thing of value to any individual, municipal, or other corporation whatever; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SEC. 39. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed in whole or in part, nor to pay, or to authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SEC. 40. The Legislature shall not ratify any amendment to the Constitution of the United States which may be proposed by Congress, except such as shall have been proposed and published at least thirty days next preceding the general election for members of the Legislature ratifying such amendment.

SEC. 41. In case of a contested election in either branch of the Legislature only the claimant decided entitled to the seat shall receive from the State per diem compensation, or mileage.

SEC. 42. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no officer shall be suspended or superseded thereby, until the election and qualification of the several officers provided for in this Constitution.

LEGISLATIVE DEPARTMENT.

MR. TERRY. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section one.

THE SECRETARY read:

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

THE CHAIRMAN. If there be no amendment to section one, the Secretary will read section two.

THE SECRETARY read:

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday after the first Tuesday in January next ensuing the election of its members, at twelve o'clock M., unless the Governor shall in the interim convene the Legislature by proclamation.

No session shall continue longer than sixty days, except the first session called after the adoption of this Constitution, which may continue eighty days. And no bill shall be introduced in either House during the last ten days of the session, without the consent of two thirds of the members of said House.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I have a resolution to offer:

Resolved, That it is the sense of this Convention that the report of the Committee on Legislative Department be recommitted to said committee, with instructions to so amend it as to provide that the members of the Legislature, both Senate and Assembly, shall be elected at the same time and place for the term of four years; to hold one session of the Legislature during the term of these officers, except oftener convened by the Governor of the State; and that said regular session shall be held after the second year of the Governor's term has expired.

The Legislature we are going to have we are going to take away all the special legislation from it. There will be only the necessity for overhauling the general laws of the State. Each session of the Legislature costs now two hundred and thirteen thousand dollars. This will save the State about forty thousand dollars a year, this theory of the committee; but the theory of having only one session in four years would save the State, from the present way, two hundred and thirteen thousand dollars. Now, sir, the meeting of the Legislature is a universal cause of trotting into existence the political machinery throughout the State, and it is rather demoralizing to the people—these frequent elections, which really amount to nothing. The Governor could have full power to call the Legislature together at any time that he should need them, and I think we could trust them for four years, when that session would be in the middle of the Governor's term. The feelings of my district are uniformly that the Legislature should only be allowed to meet once in four years, for really the people, when the Legislature has met, have felt the greatest anxiety to have them adjourn. They are a most expensive body. The Codes have really to be reprinted; and it appears to me that the good sense of the people is represented in this matter, and that they demand that the Legislature shall only meet once in four years. It will save the State an immense amount, and I really think it will be a benefit to the whole country. Here it is not so universal. We are here among politicians. I approve of the report of the committee, so far as they have reduced it, but I think we ought to confine ourselves to one session in four years, leaving the Governor the power to call it together, if he desires.

MR. FILCHER. I desire to ask the gentleman if he knows of a State in the Union, or of a civilized government in creation, where the Legislature meets as seldom as once in four years?

MR. WHITE. I do not think there is; but it was only a short time ago that the Legislature met every year. They are all meeting now every two years and they will soon meet every four years. I find in the old State of Pennsylvania they are tired of these political bodies meeting. The young men of the country are turning into politicians all over the State. They give up their employment and go into politics as a business. If there was but one session in four years these men would die out between the four years and be obliged to go at some honest employment. All the young men are looking to politics as a means of livelihood. I would rather that one of my sons would carry a hod for a living than to take the best office in the gift of this State. Therefore, I would like to see something done to check this office hunting.

MR. MORELAND. Suppose you have the session quadrennial, how are you going to provide for the election of the United States Senator?

MR. WHITE. I suppose that could be done in some way, and that is the reason why I brought this thing up.

MR. BEERSTECHER. I offer an amendment; to insert in section two, line six, after the word "Constitution," the words "which may continue one hundred and fifty days."

MR. CHAIRMAN. The only motion that the gentleman from Santa Cruz can make is to move that the committee rise. It cannot be done in the committee.

MR. WHITE. Mr. Chairman: I move that the committee rise for that purpose.

The motion was lost.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I move to amend by inserting in line six, after the word "Constitution," the words "which may continue one hundred and fifty days." As the section is reported it reads: "No session shall continue longer than sixty days, except the first session called after the adoption of this Constitution, which may continue eighty days." I do not desire to speak upon this subject, but it seems to me, if this Constitution is adopted, and the Legislature is convened under the old Constitution, and it is incumbent upon them to frame a new code of laws for this State, they cannot do it intelligently and faithfully and properly unless they have one hundred and fifty days. It seems to me that it is entirely too short a time to say that they shall frame a code of laws in consonance with the new Constitution in eighty days. We have seen the effect of attempting to frame even a Constitution, a short instrument, in one hundred days, and we have accomplished almost nothing. It seems to me a moral impossibility to accomplish it in eighty days, and therefore, why the restriction? It seems to me that the Legislature convened after the adoption of this Constitution, if the same be adopted, should certainly have one hundred and fifty days, to intelligently do its work. There is no object in putting men under a forcing process so that the Legislature must be called again, the next year, in order to change the law. If a Legislature is to come here to put into operation this Constitution, let them have ample time to do it; let them have time to mature their work; let them have time to do it properly, and do not bind them down to eighty days. I believe that one hundred and fifty days is just as short a time as we ought to make it, and I would be in favor of six months, but I do not believe that any body of men can do the work necessary to be done, if this Constitution be adopted, in eighty days.

MR. BROWN. I second the amendment.

MR. O'DONNELL. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"The sessions of the Legislature shall be quadrennial, and shall commence on the first Monday in December next ensuing the election of members, unless the Governor of the State shall, in the interim, convene a special session by proclamation. No session shall continue longer than one hundred and twenty days."

MR. O'DONNELL. I offer that as a substitute.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I desire to say that from the first I have been in favor of quadrennial sessions of the Legislature. Now, it is proposed to make quite a reform in our Constitution. The object or desire is to eliminate all of this local legislation, and to put in a constitutional provision that will do away with all that class of legislation. So far as the report of the committee is concerned in that direction, I am fully in accord with it, but I think that the sessions of the Legislature of this State should be quadrennial. I know in our own County Convention, which was largely attended, there being about one hundred present, without being required to stand upon any platform, I told them all that I should favor quadrennial sessions of the Legislature, and they knew the grounds upon which I stood. Now it is said this is a novelty. It occurs to me that we have drawn very liberally from the Constitutions of other States, and I think it is nothing to our discredit if we have a little novelty in the Constitution of California. I say that once in four years is often enough to meet here, and in that event a better body of men will be selected. I am not in favor of having this election at the same time of the Presidential election. Voting for electors for President and Vice President would perhaps make a ticket unnecessarily large, and perhaps it would make the honesty of each to depend upon the suffrages of the people at any one election. But I am in favor of quadrennial sessions of the Legislature, commencing on the first Tuesday after the first Monday in November of next year, and every four years after. I think a good deal of time is lost by having the session commence before the holidays, and therefore I am in favor of so much of the report of the committee as says that they shall meet on the first Monday after the first Tuesday in January. It will be a great saving to this State, and I say that that constitutional stricture should be based upon economy. It is a move in the right direction, and I say that on economic grounds this should be favored. If we limit the session to sixty days, and eliminate all this local legislation, and confine the legislation to general matters, I say that sixty days will be time enough, and four years frequent enough, and I believe that that is in accord with the sentiment of the people of this State. Furthermore, if any emergency presents itself the Governor can call the Legislature together. There is no occasion to have these biennial sessions. Almost uniformly at first in all of the States the sessions were every year, now they are mostly biennial. If we make the sessions quadrennial there will be a better class of men selected, and the interests of the people of this State will be looked after better than they are at present. Therefore I am entirely in sympathy with the proposition to have quadrennial sessions.

MR. WICKES. Mr. Chairman: It seems to me there would be a little difficulty in the election of a United States Senator. I am in favor of biennial sessions, and of confining these sessions to short terms, and leaving all local legislation to the county Boards of Supervisors.

REMARKS OF MR. JOYCE.

MR. JOYCE. Mr. Chairman: I am very sorry to hear this cry of reform being raised here again. It seems to me this old penny wise and pound foolish cry rises in this Convention very often. It seems to me that we cannot afford to abolish the Legislature altogether and place in the hands of the Governor the whole power.

MR. WHITE. Were you elected on a platform that favored sessions once in four years?

MR. JOYCE. No, sir.

MR. WHITE. Yes, you were.

MR. JOYCE. I believe there is a good deal of corporations in this. I believe the people are hoodwinked. I believe that when our old States were organized they were organized by honest men and conscientious people. In some places corporations were unknown. Since these corrupt corporations have been formed they come in for an abolition of our Legislatures as a whole. I believe they go in for putting power in the hands of the Governors, and the next thing will be the Governors oppress the citizens. We are here almost eighty days, and what have we done? I believe that the State of California is ground down by the combined combination of corporations; that it would take them at least four or six weeks of this sixty days to get through with the election of a United States Senator, and before they could get what was necessary to protect the people against the power of corporations that the sixty days would be up. I do not believe that the people are so ground down by the Legislature or direct salaries of officers as what they are by the monetary jobs and accumulated salaries of our officers. The contractors of San Francisco rob the people of that city and county more than their whole public tax for the paying of public officers. This we do not say a word about. We want to tear down salaries and bring down wages. The corporate bodies of this State want to bring down their officials, and they want to show on the outside. I do not believe it can be done by crippling the hands of our Legislature. I believe that our Legislature, if it was convened once a year, and then convened for ninety days, could do more. I am sorry to hear this cry from our side of the house. I would like to know how many of these corrupt bills have ever been vetoed by the Governors of this State. I do not want to see this nigger

in the fence where there is no nigger in the fence. I want no hoodwinking on the ground of economy. Here those people tell us that it is almost impossible to find honest men for the position of legislators. The consistency of these arguments is beyond the knowledge of workingmen. The whole thing looks suspicious; at least it does to me. I have an amendment to offer, if it is in order, Mr. President.

THE SECRETARY read:

"Amend by inserting the words 'one hundred' in line five, instead of the word 'sixty,' and insert the words 'one hundred and fifty,' in line six, instead of the word 'eighty.'

MR. DOWLING. I am sorry to hear men laboring under misapprehension——

MR. MORELAND. I suggest to the members of the Workingmen's party that they should "pool their issues."

MR. SMITH, of Santa Clara. Mr. Chairman: I have an amendment.

THE SECRETARY read:

"Amend by inserting at the end of the fourth line, 'No session shall have pay for a longer period than sixty days, except the first session called after the adoption of this Constitution.'"

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: There are several amendments pending now. I expect to support this report. I believe it to be a good one—the best report that has been made to this body, and as to the amendment pending—as to time, I think the true limit should be to limit the pay and allow them to sit as long as they please. If the provisions of this report are adopted there will be no necessity for about seven eighths of the bills that are now presented. I think the last session considered nine hundred and fifty bills, and not to exceed two hundred. I think, were general laws. I do not think after the adoption of this Constitution there will be any necessity for changing more than one hundred and fifty laws. I think it better to limit the amount paid than the time of the meeting. I think that five hundred dollars should be the limit for a term of the Legislature. I am in favor of the Legislature meeting every two years. Really, I would prefer the Legislature should meet annually instead of every four years. I believe in bringing the Government as near to the people as possible. I do not believe in leaving it to the Governor. I think we propose to bring the representatives a little nearer to the people, so that the laws shall be a reflex of the people of this State. That is the policy of a republican government. The only change to be made in the Constitution, in my mind, is to limit the pay that they should receive at any general session of the Legislature.

MR. MARTIN, of Santa Cruz. Mr. Chairman: The people of my section are in favor of the Legislature meeting once in four years. In fact, they do not care if it never meets. They can get along without it.

THE CHAIRMAN. The question is on the motion to strike out "eighty," and insert "one hundred and fifty."

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: It does appear to me that this length of time will be considered none too great, taking into consideration the fact that there is a new starting point almost throughout, and that laws are to be made in accordance with the new Constitution, to suit its peculiarities; to suit its provisions throughout. It will require time; and unless there is given sufficient time to investigate, to consider, to weigh and balance the laws that are to be made, and to compare them with this great organic law that is now under consideration, it will be merely impossible in the short length of time to make laws which will answer the purpose. It does not require that there should be any lengthy argument upon this subject. We must know at once that the work will be one of great magnitude, and that there should be no hurry in this matter in consequence of there being a narrow limitation of time. We have seen the ill effects of this here in this body, and we would not wish this to be repeated when the Legislature meets for the purpose of making laws, in many respects different from any laws which we have had before, and which should correspond nicely with the Constitution now being made. I am in favor of the amendment.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I concur entirely with the gentleman from El Dorado, Mr. Larkin, in regard to limiting the pay instead of the time the Legislature may remain in session. They will be driven in the last few days to consider the most important legislation, and the result will be hasty and ill considered legislation. Now, if you limit the compensation you accomplish the whole purpose, and then let the terms be continued until the work is completed and completed properly and in order. I was about to move to strike out all of the section from the word "in" in the fourth line, to the word "days" in the sixth line, to meet that object.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: There seems to be a great deal of difference of opinion among the members in regard to this matter. I will say that the Committee on Legislative Department arrived at the conclusion that sixty days session would be amply sufficient for all the purposes of legislation hereafter, and that that conclusion was arrived at from consideration of the fact that by changing the time of meeting until after the holidays, we had saved at least twenty days; because I believe that twenty days have been wasted on account of the holidays and other adjournments for a long time. Again, we have provided here such limits as in our judgment will, if adopted by this Convention, put an end to special legislation; and we all know that at least two thirds of the time of former Legislatures has been consumed in such legislation as will be prohibited if this report is adopted. Sixty days is long enough for any Legislature to make necessary changes in general laws; and eighty days limit for the first session was that which was adopted in the committee, after some difference of opinion, and in my mind it is sufficient. I do not understand that it is necessary, because this Constitution is adopted, to have a new code of laws. I do not understand that the Constitution is going to repeal all our statutes, and do not see really that any more time will necessarily be consumed by the first session than any subsequent session of the Legislature; and I cannot see why there will be any greater difficulty or any more time necessary for the first Legislature than in any subsequent session. It will be necessary to make some changes in the Code of Civil Procedure. The twenty days extra allowance is amply sufficient for that. I have no particular pride of opinion about this report, but I think that the time here is amply sufficient. I believe that it is proposed that the Legislature should meet as often as once in two years. Very large interests are confided to the executive officers of this State. They are to report to the Legislature, and two years is long enough between the examinations of the accounts of these receiving and dispensing agents, and ascertaining what has been done in the way of executing the laws and dispensing the money of the State. Great changes have been made and will be made which may render proper the readjustment of the rate of taxation. I think the sessions of the Legislature should be as often as once in two years. The suggestion made by the gentleman from El Dorado, Mr. Larkin, that it is to allow, instead of per diem, a gross sum to each member of the Legislature for the session; that might, I say, render the sessions shorter than they would be otherwise. I think the report of the committee is proper and ought to be adopted.

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

The amendment was lost.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from San Francisco, Mr. Joyce.

The amendment was lost.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Santa Clara, Mr. Smith. The Chair hears no second to the amendment.

MR. VAN DYKE. I send up my amendment.

THE SECRETARY read:

"Amend by striking out in line four, from and including the word 'no,' down to and including the word 'days' in line six."

MR. VAN DYKE. The purpose of that amendment is to strike out the limit on the session, and then when we reach the compensation then to limit the compensation.

The amendment was lost.

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

THE SECRETARY read:

"Strike out the words 'which may continue eighty days,' and insert in same place 'for which members thereof shall not have pay for more than one hundred and twenty days.'"

MR. WEST. Mr. Chairman: Would that amendment be subject to amendment? If so I would move to strike out "one hundred and twenty" and insert "one hundred." I believe a majority of the Convention will agree upon a session of one hundred days.

MR. SMITH, of Fourth District. I accept the amendment.

MR. INMAN. Mr. Chairman: I hope this Convention will make no change in this report. The Chairman has said sixty days is sufficient time. We are not going to pull to pieces the statutes of the State nor the Codes. I hope that this Convention will put a veto upon all those propositions when they do not bring any good reason for them, and stand by not only this report, but the reports of all the committees. I hope there will be no more amendments offered.

MR. LARKIN. Mr. Chairman: I shall oppose the amendment unless it is to strike out the limit in regard to time. As the Convention is not willing to limit the pay instead of the time, I shall support the report of the committee.

REMARKS OF MR. SMITH, OF FOURTH DISTRICT.

MR. SMITH, of Fourth District. Mr. Chairman: If the Legislature is not doing right, and there is outside support, it can very easily continue without pay from the State, and I believe it is a thing that should be certain and fixed by law. It is uncertain how much new legislation will be required by the first session. It is certain that there will be considerable. There is some new matter and some novel matter introduced already into this Constitution; and it is certain that in addition to the ordinary business of legislation, and in addition to some change in the laws necessary, there would have to be considerable new legislation under the new Constitution, and we have already found that the Legislature has made a great mistake in limiting us to one hundred days. I do not know that we have committed any great offense against time. There has been, of course, some little delay, and I think we have found here in our experience in this body, that the hundred days is a very short time. I think it would be better for the first session, inasmuch as it is uncertain how much would have to be done, to give them some more time, and a hundred days is little enough. They would require at least that much time, and they should have pay for that much time. If it should happen that a great deal more legislation should be necessary, let them stay, as we stay, beyond the time without any pay.

REMARKS OF MR. CAMPBELL.

Mr. CAMPBELL. Mr. Chairman: I hope we shall not make the mistake to too much limiting the first session. The other is all right; but if gentlemen will reflect a moment they will see that there will necessarily be a great deal of legislation. In regard, for instance, to the subject of municipal corporations, we are going to take from the Legislature a large body of power, and it will be necessary to regulate munici-

pal corporations to a very great extent; there will have to be a very large amount of legislation there. Then, if we organize our judiciary, as we contemplate, there will be considerable legislation there; then, as we have provided for the matter of corporations not municipal, there is very important legislation there, at the first session; and, as in regard to the subject of taxation, it is probable that considerable careful legislation will have to be adopted; we shall have to adopt, perhaps, an entire new taxation law. It is not a matter of great moment whether the Legislature, at its first session, shall sit a few days longer or a few days less time, but give it ample time, so that it can set into operation this new Constitution under the most favorable circumstances, and, therefore, with careful legislation. I believe we would do no wrong to allow them to stay four months and pay them if necessary. After that the sixty days would be perfectly proper. I hope the committee will not limit them down to eighty days. I believe it will be impossible to set in operation this Constitution in that length of time. The report, in its main features, I agree with; I think it an admirable report. I am not in favor of great changes. I hope the time will be extended to at least one hundred days. I think one hundred and twenty days would be preferable. I had proposed to offer this amendment striking out "eighty" and inserting "one hundred and twenty," and then if the gentlemen think it is too long to pay them for one hundred and twenty days, we can, in the resolution fixing the compensation, say that they shall only be paid for one hundred, but let them sit after one hundred days. I hope that we will strike out "eighty" and insert "one hundred and twenty."

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I am somewhat surprised that so much opposition should be manifested to a proposed section of the Constitution which embodies a proposition so universally demanded by the people. I know that it has been widely discussed on the stump. It is true that there is a widespread sentiment among the people opposed to legislation generally. That sentiment which has caused them to look upon legislative bodies as an evil is calculated to create a spirit of this kind; and I know that certain candidates told the people that they were in favor of having fewer sessions, or quadrennial sessions, or less time. I am convinced that it is not the right principle, and would work an evil to our general form of government. It has been suggested here, in reference to that point, that it would be inconvenient to elect two United States Senators in six years; and so it would. There is an objection in that point. It has been suggested that we could not well foresee the condition of the country, and could not wisely provide for the revenue for so long a time. That is also an objection. But there is another and more vital objection, in my opinion, and that is the idea of so long absenting the people from those who have power over them. It is a principle that we cannot afford, in my opinion, to indorse. The idea that the administration and the Legislature could come in here simultaneously and go out together is not a good one. The administration would be absolutely left to itself during its term. Assuming that the Governor should become implicated in some nefarious practices, I ask you what power there is under such a system to reach him? You provide that the Governor may be impeached, but as soon as the sixty days of the Legislature are over he is left to himself. One of the best features of our government is that the officers are frequently brought face to face with those whom the people elect to scrutinize their action. The oftener you can send up persons directly from the people, and in this capacity legislators come, to look into and examine the affairs of State, and confront the officers enlisted with power by the people, the better your government.

In reference to the time of the sessions, that matter was thoroughly discussed in committee, and I believe that the judgment of the committee will be satisfactory to the people. We have required that the Legislature shall not meet until after the holidays. Then we have provided that no special legislation shall be enacted. It provides for cutting off largely all special legislation. A great amount of time has been spent on these special bills, and if you sift it right down and get right into the internal workings, you would find that not thirty days, on the average, have been earnestly, studiously, and faithfully devoted to the consideration of general measures. The committee at first decided in favor of sixty days, but on further consideration concluded to allow eighty days for the first session, because, in the event of the adoption of this Constitution, there would naturally be a little more legislation necessary. In other words, it would be necessary to alter many laws now existing in order to make them conform to this Constitution. It would be necessary to pass certain laws in reference to municipal corporations. A few general laws will, and only a few will be required; perhaps one for each of these reports will meet the whole requirement. I claim that a bill general in its nature can be considered, and thoroughly considered, in less time than we have devoted here to the consideration of one of the reports of our committees. There is another point in favor of less time as compared with the time required by this body. It must be remembered that body is smaller than this. The largest house, if this report is adopted, will contain but sixty members, and I think it is a rule that will hold good that in proportion as the body is smaller the work will be facilitated. Sixty members may not bring all the experience of a larger body, but they will get over the work in much less time than a body twice as large. I believe the report is wide enough as it is. I haven't heard any amendment proposed that improves it. The reforms demanded are contained in it. The evil of special legislation is aimed at. The lobby influence is aimed at. If you scan that report narrowly you will find more reforms contained therein than will perhaps appear on the surface. I hope that the gentlemen will forego these little notions and trifling objections and let us get on to other and more important business.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I do not care to remind gentlemen what platforms they were elected on, but this Convention has every admonition to reform. I hope that the committee will strike out that limitation in the second paragraph which provides that no session shall be longer than sixty days, except the first session. Leave the time entirely independent, and when we come to the amount of salary, not leave that to the Legislature. Such a question as that ought not to be left to the Legislature unless the times change so fast, and the value of money changes so fast, as to make it necessary to leave it to the Legislature. If money is going to depreciate, of course, they ought to have the power to raise their pay; but I am in favor of striking out the limitation as to time, and allow them in a future section five dollars a day and no more; in no case to exceed five hundred dollars for a session, excepting, perhaps, the first session. If they choose to hold over one hundred days, then give them no pay. If they get through with the business, what propriety is there in paying them five dollars a day when they are doing nothing. I think, that in view of the burden of debt that presses upon the people of the State that five dollars a day is all that should be paid. The cry is that nobody but rich men could come. Any man can come for that. A gentleman here tells us that he lives for five dollars a week; and five dollars a day is certainly as much luxury as any gentleman has a right to indulge in at the expense of the State. If any gentleman chooses to indulge in more let him pay it himself. Strike out these three lines, the fourth, fifth, and sixth, and when we come to a future part of the provisions put in a provision that they shall have five dollars a day, and in no case receive above five hundred dollars. I am in favor in the first place of striking that out and inserting nothing.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: The question of compensation is not referred to at all in the report of the Committee on Legislative Department. In the committee that matter was discussed, and the majority of the committee were of the opinion that it was beneath the dignity of the Constitution to fix the matter of compensation, which belonged exclusively to the Legislature, and also for the further reason that the compensation is fixed by law, and would continue, in the absence of anything in the Constitution to change it. As to the time, Mr. Chairman, I must confess that my judgment has undergone some change since we of the committee assented at least to this report, or to the main features of it. Since then we have acted upon a Bill of Rights, in which we have made many changes upon the subject of traverse juries, grand juries, and other subjects, and thus made work for the Legislature. Upon the subject of the Chinese, we have referred much important business to the Legislature. As to revenue, there will be a vast amount of business at the first session of the Legislature; and as to the matter of corporations, which has been passed upon so far as the general committee on that subject has been concerned, gentlemen will notice that in this report of the Committee on Legislative Department there are some very important provisions there with regard to all other corporations not treated upon by the Committee on Corporations proper, which will require very considerable business in the Legislature. It will be noticed there that by one section of the article on Legislative Department, the Legislature—unless it is otherwise provided, and it has not been, as we have passed corporations—has to provide for the fixing of the rates of all corporations. I maintain that this question of water rates which agitates a good many in this Convention will find its solution, perhaps, in that section of the report of the Committee on Legislative Department. I have no doubt that the first session of the Legislature will require double the time, or nearly so, of any succeeding session. I know there has been a good deal of time wasted here. There have been some speeches unnecessarily long, and some speeches unnecessarily repeated, and yet it is true that this, as a deliberative body, has worked as hard, perhaps, and intelligently, as any that has ever assembled in the State. And yet it is now plain and palpable, that if we perform our duty we will remain here a considerable time beyond the one hundred days, compensation or no compensation, to do our work faithfully. I do not know that one hundred and twenty days, however, are required; but I do believe, in view of what has transpired, and the vast amount of business which has been referred to the Legislature—for I understand it means the first session of the Legislature, where we make a thing mandatory—there is a necessity for a longer time than specified. Therefore I shall vote for the amendment to strike out "eighty," and I shall offer to strike out the word "eighty," in line six, and insert the words "one hundred." I think perhaps that may be acceptable as a compromise. As to the other sessions, I think sixty days are amply sufficient.

Now, Mr. Chairman, a word as to quadrennial sessions, and I have done. The argument presented on the question here was discussed in the committee, and it had considerable weight. We do not propose to try the experiment and be the first State among men, and in the history of mankind, to make the sessions of the Legislature less frequent than once in two years. Arguments have been used here that I do not propose to repeat; but I propose to simply say this, that it is, after all, only in the Legislature where the people are heard; and when we propose to make the sessions of the Legislature less frequent than biennial, the less frequent they are made the less republican is the form of government. I do not believe, however, from the expressions I have heard, that it is profitable to discuss these propositions which have so little support that there is no possibility or danger of their success.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I believe, sir, after reading the report of the Committee on the Legislative Department, that they have considered this subject with ability. They have made an able report, and in the main, I am prepared to support the report; but I hope it will not be considered treating the committee with any disrespect to offer or vote for material amendments. Now, it is well known that the first Legislature

that meets under the new Constitution, if adopted—and I believe it will be adopted, for I believe we will make a good Constitution—will be the most important legislative body that was ever assembled in the State of California. It will be the most important deliberative body that ever met in California. I will not even except this Convention. While they will not be called upon to make the new machine, they will be called upon to adapt the new machine to the State Government under the circumstances occurring by the adoption of the new Constitution. As has been well remarked, the jury system will need a good deal of change if any amendment is adopted. The question of revenue and taxation, and the State's finances will need a great deal of consideration, of careful examination and adjusting. The question of municipal corporations, which has been referred to, and especially that part in relation to county and township organizations, will require much legislation. All these subjects coming up before the Legislature will require thought, will require study, and will require time for their proper adjustment.

Therefore I hope that the amendment will be adopted, striking out "eighty," and inserting "one hundred," in the sixth line. I am not one of those who believe, and I have not on any occasion claimed, that the Legislature of the several States are proverbially dishonest. We expect to elect an honest Legislature, and we suppose that they will do their work carefully and well. I am opposed to restricting the pay. I believe that five dollars a day is enough, but I am in favor of a per diem and not in favor of a fixed salary. Whenever the time expires in which members receive pay, I have found in all legislative bodies of which I have had any acquaintance, there is a class of members that commence a system of discontent and demoralization, moving to adjourn and impeding the progress of legislation, and I have never been able to find any good work done after the time has expired for which pay is allowed. Come down to old prices; give them a per diem, but give them a per diem as long as you allow their session to hold; and, if you confine them in any respect, confine the length of the session. Therefore I agree with the report, in confining the length of the session to sixty days for ordinary sessions, after the first meeting of the Legislature, which I believe should have one hundred days. I believe that would be a proper length of time.

MR. ANDREWS. Mr. Chairman: If I am in order I would like to offer an amendment to strike out "eighty," in line six, and insert "one hundred."

THE CHAIRMAN. The gentleman from Kern, Mr. Smith, has moved to strike out "which may continue eighty days," and insert in lieu thereof the words, "for which members thereof shall not have pay for more than one hundred days."

MR. ANDREWS. Mr. Chairman: I think that one hundred days for the first session is little enough. My idea is that one hundred and twenty days would be better than one hundred. Unless we should have a much better legislative body than I have been associated with, one hundred and twenty days is little enough. Sixty days is too great a limitation. I think that eighty days is little enough. I do not believe that it is wise to drive our legislators, and I think sixty days would always drive them. I am in hopes that the committee will not provide that the first session after the adoption of the Constitution shall be less than one hundred days.

MR. WHITE. Mr. Chairman: If that amendment is adopted the pay will be for one hundred days only, and then they could go on just as we are now, without pay.

MR. LARKIN. Mr. Chairman: I cannot see why we should limit the time. The Governor can call them together on the next morning. I am opposed to any limit. If it was necessary to continue the first session, the Governor could call an extra session the very next morning after the time expired.

MR. BEERSTECHER. Mr. Chairman: I move to amend, so as to read as follows: "There shall be no Legislature convened from and after the adoption of this Constitution, in this State, and any person who shall be guilty of suggesting that a Legislature be held, shall be punished as a felon without the benefit of clergy."

THE CHAIRMAN. The gentleman's amendment is out of order.

MR. WEBSTER. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Strike out all after the word 'proclamation,' in the fourth line, down to and including the word 'days,' in the sixth line, and insert as follows: 'No pay shall be allowed to members for a longer period than sixty days, excepting the first session of the Legislature called after the adoption of this Constitution, they may be allowed pay for one hundred days.'"

MR. WEBSTER. Mr. Chairman: It occurs to me that it is doubtful policy to limit the time absolutely to any time whatever. I think that will remove the evil. If there is matter of great importance before the Legislature, they should not be cut off from the enactment of good laws by a constitutional provision. By cutting off the pay after a certain time, they are not likely to stay longer than is absolutely necessary to enact the legislation which is before them.

MR. BEERSTECHER. Mr. Chairman: There is general complaint of the work of this Convention, that we are moving along too slowly, and any member of the Convention being present and looking over the room, and noticing how little interest is taken, will say that it is no wonder that we are moving along slowly. No one pays any attention, and these matters are moving along in this way by reason of the indolence of the members, and it is their fault, and no one else's. I am in favor of the amendment offered by the gentleman from Alameda, Mr. Webster. The only objection that is urged is upon the plea of economy. It is said that the Legislature ought not to sit more than sixty, or more than eighty, days, because it costs too much, and the expenses ought to be reduced. And as it is merely a plea of economy, I cannot see any objection to allowing the Legislature to sit just as long as it is necessary to continue in session, but limit the time for which they are to receive pay. Now, that is the true theory. Give them pay for just so long, and no longer, and, if necessary, allow them to continue in session. There is no objection to allowing them to continue in session. I believe that the laborer is worthy of his hire, and I believe in paying the legislator ten dollars a day for a certain number of days. I do not believe that the people will thank us for getting scrub members and giving them scrub pay.

MR. SMITH, of Fourth District. Mr. Chairman: I think the gentleman from San Francisco is mistaken in the matter of economy being the only question. It seems to me that the reason for short sessions is, that the longer the Legislature that is not doing good work is in session the more chance there is for evil. Now, there generally is a certain amount of work to be done. The effort of this Convention is to reduce that amount of work to general laws, and consequently to much less work. Now, if we have a session of the Legislature that intends to do evil, that session can continue and be paid from outside as long as it needs to, and the evil go on against the people. The policy has been in most of the States to reduce the time of service. Let it be fixed by law, and shut down at the time that the work that is necessary to be done is finished. Let them have no longer time than is necessary for the ordinary business.

MR. O'DONNELL. I call for the previous question.

THE CHAIRMAN. The committee seems to be ready for a vote. The question is on the adoption of the amendment offered by the gentleman from Kern, Mr. Smith.

The amendment was lost.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Alameda, Mr. Webster.

The amendment was adopted, on a division, by a vote of 68 ayes to 32 noes.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from San Francisco, Mr. O'Donnell.

The amendment was lost.

MR. JOHNSON. Mr. Chairman: I move to strike out "biennial" and insert "quadrennial."

Lost.

THE CHAIRMAN. If there are no more amendments to section two, the Secretary will read section three.

MEMBERS OF ASSEMBLY.

THE SECRETARY read:

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Tuesday after the first Monday in November, and their term of office shall be two years.

MR. WYATT. Mr. Chairman: I move to amend section three by inserting after the word "November," in the third line, the words "unless otherwise ordered by the Legislature." It is proposed now that one time of holding the election in every four years shall be upon the day of the Presidential election. That is now on the first Tuesday after the first Monday in November. That day of holding the Presidential election may be changed at any time, and the strong probabilities are that it will be changed before the session of this Convention closes. A bill has now passed the Senate of the United States changing the day of the Presidential election to the first Monday in October, with every probability that it will pass the House and become a law. If so, then it ought to be in the power of the Legislature to make the general election of this State conform to the law of Congress, and it ought to be flexible. I therefore think that this amendment ought to be inserted in this clause of the Constitution.

The amendment was adopted.

MR. WHITE. Mr. Chairman: I would suggest that there should be an exception made in regard to the first election. If this passes without excepting the first election, we will have to have a separate election for the election of members of Congress.

MR. VAN DYKE. Mr. Chairman: I would suggest that that could be provided for by some provision in the schedule. A provision can be made in the schedule which will cover all the articles and all the sections.

THE CHAIRMAN. The Secretary will read section four.

TERMS OF SENATORS.

THE SECRETARY read:

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State, and of the district for which he shall be chosen, one year next before his election.

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

THE SECRETARY read:

"Insert in line three, so as to read, Who has been three years a citizen, and an inhabitant of the State and of the district for which he shall be chosen one year next preceding his election."

MR. LARKIN. Mr. Chairman: The question as to probation for persons to become citizens of the United States, or to possess all the qualifications of an elector, should precede his citizenship, and no condition should be made as to his qualifications to hold office. If a man is a citizen of the United States, he is a citizen, of course, and has all the rights of a native-born, and the idea of declaring that he should live here three, or four, or five years to be entitled to hold office, I think is wrong. If we are not satisfied with the limit of time a man should reside here before he becomes a citizen, why amend the naturalization laws, but when a man is declared to be a citizen, a one year's residence in the State should be sufficient to entitle him to all the rights of the native-born citizen.

MR. INMAN. Mr. Chairman: I hope the amendment will be

adopted. I want to drive out the carpet-baggers. I do not care whether they are American or foreign-born. I do seriously object to carpet-baggers. We witnessed their effect in the Southern States, and I hope that this Convention will adopt the amendment.

MR. WELLER. Mr. Chairman: I think the gentleman from El Dorado is mistaken in regard to the amendment. A person who has not been in the State more than one year cannot be qualified—and cannot understand the wants of the people of this State—for the legislative and judicial officer, as well as individuals who have lived here three years with the same qualifications, and it is no more than right that our people should be protected in that way, and that they should have individuals that are acquainted with our wants, for legislators and judicial officers.

MR. O'DONNELL. Mr. Chairman: I shall oppose that amendment. It is drifting back to Know-Nothingism. I think the section, as it is in the old Constitution, is good enough: "Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent." I shall oppose the amendment.

MR. WELLER. Mr. Chairman: One word more. The gentlemen get the idea that the amendment was aimed directly at foreign born citizens, which is not the case. It is not aimed at them more than the American citizen; but the men who hold representative offices in this State should be residents of the State for three years, and one year residents of the districts which they represent. It is right that we should have that protection. It is a right and it is a respect which our older residents should have accorded to them, that they should not, on any impulse, be thrown out by individuals that are mere carpet-baggers in the State. It is a matter that must be conceded by any person that will look at it in the proper light. We want intelligent men—men that are acquainted with our wants and interests, and men who have had time to understand them—to represent us in the Legislature.

MR. BARTON. Mr. Chairman: I do not think this has anything at all to do with naturalized citizens. We do not know anybody but Americans in this country, and when they are once citizens I recognize them as American citizens. There might be a time when the people of some of the counties of this State may be willing, and glad, and anxious to select some talented man that had lately come into their midst, and under this provision it would operate against such individuals, and thereby strangle the desires of the people. I shall vote against this amendment, and hope it will be defeated.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: Now we are all convinced that when there is a necessity for anything whatever to be done it is always very important that the person or the individuals who do it should know what the matter is, and understand its nature and comprehend it in its different tendencies and bearings. For instance, if a man is sick and the doctor is called in, it is necessary that that doctor should know the case, that he should understand precisely the disease he is dealing with, in order that he may act advisedly and cure that patient. Well, I hold that in all matters it is necessary for individuals that act to understand fully what is before them, that they may act intelligently in the same. We know perfectly well that the men who live in the eastern part of our country do not understand the peculiarities of California; they do not understand the peculiarities of our institutions and laws and our peculiar interests, and we know moreover that it takes some length of time to comprehend these. We are fully aware even in this Chinese question that has been before this body that they do not look upon it as we do. Why is it? Because they have not lived here; because they have not been connected with the same circumstances; therefore it is a matter of importance for them to comprehend and act intelligently upon these things that affect this State, as we consider it, with due respect to their intelligence. The same principle applies when we take into consideration the laws of this State, and I am under the impression that most men, after they have been here two or three years, find at once that they have not understood the question. On the subject of farming, we see men come here from the East, and to hear them talk you would imagine that the farmers here knew nothing at all about farming, but as soon as they get to work they find that they know nothing about farming and irrigation as it is carried on here, and are utterly incompetent for a length of time. They positively need a schooling before they are prepared to act intelligently in this State. These are matters of serious importance, and I am fully convinced that a man who comes to this State cannot understand, until after a certain length of time, the peculiar interests of the people of this State. When he comes here it is necessary, in order that he may act intelligently, that he should undergo quite a schooling first in our peculiar institutions. I am utterly opposed to men coming here and being elected to the Legislature before they have become acquainted with the wants and needs of the people.

MR. GORMAN. Mr. Chairman: I believe that any gentleman ought to be eligible that the people of this State wish to send to the Legislature. I think that a man must understand the people in less time than three years. Therefore, I move to amend by striking out "three years," and inserting "two years."

MR. LARKIN. Mr. Chairman: Now, if this is a limitation to protect the old residents, why not make it for those who have been here twenty-nine years. I happen to be one of that number. I think there are quite a number of them. I think my friend Gorman is correct. The men who live in a community are the best judges of the men they want to elect. I think you can trust the people to elect their own representatives in any part of the State of California. I do not think it requires any constitutional provision to prohibit them from electing whom they please. I shall oppose the amendment.

MR. WELLER. Mr. Chairman: I think that for a man to be sufficiently acquainted with the interests of the people three years is little time enough. He cannot act intelligently unless he has that amount of time. Our State has grown and passed the certain period when we can get along without such inexperienced talent, and when we have experienced talent among us. It is not doing any injustice to any individual. It is actually for the benefit of the whole State. We have been left to suffer in many instances, when, if that law had been in existence, we would have had individuals who were acquainted with our wants, and who would have done us good service in the Legislature.

MR. McCALLUM. Mr. Chairman: I wish to call the attention of the committee to the fact that section four in the report of the committee is section five of the present Constitution. There is no amendment whatever except in omitting the indefinite article "a" before the word "inhabitant." We do not propose any change—the committee has not proposed any change at all—unless that would be considered a change. Section five of the present Constitution reads just the same as section four of the article, if gentlemen will look at it. I do not propose to vote for any amendment except when an amendment is demanded. I am opposed to it on principle anyhow. The portions of the State some of us come from increase rapidly in population. I believe the population of Alameda County has increased three-fold within the last six years; a great many people are coming over from San Francisco, and I would not be surprised if we had a larger city yet on the right side of the bay, and I do not propose to discourage the new comers.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Santa Clara, Mr. Weller.

The amendment was adopted, on a division, by a vote of 68 ayes to 41 noes.

MR. EVEY. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Amend by adding to section four, 'and members of the Assembly shall not be less than twenty-five years of age, and Senators not less than thirty years of age.'"

MR. NASON. I second the amendment.

MR. WHITE. I hope, gentlemen, that you will not cut off all the young men of this State in that way.

MR. EVEY. I do not consider men twenty-five years of age old men; I consider them young men; men just entering upon life; men that are more mature than boys under that age, and I hope that this Convention will adopt that amendment.

MR. WILSON, of First District. Mr. Chairman: Considering what gentlemen have said about legislative bodies, I think it is a shame to put these young men in such bad associations, and, therefore, I am in favor of the amendment.

MR. SHURTLEFF. Mr. Chairman: If a man is qualified for the position of Assemblyman at twenty-five years of age I do not think it will take five years more to make him competent to be a Senator; it seems to me that it would be ridiculous. When Henry Clay was sent to the United States Senate he lacked a little of being thirty years of age, but the Senators that voted for Clay had to be thirty-five years of age, five years older than required for the United States Senate; still they sent their brilliant young statesman a little before he was eligible. I see no good reason for prescribing young men in this way. I think that the people are the best judges as to the qualifications relative to age.

MR. TULLY. Mr. Chairman: I hope this amendment will not prevail. I cannot see any reason why a man, when he is twenty-one years of age, shouldn't be eligible to a seat in the Legislature, or to hold any office. I know many young men less than twenty-five years of age who know more than some men of fifty, and who I would rather have in the Legislature. I think it would be an outrage.

MR. HARRISON. Mr. Chairman: Article fourteen of the amendments to the Constitution of the United States reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." I think that amendment is in conflict with the Constitution of the United States.

MR. ROLFE. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Amend the amendment so as to read as follows: 'The members of the Senate and Assembly shall not be less than twenty-five years of age.'"

MR. ROLFE. Mr. Chairman: I offer this amendment because we have already incorporated in the Constitution that a person twenty-five years of age may be Governor, and I think that any person who becomes old enough to be Governor is certainly qualified to be a Senator. With that amendment I am in favor of putting some restriction in as to the age of members of the legislative bodies of this State. I agree with the gentleman from San Francisco when he said that he did not believe in admitting these young men into such bad company as our Legislatures are generally composed of. I hope that this amendment, twenty-five years as to both branches of the Legislature, will prevail.

MR. BROWN. Mr. Chairman: I am opposed to these amendments. I can see no propriety whatever in them; in fact, I am rather of the opinion that if the people conclude that any man whatever is competent, and they wish to send him to the Legislature, they should have the right of doing so. I do not believe that age is a test of wisdom or a test of capacity at all.

MR. EVEY. I accept the amendment of the gentleman from San Bernardino, Mr. Rolfe.

MR. STEDMAN. Mr. Chairman: I desire to offer an amendment to the amendment, and I do this on behalf of the young men.

THE SECRETARY read:

"Add to the amendment, 'And not over forty-five years of age.'"

MR. BEERSTECHER. Mr. Chairman: I am in favor of the amend-

ment of Mr. Stedman. I hope you will all vote for it. I hope that the old men will be allowed to protect themselves against the encroachments of the youths. I can further say to the facetious gentleman from San Francisco that I do not think he will ever fall into the Senate unless he is elected from some place where he is not known.

MR. WELLER. Some gentlemen are more popular where they are not known.

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

The amendment was rejected.

THE CHAIRMAN. The question occurs on the amendment offered by Mr. Evey.

The amendment was lost, on a division, by a vote of 53 ayes to 60 noes.

THE CHAIRMAN. If there are no further amendments to section four, the Secretary will read section five.

THE SECRETARY read:

SEC. 5. The Senate shall consist of thirty members and the Assembly of sixty members, to be elected by districts as hereinafter provided. The seats of the fifteen Senators from the odd numbered districts, chosen at the first election under this Constitution, shall be vacated at the expiration of the second year, so that one half of the Senate, after the first election, shall be chosen every two years.

MR. BARRY. Mr. Chairman: I offer section six of the old Constitution as a substitute for section five.

THE SECRETARY read:

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

MR. AYERS. I have an amendment to offer.

THE SECRETARY read:

"Insert in line one the word 'forty,' in place of the word 'thirty,' and in line two the word 'eighty,' instead of 'sixty.'"

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Los Angeles, Mr. Ayers.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I offer that amendment for the reason that I do not believe that the number of representatives should be reduced as proposed in this report. I believe in a representation by large bodies of the people, and I think that this Convention has shown that the interests of the people are safer in large bodies than they are in the hands of small ones. If we adopt the amendment which I have offered the people of this State will continue to be represented as equally as they can in all their districts. I hope that the amendment will prevail, for I do not believe that the change recommended by the committee is one that will work well for the State.

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. Chairman: I hope that the representation will stand as in the present Constitution. I think this proposition of the committee would be very unjust to the sparsely settled portions of the State. They may complain as it is. This is the second State in area in the Union. It has all the climates that can be found between the great lakes in the north and the Gulf of Mexico in the south. A Senator or representative should know all about the district that he represents—the climate, the productions, and everything pertaining to its interests. Under this apportionment you will find a district composed of the Counties of Del Norte, Siskiyou, Modoc, Lassen, Shasta, and Trinity—twenty-three thousand square miles; larger than two or three of the Eastern States. Another district, composed of the Counties of San Bernardino, San Diego, Kern, and Ventura, contains an area of over forty-eight thousand square miles; an area that is greater than the great State of New York; greater than the States of Pennsylvania, and Ohio, and Massachusetts combined. Now for a Senator alone and two Assemblymen to represent that immense area, is a matter of impossibility. Our Senators in Congress and our Representatives have sometimes failed to know our wants from a want of knowledge of the State. I recollect a little over twenty years ago, while I resided at Shasta, a well known citizen of that town met a distinguished Senator from this State, and said to him, "We should like to see you up at Shasta." This was in the month of June. The Senator replied: "I should take great pleasure in meeting my constituents in Shasta, but I could not go there now. I think next September I will make you a visit. About that time the snow will be off and I will make you a visit." Those who know the climate of that place will appreciate the circumstance. I hope, therefore, that there will be no cutting down of representation. I think it is necessary that the popular branch of the Legislature should consist of at least eighty members.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I agree with the gentleman from Shasta in the main, in relation to the question of representation. I am in favor of this State being divided into Senate districts according to population, but every county in this State should have a representation in the Assembly. The interests of the State demand it. I mean that every county should have a representative in the house. I am in favor of increasing the number, and fixing the number at such a number that each county in the State shall have a representative. My friend Dunlap suggests that one hundred and twelve will give one to each county, and sixty to be divided among the more populous counties. The reduction proposed by this committee would really disfranchise a majority of the people of this State. They would be compelled to vote for men that even the oldest inhabitant had never met. There would be no responsibility to stand up and protect any particular constituency. His constituency would be scattered over too much territory; and you might as well not allow them any representation, unless you allow them to select such men as will represent their interests and their views and look after their welfare. The only argument is economy. If it is economy, you had better do away with the Legislature entirely. Second, that they will get better men. Both of these propositions are not tenable. The only idea of selecting men to represent them should be to select such men as those that belong to the community; that know their wishes; that will come here representing the great interests of those who send them, and to do that they should be known in the community; and no man should be allowed to vote for more than one representative. That representative should have a constituency who could approach him. When he returns to them, he could return to a constituency and give an account of his acts. But the policy as foreshadowed in this report, in part, of dividing the State simply into Senate districts and selecting two in the district, I do not approve of. I approve of dividing the State into Senate districts, and then dividing these districts into Assembly districts—two Assembly districts in each Senatorial district. I believe it would be better that each Senate district have three Assembly districts, so that every county, even the little County of Alpine, should have a representative. Every county in the State should be recognized in a representative upon this floor. If a county is too small, disincorporate it. If they are too small for representation, provide for their combination with other counties. Give each county a representative; then you will have a representation that will have the interests of the whole people of the State at heart.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I hope that the report of the committee will be supported, and that we will do something to correspond with the wishes of the people in regard to economy. The gentleman forgets that we are about to do away with all the special legislation. What is the use of each county being specially represented here. Of course, the district ought to be represented. I will ask you, sir, in this Convention, are we not satisfied with six men to do all our legislation in Congress? Six men do it all, and you say here that sixty men in this house and thirty in the other is not sufficient to know the wants of the State, as regards these bills of general import, for there will be no special bills after this Constitution is adopted. I hope that the gentleman will do something to respond to the call of the people for economy. This report of the committee will save the people of the State of California about forty thousand dollars, as I have estimated, and something ought to be done to respond to the wishes of the people. I am opposed to this idea of creating more politicians and men striving for office, and increasing it in all these sort of ways. I trust and hope that this Convention will see the necessity of standing by the report of the committee on that subject. There will be plenty of men here, and I know that sixty men, or, in fact, a less number, could come here and pass such general laws as are needed, and they will do it faster and better than if the bodies were larger. The consideration that special legislation is to be taken out of the Legislature, in my opinion takes away all the force of the argument that every county should have a representative on this floor. All that we want is that the whole people should be fairly represented, and that they should not be crowded, so as to do business with too great rapidity. I trust that you will sustain the report of the committee in that regard.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: I offered section six of the old Constitution because I believe that as it exists in that respect it is far better than the section reported by the committee. I am satisfied, so far as I have the honor of representing—at least I feel satisfied in my own mind—that they have a representation as it now stands. I believe that it would be better for the interests of the people of the State that the representation should be as it is now; that eighty members of the Assembly and forty members of the Senate can and will do the work more to the people's interest than a less number. And as regards the objection made by the gentleman from Santa Cruz, I will say that I do not think there is any force in it. I do not think there is any gentleman who may advocate this matter that has any desire to accomplish his own political purposes. I do not think that is the object. It is not that more men shall have opportunities of filling legislative positions, but that we shall be represented, and we desire to be represented. It is said that there is a great deal of dissatisfaction, and I believe that if this remains as it is now there will be more dissatisfaction among the people. I think it should stand as it is in the old Constitution. The people of the counties generally desire to have one representative. They do not have that now, but I think if the Constitution is allowed to stand as it is now, that it would be very satisfactory to the people of the State. I believe that it is not one of the changes demanded, and I think this Convention should not tamper with it.

MR. O'DONNELL. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M.

President Hoge in the chair.

Roll called and quorum present.

FILLING VACANCIES.

MR. STEELE. Mr. President: Is it in order to proceed with the election to fill the vacancies caused by the death of Hon. J. M. Strong and Hon. B. F. Kenny?

THE PRESIDENT. Yes, sir.

MR. STEELE. Then, sir, I move that this whole matter be indefinitely postponed.

THE PRESIDENT. The question is that the whole matter be indefinitely postponed.

REMARKS OF MR. STEELE.

MR. STEELE. Mr. President: The reason I make this motion is that the session has almost expired for which we were elected, and it is very obvious that the force here is large enough, and even if we had a less number we would probably get along faster. New members coming in at this day would render very little assistance, and might be an element of discord. We now seem to have got into concord, and I see a great many reasons why we should not proceed to elect. I hope that it will be indefinitely postponed, and that no more time will be consumed in the discussion.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. President: I could not hear all that the gentleman who has just taken his seat said, but I understood him to make a motion to indefinitely postpone this matter. And he seemed to take the ground that, as we were very near the end of our labors, it is unnecessary, at this stage of the proceedings, to fill these vacancies. Now, this may look very well and very reasonable to us, but by way of starting out on this subject, I would say that when the body of the deceased member, Hon. J. M. Strong, was taken down to Merced City, the impression produced upon the citizens in those counties was this: that the per diem that was coming to Mr. Strong would go to his widow, and as it was greatly needed, it appeared to be the idea that they would not demand another representative upon this floor. In this way they were deterred from doing what they otherwise would have done in the matter. Now we find that Mr. Howard has come here to demand the place, and he has not come as an office seeker, but he comes here, backed by the sentiments of the people of those two counties. We find there are over sixty signatures from the town of Mariposa, including the District Judge, the County Judge, District Attorney, and all the merchants of the place. All the principal men there are demanding his admission to a seat upon this floor. Every class of citizens there, from all we can learn, are demanding this at the hands of this Convention. We find, also, that over in Merced it is the same thing. Then, again, we find that the best men in all that part of the country have recommended him.

Now, I do not think it will be urged by any of you, that the people of these two counties have not the right to be represented by a local representative in this body if they demand it. It is a right that we cannot take from them without doing them great injustice. They say they want to be represented. They have sent their petitions and their man here. They do not demand anything that is contrary to law, or anything that is unreasonable. True, gentlemen may get up here and say that our deliberations are almost ended, and that one man will not make much difference either one way or the other. We do not know that we have almost ended our deliberations, or that one man won't make any difference; and we do know that if we do not give to these people a representative, which they have a right to by law, we are acting in that particular illegality. We are acting unjustly. There is not a man present who cannot comprehend that fact.

Now, it may be contended that we can get along and act as we please; that this is not a material thing, and that it is entirely optional with this body. I am under the impression that this body is acting under a law made by the Legislature of this State, and that this law is imperious in its demands, and that its provisions are mandatory in this respect, and that it is a mistake to suppose that it is optional with this body. This is a thing that must be done. For instance, I would ask this body to listen while I read a small portion of this law, and although you may have concluded in your own minds that perhaps it would be better to lay this matter upon the table, have nothing farther to do with it, not fill any vacancies whatever—while you may have concluded this, still you may be wrong. You may have concluded a great many things, but I am under the impression that there are none of us who will not correct ourselves when we find we are in the wrong. I do not believe the members of this Convention would be willing to knowingly violate a law of this State. Let me read that law: Section eleven of the Act of the Legislature which governs and controls this body, says that in case any vacancy occurs by death, resignation, or otherwise, of any delegate to said Convention, the same shall be filled by the Convention. Now, we are acting under that law, and in pursuance of that law. We are not a lawless body, neither are certain things left to our option. We are here under the forms of law, and we must obey that law. Now, that law does not say that vacancies may be filled, or that it is optional with the Convention to fill them or not. It is imperatively demanded of us as law-abiding citizens—as law-abiding members of this Convention—that we give to this man a seat in this Convention. "Shall be filled," says the law. Are gentleman in this body prepared to set themselves up in the face of such a mandatory provision as that, in view of the fact that these people have sent a man of their choice here who is without demanding admittance? Will you ignore their lawful demands, and refuse him admission? Is it right? Can you say this law shall have no binding force over our actions? No, gentlemen, we must obey that law and give him a seat upon the floor of this Convention.

MR. AYERS. Mr. Chairman: I offer an amendment, to be added to the motion before the house.

THE SECRETARY read:

"And that the Sergeant-at-Arms draw the per diem of the members of this Convention for the week ending December thirty-first, and retain the pay for one day from each member, and equally divide the entire sum so retained between the families of Honorable J. M. Strong and Honorable B. F. Kenny."

THE PRESIDENT. The amendment to the motion is out of order.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I ask the privilege of speaking away from my seat, because it is almost impossible to make myself heard from my own seat. I believe it was the general understanding among members of the Convention that there would be no action taken in regard to filling the vacancies that have occurred through misfortune and death, since the assembling of the Convention. To that I believe there has never been a dissenting voice among the San Francisco delegation. I believe the delegation and the people of San Francisco, so far as I have heard, will assent to that proposition, and it was only yesterday morning that this matter was first introduced to the attention of this Convention, in regard to filling any vacancies at all.

Now, it seemed to us that if there were to be any vacancy filled it would be only just and right that they all be filled. In view of that fact, the San Francisco delegation, conferring among themselves, unanimously agreed that they were willing to indefinitely postpone the matter of filling any vacancies at all; not, however, because they are opposed to filling them, because they do not wish to deprive any county of a representative, but for reasons that have been stated by the mover of this motion, and which have, no doubt, suggested themselves to other members of the Convention, because it is near the close of the session, and we thought it just as well to let the matter stand, and take no action upon it. But, if it is the will of the Convention—if it is the wish of the majority that these vacancies be filled—then we will bring forward a candidate to fill the vacancy in San Francisco, upon the ground that if one is to be filled the other ought to be. Upon this motion we are willing to vote aye. I believe it is the universal sentiment of the San Francisco delegation. I merely wished to state this sentiment, because they are more nearly interested than any other delegation upon the floor. That is the reason I have consumed this much time.

SPEECH OF MR. JONES.

MR. JONES. Mr. President: As far as I am personally concerned I may have thought, as the gentleman from San Francisco seems to have thought, that there was no occasion for the Convention to fill any vacancies. But I have never thought so upon the basis that it is optional with the Convention to act or not as they please, in the face of the expressed will of the people of any county or district where there is no representative. It is the right, as I understand it, of every district which desires it, to have a representative upon this floor. So long as they do not demand it, of course the Convention would be justified in not taking any action. But in the case of the district composed of the Counties o Mariposa and Merced, the people have taken a very definite and forcible way of asking this Convention to fill the vacancy. It is right that they should demand it, and we should not disregard their demands.

MR. BARNES. I would like to ask the gentleman a question.

MR. JONES. Certainly.

MR. BARNES. What is the voting population of the district represented by Mr. Strong?

MR. JONES. At the last election, when only about half the votes were cast, the vote amounted to some one thousand three hundred.

MR. BARNES. How many of the voters have demanded that this vacancy be filled?

MR. JONES. This petition is signed by one hundred and thirty-seven of the representative men—the best men—in that community.

MR. BARNES. What do you mean by representative men? Every voter is a representative man.

MR. JONES. I mean by that the best men, the most reputable citizens, merchants, farmers, lawyers, miners, citizens in every branch of business in the two counties composing that district. But I wish it understood that these papers have not been circulated extensively. There has not been an effort made to obtain a large number of signatures. We all know how easy it is to fill a petition with names of men who have no particular standing or influence in the community. It is easier to produce the names of a thousand men whom a particular individual might not be able to identify than to get the names of fifty men who are well known at home and abroad. I have looked over the names here, and I see they are names of men who could not be induced to set their hands to a petition that did not fully accord with their sentiments. Many of them are men that would as soon set their names to a promissory note as to sign a request of this sort, unless that request meets their own personal approbation. Public officers are no better than anybody else, but they are representative men, who have received a public indorsement there. The District Judge, the County Judge, Sheriff, District Attorney, and all that class of men are to be seen here. And in Merced County the petition is signed by the County Judge, Sheriff, and other county officers, and the lawyers practicing in the Courts. It is signed by miners, merchants, farmers, and laboring men—men that I know stand well in the community.

Now, sir, these people make this request; I do not make it. I did not even know that it was to be made. There had been something said—I had received some notice from one gentleman in Merced County; to make a clean breast of it, I told him that he was a well known Republican there, and that, in my judgment, it would be the sense of this Convention that the vacancy should be filled by a person who might be the choice of the people, of the same politics as the deceased member, and acting on that intimation, his name was withdrawn. I then received these papers. They came from Mariposa and Merced, and I deem it my duty to urge the wishes of those people manifested in this emphatic

manner, upon this Convention, and to ask the Convention if they intend to set at naught the clearly expressed desire of the people of that district whose representative is deceased. If this Convention thinks there is a necessity for so disregarding the wishes of that people, they will of course do so; but I am utterly unable to see upon what grounds it can be done.

It is said that we are near the close of the session. Who is it that knows that? I would thank God if I had any means of arriving at that conclusion that we are nearing the close of the session. We intend to do our duty here as well as we are able to do it, and if we do, I say that there is nothing to indicate to me that we are nearing the close of the session. We are near the close of the time provided by law, near the close of the time for which the law provides that we are to receive pay. The money provided for paying us is well nigh exhausted, but that does not militate against the people in any district, or against their right to send a representative here, who shall take the same chances as to pay as the rest of the members of this Convention. All I ask of this Convention is to respect the wishes and the demands of the people of these two counties, and allow the man whom they have sent here to take his seat. It is their right, and I cannot see any possible grounds upon which they can be denied. The place has become vacant by death, and the law plainly provides how such vacancies shall be filled. I hope there will be no attempt made to thwart the desires of these people, because I say it is the manifest desire that this vacancy be filled. It is plain that there is no money in it, and that is all the better, because it shows that there is no selfish interest in it. I trust that there will be no attempt made to thwart their wishes. I deem it to be their right, and I will maintain that right as well as I am able, and I shall be very much surprised if this Convention shall fail to recognize that right.

SPEECH OF MR. BARNES.

MR. BARNES. Mr. President: I understand the gentleman to say that this petition is signed by one hundred and thirty-seven and a half men [laughter] of these counties. The vote of those two counties is two thousand two hundred and eighty. Now we all know how easy it is for anybody to get a recommendation or a protest signed. I have no objection to the gentleman, and I do not know of any objection to him; but we all know how easy it is to get up these petitions. I remember a petition was circulated in New York, among the congregation of a noted divine, asking that the minister be hung as a public nuisance, and a majority of the congregation signed it. Anybody will sign a petition. I sign them here every day, and I presume members of this Convention have signed petitions for pardons. Petitions go for nothing.

Now the committees of this body have done their work, and we are now engaged in considering their work. Now what is the use at this time of going into an election and taking up the time of this body, to bring in men who can be of no service whatever? We have counsel enough. We have one hundred and forty-eight orators besides myself, and there is little time left in which to do the work. The public does not need it. The counties do not need it. Judge Jones himself is fully able to represent that district and the counties composing it. I hope the motion will prevail. He says we must do it because the law says so. All that means is that if a vacancy occurs there shall not be an election by the people. I would dislike very much to be the man to take the sad memorials from the desks of either Mr. Kenny or Mr. Strong. I would hate to be the man to remove the crape from those desks. Let us keep these seats as a reminder of what is coming for all of us, and let the lesson of death stand in this body as it has stood, hoping that those who occupied those seats are now members of that great convention above.

SPEECH OF MR. TERRY.

MR. TERRY. Mr. President: If I believed this to be a matter which the Convention might settle according to its own will, I would support this motion. But we have the application of the people of this district, and it is the duty of this Convention to comply with their demands and give them a representative here, and I do not propose to shirk that duty. The statute under which this Convention was called provides that in case of vacancy occurring by death or otherwise, the Convention shall fill the same. It is as mandatory as any other provision in that law. It is our plain duty to fill these vacancies, and as far as consuming the time is concerned, more time has been wasted in arguing this matter than would have been required to fill the vacancies, which the people of Mariposa and Merced demand, and which is their right. The law gave to these two counties a representative, and they are without a representative here. Judge Jones is not a representative of these two counties. He represents a district composed of three counties. He does not appear here to represent that district, and if he did, they are entitled to all the representation which the law allows them. The people have a right to demand it. I place no importance upon the names of one hundred and thirty-seven and a half men. If any one man demands to be represented, he has a right to it. If an election had been called, and only five or six men had voted at that election, the candidate receiving three votes out of the five would be entitled to his seat here just as much as if he had received a majority of all the votes in the district. Now this is not a matter which this Convention has a right to dispose of according to its own whim. The people are entitled to a representative, and if they come here and demand it at our hands, we have but one thing to do, and that is to comply with their demands. We have no right in the world to refuse it.

SPEECH OF MR. STEELE.

MR. STEELE. Mr. President: Before I made this motion the gentleman from San Joaquin was in favor of indefinite postponement, or so I understood him at least. He seems to have changed his mind about the matter. What has come over the spirit of his dreams I do not know. I certainly do not wish to disfranchise the people of San Francisco, or the people of Mariposa and Merced, if it is demanded. But now the session is near its close; the committees have all reported, and what is the benefit of a man coming in at this late day, who is not at all conversant with the business before this Convention. Not only that, but we see that the election of these men will be very apt to breed discord. There is already an element of discord here. There are hardly ten members on the floor of this Convention who think alike. We have a very short time in which to complete our work; let us go to work and do it. We have had already too much dilly-dallying, and why introduce another element of discord. I am in favor of going to work. We know how little we have done, and how much remains yet to be done, and we know, too, that no injury will be done to this district by refusing to elect this man. They certainly have representatives enough on this floor to look out for and protect their interest. I do not think anybody or any interest will suffer. I think it would be greatly to their advantage, and to the advantage of the State, for us to drop this matter and go to work. I hope the motion will prevail.

THE PREVIOUS QUESTION.

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

The motion was seconded by Messrs. Brown, Ayers, West, and Wyatt.

THE PRESIDENT. The question is, Shall the main question be now put?

Carried.

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

Seconded by Messrs. Brown, West, Wyatt, and Steele.

THE PRESIDENT. The Secretary will call the roll.

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

AYES.

Barbour,	Harrison,	Schomp,
Barnes,	Harvey,	Shafter,
Barry,	Herold,	Smith, of Santa Clara,
Barton,	Hitchcock,	Smith, of 4th District,
Beerstecher,	Huestis,	Smith, of San Francisco,
Belcher,	Hughey,	Soule,
Bell,	Inman,	Steele,
Biggs,	Jones,	Stevenson,
Boggs,	Joyce,	Stuart,
Burt,	Kleine,	Sweasey,
Campbell,	Lindow,	Thompson,
Chapman,	Martin, of Santa Cruz,	Townsend,
Charles,	McCallum,	Tuttle,
Condon,	McConnell,	Vacquerel,
Cowden,	Morse,	Van Dyke,
Davis,	Nason,	Van Voorhies,
Dowling,	Nelson,	Webster,
Doyle,	Neunaber,	Weller,
Dudley, of Solano,	O'Donnell,	Wellin,
Estee,	Ohleyer,	West,
Estey,	Overton,	Wickes,
Farrell,	Porter,	White,
Filcher,	Prouty,	Wilson, of Tehama,
Freud,	Reed,	Wilson, of 1st District,
Grace,	Reynolds,	Winans,
Gregg,	Rhodes,	Ayers,
Hale,	Ringgold,	Wyatt—82.
	Rolfe,	

NOES.

Andrews,	Hilborn,	McNutt,
Blackmer,	Holmes,	Moffat,
Brown,	Howard,	Moreland,
Caples,	Hunter,	Reddy,
Cross,	Johnson,	Shoemaker,
Crouch,	Kelley,	Shurtleff,
Dunlap,	Keyes,	Stedman,
Evey,	Lampson,	Swenson,
Freeman,	Larkin,	Terry,
Garvey,	Larue,	Tully,
Glascock,	Lewis,	Turner,
Gorman,	Mansfield,	Walker, of Tuolumne,
Heiskell,	McCoy,	Mr. President—39.

NOTICE OF RECONSIDERATION.

MR. JONES. Mr. President: I changed my vote for the purpose of moving a reconsideration. I now give notice that on to-morrow, at two o'clock P. M., I will move to reconsider the vote by which this matter was indefinitely postponed.

LEGISLATIVE DEPARTMENT—LEGISLATIVE DISTRICTS.

MR. TERRY. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section five and amendments are under consideration. The first question is on the amendment proposed by the gentleman from Los Angeles, Mr. Ayers, to insert "forty" in place of "thirty," and "eighty" in place of "sixty."

MR. KELLY. Mr. Chairman: I offer an amendment to the section, which I send up.

THE SECRETARY read the amendment:

"Amend so as to read: 'The Senate shall consist of forty members

and the Assembly of eighty, to be elected by districts, as hereinafter to be provided; and the Legislature shall have power to form Senatorial and Assembly districts; provided that in forming Assembly districts each county shall be entitled to at least one member.'"

THE CHAIRMAN. The question is on the amendment of the gentleman from Los Angeles, Mr. Ayers, to strike out thirty and insert forty, and strike out sixty and insert eighty.

Division was called for, and the committee, by a standing vote of 73 ayes to 36 noes, adopted the amendment.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Yolo, Mr. Kelley.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I feel as sure as I ever felt of anything in my life, that the Committee of the Whole has voted inadvertently in adopting the amendment that has just been adopted to section five. It will be discovered, by reading this report through with all the different sections, that the scheme for thirty Senators and sixty Assemblymen is a compromise, as it was, in fact, in the committee—or partly a compromise in the committee—where there were many conflicting opinions concerning the structure and membership of the Legislature—concerning the number that it should consist of, the length of the sessions, and the per diem of members, apportionment, and all things and all matters connected with the structure of the Legislature. This scheme of reducing the number of Senators to thirty, and the number of Assemblymen to sixty, was a part of that compromise, and a great many considerations entered into it. The chief feature of it was the cutting off of special legislation; and turning to section twenty-five of the report, and comparing that with the present Constitution, it will be discovered that seven eighths of the legislation of the present day is by section twenty-five prohibited. This section provides that the Legislature shall not pass any local or special laws, in the cases therein enumerated. This has greatly reduced the labors of the Legislature, and also lessened the necessity of its representative character, as urged by a gentleman this morning. This report, taken as a whole, is designed to reduce the Legislature more to the character of a Constitutional Convention. It is designed to reduce its labors, so that they will be confined almost entirely to the perfecting of the Codes; to deprive it of the power of frittering away the people's money, to prevent jobbery, and to blot out of existence the lobby, and to reduce the Legislature to something like a fundamental body, or general Legislature, so that nearly every Act, except the appropriation bills for carrying on the Government, will be in one or the other of the Codes, in the shape of amendments to the Political, Civil, or Penal Codes, or the Code of Civil Procedure. And to this all legislation is tending at the present day. To this all the more recent Constitutions tend, that is, all those that have been adopted within the past ten or fifteen years; and the Committee on Legislative Department was unanimous, without a dissenting voice, in favor of the proposition that this Convention should take the most advance ground upon that question, and deprive the Legislature of the power to pass such laws. I allude to this because it is one of the considerations which entered into the compromise, whereby the committee reached a conclusion and reported back section five, providing for thirty members of the Senate, and sixty Assemblymen.

Now, sir, I feel sure that the members of this body have not fully considered all of these questions. I feel certain that they voted inadvertently when they voted to restore the former Legislature, instead of cutting it down to thirty Senators and sixty Assemblymen, because they have not considered all these questions, and all the different bearings this matter has upon the structure of the Legislature, as the committee considered it, before they arrived at a conclusion. And that is why I was sorry to see the vote taken so hastily upon the amendment. Since that vote was taken I have talked with the Chairman, and he says he sought to catch the Chairman's eye before the vote was taken, in order to place this whole matter squarely before the Convention, but he made a failure of it, and the vote was taken before he had an opportunity to speak. I would like to see that vote reconsidered, so that the whole report can be considered together, as a whole, as it ought to be considered.

The committee, as I said before, agreed upon this report unanimously, and they succeeded in compromising the many conflicting opinions, some of which are not embodied here. They preferred to take this as a whole rather than to bring in any minority report, which would induce confusion. It seems to me now that it would be better for the Convention to reconsider the amendment that has been adopted and allow the other sections which have a bearing upon this section to be discussed and considered in connection with this. We do not want to act hastily in this matter. We cannot afford to act hastily. We do not want to increase the number to forty and eighty, and then go on and act upon the balance of this report. We might as well strike out the rest of this report and substitute the old Constitution. This section has an important bearing upon the balance of the report—the time of the Legislature, the per diem of members, etc.—and we have found, sir, in the experience of this Convention, that ponderous bodies are incapable of transacting business with dispatch. It is not the fault of this Convention that we have sat here for almost one hundred days and accomplished nothing. It is not the fault of this Convention; it is the fault of its structure. It is composed of so many men that it is impossible to expedite business. It is just so in the Legislature. It is well known that fifty or sixty members of a Convention can frame a better Constitution, and in a much shorter space of time, than double the number. It is so in the Legislature. Thirty in the Senate and sixty in the House, when the Legislature is confined to general laws and the amendment of the Codes, is a sufficiently representative body. There is no need that every county should have a member in the lower house. There are no local laws to be passed. The Legislature, under this report, is confined to enacting general laws. Turn to section twenty-five, to which I called your attention awhile ago, and see. It says the Legislature shall pass no local or special laws in any of the following cases:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of Courts of justice.

Fourth—Providing for changing the venue in civil or criminal cases.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Vacating roads, town plats, streets, alleys, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates belonging to minors or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or incumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-Second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—Authorizing the laying out, opening, altering, or maintaining roads, highways, streets, alleys, or public grounds.

Thirty-third—For limitation of civil or criminal actions.

Thirty-fourth—In all other cases where a general law can be made applicable, no local or special law shall be enacted.

Now, it will be seen from this what a load of special legislation will be removed. All that class of legislation where it is important for the several counties to be represented, will be taken away from the Legislature and sent back to the counties to be enacted by the local Boards, so that there is no real need of a representative, so far as the local interests of a county are affected.

Now, sir, I am opposed to this amendment, and I shall move to reconsider it. These various sections depend upon each other, and the entire report ought to be considered together.

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

MR. REYNOLDS. I believe it to be in the power of the Committee of the Whole at any time to move a reconsideration. If the Committee of the Whole should at any time find that a mistake has been made, I believe it has the power to reconsider without notice being given.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: It is manifestly the wish of the majority of this Convention that the representation in the Legislature shall not be cut down. That has been shown by the vote just taken. Now, I do not know whether this amendment will disarrange the entire plan of the committee or not, but the only way by which we can come at this matter of retaining the present representation is to amend the report as we go along, and if it is necessary to strike out the entire scheme of apportionment, I do not know but the Convention will do so. I say the majority of this Convention will require that the representation shall be full and complete.

MR. DUDLEY, of Solano. I move to amend section five by striking out the words "as hereinafter provided," in line two, and insert the words "as provided by law." Also, strike out the word "fifteen," in line three, and insert in lieu thereof, the word "twenty." That will make it conform to the amendment adopted. I am under the impression that the action of the committee in refusing to cut down the representation is not inconsistent by any means. I believe the committee were fully aware of what they were doing. I hope this amendment will be adopted.

MR. LARKIN. Is the amendment of the gentleman from Yolo before the Convention?

THE CHAIRMAN. Yes, sir.

REMARKS OF MR. LARKIN.

MR. LARKIN. I think that amendment ought to be adopted by this

Convention. I do not propose to take up your time in discussing this matter, but I want to answer the gentleman from Santa Cruz, Mr. White, who, I understand, in his canvass declared himself in favor of reducing the number in the Legislature. I believe he wrote his own platform and advocated his own views.

MR. WHITE. I didn't write my own platform. It was the Workingman's platform, adopted in Convention, and I hold it in my hand.

MR. LARKIN. I know he had as much to do with it as any man. I think the people understood that he would come and represent their best interests, as far as reducing expenses is concerned. I think we should provide that members of the Legislature shall not receive more than five hundred dollars for a general session. That we can do when we arrive at section twenty, which amount should cover all their expenses except mileage, which should not exceed ten cents. All these things should be fixed in the Constitution, so that the Legislature will not have power to increase their own salaries.

Now, the proposition that each county shall be represented I believe to be the fundamental principles of government. The whole people of this State should be represented. The industrial interests, and the producing classes, should be recognized in a legislative body. The men who till the soil and delve in the mines, and in the shops, have a right to dictate legislation, and their wishes should be respected. They have that right, and this Convention should say by their votes that these varied industries should be represented. They are a class of men who will guard the interests of the whole State, and it is upon these industries that the whole State is built. They are engaged in developing the resources of California. It will not work any injury to San Francisco, because these men are all deeply interested in the prosperity of San Francisco, and her rights will be guarded and protected by every county in the State.

MR. SMITH, of Fourth District. I offer an amendment to cure an inconsistency. This amendment gives one to each county, and thus it is provided that they shall be elected by districts. I offer this amendment to cure that defect.

THE SECRETARY read:

"Add to section five: 'No apportionment shall be made which shall deny to each county in the State at least one Assemblyman,' and that the words 'by districts' in the second line be stricken out; also strike out the word 'fifteen' and insert the word 'twenty.'"

MR. BARRY. Mr. Chairman: I rise to a point of order.

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

MR. BARRY. The amendment before the house is the amendment which I offered to section five—the corresponding section of the old Constitution. The gentleman from Los Angeles, Mr. Ayers, offered an amendment, which was to leave the section practically as the law is now, that is, forty Senators and eighty Assemblymen. My idea was to not change the section. The gentleman talked of accepting the amendment, but afterwards, when the amendment was called up, he failed to do it. Now, my point of order is that three amendments have been offered—one by Mr. Kelley, one by Mr. Dudley, of Solano, and another by Mr. Smith, of Kern. Mr. Dudley offered an amendment to section five of the report of the committee, which was not before the house. It was my substitute for section five—section six of the old Constitution—that was before the house, and the amendment offered by Mr. Ayers to my substitute.

THE CHAIRMAN. The gentleman's amendment is a substitute for the whole section. The friends of the section will be permitted to amend it as they see proper. The point of order is not well taken. The substitute will be voted upon in its order.

MR. ESTEE. As I understand it, the amendment of the gentleman from Yolo is the one that is pending.

THE CHAIRMAN. Yes, sir.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: An amendment, I believe, has been adopted fixing the number of Senators at forty, and the number of Assemblymen at eighty. Now, if this amendment be adopted, of course there will be fifty-two Assemblymen distributed among the fifty-two counties, leaving twenty-eight Assemblymen to be distributed according to population. In other words, Alpine County, which polls one hundred and fifty-seven votes, would have one member, and San Francisco, which polls twenty-seven thousand votes, would have but three in the Assembly. I do not think that would be right; I feel sure that if this amendment should be adopted the Constitution would be rejected, and it ought to be rejected. Of course, if the number should be increased, as has been intimated here, perhaps an amendment of that character, giving one to each county, and dividing the balance according to population, might pass; and even then it would not be right, but the populous counties might consent to it. But the idea that a little county, having but one hundred and fifty voters, having one third the representation of a county having twenty-seven thousand to forty thousand voters, is certainly not right. It would be an experiment which I feel sure the people of the State would not indorse. It is contrary to every principle of a representative government. I do not believe that this Convention will indorse any such scheme. If the gentleman desires to increase the Assembly, as it stands in Pennsylvania, one hundred and twenty-eight; or in New York, one hundred and twenty-three; or, as it is in Missouri, then that kind of representation would be more reasonable. I do not know but it might commend itself to the favorable consideration of this Convention; but, sir, if you fix it at eighty Assemblymen, and divide fifty-two of them among the various counties, one to each county, the smallest county one, and the largest county one, and distribute the remaining twenty-eight according to population, it will be no fair or reasonable representation of the business interests of these great counties; I am, therefore, opposed to the amendment offered by the gentleman from Yolo. I understand, of course, that the very small counties would favor such a proposition, because they would get a large representation with a very small population, yet, the idea of limiting San Francisco to three members of the Assembly, I opine there would not be three thousand votes in that city in favor of the new Constitution; because it would be so extraordinary, so exceedingly unfair, so contrary to every principle of a republican form of government, that twenty-five men in San Francisco would be only equal to one in some other county. I say it would be so manifestly unjust and unreasonable that your Constitution would be ignominiously defeated, as it ought to be.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope the amendment offered by the gentleman from Yolo, Mr. Kelley, so far as retaining one representative to each county in the State, will be supported by this committee and by this Convention. I deem it to be an unwise policy upon the part of this Convention to make so few representatives to the Legislature as to practically deprive the people of this State, or a portion of them, of representation. Now, if the population of any county should become so small, so reduced, that the county is not able to maintain its county government, of course it ought to be merged into other counties, as was done in the northwestern portion of the State a session or two ago. But I do not think any county in the State ought to be permitted to maintain a distinct political organization, without being entitled to one representative in the Legislature of the State. And if increasing the number to eighty, as we have, will not entitle each county in the State to a member, and, in addition, give to the more densely populated portions of the State a proper representation, then, I say, increase the number of representatives until we can properly represent the State, and every county in the State. The State of California is able to pay for proper representation, and is willing to pay for it, and she demands proper representation; and I propose to offer an amendment that shall increase the number of representatives from eighty to one hundred, and I don't know but I should prefer to have one hundred and twenty Assemblymen and forty Senators, and elect three representatives in each Senatorial district, and elect them upon the same plan as is in vogue in Illinois—so that a bare majority shall not be able to deprive a strong minority of representation, so that every community in the State will be represented. I therefore hope that so far as the amendment of the gentleman from Yolo is concerned, allowing to each county in the State one representative, it will be maintained by this Convention. Increase the number of representatives, if it is found necessary. I want it arranged so that it will be simple and effectual. A membership of sixty Assemblymen in this State is equivalent to no representation at all, unless you want to carry on this government upon the principle of a Commission. I am in favor of Commissions, when they are necessary, but I am not in favor of transforming the Legislature into a Commission. I want the people to have representation, and I want every locality in this State to be represented. Take my district, for instance, as it will be under the apportionment marked out in this report—Monterey, San Luis Obispo, and Santa Barbara—commencing at Monterey Bay and extending down the coast one hundred and fifty miles to the county seat of San Luis Obispo, and about the same distance between San Luis Obispo and Santa Barbara. A representative there would have no more idea of the local wants of these people than he would have of the wants of the people of Siskiyou or San Diego. That district embraces a territory larger than that of the State of Pennsylvania, too large to be represented by one man. He might as well be elected from Siskiyou, for all he would know about it. Therefore, I hope that this amendment will be adopted, and each county given one representative at least, even if it becomes necessary to increase the number to one hundred and twenty.

MR. HOWARD, of Los Angeles. Is an amendment in order?

THE CHAIRMAN. No, sir.

MR. HOWARD. I give notice that, as soon as it shall be in order, I will move to have the present apportionment offered as a substitute, with the single exception of the County of Los Angeles, where there has been a great increase in population. I will move to increase the number there by one.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. We have got into confusion, and I don't see how it is possible to get out of it without the committee rising. An amendment has been adopted to section five, that the Senate shall consist of forty and the Assembly of eighty members. The idea of giving each county one representative has been suggested, but it is not possible to do so without violating our rules. The number has been fixed by the Convention. Now, sir, I am perfectly satisfied that through inattention there has been a misunderstanding here. When this question was first put, the noes evidently had it, and I did not deem it necessary to speak upon it; but when the Chair called for a rising vote, the members did not seem to understand what the question was, and it was declared carried. This amendment changes the character of a considerable portion of the report of the committee. I do not suppose it is necessary for me to argue against the proposition of having eighty Assemblymen, fifty-three of them to be apportioned one to each county, and the balance to be divided according to population. If we should adopt such a proposition as that, the Constitution would probably receive a majority of the one hundred and sixty votes in Alpine County, and would be hopelessly defeated by San Francisco with her thirty thousand votes, Alameda with ten thousand, and other large counties in proportion. It is a proposition that is not worth arguing about. Now, sir, I do not know what this committee will do—that is, what it has done. I do not know whether the Chair will entertain a motion to reconsider what has been done. It disturbs the whole business of the committee. If the Chair does so rule, I propose to make a motion by which we can get at the judgment of the committee—that is, that the committee rise, recommend to the Convention to recommit section five to the Committee on Legislative Depart-

ment, to restore that section so as to read as it was originally presented, if the Chair will entertain a motion to reconsider. If it does not, it is actually impossible to get the judgment of the majority of the Committee of the Whole on the proposition pending. I will make that motion in order to get the judgment of the Committee of the Whole.

THE CHAIRMAN. It is moved and seconded that the committee rise and recommend to the Convention to recommit section five to the Committee on Legislative Department, with instruction to restore the section as it was originally presented.

Division was called for, the committee divided, and the motion was lost: ayes, 52; noes, 55.

MR. KELLEY. Mr. Chairman: If it is in order, I would accept the amendment offered by the gentleman from Kern, Mr. Smith.

THE CHAIRMAN. If there is no objection the gentleman will have leave.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I think there has been a misunderstanding. The object of the last motion, it seems to me, was to fix the number of Senators and Assemblymen in the Constitution. Now, to give to each county one representative, and limit the number to eighty, would be doing a great injustice to San Francisco and other large places. Now, it seems to me we should present a Constitution to the people that is on the basis of economy. We should present one with a small number, or else not deal with the matter at all, and leave it to the Legislature, because we will step on a great many corns, and lose a great many votes for our Constitution. Now, if we should leave the matter as it is in the old Constitution, with the additional provision, that each county in the State shall have at least one representative, we get at the matter; and I think a large number voted against the committee rising through a misunderstanding of the matter. I believe the object was to restore the section as it was originally reported. I don't know how to get at it, whether it is in order to move to amend the section so as to increase the number or not.

THE CHAIRMAN. No, sir, it is not.

MR. SMITH. Then the only way to get at the matter is to rise.

MR. CAMPBELL. Mr. Chairman: Is an amendment in order now?

THE CHAIRMAN. No, sir. The question is on an amendment to an amendment offered by the gentleman from Yolo.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I was in favor of this section as it was originally reported; but the will of the Convention has been clearly expressed to increase the number, which has been thus fixed at forty and eighty respectively, for the two houses. I hope that no such amendment as that which has been offered here, giving one to each county, will pass. If it did pass, beyond all question the result would be the defeat of the Constitution. If you deprive the people of the larger counties of a reasonable and fair representation, they will not vote for your Constitution because that is the very essence and foundation of representative government. And they never will consent that one hundred men in one part of the State shall be more fully represented than one thousand in another part. Now, sir, the true solution of this would be to strike out simply the word "fifteen," in line three, and insert "twenty," and then you have the section complete. But the next section would have to be remodeled. And I should then propose, in the event of such an amendment being adopted, that the next section be recommitted to the Committee on Legislative Department. Population has always been, under our system of government, the basis of representation, and the people will not tolerate this proposed innovation. That is the very foundation upon which our government rests, and any attempt to foist this change upon the people will be emphatically repudiated, I can assure you.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: There is no confusion here at all. It is perfectly clear and plain, if the committee will amend the latter part of section five to conform to the former part, the section will be complete. Already an amendment has been sent up, and is now pending, to amend the latter part of the section and make it harmonize with the first part. Then, so far as the following sections are concerned, I propose, and I don't think this committee is going to yield to the idea of giving to each county in the State one representative (regardless of population); I presume we will have to vote that down, unless the number was increased very much. Otherwise it would deprive the populous portion of the State of proper representation. Now, section five ought to be amended so as to read harmonious, and I propose to offer an amendment so as to make it read that "Senatorial Districts shall remain as now provided by law, until the Legislature shall change the same."

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: As far as San Francisco is concerned I know that the electors of that city do not desire to have their representation cut down. And they are perfectly satisfied with the representation as it stands at the present time. And it seems to me that we are about to commit a very grave mistake, if we desire to insert in this Constitution any iron-clad clause that will state how many representatives there shall be in the Legislature of this State. I am utterly opposed to putting into this Constitution the number of men that shall represent the people in the Legislature. And I believe the matter should be left in the new Constitution as it is in the old Constitution, and I am in favor of the amendment of Mr. Barry, and I hope that every other amendment now pending before this Convention, and every amendment that may be offered before the committee, will be promptly voted down. I hope the report of the committee will be changed so as to substitute section six of the old Constitution, to read as follows:

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

MR. VAN DYKE. The number is limited in the old Constitution—section twenty-nine:

"SEC. 29. The number of Senators and members of Assembly shall, at the first session of the Legislature holden after the enumerations herein provided for are made, be fixed by the Legislature, and apportioned among the several counties and districts to be established by law, according to the number of white inhabitants. The number of members of Assembly shall not be less than twenty-four, nor more than thirty-six, until the number of inhabitants within this State shall amount to one hundred thousand; and, after that period, in such ratio that the whole number of members of Assembly shall never be less than thirty nor more than eighty."

MR. BEERSTECHER. Now, I believe in a clause of the character of section six. I believe in an elastic clause, one that will provide representation in proportion to population. I do not believe there is anything wrong in giving to every county in this State one representative, provided you go further, and after you have given to each county one representative, you commence and apportion by population also. Each county has one to start on, and then, if they have a certain number of voters in a county, over and above a certain number, then they have one more; and so on. Give each county one, and after that the representation should be according to population. Now, there is no objection to such a course as that. But I do not believe it is right nor just that we should say there shall be forty Senators and eighty members of the Legislature. I do not believe that is right, and then go on and say that each county shall have one, and by that way deprive the voters of San Francisco, and Oakland, and other large towns in this State, of their proper representation according to population.

MR. HEISKELL. Didn't you vote to deprive San Francisco, and Merced, and Mariposa, of representation in this body?

MR. BEERSTECHER. No, sir. Now there is one reason why it is not as necessary now in this Constitution as it was in the old Constitution. We propose to cut off all local and special legislation. We propose to take this class of legislation away from the Legislature and vest it directly in the people of the several counties. They will do their own legislation for themselves, consequently the necessity of sending men to the Legislature does not exist after the adoption of this Constitution as it did before. After considering the subject I believe the true basis of popular representation is here in the old Constitution. I believe the people are satisfied with the representation as fixed in the old Constitution. I think it will be a mistake on our part to depart from it, and I believe if we depart from the old Constitution in this particular the people will very promptly vote down the Constitution. I do not believe in putting in any iron-clad rule, and saying that there shall be forty Senators and eighty Assemblymen.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I should like very much to see each county in the State have a representative in the Assembly. But I can see that it would not be just to the larger counties, or counties having a large population, with the small number of Assemblymen that we have provided for. Consequently, I cannot support such an amendment. I believe, however, that our safety lies in adopting the substitute proposed by Mr. Barry, the section taken from the old Constitution. That will leave the apportionment as it is now, and I do not believe we can improve upon it at present. If we should undertake it, I think, more than likely, we would make it worse. For my part, I shall vote for it when the proper time comes, and I hope the committee will see the wisdom of adopting it.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: The change made by the Committee of the Whole in the number of Representatives and Senators need not affect the general plan reported by the committee, except so far as to increase the two houses. Representation ought to be based upon population. It may be very well to say that each county should have one representative; but there is no fairness in saying that the County of Alpine, with one hundred and seventy-five votes, should have the same representation as some other county with a voting population of four thousand, or three thousand. There will be no reason requiring every county to have a representative to look after local legislation and local interests in the future, if this Constitution is adopted, because it is proposed to do away with special and local legislation, and to repose in the local Legislature of each county the right to regulate their own private affairs, so that there will be no necessity for each little county to have a representative in the Legislature to watch the interests of that county. Now, it is proposed here to limit the number of Senators to forty, and the number of Assemblymen to eighty. That may be followed up by a corresponding change in the succeeding section. It will then read that "for the purpose of choosing members of the Legislature, the State shall be divided into forty districts, as nearly equal in population as may be, composed of contiguous territory," etc. Each district shall choose one Senator and two members of the Assembly. They shall be numbered from one to forty, etc. Now, it will not be necessary to make any change, except simply to substitute forty for thirty. Then I propose to add: "Until such adjustment shall be made, the present apportionment provided by law shall continue." So it will remain as it is now, until the census of eighteen hundred and eighty is taken. Then it will be the duty of the Legislature to apportion the State. Every portion of the State will have proper representation according to population. Now the changes that have been made need not render neces-

sary the remodeling of the section, until we get down to the nineteenth line; then I propose to add, in lieu of what follows, that "until such adjustment shall be made, the present apportionment provided by law shall continue."

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I regret very much that I could not hear the remarks of the gentleman from San Joaquin. Gentlemen have said something in relation to the present apportionment, and in relation to that matter I would say that the present apportionment is as unjust, in my view, as any the State has ever had. The gentleman talks about the effect that the changes might have in relation to the vote in San Francisco. I ask them to take into consideration the effect upon the votes of other districts. I say that it is unjust that San Francisco should be represented from twenty to thirty per cent higher than the population of my district.

MR. ESTEE. Do you understand that to be the fact?

MR. ANDREWS. Yes, sir.

MR. ESTEE. The gentleman is entirely mistaken, because San Francisco was entitled, under the last apportionment, to twenty-two and one half members, but we consented to take twenty, and the apportionment was made upon this ratio.

MR. ANDREWS. That was made upon no constitutional census at all. That apportionment was made, sir, upon the Federal census, and every one knows that that census, so far as the sparsely settled regions were concerned, was no census at all. The gentleman knows that the compensation for Census Marshals, even in a large place like San Francisco, was not adequate, much less so in sparsely settled counties such as I represent. That apportionment was not made upon a coustitutional basis. The basis of apportionment is the census made by the State, and the gentleman knows it. This is not a constitutional apportionment. The district which I represent is not represented within thirty per cent. as San Francisco is represented. Further, sir, it would not be just, even to make it upon the basis of votes. There are six hundred, or seven hundred, maybe eight hundred voters in the district I represent, and some of them have to go twenty or thirty miles to vote; that is not the case in San Francisco; every vote is polled, which cannot possibly be the case in the district which I represent. I say the apportionment is an unconstitutional apportionment. It is an unfair apportionment to the people of this State, and whatever you may do in this Convention, if you are going to base representation upon population, they require that there should be some consideration of the popuiation in the various districts, and not made as this last one was made, upon an unfair enumeration, not contemplated in the Constitution.

For that reason, I care not particularly as to the number, whether it is forty or thirty—whether you settle upon forty for the Senate, or thirty. If it shall consist of thirty the apportionment made here by the Committee on Legislative Department is to some extent more just than that which we are entering upon. The apportionment proposed by the gentleman from Solano is unfair and unjust. There are other parts of the State besides San Francisco to be looked to in framing an organic law. The other parts of the State have, from their very organization, paid tribute to San Francisco. It is that which has made San Francisco what she is to-day; and, I say, if representation is to be cut down, do not cut it down in such districts as I represent. I have seen, in the history of this State, representatives from other parts of the State save San Francisco from herself.

MR. JOHNSON. Mr. Chairman: In order to find a clue to get out of this labyrinth, it seems to me that the suggestion of the gentleman from Alameda was proper, though the other gentleman from Alameda has stated that he thought the vote was decisive as to the meaning of the Convention. But it was nearly a tie vote. Now, in order that the sense of the Convention may be properly tested, I move that the committee now rise, report progress, and instruct the Committee on Legislative Department to restore section five, as originally reported, so as to start right again.

MR. ESTEE. I rise to a point of order.

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

MR. ESTEE. The same motion was made awhile ago for the same instructions, and voted down.

The point of order was overruled.

On the motion, the committee divided, and the motion prevailed by a vote of 53 ayes to 48 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department. They recommend that the article be referred to the Committee on Legislative Department, with instructions to restore section five as originally presented.

MR. REYNOLDS. Mr. President: I move the reference of section five to the Committee on Legislative Department, with instructions to restore the section as originally presented.

MR. AYERS. Mr. President: I shall oppose that. The sense of this Convention is to the effect that we have eighty members of the Assembly and forty Senators, and I think the instructions should go to the committee that it is the wish of the Convention that the numbers be fixed at forty and eighty.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I hope this thing will not be done. I am opposed to cutting down representation in the only popular department of the government. There is no reason, in my judgment—and I have listened for some reason—for cutting down the Assembly to sixty members. It is not the policy adopted in any other part of the country. In Missouri, where they have changed the Constitution recently, they have one hundred and forty-three members of the Assembly. In New York, one hundred and twenty-eight; in Pennsylvania, two hundred; in Massachusetts, two hundred and fifty. In fact, nearly all the larger States in the East have from one hundred to two hundred and fifty in the Assembly, and the reason is this: that this is the popular branch of the government, through which the people speak, and that the people can only be fairly represented by people who go direct from their homes; that in a great State like this it would be a physical impossibility for a man living in San Bernardino County to properly represent San Diego County, because, necessarily, he would not be acquainted with the local necessities of the people. Now, my friend to the left represents five or six counties, composing one district, extending across the whole breadth of the State, and running down the coast one hundred and eighty miles. It is utterly impossible for him to adequately represent the wants and wishes of the people of such a large territory, and I hope the Convention will not adopt the proposition to cut down the representation in the legislative department of this State. I would much prefer to see one hundred and twenty members of the Assembly. Let us not cut it down, because there is no reason for it. Let us make the number pretty large. If we wish to be economical, limit the compensation, but do not deprive the people of a fair representation in the popular branch of the Legislature.

Now, I wish to say that the question raised by the gentleman from Shasta cuts no figure in this case. If the people of any part of the State are not properly represented, then they ought to be properly represented. Would it better their condition any to cut down the representation from eighty to sixty? I think not. I say it is against the interests of the people of this State, and I believe against their wish also, to cut down the representation in the popular branch of government, and for one I am opposed to it. It has no reference to San Francisco; San Francisco only gets her proportional share. It has no reference to Shasta. Let San Francisco and Shasta stand side by side, and be represented according to population, and let that population be ascertained according to law.

MR. ANDREWS. How would you ascertain the population?

MR. ESTEE. Ascertain it by the United States census. I am aware that there is a clause in the old Constitution requiring the State to take the census, but they have never done it.

MR. ANDREWS. Permit me further—are you not aware that in the counties I represent the last census was no census at all?

MR. ESTEE. I did not know it until I heard it from the gentleman. I had supposed it was a fair census. Let him make that representation to the committee. Let his county and all other counties be fairly represented. There is no desire to disfranchise any portion of the State. I certainly have no such desire.

MR. AYERS. Mr. President: I move to instruct the Committee on Legislative Department to adjust their report so that hereafter there shall be forty Senators and one hundred and twenty Assemblymen.

MR. JOYCE. Mr. President: My idea of representation is based a good deal on the Federal plan. We find out that every State has put it according to population. Each district is represented according to population. Now, if we say that there shall be forty Senators and eighty Assemblymen, if the population should grow to five million, it will be out of the power of the Legislature to increase the number, or to manipulate in any other way except to reduce in one place and add in another. There ought to be some way by which the representation can be increased according to population.

MR. AYERS. Mr. President: I think the amendment I sent up will take us out of this confusion and meet the views of a large number of the members. If one hundred and twenty Assemblymen is too many we can reduce the number to one hundred, but I would like to test the sense of the Convention.

THE PRESIDENT. The question is on referring to the committee, with instructions to place the number at one hundred and twenty.

MR. GRACE. Mr. President: If we refer this to the committee, and they report it back again, will it be considered as the act of the Convention?

THE PRESIDENT. It is in the power of the Convention to amend it.

MR. GRACE. Will it be in the power of a member of the Convention to move an amendment?

THE PRESIDENT. Yes, sir.

MR. GRACE. Then I am in favor of the amendment.

MR. BELCHER. I propose an amendment to make it forty Senators and eighty Assemblymen.

MR. O'DONNELL. I move we adjourn.

MR. McCALLUM. I did not hear the answer of the President to the question asked, that if the committee should restore this section, whether it will be open to amendment?

THE PRESIDENT. Yes, sir.

MR. McCALLUM. Then that being the case, the matter can come up at the proper time and be amended. I suggest that we adopt this motion and restore the original section as reported by the Committee on Legislative Department.

MR. REYNOLDS. If I understand the motion, it is that section five be referred back to the committee, with instructions to make the number forty and eighty, instead of thirty and sixty. It may be amended.

THE PRESIDENT. There is an amendment to the amendment. The first question is on the motion of the gentleman from Yuba, Mr. Belcher.

MR. REYNOLDS. Mr. President: I suggest that the whole report be referred to the committee, so that sections five and six may be adjusted to the amendment adopted by the committee, of forty and eighty, so as to complete the report. Now, the committee have adopted the numbers, forty and eighty, and what we wish is to have the report referred back to the committee to make the whole report conform to this idea.

MR. McCALLUM. There is a certain matter which has been entirely overlooked here. If gentlemen will look at section twenty-five of the

report of the committee, they will find enumerated thirty-three different matters of special legislation which the Legislature is prohibited from legislating upon in future. This whole system of local legislation is to be left to the localities concerned. I think we ought to vote down the amendments, and adopt the recommendation of the Committee of the Whole to restore section five again.

ADJOURNMENT.

MR. WILSON, of First District. Mr. President: This matter has got into such a confused condition, I move we do now adjourn. In the morning we can get at it and note the proper instructions.

Division was called for, and the motion prevailed, by a vote of 81 ayes.

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

EIGHTY-SECOND DAY.

SACRAMENTO, Wednesday, December 18th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Harvey,	Reynolds,
Ayers,	Heiskell,	Rhodes,
Barbour,	Herold,	Ringgold,
Barnes,	Hilborn,	Rolfe,
Barry,	Hitchcock,	Schell,
Barton,	Holmes,	Schomp,
Beerstecher,	Howard,	Shafter,
Belcher,	Huestis,	Shoemaker,
Biggs,	Hughey,	Shurtleff,
Blackmer,	Hunter,	Smith, of Santa Clara,
Boggs,	Inman,	Smith, of San Francisco,
Brown,	Johnson,	Soule,
Burt,	Jones,	Stedman,
Caples,	Joyce,	Steele,
Chapman,	Kelley,	Stevenson,
Charles,	Keyes,	Stuart,
Condon,	Laine,	Sweasey,
Cowden,	Larkin,	Swenson,
Cross,	Larue,	Terry,
Crouch,	Lewis,	Thompson,
Davis,	Lindow,	Tinnin,
Dean,	Mansfield,	Townsend,
Dowling,	Martin, of Alameda,	Tully,
Doyle,	Martin, of Santa Cruz,	Turner,
Dudley, of San Joaquin,	McCallum,	Tuttle,
Dudley, of Solano,	McConnell,	Vacquerel,
Edgerton,	McNutt,	Van Dyke,
Estee,	Mills,	Van Voorhies,
Evey,	Moffat.	Walker, of Tuolumne,
Filcher,	Moreland,	Webster,
Freeman,	Morse,	Weller,
Freud,	Nason,	Wellin,
Garvey,	Nelson,	West,
Glascock,	Neunaber,	Wickes,
Gorman,	O'Donnell,	White,
Grace,	Ohleyer,	Wilson, of Tehama,
Graves,	Overton,	Wilson, of 1st District,
Gregg,	Porter,	Winans,
Hager,	Prouty,	Wyatt,
Hall,	Reddy,	Mr. President.
Harrison,		

ABSENT.

Bell,	Finney,	Murphy,
Berry,	Hale,	Noel,
Boucher,	Herrington,	O'Sullivan,
Campbell,	Kleine,	Pulliam,
Casserly,	Lampson,	Reed,
Dunlap,	Lavigne,	Smith, of 4th District,
Eagon,	McComas,	Swing,
Estey,	McCoy,	Walker, of Marin,
Farrell,	McFarland,	Waters.
Fawcett,	Miller,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Dunlap and Estey.

Leave of absence for two days was granted Messrs. Campbell and Walker, of Marin.

Indefinite leave of absence was granted Messrs. Tinnin and O'Sullivan, on account of sickness.

THE JOURNAL.

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

Carried.

ATTACHES.

MR. PRESIDENT. I have a communication from the Sergeant-at-Arms, in reply to a resolution of inquiry, which the Secretary will read.

THE SECRETARY read:

To the honorable President and members of the Constitutional Convention:

GENTLEMEN: In reply to a resolution passed by your honorable body, on Saturday last, requesting me to furnish the Convention "a list of employés," and to state "if there is any that are not required to do the work in future," also if there is any employed who are not authorized by law, I will say: The employés at present consist of one Secretary, two Assistant Secretaries, one Minute Clerk, one Journal Clerk, one Sergeant-at-Arms, one Assistant Sergeant-at Arms, three Doorkeepers, four Porters, one Postmaster, one Mail Carrier, eight Pages, one Gas Porter; total, twenty-five. Salary per week, eight hundred dollars. I think the work can be done in future by a less number. The following reductions can be made, and then get along very well with the work: Four Pages, two Doorkeepers, one Porter, and one Mail Carrier. The Act creating the Convention provides that the President may appoint not to exceed one Doorkeeper and four Pages. I therefore think that four Pages and two Doorkeepers, now employed, are not authorized by law.

Respectfully submitted.

T. J. SHERWOOD, Sergeant-at-Arms.

MR. LARKIN. I move that the recommendation of the Sergeant-at-Arms be adopted.

MR. HUESTIS. I move that the whole matter be laid on the table.

MR. BARNES. I second the motion.

The motion prevailed.

LEGISLATIVE DEPARTMENT.

MR. DUDLEY, of Solano. Mr. President: I move that section five of the report of the Committee on Legislative Department be re-referred to the Committee of the Whole.

MR. ROLFE. Mr. President: What will be the effect of that motion?

THE PRESIDENT. To take it into Committee of the Whole.

MR. BARNES. Is there anything now before the Convention?

THE PRESIDENT. A motion to re-refer section five to the Committee of the Whole.

MR. McCALLUM. I would like to know what has become of the motions already pending to refer that section to the Committee on Legislative Department.

THE PRESIDENT. If this motion prevails those motions will necessarily fall. They will be disposed of by this motion, if the Convention refers it back to the Committee of the Whole. The question is on the motion of the gentleman from Solano, Mr. Dudley, to re-refer section five of the report of the Committee on Legislative Department to the Committee of the Whole.

The motion was lost, on a division, by a vote of 44 ayes to 45 noes.

MR. REYNOLDS. Mr. President: I renew the motion that was pending at the time of the adjournment yesterday.

THE PRESIDENT. The Secretary will read the motions pending at the time of the adjournment yesterday.

THE SECRETARY read from the Journal:

"Mr. Reynolds moved that section five of the article on Legislative Department be referred to the Committee on Legislative Department, with instructions to restore the section as originally reported by said committee.

"Amendment by Mr. Ayers:

"Instruct the Committee on Legislative Department to adjust their report so that there shall be forty Senators and one hundred and twenty Assemblymen.

"Mr. Belcher moved to amend 'that the committee adjust the section to the amendment, as adopted in Committee of the Whole, of forty Senators and eighty Assemblymen.'"

MR. BELCHER. Mr. President: I desire to withdraw my motion and substitute one that the Committee on Legislative Department be instructed to adjust the section by substituting section six of the old Constitution. That effects the same thing, and leaves the system so that, if it should be necessary, it can be changed. At present there are forty Senators and eighty Assemblymen, and it seems to me that at some time it might perhaps be better to have it so that it could be changed, if necessary. It seems to me that eighty Assemblymen would do at present, and that forty Senators are enough at present, but years hence it may be thought that one hundred or one hundred and twenty representatives would be better than eighty. Now, if section six of the present Constitution was adopted it would leave the system the same as it is now, and the next section will be easily adjusted to it, leaving the whole system as it is now. I therefore move to substitute, as an amendment, that the committee be directed to report section six of the old Constitution in the place of section five.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. President: I second the motion of the gentleman from the Fourth District, to substitute section six of the old Constitution in place of section five as reported by the Committee on Legislative Department, and the amendments offered to section five. That, as I understand now, would place the number of representatives at eighty and the number of Senators at forty, with the privilege left in the Legislature at any future time to increase the number as may seem proper and right to them, to give a just representation to the people of this State. I am opposed to having one Senator less than forty or one representative less than eighty, and I would prefer to have one hundred and twenty representatives to forty Senators.

MR. AYERS. I would like to know where there is found anything in section six that provides that there shall be eighty members of the Assembly and forty members of the Senate.

MR. WYATT. If there is nothing in section six, there is something in section twenty-nine which fixes it. I would prefer to go farther and provide that each county of this State shall have one representative and that there should be representatives enough to give to the heavily populated counties of the State what would be a proper representation, taking one representative from each county. I deem it important that the representation should be increased rather than diminished. Under the growth of the State of California since eighteen hundred and sixty-

San Francisco has been swallowing the population of the State, and there is every reason to believe that for the next ten, fifteen, or twenty years, she will hold the same large population as compared with the balance of the State; and to represent San Francisco will be to represent the State, simply taking the population as a basis; and in order to some extent to counteract that influence, not only for the good of the State at large, but for the good of San Francisco, it is necessary to deviate somewhat from the representation upon this basis of population, to a representation by territorial districts. But if the Convention will not allow one representative for each county of the State, then I am at least in favor of leaving it to the Legislature, so that they can increase the representation of the State when they shall see the immediate necessity for it, and I believe they will in the near future. The State of Illinois has found it necessary to provide that the City of Chicago shall never have at any time exceeding one fifth of the representation of that State. It ought to be in this Constitution that the City of San Francisco should not at any time exceed one fifth of the representation of the State of California. Based upon population now, they would have one fourth of the representation of the State, and it is not improbable that in the next fifteen years they would have one third of the representation of this State, and it might possibly be one half. It has been said further, and found to be a practical fact so far as it has been shown in the history of American legislation, that large cities are, as Mr. Jefferson described, where the corruption of legislation comes from, and that the country districts are those to be looked to for the purification of the public administration of justice. I do not want to see the representation of this State so reduced that any great city shall hold one third of the representation of the people, and then when an excitement springs up like that of last Winter, result in the passage of such laws as the gag law of the last Legislature. San Francisco, without saying anything that is not true of it, has been saved from herself by the members from the country on different occasions in this State; and it is proper that the representatives that represent the length and breadth of this broad State should be provided for. I therefore hope that nothing less than forty Senators and eighty representatives will be provided for in this Constitution; with a flexibility in this Constitution to allow the Legislature to increase at any time that the necessities of the case may require it.

Mr. O'DONNELL. Mr. President: I believe that a majority of the delegates of this Convention is satisfied with the section six of the old Constitution, to take the place of section five of the new Constitution; and to adopt that and leave out section six. These counties talking about not having proper representation! San Francisco has not a proper representation. She has now only twenty representatives. Look at El Dorado. She had four Senators and San Francisco four. These distant counties have all been well represented—always have been. There has never been any disturbance in regard to that matter. The counties have always been satisfied with their representatives except one or two of these old cow counties, where there is but some two or three hundred men living in them. [Laughter.]

Mr. AYERS. Does the gentleman say that outside of San Francisco the counties have always been satisfied with their representatives?

Mr. O'DONNELL. I have never heard any complaint except from one or two old cow counties.

Mr. AYERS. Then you had better take a trip through the State.

Mr. O'DONNELL. I have been through the State.

Mr. AYERS. Then you had better take another trip.

Mr. O'DONNELL. New York has one hundred and twenty-eight representatives. She has got six million population. California has got seven hundred thousand. Such a comparison I never heard before. In regard to the old section another thing is, if the State should increase in population there is a provision made there about the Legislature. There is a provision—and no doubt if this Constitution should be adopted there will be a great increase of population, if we get rid of the Mongolian.

Mr. HEISKELL. Do you want the Chinese to be represented—enumerated in the apportionment?

Mr. O'DONNELL. Well, we do not represent them. We have got only twenty representatives and have three hundred thousand inhabitants. Here are some of your counties with only a thousand or fifteen hundred. I want to be represented according to the census of the United States. We don't mean the Chinese. We count them more as chattels or stock. Now, Mr. President, how can we have a better clause in the Constitution than this:

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

I cannot see any reason why we should not adopt that section. This is one of the most important sections in the Constitution. You have all had a proper representation, and I hope that the amendment that this be reported back will be adopted. I see a great deal of dissatisfaction here among members. They want to load down this Constitution. They want to put a clause into the Constitution so that the whole of it will be repudiated, and if we keep these two sections there it will be repudiated. The people are well satisfied with the old Constitution in this respect, and I hope it will be adopted; that this section will be reported back to the Committee of the Whole and will be adopted. If it is it will be adopted at the next election.

Mr. TURNER. Mr. President: I wish to ask a question. If this motion prevails to refer this with instructions to replace section six in the bill we are now considering—if this is done, will it be subject to amendment in Committee of the Whole? Will it be open to amendment?

The PRESIDENT. It will be open to the action of the Committee of the Whole.

Mr. TURNER. And subject to amendment?

Mr. VAN DYKE. Yes.

Mr. MANSFIELD. Mr. President: I would like, if in order, to submit another instruction.

The PRESIDENT. There is already an amendment to an amendment pending.

Mr. MANSFIELD. I hope the gentleman will accept this additional instruction. It seems to me that the proposition now does not go far enough. The committee should be instructed to adjust the representation according to the population of the counties. My amendment is to that effect.

Mr. ROLFE. That is in another part of the article. That is provided for in another part.

Mr. MANSFIELD. I would prefer to have the instructions go to the committee together.

Mr. BLACKMER. Mr. President: It seems to me that this does not go far enough, for the reason that it will be as necessary to remodel section six of the report of the committee as to substitute section six for section five. This provides one thing that it seems to me is already provided for, and that is, the division of the Senators by lot. That is already provided for; what we wish to do is to continue the present apportionment until the next Legislature meets, or until after the next census. Both sections should be referred to the committee so that they can arrange the two.

Mr. VAN DYKE. Mr. President: The sixth section has not been taken from the Committee of the Whole.

Mr. BLACKMER. Mr. President: I had prepared an amendment to refer sections five and six to the committee, with instructions to so adjust them as to leave the present subdivisions as they are until after the next census.

Mr. MANSFIELD. That is just what we complain of.

The PRESIDENT. Section six is not before the Convention. It is in the Committee of the Whole.

Mr. MANSFIELD. That perpetuates the evil we complain of. We have over six thousand; we have not a proper representation. The County of Solano has two thousand less votes, and they have four. The County of Santa Clara has some three hundred less votes, and they have five. Under this present apportionment we should be afflicted with the same difficulty of which we complain now.

REMARKS OF MR. MCCALLUM.

Mr. McCALLUM. Mr. President: The objection to the amendment of the gentleman from Yuba is that it belongs to section six, and not to the section now under consideration. It has no reference whatever to the apportionment as provided in section six of the present Constitution. That section says nothing whatever about the number of Senators or Assemblymen. There is another section in the old Constitution which makes the apportionment. The gentleman from Los Angeles proposes that the Assembly shall consist of one hundred and twenty, and the Senate consist of forty members, making the entire representation one hundred and sixty. I cannot entertain any apprehension that this economical Convention is going to adopt a proposition making an increase of fifty thousand dollars in the expenses of the Legislature, instead of the decrease of fifty thousand dollars per session, as proposed by the committee. If the Convention favors forty and eighty, let us vote on that. If they propose to let the present representation stand as it is, let us vote upon that. Let us not mix up matters which belong to section six with matters which belong to section five. As to whether it will reach the question of whether there should be apportionment now or not, would be an open question. Let it be presented at the proper time. When a question is presented, let us vote upon that as a proposition disconnected with other matters. For my own part, I think this Convention would be derelict in duty if it should fail to make an apportionment. The Constitution has provided for a State census every ten years. It is imperative in the requirement, although it has never been complied with. But it has not been complied with, on account of the great expense. The Legislature could not make it, because it would be unconstitutional. The Constitution can make it, however, and it ought to be made, and made now, because, after the National census to be taken in eighteen hundred and eighty, there would be no meeting of the Legislature until eighteen hundred and eighty-two, no election under that until eighteen hundred and eighty-three, and no session of the Legislature under it until eighteen hundred and eighty-four—five years hence. Our present Constitution required it to be done in eighteen hundred and seventy-five. It can be made now. It ought to be made now. It is in conformity with the letter and spirit of the Constitution to say that it should be made. Some counties have doubled and trebled in population. The gentleman says it is so in Los Angeles. I know it is so in Alameda, and many other counties have doubled their population. I do not believe in waiting for the National census, when two United States Senators are to be elected, and when matters of much more consequence are to be passed upon by the Legislature. But let us vote upon that question as a distinct proposition, and not mix it up with the matters presented in section five. Let us fix the number first, and then we can proceed intelligently upon the question of distribution afterwards.

REMARKS OF MR. BARNES.

Mr. BARNES. Mr. President: I understood the view of the committee to be as stated in the instructions proposed by Mr. Belcher to the committee last night, which was that the Committee on Legislative Department be requested to adjust their report so that there should be forty Senators and eighty Assemblymen. That leaves them just as it was before. Now, then, in order to accomplish that result, it seems to me a simple matter enough to do, if we take out section five as it stands

and substitute section six of the old Constitution in place of it, and then in place of section six insert section twenty-nine of the old Constitution, so that it shall read: "The number of Senators and members of Assembly shall, at the first session of the Legislature holden after the enumerations herein provided for are made, be fixed by the Legislature, and apportioned among the several counties and districts to be established by law," etc.

The gentleman from Alameda says there are some counties in this State whose population has trebled. There are counties whose population has been very largely diminished. How are we to get at it? Certainly we cannot take the vote of the county, or the vote of the district, to determine the question of its population. Population is one thing, and the vote is another; and, as I understand it, this subject cannot be settled until we shall have such an enumeration in eighteen hundred and eighty as is provided for in the old Constitution. There is at present an apportionment that is in the main satisfactory. Now, why in the world should we undertake, without knowledge and without anything upon which to base a substantial judgment, to change it? Why not leave that subject where it properly belongs, with the Legislature, simply putting in section six of the old Constitution in place of section five of the report, and moving section twenty-nine and putting it in place of section six of the report, and leaving it to the Legislature to redistrict the State, if necessary. I think if that course were taken it would cover the whole ground, and we would be able to get over this subject.

MR. REYNOLDS. Mr. President: If the Convention will permit me to withdraw my motion, I think we can easily get out of this difficulty. If the Convention——

THE PRESIDENT. The difficulty is, there are two amendments to your motion pending.

MR. REYNOLDS. I was about to say, if the Convention will permit a withdrawal of this portion of the amendment, then I would move to refer so much of the report as relates to this subject back to the committee, with instructions to amend it so as to adapt it to the amendments adopted by the committee, restoring the numbers forty and eighty. That would obviate all this difficulty. The committee could then adjust sections five and six to the amendment already adopted by the Committee of the Whole, and report at their earliest convenience, and we could temporarily pass these sections.

THE PRESIDENT. If there be no objection, the gentleman will be permitted to withdraw his motion. The amendments would drop with it.

MR. DUDLEY, of Solano. I object.

THE PRESIDENT. The Chair will put the question to the Convention. The gentleman from San Francisco asks leave to withdraw the instructions which he moved.

The leave was granted.

MR. REYNOLDS. Mr. President: I now move that sections five and six of the report of the Committee on Legislative Department be referred to that committee, with instructions to readjust the report, so as to conform to the amendment adopted by the Committee of the Whole, to wit: forty Senators and eighty Representatives.

THE PRESIDENT. The gentleman will recollect that section six is now in the Committee of the Whole and has not been withdrawn. Section six can be adopted in Committee of the Whole just as well as to send it back to the Committee on Legislative Department.

MR. VAN DYKE. Let the gentleman confine his motion to section five.

MR. TERRY. I think the difficulty can be settled in Committee of the Whole. I move that section five be referred back to Committee of the Whole.

The motion prevailed.

MEMORIAL ON CHINESE.

MR. BARNES. Mr. President: I move to take from the table the memorial presented by the special committee on December fourteenth, to be transmitted to the Governors of Oregon, Nevada, Arizona, and Washington Territories.

The motion prevailed.

THE SECRETARY read:

MEMORIAL.

CONSTITUTIONAL CONVENTION OF CALIFORNIA,
SACRAMENTO, December —, 1878.

To the Governors of Oregon, Nevada, and Washington and Arizona Territories:

Your attention is respectfully invited to a resolution adopted by this body on the ninth instant, of which the following is a copy:

Resolved, That a committee of three be appointed by the Chair to draft petitions to be forwarded by this Convention to the Governors of Oregon, Nevada, Arizona and Washington Territories, requesting their Excellencies to memorialize the President of the United States and the Senate, on behalf of their States and Territories, for a modification of the Burlingame Treaty, now existing between the Chinese Empire and the Republic of the United States of America.

This body entertains no doubt that the people of Oregon, Nevada, Arizona and Washington Territories are in full accord with the people of California in desiring to prevent the further immigration of the Chinese, and to compel the removal of those now domiciled upon the Pacific Coast. It believes that your Excellencies have recognized the evils which have resulted from the presence of the Chinese, and that your Excellencies will cheerfully unite with us in the expression of the existing universal sentiment of hostility to its continuance to the President and Senate of the United States, to the end that the treaty now existing between the United States and the Empire of China may be abrogated, or so modified as to permit the prevention of further immigration of a vicious and non-assimilating population.

You understand, doubtless, as we do, that these people have no respect or regard for our Government, either as to its form or administration; that they govern themselves by a system of laws peculiar to themselves, and have their own tribunals for the administration of law; that twenty-five years' experience has shown that they are incapable of assimilation, either in sentiment, habits of life, or religion; that they are rapidly absorbing all branches of mechanical and manual labor, and expelling from most ordinary pursuits the middle and poorer classes of our citizens; that the destitution thus caused is developing a race of American paupers, criminals, and tramps, instead of a race of industrious, virtuous, and intelligent American citizens; that the existence of either an aristocratic or servile class is a perpetual menace of free institutions, and that both these deplorable results of Chinese immigration are imminent, and have already manifested themselves; that the habits of the Chinese, the absence of the family relation, of fixed homes, and of decent social life among them, enable them to support themselves and accumulate money upon wages which would starve an American citizen, and that their accumulations are very rarely expended or invested in the communities where they are domiciled, but are transmitted to the country of their nativity, and that they are, therefore, enabled to avoid taxation and any considerable share of the burdens of government, and to drain the circulating capital of the coast; while their criminal habits and utter immorality are filling our prisons, jails, almshouses, and places of refuge for the destitute, and debasing, by example and intercourse, the rising generation. We believe that these considerations, and others that may occur to your Excellencies, should be pressed upon the attention of the President and Congress of the United States.

This body will take occasion to express the views indicated above to the President and Senate of the United States, and respectfully request your Excellencies to officially address the treaty-making power of the Government and Congress to the same effect, to the end that they may understand the wishes, necessities, and demands of the people of the Pacific Coast in reference to the question of Chinese immigration.

MR. BARNES. Mr. President: I move that the memorial be adopted and transmitted to the Governor.

MR. SHURTLEFF. Mr. President: I do not see the necessity of including Arizona Territory. At the last report there were only nineteen Chinamen in the whole Territory of Arizona.

MR. AYERS. There are more than that there now.

MR. SHURTLEFF. In the Territory of Idaho there are a good many, but as regards Montana I, for one, do not propose to follow the Chinamen over there. I think if we had about three hundred thousand of them scattered throughout New England and the great West, it would solve this Chinese problem. I think Idaho ought to be embraced in the resolution, and Utah also. I move that Idaho be added.

MR. GRACE. Mr. President: I move that Montana be added to that report.

MR. WELLIN. I move to add Utah and Colorado.

MR. GRACE. I have lived in Montana, and know there are a great many Chinese there. If we want to do good, we had better add Montana.

THE PRESIDENT. The question is on the motion to add Idaho and Montana.

Carried.

THE PRESIDENT. The question is on the motion of the gentleman from San Francisco, Mr. Barnes.

Carried.

WASH BILL.

MR. BEERSTECHER presented the following:

SACRAMENTO, December 13, 1878.

Constitutional Convention of California, in account with Mrs. Margaret Galt, Dr.:
To washing towels, twelve weeks, seven dollars.

Referred to the Committee on Mileage and Contingent Expenses.

ICE BILL.

MR. WALKER, of Tuolumne, presented the following:

Resolved, That the sum of thirteen dollars and seventy-five cents be and the same is hereby allowed the Pacific Ice Company for ice to December thirteenth.

Referred to the Committee on Mileage and Contingent Expenses.

RESOLUTION ON CHINESE.

MR. DOWLING offered the following:

WHEREAS, That there is at present employed in the gold mines of California at least thirty thousand Chinamen; and whereas, a slight amendment to the United States mining laws would exclude all Chinese from holding, owning, or working such mining ground; therefore,

Resolved, That our Representatives in Congress be requested by this Convention to use all reasonable and honorable means to have the desired amendments incorporated in the United States mining laws.

Resolved, That the Secretary be and is hereby instructed to forward a copy of these resolutions to each of our Senators and Representatives at Washington.

MR. McCALLUM. Mr. President: I believe it is well known to those who are familiar with our mining laws, that under the Acts of Congress, as they now stand, no Chinaman can hold a mining claim in the State of California. The mining laws provide for the application for patents of mining claims, and provide that citizens of the United States, and those who have filed their intentions, may file adverse claims, and there is no provision for any other person. I undertake to say that that is the law to-day. I believe that there is no difference of opinion among those who have made a specialty of studying the mining laws, that persons that have become citizens of the United States, or have declared their intentions to become citizens, may obtain patents to claims now in the possession of Chinese. That is the statute and the laws of the United States to-day.

MR. BARNES. Mr. President: I understand the theory upon which the mines of this State have been worked from the very commencement to be, very briefly, this: The State has allowed claims to be taken up by possessory titles on property. They have been allowed to be bought and sold, devised, and treated as property. The United States has been passively acquiescing in this, and it is only until very recently that the United States has undertaken to dispose of mining claims by permitting them to be taken upon certain conditions.

MR. McCALLUM. Twelve years since.

MR. BARNES. That is comparatively a recent period. Now, so far as the law of this State is concerned, I do not understand that there is anything in it that prevents a Chinaman buying and holding as well as anybody else. If he has no title anybody might go on and make a location, and take his claim under a patent of the United States. But that is not the scope of this resolution. What I understand the gentleman from San Francisco desires to accomplish by this is some positive amendment of the mining laws of the United States, so that the United States

Government itself will inhibit and prevent the working of mines upon the public lands of the United States by Chinamen.

MR. HALE. Mr. President: I ask that the Secretary read the resolution.

THE SECRETARY read the resolution as above.

MR. HALE. Mr. President: I move to lay that resolution on the table. It is entirely unnecessary. As has been said——

THE PRESIDENT. A motion to lay on the table is not debatable.

MR. HALE. I wish to withdraw the motion temporarily, as I wish to make a remark. The resolution is——

MR. HOWARD. I rise to a point of order.

MR. STEDMAN. I object to the withdrawal of the motion.

THE PRESIDENT. The gentleman can make the motion at the end of his speech if he desires.

MR. HALE. Mr. President: As stated by the gentleman from San Francisco, Colonel Barnes, up to eighteen hundred and sixty-six the policy of the Government of the United States, in respect to its public lands, was one of silence, with the full knowledge of the fact that these lands were largely occupied for mining purposes; large sums were extracted from them, and government quietly submitted and apparently recognized it. The Courts of this State until that time considered this acquiescence upon the part of the government as a permission, and treated the occupants of mines as being the owners of the property, founded upon the well recognized legal presumption of ownership of title founded upon possession. In eighteen hundred and sixty-six, for the first time the Government of the United States was moved to take some active steps in the premises, and then not for the purpose of condemning the previous policy or practice obtaining in the mining districts, but with a view of securing title upon a safe and convenient basis. They provided for the first time that citizens of the United States, and those who had declared their intentions to become such—and limiting the right to those persons—might occupy the public lands for mining purposes; and provided at that time for the purchase by such occupants of certain classes of them upon terms which are described. Amendments were made in eighteen hundred and seventy and eighteen hundred and seventy-two, but to-day the law stands in this wise, that citizens of the United States, and those who declare their intentions to become such, and only those, are privileged to occupy the public lands for mining purposes, and the privilege is limited to that class. Now, that is all that Congress can do. I submit, therefore, that there is no occasion for this resolution whatever. The fact is that the status of our law, so far as the Federal law is concerned, is just what any of us would ask for. I move to lay the resolution on the table.

MR. BARNES. Mr. President: I submit——

THE PRESIDENT. A motion to lay on the table is not debatable.

MR. BARNES. I think the gentleman pursued a singular course. That is a nice way to do, debate it and then move to lay on the table. I hope the gentleman will pursue the same course and lie on the table.

The motion prevailed, on a division, by a vote of 51 ayes to 31 noes.

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

THE PRESIDENT. You are too late.

LEGISLATIVE DEPARTMENT.

MR. TERRY. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

MR. WYATT. Mr. Chairman: I want to offer an amendment to section five.

THE CHAIRMAN. I think there are about four amendments now pending.

MR. KELLEY. Mr. President: I understand section five was referred back to the committee.

THE CHAIRMAN. To the Committee of the Whole.

MR. ROLFE. I will ask if these amendments were not handed in before we went into Committee of the Whole?

THE CHAIRMAN. They were pending in Committee of the Whole when the committee last rose. The Secretary will read them.

THE SECRETARY read:

"Offered by Mr. Dudley, of Solano:

"Amend section five, by striking out the words 'as hereinafter provided,' in line two, and insert the words 'as provided by law;' also, strike out the word 'fifteen,' in line three, and insert in lieu thereof the word 'twenty.'"

"By Mr. Smith, of Fourth District (accepted by Mr. Kelley):

"Add to section: 'No apportionment shall be made which shall deny to each county in the State at least one Assemblyman;' and that the words 'by districts,' in the second line, be stricken out; also, strike out the word 'fifteen' and insert the word 'twenty.'"

"Mr. Barry offers section six of the old Constitution."

MR. BARRY. Mr. Chairman: I would say that before recess on yesterday I offered section six of the old Constitution, and that has not yet been read. I offered that previous to the offering, by any other person, of any other amendment, and I think that would be first in order.

THE CHAIRMAN. That amendment is a substitute for the whole section, and will come up after the others. The first in order is the amendment offered by the gentleman from Solano, Mr. Dudley.

MR. TERRY. Mr. Chairman: I understand that the word "fifteen" was stricken out. If the gentleman will read section six, as reported by the Committee on Legislative Department, I think he will agree that his amendment is unnecessary; that is, his amendment striking out "as hereinafter provided" and inserting "as provided by law." The section requires the Legislature, after the next census, to apportion the State; and, further, provides that, in making such apportionment, parties who are not eligible to become citizens of the United States shall not be taken into account. I think this is a better provision than is now in the law. It is provided so that the State may be divided into forty districts, as nearly equal in population as may be, composed of adjacent territory, after the census of eighteen hundred and eighty, and after each census taken by the United States; and that in making such adjustment, persons who are not eligible to become citizens of the United States shall not be counted as making a part of the population.

MR. BARNES. Are they not population?

MR. TERRY. They are not citizens. Alien residents are not population.

MR. BARNES. Are they not population?

MR. TERRY. No, they are not population. If they are population, they are not such that they should be counted as forming a basis of representation. They are people who are here against our will, and whom we are anxious to get rid of. They may be population, but it is a class of population like the Indians—not taxed, who are not counted in making up a basis of representation.

Mr. DUDLEY, of Solano. Mr. Chairman: On the supposition that the committee will adopt section six, that part of my amendment to strike out "as hereinafter provided," and insert "as provided by law," is not necessary. The last part is.

MR. TERRY. I understood that the other had been done.

MR. DUDLEY. It has not been done. The word "fifteen" still remains.

MR. TERRY. That, of course, is necessary then.

MR. DUDLEY. I am not particular about the rest. I therefore modify my motion.

THE CHAIRMAN. If there be no objections, the gentleman will have leave to modify his motion. The question is on the motion to strike out "fifteen" and insert "twenty."

MR. WYATT. Mr. Chairman: I really do not know what we are voting upon or what we are proposing to reach. In order to test the sense of the committee as to whether they are willing to increase the Senators to forty, if they have not been, and increase the Representatives to one hundred and twenty, if it has not been done, I shall move that this committee now rise, report back sections five and six, with the recommendation that they be referred to the Committee on Legislative Department, with instructions to report to the Convention that the Senate consist of forty members, and the Assembly of one hundred and twenty members; that they shall be elected from separate Senate and Assembly Districts, and that each county shall be entitled to one Assembly representative in the Legislature.

MR. ANDREWS. I second the motion.

MR. LARKIN. Will the gentleman allow me to offer an amendment to that proposition? If the gentleman will make it one hundred and twelve members, that will allow one for each county, and the same number as now apportioned by the committee for the balance of the State.

MR. VAN DYKE. I rise to a point of order. There are three members——

THE CHAIRMAN. This is a motion for the committee to rise; there is no amendment.

MR. WYATT. No, sir; there ought to be at least one hundred and twenty Assemblymen.

THE CHAIRMAN. The question is on the motion of the gentleman from Solano.

[Great confusion, and cries of "Read!" "Read!"]

THE SECRETARY read:

"Strike out 'fifteen,' in line three, and insert 'twenty.'"

Adopted, on a division, by an affirmative vote of 80.

MR. KELLEY. Mr. Chairman: I will insist on my amendment, offered yesterday, and would like to make a statement to this house. I have examined the last apportionment, and find that there are eighteen counties that have a joint Assemblyman that are now represented in the Assembly by nine Assemblymen. I find, also, that there are twelve counties that have two or more Assemblymen, which makes forty-eight in all. Twelve large counties have forty-eight members in the Assembly, and the eighteen small counties have nine. Now, that amendment proposes to take nine from these large counties and add to the eighteen small counties, which would then, under the present apportionment, allow these twelve large counties thirty-nine Assemblymen instead of forty-eight, which is nine less. I do hope that the amendment will pass, in justice to the small counties.

MR. VAN DYKE. Is that an amendment to section five?

THE CHAIRMAN. That is offered as an amendment to section five. The Secretary will read.

THE SECRETARY read:

"Add to section: 'No apportionment shall be made which shall deny to each county in the State at least one Assemblyman;' and that the words 'by districts,' in the second line, be stricken out; also, strike out the word 'fifteen,' and insert the word 'twenty.'"

MR. KELLEY. Mr. Chairman: I would further state that in case the Assembly was increased to ninety it would just leave it as it is, with the addition of these nine counties.

MR. WHITE. Mr. Chairman: I would say to this Convention that I trust that we may not increase the Assembly beyond what it is at present. There are many here who are in favor of having it still less, but as a compromise I would be willing to have it remain as it is. But all these attempts to get a larger representation on the floor is entirely contrary to the wishes of the people. I am perfectly satisfied that any increase in the numbers of legislators will be disapproved by the people. I think they would stand the present Legislature, but I think if we go beyond it they will not stand it. We are about to do away with special legislation. Out of seven hundred laws in these volumes there are five

hundred and odd of them which are local laws. What is the use of having the same number as are on this floor now just to overlook the general laws of the State, and get such an immense crowd here? It appears to me that the people will not stand it. I trust that the members who are in favor of going higher will come to common ground and go back to the old Legislature of eighty and forty. I am in favor of less, but at the same time I am willing to take that as a compromise. I think it is the general feeling that one hundred and twelve or one hundred and twenty would be disapproved by the people.

MR. VAN DYKE. Mr. Chairman: I understood that yesterday, in the Committee of the Whole, we voted to strike out "sixty," and insert "eighty." Then I submit any proposition that goes to change that is out of order. So the number cannot be increased from eighty without reconsidering that.

THE CHAIRMAN. The amendment does not propose to increase it.

MR. VAN DYKE. I have then to say that to attempt to distribute these eighty members so as to give each county one would defeat this Constitution, however good it may be, and I hope the members will vote it down.

The amendment was rejected.

THE CHAIRMAN. If there be no further amendments——

MR. BARRY. Mr. Chairman; I believe that my substitute is now in order.

THE CHAIRMAN. Yes, that is true. It is in order. The motion is to substitute section six of the old Constitution for section five of the report.

MR. BARRY. Mr. Chairman: I offered that substitute yesterday, believing that it would be better for the interests of the people to let the Constitution remain unchanged so that the number of representatives would be just as they are now—forty in the Senate and eighty in the Assembly. In that way the people are represented as fully as they desire to be. By the amendment proposed to be offered by Colonel Barnes, it would still give further flexibility to the section, and provide that it might be still further raised as the exigencies of the case may require, when the population of the State may increase, and the apportionment be changed, and then the number of representatives may be increased. I believe that is the sense of this Convention, that the Convention should adopt section six of the present Constitution. I believe that they realize that no change is necessary. I believe that with the amendment of the gentleman from San Francisco it would suit all this Convention.

MR. VAN DYKE. Mr. Chairman: We have perfected this section five so that it accomplishes the object contemplated by substituting section six of the old Constitution. We have it now forty Senators and eighty Assemblymen. Section six of the old Constitution provides that the number of Senators shall not be less than one third nor more than one half of that of the members of the Assembly, and then the proposition was to put in section twenty-nine. That is just the effect of what has been adopted. It is altogether unnecessary now to substitute the old section six, as moved by the gentleman from Nevada, Mr. Barry. If we substitute the old section six then we will have to put some limitation on the number, and the limitation by section twenty-nine is eighty Assemblymen and forty Senators. That we have already voted for. It is an idle work now to substitute section six, because it does not limit it at all. You must necessarily limit it somewhere. It won't do to have a body without any limit, and if you add the old limitation you will come round again to the same point we are at now, and I submit to the members that it is altogether unnecessary now to substitute the old section six. Let us allow this to remain as we have at present amended it, and we have accomplished the object had in view.

MR. MANSFIELD. Mr. Chairman: I move to amend by recommitting this section six to the Committee on Legislative Department, with instructions to adjust the representation between the counties according to the population as determined by the vote of eighteen hundred and seventy-six.

THE CHAIRMAN. The motion is not in order.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: I am in favor of the proposition made by the gentleman from Sierra, Mr. Barry. It states, in a better way than is contained in section five, the conclusion to which I think this Convention has come; and then if we add to that as a substitute for section six so much of the old section twenty-nine as is necessary, we have got a very good section. Let it be so that until the Legislature shall direct otherwise, the apportionment and representation shall be as now provided by law. The census that may be taken under direction of the Congress of the United States in the year eighteen hundred and eighty, and every subsequent ten years, shall serve as the basis of representation in both houses of the Legislature. You have there a very simple system. You are not required to go into what is population; and, as I had occasion to remark before, it seems to me unjust and improper to take the vote of any election in this State as a basis upon which representation shall be had. I see no reason why the vote of eighteen hundred and seventy-six—I believe that was the Presidential election—should be taken as a basis of representation of the people of this State. Section twenty-eight of article four of the old Constitution provides:

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

Now, sir, we see that the founders of the old Constitution considered it was necessary to get at the facts with some care. They provided for two enumerations in the early history of the State—one in eighteen hundred and fifty-two, and another in eighteen hundred and fifty-five. The basis of representation was fixed by population, and not by voters; and I do not understand that the view of my friend, the gentleman from San Joaquin, is a correct one. Population is the basis of representation, and not voting. If we have the Chinaman here, and if we have the Chinaman in San Francisco, he is a part of the population of the State. As far as he has property he is taxed. We want representation on population.

MR. TERRY. Have the Indian tribes in any Territory or any State ever been counted as population?

MR. BARNES. No, sir; and I will tell you why——

MR. TERRY. Or the slave population in the South, except for the three to five——

MR. BARNES. I do not care how many they got. They were a basis of representation in the South, as everybody knows, and the South got its representation on the basis of the slave population. There was a compromise, which never was satisfactory to the South. But they did finally get it. It was reluctantly yielded. The South always did win, because the South furnished the brains of the Democratic party. I beg pardon; there is so much conversation going on here that it disturbs my feeble mind; but it was a basis of representation. Why were the Indians not made a basis of representation? Because they were not taxed. That was the reason. The Indian was put aside upon a reservation. He was the ward of the Government, and the Government supported him, and it imposed no taxes upon him whatever. If the Indian had been taxed as we tax the Chinese, he would have been a basis of representation. If there are ten or fifteen thousand Chinese in San Francisco who are taxed, and who are not the wards of the Government, that city is entitled to representation upon that basis, and you can argue the question logically, it seems to me, upon no other ground.

What is proposed here now? That we shall take the Presidential vote of eighteen hundred and seventy-six as a basis for the apportionment of the population of this State. That is an entire departure from the system proposed by the founders of this Constitution. They had a careful enumeration of the population of this State, two within three years, in view of the enormous growth that was going on; that was taken with the census of the United States. Now it is proposed that the vote of this State shall be taken as a basis of representation. It is a violation, it seems to me, of every principle, and if you are going to take the vote of eighteen hundred and seventy-six, what reason is there for selecting that? We have had elections since; if votes are to be the basis, why not take the last election that was had, when this Convention was called? Why not take the vote of the State upon the question of the Constitutional Convention, or any other question that was ever submitted to the people? It is not right, it is not just, and I submit that this Convention has not before it, or in its possession, the proper data to reapportion this State. Mr. Cross says that we have all a pretty good idea of what the population of the different portions of the State are. The gentleman may have a pretty good idea of the population of his county, but before I could consent to vote for any basis of representation there, I should want to know with some certainty. There is no more reason for taking the vote in a Presidential election than in a Gubernatorial election; they differ as much upon the elements as anything else; bad weather and bad roads, fair weather and good roads, make a difference, sometimes, of one third of the entire vote of an election. To say that we shall determine by the vote would be to undertake to do something absolutely impossible. We would want to know what the condition of the roads were; what the state of the farming interests were, whether they could get out or not; almost whether the people were sick or well, and what the domestic details of the families in the districts of this State were, before we could undertake to determine upon any such thing. I hope there will be no attempt made in this Convention to change the apportionment so recently made by the Legislature. We fought long and hard enough for that—now the first time they get a clip at us again they try to make a new basis of representation. This is like all the other attempts to apportion this State, they have always been in the interest of some other place or some other portion of the State than San Francisco. I say it ought not to be dealt with at all, it should be left to the time, when, in the course of two years, we shall have the enumeration made by the Government of the United States. It should be left, as the gentleman from Sierra suggests, putting in section six of the old Constitution, and portions of section twenty-nine, and we shall not do anybody any injustice. If the motion of the gentleman from Sierra prevails I propose to offer as a substitute for section six the following:

"The number of Senators and members of Assembly shall be fixed by the Legislature and apportioned among the several counties and districts, to be designated by law, according to the number of inhabitants. The number of members of Assembly shall not be more than eighty, and until the Legislature shall so direct the apportionment of representation and adjustment of districts shall be as now provided by law. The census that may be taken under the direction of the Congress of the United States in the year eighteen hundred and eighty, and at every subsequent ten years, shall serve as a basis of representation in both houses of the Legislature."

It would be a remarkable thing if the suggestion of my friend Mansfield should prevail, and representation should be based upon the Presidential vote of this State in eighteen hundred and seventy-six. It would be an anomaly, sir, so far as any adjustment of representation is concerned. If any vote is to be taken I do not see why the last vote is not the best. You might as well take the largest vote as the smallest. It shows nothing, it proves nothing.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: It seems to me that this question of what should be the basis of representation in the Legislature, is an

important question, and one that we ought to deal with in a direct manner. As I understand the principle of a representative government, it is this, that every man who has a right to participate in the affairs of government, has a right to be heard equally with every other man who has a right to participate in the affairs of government, without reference to where he resides. Under the original idea of democratic government, in small communities all the members of a particular society met in one place and held a town meeting, and there expressed their vote in person. When the communities became populous, and the State large, this became impracticable, and then men began to combine and to speak in large numbers through small numbers called representatives. It was intended that the vote of one man in one locality should have as much weight as the vote of another man in another locality. I know of no reason why the man who happens to live in Alpine County should not have as much right as the man who lives in San Francisco; nor do I know of any proper rule by which a Chinaman should be entitled to as much voice in the government of this State as a white man. Now, sir, if we make the population the basis, I am not sure that it would be an advantage to colonize these Chinamen.

MR. BARNES. You can have ours.

MR. CROSS. It seems to me that one man, residing in one portion, has a right to as much influence as another. Take the Presidential vote. It seems to me that those who have a right to participate in the affairs of government is the true basis, and that perhaps the Presidential vote is the proper basis for two reasons: one reason is that that vote was a very full one all over the State. I believe it has been claimed that in some places it was almost too full. And if at such a time any portion of the people do not participate, I do not believe they deserve much consideration from any legislative body. I understand the case of the County of Alameda, in which the population has grown enormously; I can understand the case of Los Angeles, in which the population has very largely increased; and I can understand the case of other counties, in which the population has very largely diminished. I think it is right and proper that this Convention should fix the basis of representation. I was in favor of large legislative bodies, especially the lower house. It is the only place where the people directly touch the affairs of the government. It is the only place in which the people almost directly speak their wishes. The executive department rests with a very few men, and they cannot be acquainted with the great body of the people, and thus the legislative department is the representative department of the State. This State has an immense area, and with a representation of sixty and thirty we shall have one man representing two thousand square miles; and, sir, in a body like the Assembly of the State of California, I undertake to say it is impossible for one man to represent two thousand square miles. I believe we should have a larger Assembly. There should be a more liberal representation. If we had one hundred and forty in the two houses of the Legislature, we should still have each member of the Legislature representing something like six thousand people, and as the State grows the number would be increased to three or four times what it is now. The cases of Massachusetts, New York, and Rhode Island have been cited here. They have comparatively small legislative bodies, in comparison with the population, and yet the territory which each member represents is comparatively very small. While Chinamen are not entitled to representation it seems to me that there should be a large and liberal representation in the Assembly.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: The argument of the gentleman from San Francisco upon the basis of representation upon population is certainly an argument that that gentleman should not use if he is a representative of the people, and not of Dupont street and the Barbary Coast. He objects to the last Presidential vote, and yet I believe it was conceded in San Francisco that that vote was some fifteen thousand more than they were entitled to. Still he objects to taking that as a basis for San Francisco. It has been found in New York and Ohio, where there are large cities, that the interests of these cities have demanded that they should not have to exceed one fifth of the representation of the State. I am satisfied that San Francisco's interests have been protected as much by the people of this State outside of San Francisco as it has been by her own representatives. Now, so far as this question is concerned, if we don't adopt the proposition to allow each county in the State a representative, let us adopt the old section and leave it to the Legislature. If this body is not willing to act upon that proposition, the time will come, and come soon, when the people of this whole State will demand that they be represented, as they should, in the Legislature of this State. I am not in favor of limiting the number. If there is to be any limitation, I prefer to fix a minimum rather than a maximum. Provide that it should not be less than thirty Senators and not less than ninety Assemblymen, and leave it to the Legislature to provide that each county should have a representative. These counties that have been formed under some mining excitement, or some temporary excitement from some other cause, they will be weeded out. It will be the duty of the State. I hope this Convention will determine, if they cannot give to each county a representative, to leave it to the Legislature to determine the number of representatives.

MR. MANSFIELD. Mr. Chairman: The adoption of the present clause is a continuance of the injustice which I protest against. Los Angeles County is not fairly represented, as every member here knows. The only body that can give us relief is this Convention. The Legislatures do not do it, and I ask for the consideration of my amendment, which I submitted a short time ago.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: I did not catch the first part of the observations of my friend from El Dorado, but I understood him to assert several things in which I think he is mistaken. He says that everybody admits that we had fifteen thousand fraudulent votes——

MR. LARKIN. Respectable men.

MR. BARNES. Well, that comes with a bad grace. The gentleman is entirely incorrect. Various reports went about through the country, and probably the first report of it reached the gentleman. The whole subject was pretty thoroughly investigated there, and although it was decided that there was some wrongful voting there all around, it did not reach to anything like that number. There may have been two or three thousand votes that were out of order, but certainly not to exceed that. I attended the examination when the County Clerk was examined, and he came off triumphantly acquitted. I undertake to say that the vote in San Francisco, as a rule, is as fair as any vote the gentlemen ever received. I did not understand what he said about my representing the people, but he does not regret my presence here more than I do; and I only wish that whenever gentlemen have anything to say to me, that they got more votes than I did for the Constitutional Convention, to remember that I thank my friends from the bottom of my soul who voted against me, and I only wish there had been about three thousand more of them, and I would not have been here.

Now, he says there is no such thing as representation by population, and he talks like a statesman—rather an ignorant statesman—[Laughter], as to what is a basis of representation. Why, the Constitution of the United States, which, until this body met, was a respectable authority, and a man could present some of his views and put his back up against and defy the enemies of good government, has something to say on this subject. I do not suppose it is worth anything to the gentleman from El Dorado, and probably if he could have the re-creation of this government he could make a much better Constitution than Washington and the rest of the gentlemen who had that work in hand. I only wish that the genleman from El Dorado had lived in that time. Now, as I say, this heavy old humbug, the Constitution of the United States, in section two, of article one, makes some allusions to this subject. It provides for the composition of the House of Representatives, and for the electors, and as to representation, and taxes, and I was under the impression that "representatives and direct taxation should be apportioned among the several States within this Union according to their respective numbers." *Numbers*, not citizenship.

MR. LARKIN. Has that any reference to this State?

MR. BARNES. If the gentleman will allow me I will undertake to instruct him so that he won't get up again on this floor without informing himself a little on the subject about which he proposes to talk. The Constitution of the United States says:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

There is no question there as to the basis of representation. It was simply the number of free persons, including those bound for service for a term of years, and excluding Indians not taxed, and three fifths of all other persons, so that the basis of representation was all free persons in the State, including those bound to service for a term of years, excluding Indians not taxed, and three fifths of the slaves.

"The actual enumeration shall be made within three years after the first Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct."

Article fourteen of the Constitution deals simply with the question of citizenship, and not with population.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The committee will observe the difference between the basis of representation on population and citizenship. Citizenship is one thing; population for the purpose of representation is another, and the idea that underlies the whole doctrine of representation is that while a man shall only be entitled to vote upon possessing certain qualifications, either having been born upon the soil or taken the oath of allegiance to the Government, every man paying taxes is entitled to representation upon that basis. That is the principle, sir, and it cannot be denied. I do not undertake to say to what extent, because I do not know, the Chinese population have been made a basis of representation in that city. If they have not been included, upon every principle of government, they ought to be included, and I do not think the exception made in the report of the committee ought to stand. I think that San Francisco, and every other portion of the State, is entitled to representation upon this population, because this population, whether citizens or not, pays taxes. They have got to be provided for. The whole system of government reaches them. For them hospitals are built, jails are constructed, and the whole system of government revolves about them as much as it does about the voter. And while they cannot vote they are population, and in the apportionment made under the laws of the United States to-day for our representation in Congress, Chinamen are just as much a part of population for the purpose of determining our population to give us representation in Congress as the noblest white man who lives.

Now, sir, we have another illustration of this same principle of population. While the idea of the statesman from El Dorado is that nobody is entitled to be represented except the voter, I certainly think he is mistaken in that view, because in our population are counted women. Now, women cannot vote, and yet they are a basis of population upon which representation is based. Boys under twenty-one, and girls under eighteen, are a portion of the population, and they are taken into account in our basis of representation; and yet they would be excluded upon the doctrine propounded by the gentleman from El Dorado. Now,

the whole people are population. It is not merely the voter, who has the ballot and can go to the polls and vote, but it is the people, men, women, and children. It is everybody—all free persons—under the Constitution of the United States. If you could suppose such a thing as is suggested by Mr. Wilson——

MR. ROLFE. Has not the Convention acted upon the fact that the Chinese population are not free but are coolie slaves?

MR. BARNES. Exactly; but as long as they are here they are population.

MR. ROLFE. Are they free persons?

MR. BARNES. I do not know that that makes any difference on the basis of representation. It is a very good reason why they ought to go, but as long as they are here, as long as they are taxed, and are a part of the population of this State, they ought to be entitled to representation.

MR. ROLFE. Would you read from the Constitution——

MR. BEERSTECHER. I rise to a point of order. On Monday I introduced a resolution, which was adopted by this Convention, that speakers should confine themselves to the immediate subject under consideration. I hope, Mr. Chairman, that hereafter speakers will be confined to the immediate section under consideration.

THE CHAIRMAN. The point of order is not well taken.

MR. STEDMAN. I rise to a point of order.

THE CHAIRMAN. State your point of order.

MR. STEDMAN. We have a rule which prescribes that no gentleman shall speak longer than fifteen minutes and not more than once on any question. The gentleman is now speaking the second time on the question.

THE CHAIRMAN. The time has not yet expired. The Chair will announce the time.

[Cries of "Leave," "leave."]

Mr. BARNES. Thank you, gentlemen. Mr. Chairman: If the Chinaman owns any property he is taxed, he belongs to that population which is taxed, and which ought to be made the basis of representation as far as population is concerned. That is the view taken by the Constitution of the United States, and it ought to be the view taken of it here.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: We are here not only for the purpose of taking into consideration all these questions, but we are here to rectify abuses which exist under the present laws. The gentleman from San Francisco is perhaps well satisfied with the apportionment as it now exists. So, perhaps, are gentlemen from other portions of the State. I can well understand it; but I say right here that there could be no more unjust apportionment than that which we now have, and in behalf of the section which I represent I shall endeavor here to rectify the error which now exists, for it is a grave one. I shall merely call the attention of the committee to these figures. Based upon the vote of eighteen hundred and seventy-six, Los Angeles has one representative in the Legislature to two thousand two hundred and nineteen votes; San Francisco has one representative in the Legislature to every one thousand three hundred and sixty-six; Santa Clara has one representative to every one thousand two hundred and eighty votes; Nevada one representative to every one thousand and fifty-one votes; and Amador, *mirabile dictu*, has one representative for eight hundred and twenty-nine votes. Now I ask you whether there is anything fair, just, or decent in that apportionment? That Los Angeles should have one representative to two thousand two hundred and nineteen votes, while Amador has one for every eight hundred and twenty-nine votes. I say we can rectify that in this Constitution. We can at least rectify it up to the time of the next census. There will be no apportionment——

MR. FILCHER. Placer has one for every one thousand six hundred and fifty votes.

MR. AYERS. If we should adopt the old Constitution without reference to making a new apportionment, our county would continue to be represented as it is up to the year eighteen hundred and eighty-two, four more years to go on, and I say that we can do justice in this Constitution just as well as we can in the Legislature after the census of the population has been taken. I believe that it would be proper to take the Presidential vote as the basis to reapportion this State, and I hope that any action of this Convention upon the subject will take that as its basis.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I have a word to say in regard to representation on the basis of population. I fully agree with the gentleman from San Francisco, Colonel Barnes, about the sense of the term population. I take it that it means all people, black, white, and yellow. The term covers every human being, and the Constitution of the United States is correctly in point as an authority. The word "numbers" is used, the word "people" is used, and the word "population" is used, and the basis of representation undertaken to be declared. They found it necessary to deduct out of the word "population" or "numbers" certain classes of persons, and they expressly excepted them out of that, and they made the exception because they were included in the generic term first used. Exceptions always come out of something stated before. The word "numbers" was diminished by "Indians not taxed." Indians that were taxed were left in the numbers. In the Western States the Oneida Indians, and some others, were taxed, and they were included in the basis of representatives, while the Ojibbeways, and Pottawatomies, and others were excluded because they were not taxed. But "population" and "numbers" included all these persons, and those were left out which fell within the exception, and those who did not were counted in the basis of representation. Now, it has been just so here in California. Everybody has been included under the term population. Whether it is proper to exclude Chinamen is another question, but the Constitution does not affect the matter in any way whatever. If we want to represent the Diggers here we have a right to put them in. It is simply a question of expediency as to whether the Chinaman shall be represented or not. The representative must come from the voting class, but he is to represent the interest and protect the rights of all the people, and somebody or other ought to protect them. Whether it is best or not best is a question for the Convention to settle.

Now, as regards the position of the gentleman from Los Angeles. He does not deny that population is the basis of representation; but you have got to ascertain it in some way or other. They say that they are not represented, and they want some means adopted by which they will approximate the population and place them in a better position. Now, if that could be done safely I should be inclined to favor it. Whether the vote is a correct indication of population, or whether it is in the same ratio in different localities, is a question open to inquiry. So general an election as the Presidential election may give an approximately correct idea of the population, and if that would be the case, and there are no exceptional facts that I do not readily see, I do not see why that should not be effected for the next election, and let the Legislature of eighteen hundred and eighty-one or eighteen hundred and eighty-two make it right. There have been gross wrongs perpetrated in this State upon that matter. I came here in eighteen hundred and sixty-one, and that accomplished man, Governor Downey, interested himself very much in the matter. The pony express brought the census across the continent, and there was El Dorado, a very respectable county and very respectably represented, with four Senators and eight members of the Assembly. It was said in express terms, you mining counties have got the Legislature now, and if you do not keep up the cow counties will get it and take the power out of your hands, and it was offered as a reason why this apportionment should be changed. It was partially remedied then. In regard to San Francisco, I am willing to say that the fractions were taken against the city—the prejudice was against the city. In eighteen hundred and sixty-three, the Constitution being in force, we were required to have an enumeration in eighteen hundred and sixty-five. The Legislature of eighteen hundred and sixty-three passed a bill providing for an enumeration in eighteen hundred and sixty-five, and the Governor put it in his pocket because it was going to cost some money. We did not have any apportionment because he would not sign that bill, and the city was deprived of the representation that they sought. Four years ago they succeeded in getting in some apportionment. Now, sir, if you are going to let this provision stand as it is, that in the enumeration all Chinese should be excluded, I do not know of any reason why all aliens should not be excluded; certainly all aliens who have not filed their declarations should be excluded if the Chinese are. I am satisfied that this apportionment better be left to the Legislature itself, except in pursuance of the idea of the gentleman from Los Angeles, if the Convention should see fit to provide temporarily for these difficulties, and then leave it to the Legislature after eighteen hundred and eighty. I am satisfied that Los Angeles is suffering great injustice. I am inclined to support Colonel Barnes' proposition, and I am perfectly satisfied with the old Constitution.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: For instance, you take San Francisco, and under the same theory, if the vote of eighteen hundred and seventy-six is to be the test, San Francisco would have about twenty-five Assemblymen, because in eighteen hundred and seventy-six there were polled forty-one thousand six hundred and forty-six votes in that city, and whenever you open this question on the theory that at the next Legislature it is necessary to have a new apportionment for that session only, you will open it for all these counties. I apprehend that Alameda would come in, because I understand the population has increased very largely there. I think a good way is to leave that as it is for the next session of the Legislature. As to the representation of Chinese, I agree with Colonel Barnes in one proposition: that they are population, and should be taken as population, because otherwise we might lose our Congressional representation on that basis. I find that San Francisco has no greater proportion of Chinamen than other portions of the State. I find in eighteen hundred and seventy, according to the United States census, there were one hundred and forty-nine thousand four hundred and seventy-three inhabitants in San Francisco, twelve thousand and thirty of whom are Chinese. Take San Joaquin, with twenty-one thousand and fifty, there are one thousand six hundred and twenty-nine Chinese. There the proportion would be a little less. Take Yuba, population ten thousand eight hundred and fifty-one, Chinese two thousand three hundred and thirty-nine, and so with several of the counties. In fact, take El Dorado. The total number of inhabitants is ten thousand three hundred and nine, while the Chinese number one thousand five hundred and eighty-two. So that it has no local significance.

MR. LARKIN. The census takers of that county were very quiet men. It has nothing correct, and the population as taken is nowhere near right.

MR. ESTEE. That is the old argument, that the census was taken wrong, because the rule applies to other counties as well as El Dorado. I find that Alpine has six hundred and eighty-five inhabitants, eighty of whom are Chinese. I only refer to that to show that it has no local significance. I understand that there are too many Chinese in San Francisco, as there are too many in other counties. But if the State should establish a rule that Chinese should not be counted, then Congress might say that they should not be counted for the purpose of Congressional representation. Now, it is true that the gentleman may state that the Chinese will not be here at the next apportionment, but I apprehend, although my friend from San Francisco says the Chinamen must go, that they will not be away before the next apportionment. They will be here still, and while they do not vote, they are

population for all the purposes of representation. I hope that the section will either be left as it is, or that the old section will be adopted, and for this reason, that the people are satisfied with the present apportionment. I warn the gentleman from Yolo that if he got anything of the kind he proposes into this Constitution the Constitution would fall by its own weight.

MR. EDGERTON. That has been voted down.

MR. ESTEE. I understood it was before the house. I will not address the house upon a question that is not before it.

MR. DAVIS. Mr. Chairman: I believe that the law as it now stands, leaving the Legislature to regulate this matter, would suit my constituents best. I hope that we will arrive at a vote without spending much more time in this discussion.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: There was a Committee on Apportionment and Representation which should have reported upon this matter. I think we ought to defer this matter until that committee make their report if they have not done so. I have no recollection that the committee has made its report. It is a large committee, of which Mr. Murphy, of Del Norte, is Chairman. I do not know that they have made any report. Some of the members perhaps may know, but if we had a report of that committee, perhaps it would offer a better basis for our argument than we now have. As far back as I can remember it has always been a matter of contest as to how they should be represented properly in the Legislature. I think we ought to have in the Constitution a just and inflexible rule that will control the matter in the future. I do not believe in the provisions contained in the old Constitution at all. It has been unsatisfactory in its operation, and has caused all the contests heretofore, in the struggles to obtain and enjoy a large representation in some parts of the State. Representation should be based on population. That is a rule so uniform that it prevails in almost every State in the Union. There are but very few States that have not adopted that rule. So far as aliens are concerned I can find but three exceptions. In one Constitution "aliens and Indians" are excluded, in one "aliens and colored persons not taxed," in one "aliens and Indians not taxed," some others exclude "Indians not taxed." Now, in regard to the Indians of this State, by our Constitution they may be admitted to citizenship. They may become electors under our Constitution by a concurrent vote of the two houses. They are not excluded.

I do not suppose anybody can make an enlightened argument why population should not be the basis. In Pennsylvania, under the old Constitution, representation was based upon the number of taxable inhabitants. That was the Constitution of eighteen hundred and thirty-eight; but the Constitution adopted in eighteen hundred and seventy-three brought the rule right back to where it belongs:

"The State shall be divided into fifty Senatorial Districts, of compact and contiguous territory, as nearly equal in population as may be," etc.

They dropped the words "taxable inhabitants" and come to the word "population," which is the proper term. Why, take our alien population in San Francisco and in other parts of the State. Suppose there are in San Francisco one hundred thousand English, French, and others; ought they not to be represented to some extent? Is not their property to be protected? So far as representation is concerned, and it is for the protection of persons and property, is not every man in the community who pays taxes entitled to representation, in order that he may be heard in matters upon which his safety and happiness depend? Ought he not to be heard here? It is putting it down on very narrow rules when gentlemen get up here and say that because a man is not a voter he has no protection at all. But in regard to what would be a just and inflexible rule, I would be perfectly willing to adopt the rule that has been adopted in Pennsylvania and Missouri. Take the Pennsylvania Constitution. Section sixteen, of article two, says:

"The State shall be divided into fifty Senatorial Districts, of compact and contiguous territory, as nearly equal in population as may be, and each district shall be entitled to elect one Senator."

Suppose California has a population of eight hundred thousand, and we have forty Senators. Divide eight hundred thousand by forty and it would give twenty thousand for each district. Why could not the State be divided in that way? All that remains to do is to divide the State into forty districts, each composed, as nearly as may be, of twenty thousand inhabitants. Section eighteen of the same article of the Pennsylvania Constitution says:

"The General Assembly, at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into Senatorial and Representative districts, agreeably to the provisions of the two next preceding sections."

Now, we could make it so that the General Assembly, or Legislature, immediately after the next United States census, which would be in eighteen hundred and eighty, shall apportion the State into Senatorial districts—that is, into forty Senatorial districts. There is a burden imposed upon the Legislature that after each decennial census of the United States, they shall divide the State into districts as nearly equal in population as may be. There is a rule that is just. It gets rid of this eternal contest in the Legislature, and the struggle for representation there, and it is controlled by the Constitution. Why should it not be so? I would like to hear any gentleman on this floor get up and say that this rule is not just. Now in the Assembly:

"The members of the House of Representatives shall be apportioned among the several counties on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by two hundred. Every county containing less than five ratios shall have one Representative for every full ratio, and an additional Representative when the surplus exceeds half a ratio; but each county shall have at least one Representative. Every county containing five ratios, or more, shall have one Representative for every full ratio."

Now, that is a very fair and a very just rule. It gets around every question, and no man can complain, or should complain. Now, in Missouri, the provision is:

"The House of Representatives shall consist of members to be chosen every second year by the qualified voters of the several counties, and apportioned in the following manner:

"The ratio of representation shall be ascertained at each apportioning session of the General Assembly, by dividing the whole number of permanent inhabitants of the State by the number two hundred. Each county having one ratio, or less, shall be entitled to one Representative; each county having three times said ratio, shall be entitled to two Representatives; each county having six times said ratio, shall be entitled to three Representatives; and so on, above that number, giving one additional member for every three additional ratio."

Then it goes on and points out the manner. Then, in regard to Senatorial districts, the same article contains the following:

"The Senate shall consist of thirty-four members, to be chosen by the qualified voters for four years; for the election of whom the State shall be divided into convenient districts."

Now, if we had a provision here, as we have determined upon forty Senators, that, for the purpose of choosing them, the State shall be divided into forty Senatorial districts, then let the clause come in: "The Legislature, at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into Senatorial and Representative districts, agreeably to the provisions of the preceding sections."

It seems to me that would be a very easy and a very convenient mode of arranging this whole subject, that would be satisfactory to every portion of the State. The only objection that could be made, perhaps, would be that in regard to the Assembly districts. Some of the smaller counties that are contiguous would have to join together to constitute an Assembly district; but even in that respect, if the Convention see fit to give each county representation, they could do so by variation of the general rule; but I should oppose giving any county that has less than one thousand inhabitants a full representative. It is not just. Nor do I think it is just to cut off representation where the population is large, no matter how large it may be. If you tax a county in proportion to the property and population, why should you not give them representation in proportion to population? Taxation and representation, according to the rule that has been established in this country, go together, and should not be separated. Taxation and representation, therefore, should go together in every county of the State. Why not in San Francisco as well as in El Dorado, or any other county? The first time that I was in the Legislature of the State of California El Dorado had four Senators, and they considered themselves as magnanimous as another. We were placed upon equality. But in course of time population has increased in San Francisco and diminished in El Dorado.

I hope we will not go back to section six, and I hope that we will adopt a system here in accordance with that which has been adopted by the different States of the Union, which is up to the progress of the age, and which should be based upon such rules fixed in the Constitution that we will get rid of this constant struggle in the Legislature in regard to representation. If I had my wish about it I would propose that this section six be deferred until the Committee on Representation and Apportionment make their report, or if they do not, let it be referred back to the Committee on Legislative Department, to arrange it in Senatorial Districts.

MR. BARNES. Mr. Chairman: I desire to make an explanation in reference to this matter. Mr. Murphy, the Chairman of the Committee on Apportionment and Representation, had designed some attention to this matter, when he found that the Committee on Legislative Department had taken control of the whole thing he has ceased and gone overland to Del Norte, so that we are a committee without a Chairman.

MR. TERRY. The Committee on Legislative Department investigated nothing which was not referred to them by this Convention.

MR. BARNES. I did not say so.

MR. TERRY. I understand that that committee has never met but one time, for organization. It was more than a month after that committee was formed before the Committee on Legislative Department recommended this. That was not the true reason that the gentleman paid no attention to the matters submitted to him, because some other committee was considering them, for he did not know what the Legislative Committee was doing.

MR. VAN DYKE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

The Convention then took the usual recess.

AFTERNOON SESSION.

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

Roll called, and quorum present.

LEAVE OF ABSENCE.

MR. SHAFTER. Mr. President: I ask for indefinite leave of absence. I have to go to the city on business that demands my attention, and I hope to be able to return on Monday.

Granted.

RECONSIDERATION—SPEECH OF MR. JONES.

MR. JONES. Mr. President: Pursuant to notice given on yesterday, I now move to reconsider the vote by which the motion to proceed with the filling of vacancies in this Convention was indefinitely postponed. I make this motion, Mr. President, with the most perfect respect to this Convention as a body, and to the members of this Convention individually. There was not a full house, in fact it was rather thin, when that vote was taken. Moreover, I did not hear any objections to the action contemplated in that motion, to proceed to fill the vacancies in the Convention, which seemed to me to be sufficient to satisfy the minds of members of this Convention. The motion, as made, was in accordance with petitions that were sent here and submitted, from certain respectable and responsible people of the Counties of Mariposa and Merced, that this Convention fill the vacancy occasioned by the death of the Hon. J. M. Strong. It was my duty to present those petitions to this body, as a member—the only member here representing any portion of that district. Being a representative of a district embracing three counties, of which these two counties form a part, very properly, as I understand it, these petitions were sent to me. I have already given to this Convention my personal guarantee in regard to the character of these petitioners. There may be those present, however, who were not present at the time I gave them. To those, as briefly as possible, I will say this: that while the number of men is not great, compared to the number of votes in the two counties—a hasty count shows one hundred and thirty-seven—they are among the best men to be found in the two counties, representing the several walks of business—as good as are to be found in any other counties. They make the request that the vacancy caused by the death of the Hon. J. M. Strong be filled. They name the man who is their choice to occupy the position. Now, sir, I not only desire that they should be heard here, I not only desire that the petitions which they have presented to this Convention should be fairly considered and acted upon, in the best judgment of the Convention, upon its own merits alone, separated from all other considerations, but I claim that the will of the people of this or any other district is entitled to respectful consideration. And it is the will of the people, for this request is uncontradicted. There is no other gentleman recommended from these two counties to fill this vacancy.

The two questions are separate. The first question is that of filling this vacancy, and then members can suggest any name they may desire. If the Convention resolves to fill the vacancy, they can then say what person shall fill it. I claim nothing exclusive in that respect. But I do claim this: that in accordance with the principles of republican government—in accordance with the customs and usages in this State—the people of those two counties are entitled to be fully represented in this Convention.

Now, the matter is a very simple one, and I design occupying but a very few moments of your time in its discussion. If there be objections to it, of course it is open to those objections. But the objections I have heard I cannot take as being good grounds why this Convention should refuse to accede to the wishes of the people of that district. As expressed yesterday, these objections amount to this and no more, that the number of petitioners was not a large proportion of the voters in the two counties. I do not consider it sufficient excuse for refusing the prayer of these petitioners. I do not understand that in order to present a petition before this body that will be entitled to your consideration, or credence, it must contain the names of a majority of the voters of these two counties. If that were so, they might as well go and hold an election.

It is true the number of petitioners happens to be one hundred and thirty-seven; and they happen to be men nearly all of whom I know personally. They are the foremost men of the counties—merchants, miners, laborers, farmers, in fact men of various professions and callings. There are other men as good as they, but these are prominent men in these several pursuits in these two counties, and they most respectfully ask this Convention, for their own interests—for the local interests of these two counties—that a man be appointed to fill this vacancy. Now, the objection raised that the number of petitioners is too small, does not appear to me to be good ground why these people should be treated with absolute contempt, when that request comes to a representative body such as this. The gentleman from San Francisco took occasion to get off a witticism—I suppose he considered it so—by saying that the number was one hundred and thirty-seven and a half. As to that matter I do not care to comment upon it. I think the gentleman who has given birth to such a thing as that should have a midwife in attendance to see him safely through it.

The next objection made was that we are almost through with our work. We have passed over a large part of the allotted time, but what is the fact? We have passed in Committee of the Whole upon three or four reports of committees, and they have yet to come up in Convention for further pruning, perhaps. If it was true that we are nearly through; if this Convention had but one week more to sit, I still would not concede to this Convention the right to deny to any district in the State the representation which the law gives it, if the people demanded it at the hands of this body. They have a right to be represented, if only for a week.

The next objection that was mentioned was that it would produce discord; that it would introduce a discordant element. That is rather extraordinary. They say, we have got along so far, and got nearly through, you propose to give us more chin music, and set us all agog again. Now, Mr. President, I can assure gentlemen, as far as personal assurance can go, that the gentleman represented to fill this seat made vacant by death, is like most of the other people of California, very well advised as to what we have been doing. He does not, any more than the great mass of thinking people in this State, rest in ignorance of the progress we have made, of the steps we have taken, of the resolutions we have passed, of the reports we have passed upon in the Committee of the Whole. I say you cannot take any intelligent man in the State of California, and bring him here now, who does not know nearly as much of the business of this Convention as we do. If there be such a man, he ought to be denied the right of suffrage. For what we have done has been merely a reconnoissance—and my military friend from San Francisco will understand me—over the subject, of making a Constitution to be submitted to the people. As to the gentlemen who are to be introduced to these vacant seats troubling this Convention with "chin music," I do not know any ground upon which such a supposition can be based. I have not myself heard any talk upon the floor of this Convention which I would be willing to characterize as chin music. I had supposed I was in the midst of a body of honorable gentlemen who knew their duties, and who were trying to do them; and who, when they arose to address the Convention and the Chair, were speaking words which they were empowered to speak by a sense of duty, and to a point they thought proper at the time. I had supposed they were speaking from a sense of duty, or as a matter of conscience, and I have not felt disposed to characterize their utterances as "chin music." And I do not think any gentleman in this Convention can be afraid of "chin music" being introduced here in the future, unless he is afraid to look in the looking-glass himself. I say such objections as these ought to have no weight in deciding this matter. I do not wish the matter to be passed over as a frivolous matter. I do not wish such suggestions as this, that new chin music will be introduced, to influence members in their actions upon this question. It is a question of popular rights. It is a question whether the people of this district shall be arbitrarily denied representation in this Convention when they come and demand it. And I say now—I may be mistaken—I do not attempt to impose any opinions—but I say now that I desire a vote to fill every vacancy that shall occur in this body from this time on till the close of our labors, whenever there comes a respectful demand that such vacancy be filled. I do it as a matter of principle and right. If any one district in this State has no right to be represented here, then my district has no right, your district has no right, and no other district has any right. Right is right.

Now, I am not aware that any other objections have been offered in this body to the motion to fill the vacancies occasioned by death than those I have enumerated. I feel at liberty to say that I have heard it insinuated, outside of this body, that a great number of resignations are going to occur in this body as soon as the money runs out. Now, that may possibly be true. I do not believe it, and I will not believe it until I see it. I am not aware that money considerations brought us here, in the first place. I am not aware that we are able to come here for the money there is in it, and leave the vocations by which we support ourselves and our families. And I do not believe, though I may be mistaken, that these insinuations are true, that a great number of members of this Convention are going to resign—vacate their seats as soon as the money runs out. But, sir, if they are going to do it, if they do do it, I say for myself—and I hope I speak the feelings of other gentlemen—I hope the people of the districts which they represent will promptly name to us some better men to fill the vacancies; some men who don't move exactly as the money moves, and we will elect them; men who will come here to stay, fodder or no fodder; men who will come to do their duty, even at the sacrifice of personal convenience, as most of the members here have done. I will be in favor of filling all such vacancies, upon the demand of the people of such districts, manifested in a proper and respectful way.

I am very well aware that there will be hardships, which will be felt by many members, when the time comes that they can no longer receive the money which is necessary for their support; and if there be any man in that straight, and he has no friend that will support him here in the performance of his duty, why he will not be subjected to censure, and I would not breathe a word against him. But it is my hope, sir, that as long as we have reasonable hope that we can do that which we came here to do; so long as there is a prospect of accomplishing the grand object which the people set out and undertook to accomplish when they ordered this Convention, so long I hope we shall stand substantially a solid body. I should prefer rather to adjourn now and go home, than that a large number of the members of this Convention should, from any necessity whatever, retire, vacate their seats, or resign, and their seats remain unfilled by this Convention, so that the action of the Convention would be merely the action of a bare quorum. I should prefer in that event to adjourn at once. I want the Convention to be substantially a full Convention when we come to pronounce upon the final work. If we cannot do that, I shall have great fears as to the ultimate fate of the instrument when it comes to be submitted to the people.

As for myself, I stand pledged to vote to fill every vacancy that may occur by resignation, death, or from any other cause. I believe it is right. I believe it is expected and demanded of us, and I believe duty demands of us that we shall stay here, as far as possible, all those who can stay, until the work is completed; and I hope if any vacancies do occur, that the people will send men here to fill them—men who are able and willing to assist us in what yet remains to be done. I am aware that the vote of yesterday was a very strong vote. Nevertheless, for the reasons I have recited here, I believe we should fill these vacancies. I have not heard one solitary reason why we should refuse to listen to respectful petitions from recognized legal districts of the State, and I am led to hope that this Convention may decide to take a different view of this matter to-day from what they did yesterday. If it does not, I shall have done my duty. I have expressed my views, and they will stand, not only on this question, but every other question like it. I believe in representation. We have spent nearly two days talking about apportionment and representation, and I would like to know what that apportionment is worth if you are going to disfranchise a district or two or three districts. If you have a right to disfranchise one, you have a right to disfranchise twenty districts. I would not give a snap for all the apportionments that can be made here, if they shall amount

to this: that when that apportionment recommends that there shall be a representative from one district, and that representative happens to die, we are denied the right to have his place filled. I submit this matter to the consideration of the Convention, most respectfully, that the idea of popular sovereignty, as far as applicable to this matter, will not be treated with contempt. There has been a respectful demand made here to have these vacancies filled, and I do hope and expect, where such a demand as this comes to this Convention, it will not be treated with contempt, despising the very principles by which we ourselves are here in the capacity of members of the Convention. I therefore move, sir, that the vote taken in this body on yesterday, on the motion to fill the vacancy created by death, in the district composed of the Counties of Mariposa and Merced, and in the County of San Francisco, be filled. I move that they be filled in this order: First, the vacancy caused by the death of J. M. Strong, and second, the vacancy caused by the death of B. F. Kenny, delegate from San Francisco.

SPEECH OF MR. HOLMES.

MR. HOLMES. Mr. President: In seconding the motion of the gentleman from Mariposa, to reconsider this motion, I wish to say that I hope the Convention will decide to reconsider this matter. When it was first brought up yesterday, from a personal knowledge of the applicant, and of the citizens who sign this petition, I had intended to indorse the nomination, but was prevented by the action of the Convention. I do not see why it should have been necessary for him to come here with petitions at all. If he had come here himself and asked this Convention to fill that vacancy, it seems to me to be our duty, under the law, to proceed to fill it. But, instead of that, he comes here backed by one hundred and thirty-seven respectable citizens of the two counties, asking that the place be filled. Colonel Barnes wants to know why they want that place filled. I answer, that it is the will of the people that the place be filled, and we have no right to deny them. In addition to the petitions that have been presented here, I have here an extract from a paper published in that district, in which it says:

"The seat in the Constitutional Convention, made vacant by the death of the Honorable J. M. Strong, has to be filled by some one to be selected by the Convention. We understand that Mr. Howard is an applicant, and we know of no one better qualified for the discharge of those duties than Mr. Howard. He has natural ability, has had legislative experience, having represented this county in the Assembly in eighteen hundred and fifty-eight, and has also held the office of District Attorney one term. He has resided in Merced County since eighteen hundred and forty-nine."

That is from the county paper, and in addition to that, he comes here with the recommendation of one hundred and thirty-seven of the best citizens of the counties. I hope the Convention will reconsider the vote and fill these vacancies. If the San Francisco delegation desire to have the other vacancy filled I will vote for it.

SPEECH OF MR. REDDY.

MR. REDDY. Mr. President: The right of representation is acknowledged and conceded on all hands. It is one of the important principles of popular government in this country, and why it should be denied to any community I am at a loss to understand. There are in this case two counties in which there are one thousand three hundred voters, and perhaps four thousand or five thousand people. They are entitled to representation here. The fact that we have proceeded some distance with this business, is no reason why they should be excluded. They have a right to be represented all the way through, even to the very last act; they have a right to be represented even on the question of final adjournment. I presume no one will deny it. If the Legislature had not commanded us to fill these vacancies, it would still be our duty to fill them when requested to do so. And why any member of the delegation from San Francisco should attempt to prevent it is more than I can see. When their own county is so well represented, I do not see why they should deny that right to others, for not only is the majority in San Francisco represented, but the minority also, and the very gentleman who most strongly opposes this election, I believe, represents the minority. Why should the right be so persistently denied when these people are here demanding representation? Why the gentleman from San Francisco should, for a moment, question the statement of Judge Jones, I am unable to understand.

MR. BARNES. I did not, sir.

MR. REDDY. I understand that the people of these two counties desire to have this vacancy filled, and Colonel Barnes asked him first how many voters there are there; and next, how many had signed the petition. Mr. Jones replied, that it was signed by one hundred and thirty-seven representative men of the two counties; and the gentleman from San Francisco was not satisfied with that statement, but wanted him to define what he meant by a representative man of the county—what was the definition of the term. Colonel Barnes claimed that every voter was a representative man. Now, I do not understand that to be the definition of a representative man, because, in that case, the Colonel himself would be a representative man. I understand a representative man, in a political sense, to be one who can carry the majority of the votes in the community where he lives, or the district in which he resides. So there we have a farther definition of the term representative man, and I presume that Judge Jones had that definition in view when he answered that gentleman.

The only question seems to me to be, whether there is a demand from that district that this vacancy be filled. I claim, whether there is or not, it is our duty to fill that vacancy as soon as an applicant appears. We have the statement of Judge Jones to the effect that the people of these counties desire the vacancy filled, and I am sure that Judge Jones' statement, made on this floor, ought to be sufficient, as to the will of the people whom he represents. Certainly his statements are entitled to respectful consideration, which Colonel Barnes seems to deny. He seems to attempt to raise a doubt as to whether there is a demand. I think that demand has been fairly made. The insinuations of the gentleman are insufficient to overcome the statements made here, and the petitions signed by one hundred and thirty-seven men of the two counties. If it is his intention to set up such doubts against such a showing, I can only compare it to the gentleman who stands in midsummer day under the scorching rays of the sun for the purpose of admiring his own shadow.

What reason is there for denying to these people representation? It has already been clearly stated by the gentleman from Mariposa, and I shall not take up the time in going over the ground again. But they have a right to be represented. We have important business yet before us. You propose to deal with the question of water rights, of property rights; you propose to make a new bill of rights; you propose to readjust representation, and yet you propose to leave this important district entirely without counsel. I cannot see how such a measure can be indorsed by this body. Not only is it true with this district, but there are other districts similarly situated, having a common interest in the business here. For instance, those who are interested in mining desire to have the aid and counsel here of those who are experienced in such things. Again, the gentleman from San Francisco has made use of an argument that I never heard used before. I never heard it used to carry a point. I never heard a statesman use the memory of the dead for the purpose of carrying a point in a deliberative body, speaking as though it would be a disgrace, or sort of sacrilege, to fill these seats. Why, nearly every legislative body that ever met in this hall has lost one or more members, and it has never been considered disrespectful to fill the vacancies. So I hope this Convention will recognize the right of these people to be represented, and proceed to fill the vacancies. If San Francisco does not desire any more representation on this floor, it is her right to say so, but if the people want it it is their right to demand and receive it.

SPEECH OF MR. O'DONNELL.

MR. O'DONNELL. Mr. President: I shall vote to reconsider this vote. I think it is the duty of every honorable delegate to do it. They have a right to it. The law demands it. "In case a vacancy occur by reason of death or otherwise, the same shall be filled by the Convention." That is what the law says. Under that law we are sent here, and that law we have got to abide by. There is a flimsy excuse made by one delegate here, Mr. Estee, that if we fill this one vacancy we have got to fill five or six more that will be caused by resignation. That was the excuse he made to the gentleman that was sent here to represent the people. Now, sir, I think it is our duty to represent the people of that county, and to elect the representatives that are sent here. They demand it, and the law insists that it shall be done. Several other gentlemen have made the same excuse. We want to fill the vacancy in the San Francisco delegation, and I hope the Counties of Mariposa and Merced will be allowed to fill that one. I am going to vote to reconsider this question, and I am satisfied that it will be carried.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: I do not rise to reply to the statement made by the delegate from San Francisco, though I have made no such statement as he imputed to me. I have made no such statement as that on the subject. What I was going to say was this: that I shall vote against reconsideration, not because I am opposed to representation, but because if we do go ahead and elect a representative from that county, we should certainly do the same with the northern district, and the same for San Francisco, and I think that the time had better be devoted to the regular business of the Convention. And I do not agree with the gentlemen from Inyo and from Mariposa, as to the absolute necessity of filling these vacancies, because it was only yesterday that it was well understood that if the widow of the late J. M. Strong could get the ten dollars a day, they would not have demanded representation. It seems they were more anxious about the ten dollars a day than about representation.

MR. BROWN. You misunderstood me, sir. I said if it had not been for the idea that the widow would get the ten dollars a day, the protest would have come here sooner.

MR. ESTEE. I understood that was the reason they had not applied sooner. I have nothing to say against the gentleman who presents himself—I presume he is a gentleman well qualified to discharge the duties of this position. I presume he would represent the wishes and reflect the views of the people of that district, but I presume it would take two or three days to get through with this question of electing delegates to fill vacancies, and I hope we will not go into it. We are too near the close of the session, and have too much else to attend to.

SPEECH OF MR. STEDMAN.

MR. STEDMAN. Mr. President: I do not desire to detain this Convention in the discussion of this question; but I desire to say, that as far as I am concerned, I will never vote against the request of these people for representation. I don't care whether it is signed by one hundred and thirty-seven and a half or by one humble citizen—the humblest in that county. I say, sir, that if only one citizen should come here and demand representation, he has a right to it. When I see gentlemen standing here and talking about the right of the people to have representation, and when a practical case is brought before this Convention vote against it, I cannot think they are consistent. Is it consistency? When I see the gentleman from San Francisco, Mr. Barnes, standing here and telling us he does not wish to see the crape torn off of these desks, what do you think? I think, sir, he would rather see those empty desks because he fears the result; he would rather look on the empty desks than look into the face of one person who may be put in. Now, I like sentiment; but, Mr. President, the

people of Mariposa and Merced are entitled to representation. They have no representative on this floor, and they come here asking for a representative. The law says when a vacancy occurs in this Convention we shall proceed to fill it. Now, sir, a petition has come here from those two counties asking that this vacancy be filled, and it is mandatory upon us to proceed to fill it. I am surprised that any gentleman like Mr. Estee should stand here and talk about that other vacancy in the northern district. Does he not know that the absence of Mr. Berry does not create a vacancy? There is no vacancy in that district. If he does not know it, he ought to know it. There is no vacancy, and cannot be a vacancy, unless a suit is brought by the people of that district. I shall vote to reconsider the motion; and I hope there will be an overwhelming vote in favor of it. At least I shall place myself on record in favor of it.

THE PREVIOUS QUESTION.

MR. HOWARD, of Los Angeles. Mr. President: I call for the previous question.

The motion for the previous question was seconded by Messrs. Brown, West, Evey, Wyatt, and White.

THE VOTE RECONSIDERED.

THE PRESIDENT. The question is on the motion to reconsider.

MR. STEDMAN. I demand the ayes and noes.

Seconded by Messrs. Gorman, West, Evey, and White.

The Secretary called the roll, and the motion to reconsider prevailed by the following vote:

AYES.

Andrews,	Harrison,	Nelson,
Ayers,	Harvey,	O'Donnell,
Barbour,	Heiskell,	Reddy,
Barton,	Hilborn,	Ringgold,
Bell,	Holmes,	Rolfe,
Blackmer,	Howard,	Schell,
Brown,	Hunter,	Schomp,
Caples,	Johnson,	Shurtleff,
Charles,	Jones,	Smith, of Santa Clara,
Condon,	Joyce,	Smith, of San Francisco,
Crouch,	Kelley,	Soule,
Dean,	Keyes,	Stedman,
Doyle,	Laine,	Swenson,
Dudley, of San Joaquin,	Lampson,	Terry,
Dudley, of Solano,	Larkin,	Tully,
Evey,	Larue,	Turner,
Farrell,	Lewis,	Tuttle,
Freeman,	Lindow,	Vacquerel,
Garvey,	Mansfield,	Walker, of Tuolumne,
Glascock,	Martin, of Alameda,	Webster,
Gorman,	McCoy,	Weller,
Grace,	McNutt,	White,
Graves,	Mills,	Wilson, of Tehama,
Hale,	Moffat,	Wyatt.
Hall,	Moreland,	Mr. President—75.

NOES.

Barnes,	Hitchcock,	Rhodes,
Barry,	Huestis,	Shafter,
Belcher,	Hughey,	Smith, of 4th District,
Biggs,	Kleine,	Steele,
Boggs,	Martin, of Santa Cruz,	Stevenson,
Burt,	McCallum,	Sweasey,
Cross,	McConnell,	Thompson,
Davis,	Morse,	Townsend,
Dowling,	Nason,	Van Dyke,
Edgerton,	Neunaber,	Van Voorhies,
Estee,	Ohleyer,	Wellin,
Filcher,	Porter,	West,
Freud,	Prouty,	Wickes,
Gregg,	Reed,	Wilson, of 1st District,
Herold,	Reynolds,	Winans—45.

THE PRESIDENT. The question is now upon the indefinite postponement of the motion to go into an election.

Lost.

FILLING THE VACANCIES—MARIPOSA AND MERCED.

THE PRESIDENT. The special order is upon filling the vacancies. Nominations are now in order.

MR. JONES. Mr. President: I nominate, to fill the vacancy in the Assembly District composed of the Counties of Merced and Mariposa, Mr. W. J. Howard, a resident of that district for the past twenty-nine or thirty years.

There being no further nominations, the Secretary called the roll, with the following result:

FOR HOWARD.

Andrews,	Burt,	Estey,
Ayers,	Caples,	Evey,
Barbour,	Charles,	Farrell,
Barnes,	Condon,	Filcher,
Barry,	Crouch,	Freeman,
Barton,	Davis,	Freud,
Beerstecher,	Dean,	Garvey,
Belcher,	Dowling,	Glascock,
Bell,	Doyle,	Gorman,
Biggs,	Dudley, of San Joaquin,	Grace,
Blackmer,	Dudley, of Solano,	Graves,
Brown,	Edgerton,	Hager,
Hale,	Martin, of Santa Cruz,	Smith, of 4th District.
Hall,	McCallum,	Soule,
Harrison,	McCoy,	Stedman,
Harvey,	Mills,	Steele,
Heiskell,	Moffat,	Stevenson,
Herold,	Moreland,	Sweasey,
Holmes,	Morse,	Terry,
Howard,	Nason,	Thompson,
Huestis,	Nelson,	Townsend,
Hughey,	Neunaber,	Tully,
Hunter,	O'Donnell,	Turner,
Inman,	Ohleyer,	Vacquerel,
Johnson,	Porter,	Van Dyke,
Jones,	Prouty,	Van Voorhies,
Joyce,	Reddy,	Walker, of Tuolumne,
Kelley,	Reed,	Webster,
Keyes,	Reynolds,	Weller,
Laine,	Rhodes,	Wellin,
Lampson,	Ringgold,	West,
Larkin,	Rolfe,	Wickes,
Larue,	Schell,	White,
Lewis,	Schomp,	Wilson, of Tehama,
Lindow,	Shurtleff,	Wyatt,
Mansfield,	Smith, of Santa Clara,	Mr. President.
Martin, of Alameda,		

FOR MONTGOMERY.

Gregg, Hitchcock.

Whole number of votes cast	111
Necessary to a choice	56
Mr. Howard received	109
Mr. Montgomery received	2

Mr. Howard, having received a majority of all the votes, was declared duly elected a delegate from the Counties of Mariposa and Merced.

SAN FRANCISCO.

MR. REYNOLDS. Mr. President: I move that the Convention proceed now to fill the vacancy caused by the death of Hon. B. F. Kenny.

THE PRESIDENT. Nominations are in order for that position.

MR. REYNOLDS. Mr. President: Nominations being in order, I will state that I am instructed by the unanimous vote of the delegation from the City and County of San Francisco to place in nomination Hon. J. R. Sharpstein. We have heard much during this discussion concerning the filling of vacancies, about obedience to the popular will. I suppose that this Convention has now arrived at the conclusion to obey the popular will, by filling these vacancies. It has, in obedience to the popular will, voted to fill the vacancy in the Counties of Merced and Mariposa, upon a petition of one hundred and thirty voters. I might say, sir, that I present here a petition of more than fourteen thousand voters of the City and County of San Francisco, being a majority over all, in favor of the gentleman I have named to fill this vacancy. It is not necessary for me to say more than that. Judge Sharpstein has long been known in public life, having filled the position of District Judge in the City and County of San Francisco. He received a majority of all the votes cast for a seat in this Convention. We put him forward as the delegate named by that delegation, under the impression that he is the choice of the people of that city.

MR. O'DONNELL. Mr. President: I second the nomination of John R. Sharpstein. I do it on account of knowing Judge Sharpstein a great number of years. And he received the largest vote of any member elected to this Convention, and I hope will receive the unanimous vote of this Convention.

MR. ANDREWS. Mr. President: I place in nomination John J. Kenny. He is a brother of the deceased member, and I understand he is a very worthy gentleman.

MR. VACQUEREL. Mr. President: I second the nomination of Mr. John J. Kenny, upon the same principle that I voted for Mr. Howard. Mr. Kenny is a brother of the deceased delegate, belongs to the same ward—the Fourth Ward—therefore, as every county and every district has a representative, I think I shall support a candidate from that district.

MR. KLEINE. I nominate Mr. Flynn, of San Francisco. The reason I object to Mr. Sharpstein is that we have more lawyers and Judges now in this assembly. Then I say let us have a few honest workingmen. If we had less lawyers here we would make better progress as we have made so far; and by all means let us have a few more honest men in this Convention. I nominate Mr. Flynn, a faithful member of the Workingmen's party.

MR. WILSON, of First District. Mr. President: I stand by my guns to use the phrase of the gentleman from San Francisco, and put in nomination again before this Convention, Mr. R. H. Lloyd, whom I nominated once before to fill a vacancy. I have nothing to say against the gentlemen who have been nominated by other members upon this floor. I think, however, that Mr. Lloyd will make a better representative on this floor than any man who has been named, notwithstanding he is one of that poor, despised profession, called lawyers. Mr. Lloyd is a young man, in the prime of life, a man of experience in matters of this kind, and will be of more use to us than any other man I know of who could come into this Convention at this late day. He is a man whose character is above reproach, and nothing can be said against him. He ran upon the Non-partisan ticket and was defeated, though he received the largest vote of any man upon the ticket. Therefore, without saying anything against these other gentlemen, I present his name before this Convention.

MR. BIGGS. Mr. President: I take pleasure in seconding the nomination of Mr. Lloyd, as a gentleman I have had the pleasure of knowing;

for a number of years. Notwithstanding I agree with gentlemen that we have rather too many lawyers, he is an honest lawyer, and I want him to stand off against some of these corrupt lawyers and politicians. I trust that this Convention will elect him, for he stands as pure and white as the noonday sun. You might as well attempt to strike the noonday sun as to say anything against the character of Mr. Lloyd. I ask you to elect a man who will be an honor and a credit to the Convention and to the State, and that man is Mr. Lloyd, of San Francisco. [Laughter.]

MR. BEERSTECHER. I am instructed to state for Mr. Flynn, that he is not a candidate for a position here, and that he does not desire to place any impediment in the way of Judge Sharpstein. Consequently his name is not before this body. He has requested me to make that statement.

MR. KLEINE. I was not aware that Mr. Sharpstein was a candidate.

MR. BEERSTECHER. I am rather surprised at my friend Major Biggs, for he told me not longer ago than this morning that he intended to support Judge Sharpstein heartily.

MR. BIGGS. I never told you anything of the sort, sir. Whenever I am misrepresented I claim the right to be heard. It is false as false can be.

MR. BEERSTECHER. That is what I understood you.

MR. WHITE. I desire to appeal to you, gentlemen, to do what is fair towards San Francisco. [Cries of "Call the roll!"] No, sir; they come here united in putting in nomination a certain man. There was no effort made by San Francisco to defeat any man being nominated by other counties. Now I do appeal, in the name of justice and equality; for the sake of harmony in this Convention; for the good spirit it will engender, for you to let San Francisco have the man of her choice.

MR. TERRY. Mr. President: By request, I place in nomination for this position R. A. Leonard, a resident of the fourth ward, San Francisco, a man of intelligence, ability, learning, and honesty.

MR. BARRY. Mr. President: In the words of my learned friend from San Francisco, I propose to stand by my guns. When the matter of filling the vacancy occasioned by the resignation of Mr. Morris was before this Convention, the friends of Mr. Lloyd placed him in nomination, as a gentleman whom they said was well qualified for the position, and a man of integrity. The Workingmen of San Francisco also placed in nomination the name of Judge Sharpstein, as one who had carried a very large vote in the City of San Francisco, the largest vote, as I understand it, of any man before the people. They represented that he was the choice of the people, twice expressed at the ballot box, and that if this Convention desired to be governed by the will of the people we should select him. But at that time there appeared to be sufficient reasons in the minds of the members to reject him and select another.

Now, sir, the same question comes up again to-day, and I indorse the nomination of J. R. Sharpstein now, as I did then, believing that he combines all the requisites necessary to fill this position with credit to himself and to the people of this State. During my short acquaintance with him, I believe I can say he is a gentleman of integrity and ability. That he is a fine jurist, and a man of such conservative and moderate views that he will be able to render valuable service to this Convention, and to the people of this State. And, sir, in supporting him, I am warmly supported by a large number of the most eminent members of the San Francisco bar, some two or three of whom are upon this floor. It affords me pleasure to be able to give the indorsement of such gentlemen as are upon this floor from San Francisco, sitting as Non-partisans, who, while they are friendly to Mr. Lloyd, have also indorsed Judge Sharpstein for the position of Judge, and paid him a very complimentary vote. I have here a paper, signed by a number of eminent lawyers, warmly indorsing Judge Sharpstein for the position of Judge of the Twelfth District Court. This paper was circulated in eighteen hundred and seventy-five, among the members of the San Francisco bar: "We, the undersigned, members of the bar of the City of San Francisco, wish to recommend to the support of the voters of this city and county, the Honorable John R. Sharpstein for Judge of the Twelfth District Court, the office now held by him," etc. Now, sir, I submit that when gentlemen of such high character as those whose names appear here, among whom I see those of Colonel Barnes, S. M. Wilson, M. M. Estee, J. W. Winans, of this Convention—when they honor him by indorsing him for the position of District Judge, that it is good evidence of his fitness for this position. I am satisfied that such men as Messrs. Barnes, Wilson, Estee, and Winans would not have signed that paper unless they believed it to be true. Therefore I submit that it ought to be sufficient evidence for this Convention. I believe the gentleman is worthy of the very high recommendations he then received.

MR. FILCHER. What year was that?

MR. BARRY. Eighteen hundred and seventy-five.

MR. FILCHER. Was he elected?

MR. BARRY. He was appointed first to this position, and then he came up for election. I was merely trying to show what these lawyers thought of him then. But the indorsement of these gentlemen was not sufficient, it seems.

MR. WILSON. The honest people, spoken of by Mr. Kleine, defeated him, notwithstanding the recommendations of the lawyers.

MR. BARRY. When they gave him as large a vote as they did, it was plain to be seen that he was their choice, because he ran several thousand votes ahead of any other person. I wish to read what the lawyers say about him.

"John R. Sharpstein took his seat this morning. The place within the bar of the Court-room was crowded with attorneys"——

MR. JOHNSON. I move that the reading be dispensed with, and that it be printed and laid upon our desks.

MR. BARRY. When the indorsement was brought here from Mariposa County, in behalf of Mr. Howard, it seems the Convention was willing to act upon that. They were governed in their action by the petitions presented and the statement made by Judge Jones. Now they ought to be willing to hear what members have to say in reference to Judge Sharpstein.

["Objection;" "objection."]

MR. DOWLING. Mr. President: The name of John J. Kenny has been placed in nomination here to fill the vacant chair, caused by the death of his brother. I am personally acquainted with him; he is twenty-six years old, and follows the same profession as his brother; he lives in the same ward, and I am confident will represent the wishes and views of his constituency. I will recommend him to the consideration of this Convention as a good and faithful representative, and one in every way worthy to be elected to this honorable position. I would not have risen in connection with this matter at all, but it has been represented here that it was the unanimous wish of that delegation that Judge Sharpstein should be chosen to fill that position. Now, a meeting was held and Judge Sharpstein's letter of acceptance was shown, but this vacancy is in the fourth ward and Judge Sharpstein lives in the eighth ward, which has three representatives here now. I shall, therefore, support Mr. Kenny.

MR. KLEINE. I withdraw the name of Mr. Flynn, and I hope we will be able to elect one of our men, and not let them get away with it.

MR. HOWARD, of Los Angeles. Mr. President: I had made up my mind to vote against Judge Sharpstein here. I thought we had exhausted the subject, but since I have learned of the indorsement of Colonel Barnes, Mr. Wilson, and Mr. Estee, I must say that I cannot disregard such high authority.

MR. BARNES. Mr. President: I have no desire to enter again into this controversy; I do not propose to do it; I only wish to say one word with reference to this paper. Every lawyer knows that when he goes before the Judge on the bench he has the interest of his client at stake. When a petition is presented to him in favor of a man upon the bench, he cannot risk his client's interests by refusing to sign it.

MR. HOWARD. Does the gentleman mean to say that he recommended a person for Judge, who was totally unfit for the position, because he had cases pending before him?

MR. BARNES. What I mean to say is this: that where a paper is put before you by the Judge's most intimate friend, it is a very risky thing, when you have clients whose interests are at stake, to decline to sign it. We all know that the same kind of papers are circulated by almost every man who is a candidate for Judge, and there is not one lawyer in ten who would be unwise enough to refuse to sign it, when he had a large number of cases pending in the Court. He would not dare to put himself in direct personal antagonism to a Judge without doing injustice to his clients. For instance, the friend of the Judge goes to Mr. Wilson, and he signs his paper; he comes to me, and I think over this matter and that matter, and I don't want to have his friend go back and say, "Barnes said so and so, and refused to sign it." I know how sometimes a client's case is lost because the Judge has a difficulty with the lawyers. I have seen it and felt it over and over again. These men signed this indorsement, but there was not one in ten, perhaps, who voted that way, because, when it came to an election, the result was not what might have been expected from such an indorsement as this. Now, the gentleman can criticise as much as he pleases.

MR. BARBOUR. Was that recommendation for honesty, capacity, purity of character, etc., given after the Spring Valley decision to which you referred on a former occasion in this Convention?

MR. BARNES. I think it was. But the Supreme Court had put its heel upon it before that time. I have had trouble enough about this thing, and I don't care whether he comes here or not.

MR. REYNOLDS. I would like to ask a question. If, after the retirement of Judge Sharpstein from the bench, a meeting of the bar was not held, at which the gentleman himself was present, and if he was not one of the most complimentary speakers on that occasion, after Judge Sharpstein had retired from the bench, and there was no case pending before him?

MR. BARNES. I have no recollection of any such thing. On the contrary, I assisted the opposition candidate in that election. I assisted him in raising money to make the canvass.

MR. BARBOUR. What was the amount of greenbacks—how much was it?

MR. BARNES. It cost five hundred dollars to pay the assessment.

MR. REYNOLDS. I would like to ask the gentleman if that is the way he takes to win his cases?

MR. BARNES. Yes, sir, that is the way I undertake to win that kind of a case, when my friend is a poor man, and cannot raise money to pay his assessment.

MR. REYNOLDS. Then I understand the gentleman recommended one man, and spent his money for another.

MR. BARNES. I signed the recommendation for his nomination; I didn't care who nominated him.

MR. ESTEE. Mr. President: I not only signed that recommendation, but I remember going to the Governor of this State, and in the most earnest manner requested him to appoint John R. Sharpstein to that position. I was in the Legislature, in this room. I sought his nomination, and used all the means in my power to secure his appointment by the Governor, and he was appointed. I signed that recommendation; I did all I could to secure his election; I voted for him, and worked for him. When I worked for him and voted for him, I did so upon principle; and now I am going to vote against him, and I do that from principle. I did not introduce this subject, but it has been brought before the Convention, and I propose to give my reasons for the faith that is in me. I shall vote against him for a member of this Convention, because, at the time when there was great excitement in San Francisco, when it was feared that a large portion of the people might rise against the city government; at a period when strife and turmoil and trouble prevailed; when property and lives were in danger from the torch; when men were wild

with excitement; at that time, sir, Judge Sharpstein appeared upon the stage of action. Just from the bench, it might have been expected that he would range himself upon the side of law and order. Instead of warning the people, who were excited and infuriated (not without cause, it is true), but excited upon great subjects—instead of telling them they must bear their ills for a time; instead of saying to them, your remedy is at the ballot box—appeal to that first—as a Judge should have done, I remember distinctly that he said he was surprised they had borne it so long. Instead of trying to pacify, he heaped fuel upon the flame which threatened to destroy the city. And for that reason, and for others that I might name, I shall not vote for him to fill the vacant seat in this Convention. I have nothing to say against the Workingmen's party; I have nothing to say against these gentlemen; but I cannot support a man who pursued such a course as Judge Sharpstein did. Instead of trying to quiet the excitement, and advising them to obey the law and appeal to the ballot box for their redress, he added new fuel to the flame, and said he was surprised they had borne their evils so long.

MR. BEERSTECHER. I desire to ask you to what particular time you refer—what date?

MR. ESTEE. I have not time to go through the files of papers; we can ascertain it when we have leisure.

MR. BEERSTECHER. According to my best knowledge, sir, the first time that Judge Sharpstein appeared before the people was at or immediately prior to the nominations, which would place it about the month of May, eighteen hundred and seventy-seven. I don't think he had anything to do with the Workingmen's organization prior to May.

MR. ESTEE. I did not say anything about the time. But I assert it to be a fact, and the public prints of San Francisco will show that it is true. My friend from San Francisco will find himself very much mistaken if he asserts that these statements were not made. Any other questions?

MR. GRACE. I have lived in San Francisco for the last ten years, and I have never seen any signs of a riot.

MR. ESTEE. I am not speaking of a riot. I was not there, and I do not know how near it came to being a riot.

MR. WINANS. Mr. President: I was one of those who signed that memorial read from to-day. I recommended Judge Sharpstein, because I believed from his past career that he was a good man for the place. But, sir, his career subsequent to that has proved a bitter disappointment, and therefore I shall now vote against him.

MR. WELLIN. Mr. President: For ways that are dark and tricks that are vain, commend me to the gentleman who signed this long recommendation in favor of Judge Sharpstein, and now gives as an excuse that he was afraid if he refused to sign it the interests of his clients might suffer. And then, after signing it, he turned round and worked for another man. Now, if they did this as a simple matter of interest to themselves and their clients, how do we know that there is not the same sort of interest in getting this vacant seat filled by the man of their choice, a man who will bring them votes here. These are little questions to answer, but they are questions that require some explanation. As far as the nomination of this other gentleman is concerned, I desire to say that we have, as the representative party of San Francisco, desired the election of Judge Sharpstein. The nomination which has been made by a gentleman far removed from San Francisco, shows what a deep interest he takes in San Francisco, and we will soon show him how little we appreciate it. We have known Mr. Leonard as long as the gentleman from San Joaquin, and while he may be in every way worthy, none of us saw fit to nominate him. I have nothing to say against him, but he is not the choice of the delegation.

MR. TERRY. Don't you know I was requested to place him in nomination by one of your colleagues, Mr. Stedman?

MR. WELLIN. Then my colleague will have the blame. I don't admire any such departure. If I wanted a man nominated I certainly would not go to the gentleman from San Joaquin, or any other gentleman, while I am able to do it myself. That gentleman is not the choice of the San Francisco delegation. Neither of these gentlemen named are indorsed by our delegation. I have not a word to say against either of them. They are both, no doubt, very worthy young men, but they are not our choice—they are not the choice of the people of San Francisco. I submit that we ought to have the man of our choice. When the vacancy from Alameda was to be filled, we made no nomination, but threw a unanimous vote in favor of your candidate, without a dissenting voice. When this vacancy from Mariposa and Merced was to be filled, we made no nomination, but conceded them the man whom the people had indorsed as their choice. Now, I ask, is it fair; is it honorable; it it right, to make these nominations against the expressed wish of the people? And I want to know whether this Convention is going to reject the man who is the choice of the delegation and of the people of San Francisco.

MR. INMAN. I move the previous question.

No second.

MR. WILSON, of First District. Mr. President: I have no apology to make to the Convention here for signing the card recommending Judge Sharpstein, or for the course I then took or now take. Judge Sharpstein was appointed by Governor Booth in January, eighteen hundred and seventy-five, I think. I had had some acquaintance with him before his appointment, but was not intimately acquainted with him. I knew nothing against him. He went upon the bench, retiring from the bar, and occupied that position for several months. In the Fall of the year, eighteen hundred and seventy-five, nominations were to be made for Judges to be elected at the ensuing election. I signed this card upon the principle upon which I always act, and that is, if a Judge has left the bar and accepted a position upon the bench, I always sustain him for a second term, unless I have some very good reason to do otherwise. I always have acted upon that principle, and I think it is a good principle, because a lawyer who leaves his business to go upon the bench, necessarily does so at the sacrifice of his business, and ought to be supported. In that case I knew of no good reason for making an exception to the rule. I thought he might make a good Judge, and signed that card in good faith, believing him to be what he was represented. And I voted for him besides. I have nothing now to say against him in regard to the matters set forth in that card. Were his history between that time and this wiped out, I would reindorse what is there said. But after a man has been upon the bench, and has associated with such men as we have had upon the bench in San Francisco, I will not excuse any Judge who thereafter denounces those men who have been his associates as being bad and corrupt men. I venture to say that there is no better set of men in the State of California, or anywhere else, than the Judges of the Courts in San Francisco. They are honest and upright men in every sense of the word. As I understand it, Judge Sharpstein on the stump denounced these men, declaring that they were a corrupt and unreliable set of men, in addition to other matters referred to. If you want to find out what a man is, go among his fellows, his associates. The merchant goes among merchants to find another merchant's standing. No man can stand up in this world against his own craft, and it is the best test a man can have. I say now that not one third of the bar of San Francisco will support Judge Sharpstein. Whatever gentlemen may say concerning the bar, I am satisfied of that fact. He has fallen into disrepute among his fellows, and I do not believe he could get one out of ten of those who signed that card to sign a similar one now. I do not make any apology for what I have done or for what I do now.

MR. FREUD. Mr. President: I am not acquainted with Judge Sharpstein intimately. I am intimately acquainted with Mr. Kenny. But, sir, in my opinion, there is a great principle involved here; it is the same principle upon which I acted when I voted for Mr. Strong. The same principle upon which I acted when I voted for Mr. Howard. I did not inquire into the character of those men; I did not inquire into their merits; it was enough for me, sir, that the gentleman from that district placed them in nomination, and indorsed them, and said that it was the wish of the people there that these men should be elected to represent them. Now, sir, the delegation from San Francisco are almost unanimous in favor of Judge Sharpstein, and I hold that the members of this Convention will accord to us the same rights which we accorded to them.

MR. ANDREWS. Mr. President: I merely desire to make an explanation, because an attack has been made upon me for placing Mr. Kenny in nomination. I made that nomination at the earnest request of a gentleman from San Francisco, a delegate upon this floor. I at first objected to it, but was urgently requested to make the nomination, and out of courtesy I did so. I consider that I have a right to make a nomination upon this floor to fill any vacancy that may occur here.

MR. STEDMAN. Mr. President: I did request Judge Terry to nominate Mr. Leonard. I did so, sir, not as against Judge Sharpstein, but as against Mr. Kenny. I propose to vote for Judge Sharpstein, and I assure the Convention that I did not have him put in nomination against Judge Sharpstein. I withdraw his nomination as against Judge Sharpstein, but not as against Mr. Kenny.

Mr. ROLFE. I wish to ask whether Mr. Leonard is a candidate?

MR. STEDMAN. I have withdrawn Mr. Leonard.

THE PREVIOUS QUESTION.

MR. INMAN. I move the previous question.

The call for the previous question was duly seconded, and the main question was ordered by the Convention.

THE SECRETARY called the roll with the following result:

FOR SHARPSTEIN.

Barbour,	Harrison,	Nelson,
Barry,	Heiskell,	Neunaber,
Barton,	Herold,	O'Donnell,
Beerstecher,	Herrington,	Reddy,
Bell,	Howard,	Reynolds,
Brown,	Hughey,	Ringgold,
Condon,	Hunter,	Smith, of San Francisco,
Cross,	Joyce,	Soule,
Davis,	Keyes,	Stedman,
Dean,	Kleine,	Sweasey,
Evey,	Larkin,	Swenson,
Farrell,	Mansfield,	Tuttle,
Freeman,	McCoy,	Walker, of Tuolumne,
Freud,	Moffat,	Wellin,
Garvey,	Moreland,	West,
Glascock,	Morse,	White,
Gorman,	Nason,	Wyatt.
Grace,		

FOR KENNY.

Andrews,	Edgerton,	Lewis,
Ayers,	Estee,	Lindow,
Barnes,	Filcher,	Martin, of Alameda,
Belcher,	Gregg,	McCallum,
Biggs,	Hager,	McConnell,
Blackmer,	Hale,	McNutt,
Burt,	Hall,	Ohleyer,
Caples,	Harvey,	Porter,
Chapman,	Hitchcock,	Prouty,
Charles,	Holmes,	Reed,
Crouch,	Huestis,	Rhodes,
Dowling,	Jones,	Rolfe,
Doyle,	Kelley,	Schell,
Dudley, of San Joaquin,	Lampson,	Schomp,
Dudley, of Solano,	Larue,	Shurtleff,

Smith, of Santa Clara,	Tully,	Wells,
Steele,	Turner,	Wickes,
Stevenson,	Vacquerel,	Wilson, of Tehama,
Terry,	Van Dyke,	Wilson, of first district,
Thompson,	Van Voorhies,	Winans,
Townsend,	Webster,	Mr. President.

FOR LLOYD.

Graves,	Mills,	Smith, of fourth district.
Laine,		

FOR LEONARD.

Inman.

Whole number of votes cast	121
Necessary to a choice	61
Mr. Sharpstein received	52
Mr. Kenny received	63
Mr. Lloyd received	5
Mr. Leonard received	1

THE PRESIDENT. Mr. Kenny having received a majority of all the votes cast, I declare him duly elected to fill the vacancy occasioned by the death of the Honorable B. F. Kenny.

Mr. Howard, delegate elect to represent the Counties of Mariposa and Merced, came forward and took the usual oath of office, administered by the President.

ADJOURNMENT.

MR. SHURTLEFF. Mr. President: I move we adjourn.

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

EIGHTY-THIRD DAY.

SACRAMENTO, Thursday, December 19th, 1878.

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

President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barbour,	Freeman,	O'Sullivan,
Berry,	Grace,	Pulliam,
Boucher,	Jones,	Shafter,
Campbell,	Kelley,	Stuart,
Casserly,	McComas,	Swing,
Fagon,	Miller,	Tinnin,
Estey,	Murphy,	Walker, of Marin,
Farrell,	Nelson,	Waters.
Fawcett,	Noel,	

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. Stuart and McComas.

Indefinite leave of absence was granted Messrs. Estey, Miller, and Kelley.

THE JOURNAL.

MR. LINDOW. Mr. President: I move that the reading of the Journal be dispensed with.

Carried.

RESOLUTION.

MR. WHITE. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That it is the sense of this Convention that no indefinite leave of absence be granted to any member after this date except for cause of sickness; and that if any member shall absent himself from the Convention without leave to do so for the period of seven days, his seat shall be deemed to be vacant, and it shall be in order for the Convention to forthwith fill such vacancy by election in accordance with the law convening this Convention.

MR. O'DONNELL. I move that be laid on the table.

MR. WHITE. Mr. President: I ask leave to say why I offered it. I offer it merely to prevent indefinite leave of absence to persons going away that never intend to return, and in that way would leave the Convention without a quorum. I notice that a good many have gone home and have been absent some time. We do not know whether they will come back here or not. It is very easy for gentlemen to set a time when they will come back, and we can renew that leave if necessary; but this asking indefinite leave leaves the Convention without knowledge as to whether they will come back. I think it is wise to declare the sense of the Convention on that matter.

MR. McCALLUM. I move to strike out the last clause.

MR. WHITE. I accept that amendment.

THE PRESIDENT. The question is on the motion to lay on the table.

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

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

MR. McCALLUM. I understand that the last clause is stricken out.

MR. PORTER. Mr. President: I was only going to say that we had better go to work instead of wasting an hour every morning on motions of this foolish character.

MR. RINGGOLD. I call for the ayes and noes. I do not think it is a foolish motion at all.

MR. O'DONNELL. I withdraw my motion to lay on the table.

THE PRESIDENT. The resolution will be read by the Secretary as amended.

THE SECRETARY read:

Resolved, That it is the sense of this Convention that no indefinite leave of absence be granted to any member after this date except for cause of sickness.

The resolution was adopted.

REPORT.

MR. HILBORN. Mr. President: I send up a report from the Committee on Mileage and Contingent Expenses.

THE SECRETARY read:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses, to whom was referred resolution number ninety, providing for the payment of the sum of thirty-eight dollars to Patrick Leavy for services as Gas Porter from the commencement of the Convention up to the date of his appointment, have had the same under consideration, and herewith report the same back without recommendation.

S. G. HILBORN, for the Committee.

MR. HILBORN. Mr. President: I move that the report and resolution lie on the table until the author of the resolution is present.

Carried.

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the report of the Committee on Revenue and Taxation be made the special order for the seventh day of January. I make the motion to postpone it until that time at the request of several members of the Convention, some of whom are absent, and several of whom have to leave here for the holidays. I suppose it will be generally conceded as a matter of great importance, and many gentlemen who are now unavoidably absent for some days desire to be here for——

MR. WHITE. Mr. President——

MR. EDGERTON. Does the gentleman rise to a point of order or for another buncome speech?

MR. WHITE. It was not a point of order, but——

MR. EDGERTON. Sit down, then. The gentleman from Santa Clara, Mr. Laine, desires to be away for a few days. That gentleman has devoted much time to the subject, and will doubtless be able to benefit this Convention a great deal on the consideration of this report. So far as I am personally concerned I am ready to take it up now, or at any time the Convention may see fit. I make the motion for the reasons I have stated.

MR. WHITE. Mr. President: I hope that this resolution will not pass, and that we will go right on with business. There is no one more anxious to have the assistance of the gentleman from Santa Clara than I am, but there are several others that may go away. That puts it beyond the hundred days for which this Convention was to sit, and a great many may never come back here. I think we ought to go right on with business, and I hope and trust that there will be no adjournment for Christmas for more than one day; and if this is the way we go on until the seventh of January, why, the consequence will be that we will not have half the Convention here—that they will never come back.

MR. TOWNSEND. Mr. President: I hope the motion will prevail. I have been quite unwell, and intend to leave for home to-morrow, not being well enough to stay here. I am in hopes of being back here by the seventh of January. My people are very much interested in this

subject, and I should like to be here. I know there are many others that would have to go home, and I think this ought to be put off.

MR. LARKIN. Mr. President: This is but a part of the consistent course of some gentlemen to delay and eventually defeat this Constitution.

THE PRESIDENT. The gentleman is out of order in making that style of remark about members.

MR. LARKIN. I say that this will eventually defeat this Constitution. A majority cannot afford to stay here. The effect of this motion will be to compel them to come here and wait upon these men who have sought these delays.

MR. TOWNSEND. Isn't there enough to occupy the time of this Convention without bringing that up?

MR. LARKIN. This is the main question. These are the great questions. We came here to amend this Constitution, and I want to see the work of this Convention proceed upon these important questions, and I shall oppose any motion for adjournment, or any motion for making special orders for January or next June.

MR. EDGERTON. Did I understand the gentleman from El Dorado to say this motion was made for the purpose of defeating the objects of this Convention?

MR. LARKIN. I say the result of it would be.

MR. EDGERTON. Did the gentleman say the motion was made for that purpose?

MR. STEDMAN. I move that the motion of the gentleman from Sacramento be laid on the table.

MR. TOWNSEND. I hope the motion will not prevail.

THE PRESIDENT. The motion is not debatable.

The motion to lay on the table prevailed, on a division, by a vote of 67 ayes to 40 noes.

LEGISLATIVE DEPARTMENT.

MR. O'DONNELL. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The pending question is the motion of the gentleman from Sierra, Mr. Barry, to substitute section six of the old Constitution for section five of the report of the committee.

MR. McCALLUM. I rise to a question of order: that the number having been fixed by an amendment already adopted this substitute is not in order.

THE CHAIRMAN. The rule expressly provides that a substitute is a mere amendment. The point of order is not well taken.

MR. HOWARD, of Los Angeles. Mr. Chairman: I would inquire, if the substitute is adopted, if it would be open to amendment.

THE CHAIRMAN. It is an amendment itself.

MR. TERRY. Mr. Chairman: The adoption of that amendment will leave no number of Senators and Representatives fixed by the Convention. Section five, as amended, provides that the Senate shall consist of forty, and the House of eighty. Striking out that section and adopting the one proposed, would leave no number designated. It seems to me that the object of this is sufficiently expressed by the fifth section as it stands. The Senate shall consist of forty members, and the House of eighty members. That section, if taken in connection with the sixth as it will be amended, it seems to me expresses the opinion of the majority of this Convention. It is necessary to have some designated number, if the Constitution is adopted, as it will be.

MR. BARRY. Mr. Chairman: I will state that while this section six of the old Constitution, which I have offered as a substitute for section five, does not fix the number, yet it is understood, that if it is adopted the gentleman from San Francisco, Mr. Barnes, will offer a substitute for section six which will give the law some flexibility, so that in the future the Legislature may be able to increase the number if it is found to be necessary or desirable.

MR. MANSFIELD. Mr. Chairman: I protest against the present apportionment, and for my section of the State I demand a change. I renew my motion that the Legislative Committee be instructed to adjust the representation between the counties according to the population as determined by the vote of eighteen hundred and seventy-six; that is, that we recommit this section with those instructions.

MR. BROWN. Mr. Chairman: I am decidedly in favor of this course. Now, there has been complaint for a long time in the southern portion of the State upon this very subject. For instance, Tulare County and Kern, have but one representative in the Assembly, and yet in eighteen hundred and seventy-six——

MR. VAN DYKE. Mr. Chairman: I respectfully suggest that that belongs to section six.

THE CHAIRMAN. The Chair has decided that this motion of the gentleman from Los Angeles is out of order. This committee cannot instruct any other committee. The question is on the amendment offered by the gentleman from Sierra.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I have not heard the amendment read, but I am informed that it is in substance section six of the old Constitution. In other words, it leaves it as it has been in the past. Having been in the Legislature eight years, my experience was that it was a constant struggle in the different counties of the State in order to obtain each for themselves the largest possible representation; and so it will be in the future. This committee have already gone through section five and perfected it the extent of deciding that forty members shall constitute the Senate and eighty members shall constitute the Assembly. That is the provision now. That is the number now constituting the Senate and Assembly, and all seem to be of the opinion that that number is sufficient for the interests of the State. Why not let it remain so? Why go back to the uncertain rule of leaving it open to a contest every time the Legislature meet, in regard to representation? There never has been, perhaps, a fair apportionment in this State when it has been fixed by the Legislature, for the reason that it has always been the result of a compromise, and finally the small counties, where they have had an able representative, have got an undue apportionment in the Legislature. I have noticed, sir, that in the new Constitution they fix the number of legislators. That takes away that bone of contention from the legislative body. Supposing that section five had been settled upon and determined, I had drawn a substitute for section six, which I will read:

"SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty Senatorial Districts of compact and contiguous territory, as nearly equal in population as may be, and each district shall be entitled to elect one Senator and two members of the Assembly. The districts shall be numbered consecutively from one to forty, commencing at the northern and ending at the southern boundary of the State. In forming such districts, no county shall be divided unless entitled to two or more Senators; nor shall a part of any county be united with any other county in forming a district. The Senatorial ratio of representation shall be ascertained by dividing the whole population of the State by the number forty. The members of the Assembly shall be apportioned among the several counties on a ratio obtained by dividing the population of the State by eighty. Every county containing a population equal to one or more ratios, shall elect separately its proportion of Assemblymen allotted to such county, as may be provided by law. The Legislature, at its first session after the adoption of this Constitution, and thereafter after each United States decennial census shall have been ascertained, shall apportion the State into Senatorial and Assembly districts, in conformity with the provisions of this section. Until such apportionment shall be made, forty Senators and eighty Assemblymen to constitute the first Legislature under this Constitution shall be elected, as now provided by law. After the United States census of the year eighteen hundred and ninety shall be ascertained, the Legislature, by a two-thirds vote of all the members elected to each house, may increase the Senatorial districts, and the number of Senators to fifty, and the members of Assembly to one hundred."

That will permit of an increase of the number of legislators after the census of eighteen hundred and ninety, so that there may be fifty Senators and one hundred Assemblymen. If this view should be favorably entertained by the Convention, leaving section five as it is already amended, and adopting the substitute for section six, which I have just read, it would be a better rule for the future than it would to leave it to that uncertain rule that has heretofore prevailed, having a contest in each Legislature in regard to representation. I therefore hope that we will not go backward now and adopt the amendment which was proposed here, taking the provision from the old Constitution, and substituting it for that which has been acted upon and amended by the Convention; that is, by substituting "forty" and "eighty" in place of the numbers reported by the committee.

MR. SMITH, of San Francisco. Mr. Chairman: I do not desire to see the representation cut down. I wish to see all counties represented: but I contend that the larger counties should be represented according to the population. It seems to me that we had better leave this matter——

MR. VAN DYKE. We are not on the question of apportionment at all. That is in the next section. As I understand it——

THE CHAIRMAN. The Chair cannot control the argument of the gentleman as long as it is pertinent.

MR. SMITH, of San Francisco. I think we had better leave this matter where it is now, and leave the Legislature to regulate this matter.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: It occurs to me that section six, as it stands in the Constitution, substituted in place of section five, together with the substitute proposed to be adopted for section six, would be the best plan. I am aware that it would not meet the objection of the gentleman from Los Angeles as to the present unfair apportionment, as considered by himself and the other gentlemen from the southern part of the State. But, sir, the mischief to follow from undertaking to make the vote at any election a basis of representation would be greater than the present hardship. Whatever the evil that is sought to be remedied the remedy sought to be applied is worse than the disease. It does not appear to me that we have sufficient light at present to dispose of this question. It should have been done, as was stated yesterday, years ago. A struggle was made for it year after year. It was not until three years ago that it was accomplished. It was made upon the best lights that could be obtained, but in our present situation I do not think that we have the data with which to make a change that would be satisfactory. Now, if section six of the old Constitution were adopted in place of this section five, then in place of this long apportionment being put into the Constitution, I would propose that we adopt a section something like this: "The number of Senators and members of the Assembly shall be fixed by the Legislature, and apportioned among the several counties and districts to be established by law according to the number of inhabitants. The number of members of the Assembly shall not be less than eighty, and until the Legislature shall otherwise direct, the number of Assemblymen shall be eighty, and the number of Senators forty. And the apportionment of districts shall be as now provided by law. The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature in the year eighteen hundred and eighty-two, and at the end of every ten years thereafter, and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in the year eighteen hundred and eighty, and every subsequent ten years, shall serve as the basis of representation in both houses of the Legislature."

That would make a system that is flexible. It settles the question of the number of Senators and Assemblymen, and it leaves the subject open to be adjusted as the increase of population, the growth and development of the State, might require.

MR. MANSFIELD. Why do you have a census in eighteen hundred and eighty-two instead of eighteen hundred and eighty?

MR. BARNES. We shall have a census of the inhabitants of the State by the United States Government in eighteen hundred and eighty. That will give one basis. Of course, it would not be desirable to have an enumeration going on on the part of the State at the same time that the United States census was being taken. Then, if you have a State enumeration and the United States census, you have a double basis to determine the question. You have got two sources of information, one carried on by the State, and one carried on by the General Government in the year eighteen hundred and eighty. That idea is taken from the old Constitution. Section twenty-eight of the article on the Legislative Department as it was adopted, reads:

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

That is an explanation of it, and I think it is a very just idea. We cannot depend entirely upon the census taken by the United States. I cannot avoid repeating, that it seems to me that any attempt to apportion the State from the very feeble and meager light afforded by a popular vote would be a very great mistake. The vote depends upon so many circumstances, and there are so many questions as to the fairness of any election. Now, the gentleman from El Dorado said it was known that there was some fourteen or fifteen thousand fraudulent votes——

MR. ROLFE. I rise to a point of order. Apportionment is not before the body.

THE CHAIRMAN. The Chair has already decided that point.

MR. ROLFE. Go on.

MR. BARNES. Thank you! I am aware of the opinion of the Chair, but I was not aware of the decision of Mr. Rolfe.

MR. ROLFE. My decision is that you are out of order. The Chair decides the other way.

MR. BARNES. I did not propose to be bound by it; I simply wanted to know what he thought. However, I have no more to say, except that we ought not to deal with this question until we have the proper light upon it.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: It seems to me that there is some misunderstanding on the part of the Convention about the position in which this matter stands now. The Committee on Legislative Department reported this section:

"SEC. 5. The Senate shall consist of thirty members, and the Assembly of sixty members, to be elected by districts, as hereinafter provided. The seats of the fifteen Senators from the odd numbered districts, chosen at the first election under this Constitution, shall be vacated at the expiration of the second year, so that one half of the Senate, after the first election, shall be chosen every two years."

The Committee of the Whole has voted that the House shall consist of eighty members and the Senate of forty members, so that of course the adjustment of districts, reported by the committee, will have to go out, and it is not proposed by the committee, as far as I understand, that there should be a new apportionment. It would require a good deal of time. This section kept back the report more than two weeks. It would require a long time to readjust this apportionment to fit forty districts. Therefore, I propose, when section six shall come up, to move to strike out all after the nineteenth line, and to insert in lieu of it, "that until the adjustment is made by the Legislature the apportionment now provided by law shall continue in force." So that until after the first session of the Legislature which meets after the census of eighteen hundred and eighty is taken, the representation will continue as now, the Assembly consisting of eighty members and the Senate of forty. If this section six is adopted it will be the duty of the Legislature, after the next census, to make a new apportionment. Here is another section:

"For the purpose of choosing members of the Legislature the State shall be divided into forty districts, as nearly equal in population as may be, and composed of contiguous territory, to be called legislative districts. Each district shall choose one Senator and two members of the Assembly. The districts shall be numbered from one to thirty, inclusive, in numerical order, commencing at the northern boundary of the State and ending at the southern boundary thereof. In the formation of said districts no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust said districts and reapportion the representation, so as to preserve them as near equal in population as may be."

Now, under the scheme proposed by the gentleman from San Francisco, no readjustment of representation can be had until eighteen hundred and eighty-four; because you provide for a census in eighteen hundred and eighty-two; so that for three sessions of the Legislature, for six years, there could be no change in the apportionment as it now is. Whereas, under the plan proposed by the committee, the change could be made at the session of eighteen hundred and eighty-two; so that instead of continuing the present representation the first session that would meet under the new apportionment would meet in eighteen hundred and eighty-four; whereas, under the plan proposed by the gentleman from San Francisco, it would be in eighteen hundred and eighty-six; so that there would be three sessions of the Legislature, necessarily, under the present apportionment, if the plan proposed by the gentleman was adopted.

MR. BARNES. What would be the objection to the matter being postponed until there was a thorough examination into it? If complaints are made, examine into them carefully, and put an end to the complaints.

MR. TERRY. I cannot understand why the enumeration made and paid for by the United States will not be just as correct, just as thorough, and just as reliable, as any that will be made by the State. The taking of the census by the State will involve a very large expense without any corresponding benefit. If the United States census is taken in eighteen hundred and eighty, that will be sufficient without waiting for two years longer for the State to take the census, in order to make an apportionment. If we judge the future by the past, is there any assurance of there being any State census taken? In eighteen hundred and forty-nine the Constitution provided for a census in eighteen hundred and fifty-two and in eighteen hundred and fifty-five, and one every ten years thereafter. Would any gentleman inform me that any such census was taken?

MR. VAN DYKE. It was taken in eighteen hundred and fifty-two.

MR. EDGERTON. No; and never will be.

MR. TERRY. Then where is the necessity of waiting for the State to do it?

MR. BARNES. Then what is the object of putting any mandatory provision in the Constitution as to a legislative duty, if they do not do their duty? If they do not do their duty, that is their lookout. It is for us to throw around this question all the safeguards we can. The benefit of a State enumeration of population for the purpose of having a basis of representation is, that every town and county will have an interest in seeing that it is taken. It will not be taken in the hasty and careless way in which the census of the United States is taken.

MR. TERRY. Mr. Chairman: It seems to me that the argument cuts both ways. If the basis of representation is fixed upon the census of the United States, then every citizen, and every town and county, has just as much interest in seeing that it is correctly taken. If the census taken in eighteen hundred and eighty by the United States is made by this Constitution the basis of representation, is not the same interest involved?

MR. BARNES. I do not so regard it.

MR. TERRY. Then I cannot understand it. It seems to me a self-evident proposition. It occurs to me, that with the amendment adopted by the committee, of forty Senators and eighty members, and the amendments which I will propose when it comes up to section nineteen, we will have a system which, it seems to me from the votes already taken, meets with the approval of a majority of this Convention. If the gentleman desires to give it flexibility, there would be no objection to an addition, that the number may be increased. I cannot see any advantage which section six of the old Constitution has over section five as amended here, because section six provides for no number of representatives. It simply says that the number of Senators shall not be less than one third nor more than one half of that of the members of the Assembly, but how many Senators and Assemblymen there shall be does not appear. The objections to section five will be obviated by permitting the present apportionment to stand until after the next census.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: The proposition is to substitute section six of the old Constitution in place of this section five as amended. Now, I hope that the Convention will adopt section six of the old Constitution. I think that the interests of the people demand that this be left flexible. As it stands to-day San Francisco has nearly one half of the population of the State, and the chances are that by eighteen hundred and eighty she will have one half of the population of the State. If that is the case, then one half of the representatives will come from the city; in other words, the people of the State at large cannot be acquainted with their Senators and Assemblymen. On the other hand the Senators and Assemblymen cannot know the people of the State at large. Now, the old Constitution, as it is, forbids an increase; it ought to be permitted, as it may turn out that the people of San Francisco may be able to control the whole State. It is necessary, because that city upon the sea may grow so enormous that the people of the State will be lost. I think it is but fair that each county should have an Assemblyman. If the counties are too small we should have territorial representation in the Assembly, because our interests are so diverse, and I hope that whatever apportionment is made that the Convention will keep in sight the future, and that we will not sacrifice the whole State to the great city that is growing so rapidly by the sea.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: There is some force in the argument of the gentleman from Kern, Mr. Gregg, in regard to having some flexibility, but what we ought to meet is the radical injustice which exists in the present apportionment. We can do that here without trouble. It is not so great a work. I, myself, have spent a couple of days on the matter, and I find that the apportionment is really very unequal. The gentleman, in offering this as a substitute, as I understand it, will insist upon the present apportionment lasting until after the census of eighteen hundred and eighty. The Legislature which shall meet in eighteen hundred and eighty-two will be able to apportion the State on the basis

of that census. The Legislature elected for eighteen hundred and eighty-four will be the first Legislature elected under the new apportionment. The crying injustice of the present apportionment we shall have continued, unless we correct it here, for six years longer; and not only that, but I understand, from another amendment that is to be offered, that a census is to be taken in eighteen hundred and eighty-two, and the correction of the evil will then be put off two years longer. I do not think that while we can ourselves correct an error of that magnitude that we should remand it over for so many years. I think that it is perfectly proper to take the electoral vote at the Presidential election as a basis, and from that apportion the State. It can be done fairly, by any gentleman on this floor, in three hours. I propose, when section six comes up, to offer that as an amendment to section six, hoping that this Convention will adopt it. It is fair to every part of the State. It changes the representation to some extent. It does justice to some of the counties that now have not half their representation, and I insist that it would be a great wrong on the part of this Convention to compel the counties that are now not half represented in the Legislature to continue thus inadequately represented for the next six or eight years. It is our duty to do it here. We can do it without injustice to any portion of the State, and we should do it.

MR. INMAN. This is simply a rehash of yesterday. I move the previous question.

Messrs. Howard, O'Donnell, Keyes, and Caples seconded the motion.

The main question was ordered, on a division, by a vote of 64 ayes to 15 noes.

THE CHAIRMAN. The main question has been ordered. The question is on the adoption of the amendment offered by the gentleman from Sierra, Mr. Barry, to substitute section six of the old Constitution for section five of the report.

The amendment was rejected, on a division, by a vote of 36 ayes to 73 noes.

THE CHAIRMAN. The Secretary will read section six.

MR. ANDREWS. I concur, Mr. Chairman, fully, with the remarks made by Colonel Ayers. I think we can remedy it here as well as it can be done by the Legislature, and for that reason I offer this resolution, if it be considered in order:

THE SECRETARY read:

Resolved, That the committee now rise and report sections five and six back to the Convention, and recommend that said sections be referred to the Committee on Legislative Department, with instructions to apportion representation to accord with the amendments adopted to section five in Committee of the Whole, said apportionment to be ascertained upon the vote of eighteen hundred and seventy-six and eighteen hundred and seventy-seven, and from such other data as can be found.

MR. BROWN. I second the motion.

MR. EDGERTON. I hope the resolution will not be adopted.

THE CHAIRMAN. It is not debatable.

MR. McFARLAND. I would like to hear section five read as it now stands, or now amended.

THE CHAIRMAN. The question is on the adoption of the resolution offered by the gentleman from Shasta, Mr. Andrews.

The resolution was lost.

MR. BEERSTECHER. I have an amendment to section five.

THE CHAIRMAN. The Secretary will read section six.

MR. HOWARD. A division was called for in time by a half-dozen.

THE CHAIRMAN. The Chair did not recognize anybody or hear anything until the decision had been made. The Secretary will read section six.

APPORTIONMENT.

THE SECRETARY read:

SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into thirty districts, as nearly equal in population as may be, and composed of contiguous territory, to be called legislative districts. Each district shall choose one Senator and two members of the Assembly. The districts shall be numbered from one to thirty, inclusive, in numerical order, commencing at the northern boundary of the State and ending at the southern boundary thereof. In the formation of said districts no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust said districts and reapportion the representation so as to preserve them as nearly equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming the population of any district. Until such adjustment shall be made, the First District shall consist of the Counties of Del Norte, Siskiyou, Modoc, Lassen, Shasta, and Trinity; the Second, of the Counties of Humboldt and Mendocino; the Third, of the Counties of Tehama and Butte; the Fourth, of the Counties of Colusa, Lake, and Sutter; the Fifth, of the County of Sonoma; the Sixth, of the Counties of Marin, Napa, and Contra Costa; the Seventh, of the Counties of Solano and Yolo; the Eighth, of the Counties of Sierra, Yuba, and Plumas; the Ninth, of the County of Nevada; the Tenth, of the Counties of Placer and El Dorado; the Eleventh, of the County of Sacramento; the Twelfth, of the Counties of Calaveras, Alpine, and Amador; the Thirteenth, of the County of San Joaquin; the Fourteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at a point where Larkin street intersects the waters of the Bay of San Francisco; thence meandering along the shore of said bay, in an easterly and southeasterly direction, to the point where Market street intersects said bay; thence along Market street to California street; thence along California street to Kearny street; thence along Kearny street to Vallejo street; thence along Vallejo street to Larkin street; thence along Larkin street to the waters of the Bay of San Francisco, the place of beginning. The Fifteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Larkin street intersects Vallejo street; thence along Vallejo street to Kearny street; thence along Kearny street to California street; thence along California street to Market street; thence along Market street to Kearny street; thence along Kearny street to Pine street; thence along Pine street to Larkin street; and thence along Larkin street to Vallejo street, the place of beginning. The Sixteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Franklin street intersects Pine street; thence along Pine street to Kearny street; thence along Kearny street to Market street; thence along Market street to Van Ness Avenue; thence along Van Ness Avenue to Tyler street; thence along Tyler street to Gough street; thence along Gough street to Geary street; thence along Geary street to Franklin street; thence along Franklin street to Pine street, the place of beginning. The Seventeenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Larkin street intersects the waters of the Bay of San Francisco; thence along Larkin street to Pine street; thence along Pine street to Franklin street; thence along Franklin street to Geary street; thence along Geary street to Gough street; thence along Gough street to Tyler street; thence along Tyler street to Van Ness Avenue; thence along Van Ness Avenue to Market street; thence along Market street to Ridley street; thence along Ridley street and said Ridley street produced in a direct line westerly to the Pacific Ocean; and thence meandering northerly and easterly along the waters of the Pacific Ocean and the Bay of San Francisco to Larkin street, the place of beginning. The Eighteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Market street intersects the waters of the Bay of San Francisco; thence meandering along the waters of said bay to the point where Channel street intersects the waters of said bay; thence along Channel street to Seventh street; thence along Seventh street to Harrison street; thence along Harrison street to Second street; thence along Second street to Market street; and thence along Market street to the waters of the Bay of San Francisco, the place of beginning. The Nineteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Second street intersects Market street; thence along Second street to Harrison street; thence along Harrison street to Sixth street; thence along Sixth street to Market street; and thence along Market street to Second street, the place of beginning. The Twentieth, of all that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Sixth street intersects Market street; thence along Sixth street to Harrison street; thence along Harrison street to Seventh Street; thence along Seventh street to Channel street; thence along Channel street to Harrison street; thence along Harrison street to Fifteenth street; thence along Fifteenth street to Howard street; thence along Howard street to Fourteenth street; thence along Fourteenth street to Mission street; thence along Mission street to Ridley street; thence along Ridley street to Market street; and thence along Market street to Sixth street, the place of beginning. The Twenty-first, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Channel street intersects the Bay of San Francisco; thence along Channel Street to Harrison street; thence along Harrison street to Fifteenth street; thence along Fifteenth street to Howard street; thence along Howard street to Fourteenth street; thence along Mission street to Ridley street; thence along Ridley street and the line of Ridley street projected westerly to the Pacific Ocean; thence southerly along the Pacific Ocean to the southern boundary line of the City and County of San Francisco; thence along said southern boundary line to the Bay of San Francisco; and thence meandering along the waters of the Bay of San Francisco to Channel street, the place of beginning. The Twenty-second, of Oakland Township, County of Alameda. The Twenty-third, of all that portion of the County of Alameda exclusive of Oakland Township. The Twenty-fourth, of the County of Santa Clara. The Twenty-fifth, of the Counties of Merced, Mariposa, Stanislaus, and Tuolumne. The Twenty-sixth, of the Counties of Tulare, Inyo, Fresno, and Mono. The Twenty-seventh, of the Counties of Santa Cruz, San Mateo, and San Benito. The Twenty-eighth, of the Counties of Santa Barbara, San Luis Obispo, and Monterey. The Twenty-ninth, of the County of Los Angeles. The Thirtieth, of the Counties of San Bernardino, San Diego, Kern, and Ventura.

MR. TERRY. Mr. Chairman: I offer the following amendment.

THE SECRETARY read:

"Amend section six as follows: First, strike out the word 'thirty' in the second line, and insert 'forty;' second, strike out all of said section after the word 'made,' in the nineteenth line, and insert 'the apportionment now provided by law shall continue in force.'"

MR. AYERS. I have an amendment to offer.

THE SECRETARY read:

"Add after the word 'made,' in the nineteenth line, the following: 'The apportionment of the State for legislative representatives shall be made, namely:

"*Senatorial Apportionment.*

"First District—San Diego and San Bernardino, one Senator.

"Second District—Los Angeles, two Senators.

"Third District—San Luis Obispo, Santa Barbara, and Ventura, one Senator.

"Fourth District—Fresno, Tulare, Kern, Mono, and Inyo, two Senators.
"Fifth District—Mariposa, Merced, and Stanislaus, one Senator.
"Sixth District—Monterey, San Benito, and Santa Cruz, one Senator.
"Seventh District—Santa Clara, two Senators.
"Eighth District—San Mateo and San Francisco, jointly, one Senator.
"Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Districts—San Francisco (boundaries as at present), each two Senators.
"Fourteenth District—Alameda, two Senators.
"Fifteenth District—Contra Costa and Marin, one Senator.
"Sixteenth District—San Joaquin, one Senator.
"Seventeenth District—Calaveras and Tuolumne, one Senator.
"Eighteenth District—Sacramento and Placer, three Senators.
"Nineteenth District—Solano and Yolo, two Senators.
"Twentieth District—Napa and Lake, one Senator.
"Twenty-first District—Sonoma, one Senator.
"Twenty-second District—El Dorado, Alpine, and Amador, one Senator.
"Twenty-third District—Nevada and Sierra, one Senator.
"Twenty-fourth District—Sutter and Yuba, one Senator.
"Twenty-fifth District—Butte, Plumas, and Lassen, one Senator.
"Twenty-sixth District—Del Norte, Humboldt, and Mendocino, one Senator.
"Twenty-seventh District—Modoc, Siskiyou, Trinity, and Shasta, one Senator.
"Twenty-eighth District—Colusa and Tehama, one Senator.

"*Assembly Apportionment.*

"Alameda, five; Alpine and El Dorado, one; El Dorado, one; Amador, one; Butte, one; Butte, Plumas, and Lassen, one; Calaveras, one; Tuolumne, one; Colusa, one; Tehama, one; Contra Costa, one; Marin, one; Del Norte and Humboldt, one; Humboldt, one; Mendocino, one; Fresno, one; Tulare and Kern, one; Mono and Inyo, one; Napa and Lake, one; Napa, one; Sonoma, three; Los Angeles, three; Mariposa and Merced, one; Stanislaus, one; Siskiyou and Modoc, one; Trinity and Shasta, one; Monterey, one; San Benito, one; Santa Cruz, one; San Diego, one; San Francisco, as at present districted, twenty; San Mateo, one; San Joaquin, two; San Luis Obispo, one; Santa Clara, three; Solano, two; Yolo, one; Sutter, one; Yuba, one; Nevada, two; Nevada and Sierra, one; Sacramento, three; Placer, one; Ventura, one."

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I have made that apportionment as nearly equal as I possibly could from the official returns in the office of the Secretary of State of the votes cast at the Presidential election of eighteen hundred and seventy-six. The entire vote at that election was one hundred and fifty-two thousand eight hundred and three; divided by forty Senators, would make the number of votes to each Senator three thousand eight hundred and twenty; that divided by two would make the number of votes to each Assemblyman one thousand nine hundred and ten. Taking as an average four thousand for the Senator and two thousand for the Assemblyman, and approximating so as to bring the contiguous counties as near together as possible, and to equalize their representation, I have arrived at the apportionment which I have made. It increases the representation in some of the counties and decreases it in others, but it will be seen that it is not always possible to come to the exact fractions of figures in making an apportionment of this character. Wherever the fraction made enough more to give a Senator I have done it; and so with the Assemblymen. I would rather have had that apportionment referred to a committee, so that they could look over it, as I am satisfied it will stand the test of examination. I have placed a great deal of labor upon it, and I have brought to it conscientious labor. I will state that it may be supposed that I may be greatly influenced by my desire to see Los Angeles largely represented; but so as to let this Convention know that I have acted merely upon the figures, or what they would justify, I will state that Los Angeles polled six thousand six hundred and fifty-seven votes, which would entitle her to over three Assemblymen, and that is the same proportion that I have given to all the counties polling over six thousand votes. If this committee does not feel that it is possible to act upon that apportionment understandingly in Committee of the Whole, I would rather see the apportionment referred to the Committee on Legislative Department, so that they can examine it and return it to this Convention with their indorsement, for I feel sure that they will indorse it when they come to examine it in connection with the figures.

Now, sir, if this apportionment should be adopted every part of this State would be as nearly equally represented as it possibly could be. It has been objected on this floor that the returns of an election are not the proper basis upon which to make such an apportionment. I believe that the returns of a Presidential election, such as the last one we had, will give a fair representation of the population of the State. The vote was a full one, and I believe represents fully the entire population of this State. Now, as to the principle of accepting election returns, I have to quote here from a gentleman who has suggested the following argument: What is the purpose of apportionment? It is to fix the number of those who are the rulers of the State—who shall perform the duties of rulers in the Legislature. For example: not the number of electors in the population, but the electors to be the rulers. These only adopt laws in the Legislature; these only adopt or reject Constitutions; those only who are electors are or can be legislators. Now, the object is to fix the number of electors who can be sent by electors to pass laws.

I have nothing more to say upon this subject, Mr. Chairman, but this, that I believe that if this Convention will adopt that apportionment, it will satisfy this State, that we will save a great deal of discontent in those districts which are now inadequately represented, and that we should not delay for six years to do this act of justice.

MR. BARNES. How much do you increase the representation of the district you represent now?

MR. AYERS. I increase it from one Senator and two Assemblymen to two Senators and three Assemblymen.

MR. BARNES. Where do you get the increase from? Who do you take it from? You do not take any from San Francisco.

MR. AYERS. Because you have a vote which entitles you to that.

MR. BARNES. What part of the State do you take the members from that you add to your district? I suppose you know.

MR. AYERS. You will see by comparing. It comes from various portions of the State.

MR. BARNES. When I find that out I want to sound the alarm for the plundered districts. I understand Tulare will be shouting here in a minute. [Laughter.]

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I am astonished that gentlemen speak of my shouting. The members sometimes find it so difficult to hear me that they shout "louder, louder." That I take more as a matter of applause than otherwise. [Laughter.] But in the present case I was anxious to say a few words when Mr. Van Dyke ruled me off the floor. I thought the Chair did or I would not have taken my seat. The cry of the gentleman from Los Angeles is justice and equal apportionment. Now, sir, we find that there is an unjust apportionment, and any member that by any amendment whatever will meet this I am satisfied will answer a great purpose. It is a consummation much to be desired. I am convinced that this matter of injustice has been continued long enough, that the people for a length of time, in different portions of this State, as well as the portion that I represent, have been anxious that they should be fairly represented in the halls of legislation; but, Mr. Chairman, it has unfortunately been that they have not. I am opposed to this thing being delayed until eighteen hundred and eighty-two, eighteen hundred and eighty-three, eighteen hundred and eighty-four, eighteen hundred and eighty-five, or eighteen hundred and eighty-six. But if a measure comes up purporting to remedy this evil, and it does not reach it, only in assertions, I will certainly oppose such, and I will point out the objections—where it does not reach the point. Now, I am convinced that San Francisco probably has over its proportion. It has three or four times as many in proportion to its number of inhabitants as the county that I represent. I was on the floor attempting to show before this house that there are counties here not fairly represented. I had better read this. The gentleman said yesterday: "Los Angeles has one representative to two thousand two hundred and nineteen votes; San Francisco, one to one thousand three hundred votes; Santa Clara, one to one thousand two hundred and eighty votes; Nevada, one to one thousand and fifty-one votes; Amador, one to eight hundred and twenty-nine votes."

Now, sir, Tulare County has nearly three thousand votes, or had in eighteen hundred and seventy-six, and yet has but one representative in the Assembly on a population which is over twice as much as some of the counties spoken of. Tulare has complained of this thing. The remedy has not been reached. Now, if Mr. Ayers would reach this I would have no objection; I would be in favor of it; but he does not. Instead of reaching this evil, which is the greatest injustice that is on hand, so far as investigation goes, for there is not another case in which a county has had so small a representation in proportion to its large population—if it would reach this, I would not object; but when the gentleman gets up and urges definitely that it will answer every thing in the line of justice, I must state here that he has accomplished nothing. He has given just the same as existed before. The great evil that has been complained of, and known of, and understood for years, is not reached.

MR. HOWARD. Mr. Chairman: I move that the committee rise and report back section six, and the pending amendments, to the Convention, with the recommendation that they be referred to the Committee on Legislative Department. I believe that in an hour they can adjust it to suit everybody.

MR. EDGERTON. I hope not.

The motion was lost, on division, by a vote of 35 ayes to 59 noes.

MR. DUDLEY. Mr. Chairman: I never heard of representation being based upon the result of a popular vote before. Can the gentleman tell me that he ever heard of an instance before? And as this matter was very fully discussed yesterday, I now move the previous question.

Messrs. Hitchcock, Crouch, and Hale seconded the motion.

The main question was ordered.

MR. EDGERTON. Mr. Chairman: I ask leave to say a few words for the benefit of the Los Angeles delegation.

[Cries of "Read the amendment!"]

THE CHAIRMAN. The Secretary will read the amendment offered by the gentleman from Los Angeles, Mr. Ayers.

THE SECRETARY read:

"Add after the word 'made,' in the nineteenth line, the following: The apportionment of the State for legislative representatives shall be made, namely:

"*Senatorial Apportionment.*

"First District—San Diego and San Bernardino, one Senator.
"Second District—Los Angeles, two Senators.
"Third District—San Luis Obispo, Santa Barbara, and Ventura, one Senator.
"Fourth District—Fresno, Tulare, Kern, Mono, and Inyo, two Senators.
"Fifth District—Mariposa, Merced, and Stanislaus, one Senator.
"Sixth District—Monterey, San Benito, and Santa Cruz, one Senator.
"Seventh District—Santa Clara, two Senators.
"Eighth District—San Mateo and San Francisco, jointly, one Senator.
"Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Districts—San Francisco (boundaries as at present), each two Senators.
"Fourteenth District—Alameda, two Senators.

"Fifteenth District—Contra Costa and Marin, one Senator.
"Sixteenth District—San Joaquin, one Senator.
"Seventeenth District—Calaveras and Tuolumne, one Senator.
"Eighteenth District—Sacramento and Placer, three Senators.
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"Twentieth District—Napa and Lake, one Senator.
"Twenty-first District—Sonoma, one Senator.
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"Twenty-third District—Nevada and Sierra, one Senator.
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"Twenty-fifth District—Butte, Plumas, and Lassen, one Senator.
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"Twenty-seventh District—Modoc, Siskiyou, Trinity, and Shasta, one Senator.
"Twenty-eighth District—Colusa and Tehama, one Senator.

"Assembly Apportionment.

"Alameda, five; Alpine and El Dorado, one; El Dorado, one; Amador, one; Butte, one; Butte, Plumas, and Lassen, one; Calaveras, one; Tuolumne, one; Colusa, one; Tehama, one; Contra Costa, one; Marin, one; Del Norte and Humboldt, one; Humboldt, one; Mendocino, one; Fresno, one; Tulare and Kern, one; Mono and Inyo, one; Napa and Lake, one; Napa, one; Sonoma, three; Los Angeles, three; Mariposa and Merced, one; Stanislaus, one; Siskiyou and Modoc, one; Trinity and Shasta, one; Monterey, one; San Benito, one; Santa Cruz, one; San Diego, one; San Francisco, as at present districted, twenty; San Mateo, one; San Joaquin, two; San Luis Obispo, one; Santa Clara, three; Solano, two; Yolo, one; Sutter, one; Yuba, one; Nevada, two; Nevada and Sierra, one; Sacramento, three; Placer, one; Ventura, one."

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected, on a division, by a vote of 34 ayes to 68 noes.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from San Joaquin, Mr. Terry. The Secretary will read.

THE SECRETARY read:

"Amend section six, as follows: First, strike out the word 'thirty,' in second line, and insert 'forty;' second, strike out all of said section, after the word 'made,' in the nineteenth line, and insert 'the apportionment now provided by law shall continue in force.'"

Adopted.

MR. MCCALLUM. Mr. Chairman: I give notice that I will move to reconsider that vote to-morrow.

LIMITING REPRESENTATION.

MR. FILCHER. I have an amendment to offer.

THE SECRETARY read:

"Insert in the sixteenth line, after the word 'be,' the words: 'Provided, however, that no one county shall have a greater representation in the Senate than one fifth of the Senators.'"

MR. HALE. I second the amendment.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I believe, sir, something covering this idea is necessary in a State situated as we are here in California. The object of this amendment is not to deprive San Francisco of representation sufficient for her protection, assuming that she bases protection on the strength of her representation, but, sir, it is to protect, mutually, San Francisco against the interior, and the interior, on the other hand, against San Francisco. Now, sir, we can easily see that a great commercial center such as San Francisco is or may be, might in the future years contain a majority of the State of California, and under such circumstances would necessarily have a majority of both branches of the Legislature, and under such circumstances we can readily see, without argument, what the consequences might be. Not only might she impose upon the country, but she might impose damnation on San Francisco herself, for I assert that past experience has proven that the very representatives of San Francisco have proved her worst enemies. San Francisco has been here praying the members from the interior to save her more than once, and frequently has she been saved and evils of the worst character averted from her by the votes of the country members. I would give to San Francisco, or any other great commercial center, her just proportion of members of the house on her population. If it was a majority, let her have a majority of the Assembly; if two thirds, even, let her have it in that house; and in that house she would be able to protect herself against any imposition that perhaps the interior might see fit to practice upon her. On the other hand, the interior would always be protected by holding four fifths of the Senate. Therefore, measures emanating from San Francisco directly in the interests of the commercial center, and directly opposed to the interests of the interior, might be knocked in the head. The Senate would stand, as it should stand, a conservative body, calculated in its very nature to protect not alone the interior, but the whole State, from any scheme. The very theory and basis of our representative Senate is that it should be conservative in its nature, and yet it is plain that no conservatism can come from selfish motives. Several of the States, I understand, including Illinois, New York, and Pennsylvania—States which have within their limits large commercial centers, as, for instance, Chicago in Illinois, New York City in the State of New York, Philadelphia in the State of Pennsylvania—have been compelled to move in this direction to protect the whole commonwealth against the prominent influence of these cities. While the people of the interior have been apprehensive of it, they have never made any grievous complaint; yet they are apprehensive, in view of the rapidity with which San Francisco is growing in importance, that in the near future San Francisco will possess a majority of the population of this coast, and in such an event gentlemen will agree with me that the Legislature might be perhaps robbed of its conservatism and wisdom. The idea is this, that while the lower branch of the Legislature shall contain forever a representation in proportion to population, it shall nevertheless be provided that not in any event shall any one county have more than one fifth of the members of the Senate.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I really do not know of what kind of material the people of Placer County are composed, but I had supposed that they were all citizens of the United States, and citizens of the State of California. I had supposed that they were men and women and children made in the same way and possessing the same natural and legal rights we do, not by any machine process where they can accumulate much more rapidly than elsewhere; but I am informed by my distinguished friend from Placer, that unless they have some means whereby Placer County can represent its deserted mining pits, by representation in the Senate, that they lose the balance of power in the legislative department of the government. Sir, for one, and I speak my own sentiments alone, I ask no favors for San Francisco. She is not here to ask them. We ask nothing from this Constitutional Convention that she is not entitled to. San Francisco is a part of this State. She is entitled to the same consideration on this floor as any other part of the State, and no more. She is entitled to the same consideration because she is a part of the same people, and the people of the mountain districts and the valleys ought to be proud of her. She is one of the great commercial marts of the world. The great interests of this commonwealth center there, and she is entitled to the same representation, by every principle of representative government, in every department of the State, that the mountain counties are, and no more.

The floating population cannot vote unless they remain a certain length of time; and if they float down there from the mountains, out of respect for the mountain districts, they ought to be allowed to vote if they have been there long enough. The illustration of the gentleman from Placer was a very unfortunate one. In Pennsylvania it is expressly provided that the State shall be divided into fifty Senatorial districts, as nearly equal in population as may be. In the State of New York, the City of New York never did have one fifth, certainly not more than one fifth, if as much. There is over four millions of population in the State of New York, and the City of New York has only about one million. So far as Illinois is concerned, I have not had an opportunity to examine the Constitution in that regard. But there is one proposition that is certain, and that is, that in a republican form of government, the right of representation is the most sacred right of the people, and that right rests upon population. To say that San Francisco shall be entitled to only one fifth of the number of Senators, when she has a greater population, would be to say that the people of San Francisco, the principal interests of San Francisco, the intelligence of San Francisco, the manufacturing interests of that part of the State, and the commercial interests of San Francisco, were not entitled to the same protection as like interests receive elsewhere throughout the State. I cannot conceive that any considerable number of gentlemen on this floor will sustain any such proposition. I took occasion the other day to say that if such a proposition was inserted in the Constitution, that I felt sure—and I speak of it kindly—that the Constitution containing such a proposition would not receive a handful of votes. I see that the papers of San Francisco already have taken up that subject and have discussed it.

MR. FILCHER. Allow me to read the provision of the Constitution of Pennsylvania. Section seventeen, of article two, reads:

"Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representation allotted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants, shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to population; but no district shall elect more than four representatives."

MR. ESTEE. That is so. That does not answer the question at all. I still repeat—and if Judge Hager will read it he will find it so—that the representation in Pennsylvania is according to population, and it is divided just as I stated. I have but one word more to say, and that is this: that I cannot imagine why one section of the State, on any principle of government, should not be entitled to the same representation as any other section, and I warn the gentleman from Placer, if he undertakes to inflict such a penalty for the growth of a city, that the penalty will not be endured. I warn him that the people of this State—one portion of this State—claim to be the equals of the people of any other portion of the State. That equality must be represented in the Legislature of the State.

MR. FILCHER. I simply want to know the objection. You have your full representation in the house. You want to impose upon us——

MR. ESTEE. That is what you want. Is it imposing on Placer County to give San Francisco her just representation? The gentleman is unfortunately living in a small county.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I regret, sir, that San Francisco should be brought up here in this debate, as if it was necessary to refer to San Francisco in order to settle the justice or equity of this controversy. What has that to do with it? It reminds me of the old times when San Francisco was the subject of a great many debates that occurred in the Legislature. I have never discovered from experience that San Fran-

cisco was indebted to the country for its preservation. I admit that San Francisco has been sometimes badly represented in the Legislature, but I assert also that the country has been quite as badly represented. Some of the most odious laws that have ever been imposed upon San Francisco have been passed by the country members against the protest of the delegation from San Francisco. The Second street cut—look at that! It stands there staring you in the face. It was forced upon us against the protest of the San Francisco delegation in the Senate.

MR. EDGERTON. No, sir.

MR. HAGER. I know that I was against it; I know that it was imposed upon us——

MR. HALE. Will the gentleman allow me to ask him a question? Will you please state the vote cast from San Francisco in the two houses on that measure?

MR. HAGER. I say that if it had not been for the country members that law would never have passed, because San Francisco did not have representation enough to pass the bill, if they were disposed to, without the votes of the country. Without the votes of the country it never would have passed at all. But there it stands to-day, a disgrace to the Legislature, a disgrace to the State, a disgrace to the city—that Second street cut. I deny that the City of San Francisco is indebted to the country for her preservation. There may be bad men in the City of San Francisco, and perhaps there are a great many bad men in the balance of the State. We are here for the purpose of adopting a Constitution to be recommended to the people of the State of California, that will be just in all its provisions, and in all its parts; and I hope I will never narrow my mind to so low a plane that I cannot hear the call for justice of every portion of the State of California, and I hope to be the last to make any invidious distinction between one portion of the State and another. Suppose San Francisco contained a million inhabitants; whose fault is that? Has not the member from Placer an equal right to go there with his household gods and make that his home? Is not San Francisco open for all? Why not leave your mountain homes if you do not like them? I once lived in the mountains and I was just as happy there, and if it was my desire I would go back there again. But that has very little to do with this question. I have contended that the proper manner of arranging the basis of representation is that which is contained in the Constitutions of the States of Pennsylvania, Missouri, and others, upon a ratio of population. Let there be a Senatorial ratio, and if there is a number of Assemblymen to be elected let there be an Assembly ratio. Suppose our State is composed of eight hundred thousand inhabitants, and you have forty Senators. Divide the eight hundred thousand by forty and you have the ratio for districts, and divide the State into forty Senatorial districts, the ratio would be twenty thousand. Is not that right? Now in reference to the Assembly. Suppose there are eight hundred thousand, and you want eighty Assemblymen; divide the State into eighty Assembly districts. In that way you have ten thousand as the ratio of Assemblymen. But we are told San Francisco will get an undue proportion—undue in proportion to population—because there are Chinese. Exclude the Chinese. I do not object to that. But if you cannot assail the proposition on the ground of justice and equality, why not adopt it? Now, the rule in Pennsylvania is as I have stated, and the quotation of the gentleman from Placer is not to the point. In the sixteenth section of article two, it is provided that "the Senatorial ratio shall be ascertained by dividing the whole population of the State by the number fifty." Now, their Senate is composed of fifty; the House of Representatives, two hundred. Now, if eighty Assemblymen are not enough for the State of California, to satisfy every man, then it is proper to increase the number, if you see fit, to one hundred, or two hundred, that every man may have a representation there. I do not object to that. If the number is too small to give a fair representation, make it one hundred, two hundred—anything you choose; but base it upon some fair principle, and then I will vote for it. I will give every county in the State a representative, but increase your number of Assemblymen so that you can make every county entitled to a representative. Now, the gentleman read this from the Constitution of Pennsylvania:

"Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants, shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to population; but no district shall elect more than four representatives."

It does not deprive the City of Philadelphia, or any other city, of its just proportion of representation in the Legislature. No man can get up here and advocate the proposition that because a county contained a large number of inhabitants her representation must be cut down, on any just principle, unless he violates what I have recognized as a fundamental principle of constitutional law, that taxation and representation shall go together. If you want to deprive San Francisco of her just representation here reduce her taxation in proportion, and then it would not be so bad. But you levy upon us nearly one half of the taxes of the State, and now say we ought not to have a fair representation in the Legislature under the Constitution.

MR. PORTER. Does not that Constitution of Pennsylvania restrict the number of Senators in any one city to one sixth of all the Senators?

MR. HAGER. If it is there I have not seen it. If the gentleman can find it there he is at liberty to do so.

MR. ESTEE. There is nothing of the kind there.

MR. HAGER. Mr. Chairman: I was going to ask how many amendments are pending now?

THE CHAIRMAN. One, at present.

MR. HAGER. Then I offer this as a substitute for section six.

THE SECRETARY read:

"SEC. 6. For the purpose of choosing members of the Legislature the State shall be divided into forty Senatorial districts of compact and contiguous territory, as nearly equal in population as may be, and each district shall be entitled to elect one Senator and two members of the Assembly. The districts shall be numbered consecutively from one to forty, commencing at the northern and ending at the southern boundary of the State. In forming such districts no county shall be divided unless entitled to two or more Senators; nor shall a part of any county be united with any other county in forming a district. The Senatorial ratio of representation shall be ascertained by dividing the whole population of the State by the number forty. The members of the Assembly shall be apportioned among the several counties on a ratio obtained by dividing the population of the State by eighty. Every county containing a population equal to one or more ratios shall elect separately its proportion of the Assemblymen allotted to such county, as may be provided by law. The Legislature at its first session after the adoption of this Constitution, and thereafter after each United States decennial census shall have been ascertained, shall apportion the State into Senatorial and Assembly districts, in conformity with the provisions of this section. Until such apportionment shall be made forty Senators and eighty Assemblymen, to constitute the first Legislature under this Constitution, shall be elected as now provided by law. After the United States census of the year eighteen hundred and ninety shall be ascertained, the Legislature, by a two-thirds vote of all the members elected to each house, may increase the Senatorial districts and the number of Senators to fifty, and the members of the Assembly to one hundred."

MR. HAGER. Mr. Chairman: I think that is just to the whole State. If any gentleman will put in an amendment that aliens shall not be classed as population I will accept it.

MR. VAN DYKE. Mr. Chairman: We, of Oakland, are not at all jealous of San Francisco, because we calculate, in a few years, that we will have more population than San Francisco, and we are afraid that this amendment will apply to Oakland; we shall oppose it for that reason. But, really, I again warn the delegates in this Convention, that if they want to have this Constitution adopted, not to attempt to depart from the plan of representation based upon population, because it must be apparent to all that if you change that rule which has been in vogue for years you will defeat the Constitution.

MR. ESTEE. Mr. Chairman: I call attention to section six, of article four, of the Constitution of Illinois. It says:

"SEC. 6. The General Assembly shall apportion the State every ten years, beginning with the year eighteen hundred and seventy-one, by dividing the population of the State, as ascertained by the Federal census, by the number fifty-one, and the quotient shall be the ratio of representation in the Senate. The State shall be divided into fifty-one Senatorial districts, each of which shall elect one Senator, whose term of office shall be four years."

Sections seven and eight provide for minority representation. That is only a limitation as to the size of the district. And I challenge any gentleman to find any State where the people of any locality is not the ratio upon which the representation is based.

MR. EDGERTON. I call the attention of the gentleman to the fact that in the Senate of the United States each State has but two Senators, no matter whether it has got a hundred thousand or a million population.

MR. ESTEE. That represents State sovereignty; I do not know of such a thing as county sovereignty.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. And the thing is that it was designed as a check upon the popular branch. I do not believe that the Senate should be upon the basis of population at all. It should be so constituted as to operate as a check upon the popular branch. The gentleman from Alameda warns this body——

MR. VAN DYKE. Does the gentleman suppose that if we attempt to deprive the people of that city of their just representation that they will vote for this Constitution?

MR. EDGERTON. I am now talking of the principle of justice, and making a good Constitution, which, I suppose, animates the breast of every gentleman in this Convention. Now, as to San Francisco and the injuries that city has suffered on account of the country members, I have this to say: there never has been a time in the history of the legislation of this State, so far as I know anything about it, and I have been there two or three times, when the delegation from that city could agree upon anything at all, and the more numerous their representation has been the greater has been the conflict. They have got one third of the Senate.

MR. ESTEE. One fourth.

MR. EDGERTON. Well, one quarter, then. They never agree upon a proposition, hardly, and no country member can really tell what the interests of that city require, and they have to guess at it; they have to go in and combine with one party or the other as to some measures which they have.

MR. AYERS. Is it not a fact that the country members, as they are termed, have frequently come in to save San Francisco?

MR. EDGERTON. I was going to say that San Francisco has been saved time and time again, and the city members have acknowledged, over and over again, that, but for the interposition of the country delegations, San Francisco would have been sacrificed. I do not recollect the year that the bill for the Second street cut went through. While Judge Hager was addressing the Convention I was under the impression that a large majority of the San Francisco delegation, in both bodies, supported that measure. I know, at all events, that a large number of the people of San Francisco were here in these lobbies and endeavoring to get votes for that measure from the country delegations.

MR. BARNES. Do you remember what the political complexion of that delegation was?

MR. EDGERTON. My impression is that it was Democratic. I have had nothing to do with politics for the last ten years, and cannot say positively.

MR. AYERS. Does the gentleman recollect how the San Francisco delegation stood on the bulkhead bill.

MR. EDGERTON. Almost unanimously. Mr. Page, in the Senate, and one or two others, opposed it. Now, Mr. Chairman, it is a little invidious to talk about legislative iniquities. I do not believe in three quarters of them, as I had occasion to say the other day, but I believe that it would be safe to say that five sixths or perhaps nine tenths of the iniquity done in the Legislature comes from the City of San Francisco, and is supported by the people living in that city and county. And now, sir, theoretically, upon this question of the constitution of the Senate, it seems to me that it should be so constituted as to form a check upon the popular branch. I think four or five members from San Francisco could represent San Francisco in the Senate as well as forty. There would be a greater unanimity in the delegation, and the interests of the city, so far as that body is concerned, would be better represented than it is with the quarter of that body, as it is now. I would like to hear the amendment of the gentleman from Placer read once more.

MR. HOWARD. Mr. Chairman: I am opposed to this amendment of the gentleman from Placer, because it is a violation of principle, and one which I consider to be gross. You cannot go and say to the population of any county, you shall not have representation according to your population, because your population is large. That may be a reason for changing the form of the government, but it has no application upon principle to apportionment. It is grossly improper. Now, suppose they did have a large Senatorial representation in San Francisco, what of it? They pay taxes there in proportion and they have rights in proportion, and especially they have the right of political justice.

Now, sir, I am opposed to cutting down the Senate. I would be in favor of the proposition of my colleague from Los Angeles, to increase the Senate wherever it is necessary to destroy the present gross injustice and inequalities where they exist. I am opposed to a small Senate, for the reason that we know, in this State, that all the attacks upon the integrity of the Legislature have been made by the corporations in the Senate. They have left the House and have gone to the Senate, because they say the Senate being a smaller body does not require so large an investment. I am in favor of a proportionate representation in the House according to population.

MR. HUESTIS. Mr. Chairman: The argument used by the gentleman in support of this proposition, seems to be inconsistent with the argument that was used in relation to the Railroad Commissioners.

MR. HOWARD. I do not know that I am under obligation to look after the logic of the gentleman from some place.

MR. HUESTIS. I called attention to it, and I would like to have it explained.

MR. HOWARD. I am not under obligation to explain anything. What I say is, that it is not sound policy to reduce the Senate. If you reduce the number in San Francisco, why, doesn't it reduce the Senate? I do not know that it would be any safer in Placer or in Los Angeles than in San Francisco. All I say in relation to Los Angeles is this, that you have not done justice to Los Angeles.

MR. EDGERTON. I was in the Legislature when this present apportionment was made, and the delegation from Los Angeles cordially and unanimously assented to it. It is based upon the census of eighteen hundred and seventy—the only practical basis that could be taken—and they agreed to it as a just basis of apportionment, and if there is any injustice, it is that injustice which has come from changes of population, etc., and which other sections of the State probably feel as much as Los Angeles.

MR. HOWARD. Does it follow that because a county grows that the apportionment, without regard to the increase of population, is to be adhered to?

MR. EDGERTON. That is not my position. What I say is, that Los Angeles has nothing more to complain of than some other counties, and that it is unwise to attempt to tinker it up here on the basis of a popular vote. I am in favor of waiting until eighteen hundred and eighty, when another census will be taken under the direction of the Congress of the United States.

MR. HOWARD. It cannot be unjust to do it according to a popular vote, because it will apply as well to one county as another, where there has been a growth and an increase of population. Everybody knows that the United States census, so far as an enumeration is concerned, is a delusion.

MR. EDGERTON. Could that be any greater delusion than the popular vote of eighteen hundred and seventy-six?

MR. HOWARD. Yes. I will tell the gentleman why. Because, in a general election, the voters are all brought out, and it is a fairer index than any census taken by the United States Government. The census takers are poorly paid, and everybody knows that the census is not just nor truthful.

MR. EDGERTON. Then the gentleman would base the representation upon the vote rather than upon population.

MR. HOWARD. I say that the vote is a truer test even than the census of the United States.

MR. EDGERTON. Upon what basis?

MR. HOWARD. Upon the basis that the people come out and vote, and that the census taker does not get all the names.

MR. EDGERTON. Does not the gentleman know that in one county the voting population is most all the population there is in it—that it does not number any women and children? That rule would operate the greatest kind of injustice to Los Angeles.

MR. HOWARD. I do not know any such thing.

MR. EDGERTON. Everybody else knows it.

MR. HOWARD. In some counties there may be a larger male than female population; but it is not very few. I say that the vote, at the Presidential election, is a truer test of the actual population than the census taken, in the bungling way in which the census of the United States is taken by the Marshals. There is a gentleman in this Convention from one of the counties above here, who says that the census taker who had been appointed, came to him and asked him to write it up for him: that there was not enough pay in it for him to go around and take the names. He wrote it up, and the result was that it was the best taken census in the State. Now, what confidence is there in any such census as that? It is notorious that the census of the United States as to population, is totally unreliable, and I say, therefore, it is true that the popular vote at the Presidential election is a better test than the United States census.

MR. SMITH, of Santa Clara. Mr. Chairman: I move the previous question.

The motion was seconded by Messrs. Hunter, Tully, O'Donnell, and Laine.

The main question was ordered.

THE CHAIRMAN. The main question has been ordered. The question is upon the adoption of the amendment offered by the gentleman from Placer, Mr. Filcher.

The amendment was rejected by a vote of 48 ayes to 64 noes.

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

The amendment was rejected.

MR. ROLFE. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Amend section six as follows: Strike out all after the word 'no,' at the end of line sixteen, and before the word 'shall,' in line eighteen, and insert the word 'alien.'"

REMARKS OF MR. ROLFE.

MR. ROLFE. I offered that for the purpose of avoiding the mistake that we are falling into here. It reads now: "But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming the population of any district." Now I propose to make it read this way: "But in making such adjustment, no alien shall be counted as forming the population of any district."

Now, I do not mean this as any particular point against aliens, and I am also in favor of excluding Chinese. I am opposed to enumerating Chinamen in adjusting the representation of the State. Certain portions of our State are too easy of access to Hongkong. This section, if adopted, provides that the census, taken under the direction of the Congress of the United States, shall be the basis of fixing and adjusting the legislative districts. Now, if I am correct, the census of the United States never affords any information as to whom are eligible to become citizens of the United States. I do not think it gives the race. It may give the nationality of aliens, but there are white men born in China that are certainly eligible to become citizens of the United States. Now, I think the safest plan is the one I offer, because we have but very few aliens in this State excepting Chinamen, and the census of the United States shows just how many aliens there are, and I first thought of making my amendment so as to allow those who had declared their intentions to become citizens of the United States, to be enumerated, but I believe the census of the United States does not afford any information upon that point. Therefore, if we make it aliens—simply enumerate citizens of the United States who are residents of the United States. I think it will be the best and the fairest apportionment, provided we wish to exclude Chinamen, although I do not intend to class all other aliens with Chinamen. It seems to me that this is the only way we can strike at them.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: The objection to the proposition is, that it would exclude not only all those who have declared their intentions to become citizens, but it would exclude the families of many citizens. For instance, a man arrives here and becomes a citizen of the United States: his children, born in the United States, are aliens until they become twenty-one years of age, and all of the families are aliens. You exclude the families of those who have actually become citizens. I suppose the object was to reach that class of people who are not permanent residents—who form no part of the permanent population. They are here to-day, and there to-morrow; but it is a sort of floating population that ought to be reckoned in. That, I presume, is all that was intended by this amendment.

MR. O'DONNELL. Mr. Chairman: It appears to me these aliens are considered a portion of the population of the State. I see there is a great deal of contention here among the country members, and they get up here and state that San Francisco has more than her portion of representation. I say that is false. She pays more than one half of the taxes, and she has got nearly one half of the population, and she has only one quarter of the representation in the State. You know that to be a fact. Why do you get up here and say that we have got more than our portion of representation? The population of San Francisco is nearly three hundred thousand. The population of the State is seven hundred thousand, nearly. We pay more than half the taxes of the State. San Francisco is the most troubled city in the world. The country drives their paupers upon us; we take care of their paupers. Talk about San Francisco having more than her portion of representation!

MR. INMAN. Paupers are not before the house. I hope the gentleman will confine himself to the subject.

MR. O'DONNELL. What is the subject? I guess you don't know, yourself. Aliens, I am referring to—most of them are paupers.

MR. ROLFE. As I supposed this had been an oversight and would be corrected—as I understand from the explanation of the Chairman of the Committee on Legislative Department—and they understand it to be correct as it is, with the permission of the committee I will withdraw my amendment.

No objection was made, and the amendment was withdrawn.

MR. BARNES. I desire to offer a substitute for the section as recommended by the committee.

THE SECRETARY read:

"Substitute for section six the following:

"The number of Senators and members of the Assembly shall be fixed by the Legislature, and apportioned among the several counties and districts to be established by law, according to the number of inhabitants. The number of members of the Assembly shall not be less than eighty, and until the Legislature shall otherwise direct, the number of Assemblymen shall be eighty, and the number of Senators forty. And the apportionment of representation and the apportionment of districts shall be as now provided by law. The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature in the year eighteen hundred and eighty, and at the end of every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in the year eighteen hundred and eighty, and every subsequent ten years, shall serve as the basis of representation in both houses of the Legislature."

MR. BEERSTECHER. I second the amendment. I move that the committee rise, report progress, and ask leave to sit again.

The motion was lost.

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. Chairman: I am opposed to the provision in the Constitution allowing the Legislature any discretion to increase the members of the Senate and Assembly beyond that fixed in the old Constitution. The old Constitution provided that at the first election there should be sixteen Senators, and that after the population of the State should reach one hundred thousand then at such ratio that the whole number of members of the Assembly should never be less than thirty nor more than eighty. The first Legislature, at one rush, carried it up to the maximum. Perhaps it was justifiable, but I recollect that there were many taxpayers who thought that the Legislature was a little rash in increasing it at once to the maximum. There are certain considerations why we should be careful in inserting such a provision as that in the Constitution. A great many members of the Legislature are candidates for reëlection to that office, and there are some who would be willing to seize upon any opportunity to increase the number of representatives, in order to increase their own chances of being returned. It carries with it a change of district which may, in many instances, be very agreeable to their aspirations.

Now, it is said that this is a great State, and we contemplate a very great increase of population. It is a great State, but not comparatively so. The State of California to-day, although she has been in the Union twenty-nine years, is, comparatively—speaking of the white population—rather a small State. There are fifteen States in the Union with over a million inhabitants, and according to the census we stand the twenty-fourth State in the Union. Our increase has not been very rapid; considering the richness of its mines and its agricultural interests, I am compelled to say that California is not, comparatively, a large State. There is nothing in the future that naturally, for the next twenty-five years, calls for this elasticity, as some term it, in the Constitution. Now you will observe, by looking over the Constitutions of various States, that generally a Constitutional Convention is called as often as about once in twenty-five or thirty years. For the most part, necessary amendments are reached through the Legislature, and the people ratify their action in case of necessity. Something has been said here about the vote being an evidence of population. I will read from the statistics to show what the vote has been, beginning with eighteen hundred and sixty. In eighteen hundred and sixty the total vote cast for President in this State was one hundred and eighteen thousand eight hundred and forty. Gentlemen will bear in mind that at that time the colored population of the State had no vote. In eighteen hundred and sixty-four, the total vote was one hundred and five thousand nine hundred and seventy-five; in eighteen hundred and sixty-eight, one hundred and eight thousand six hundred and sixty; in eighteen hundred and seventy-two, ninety-five thousand eight hundred and six; and in eighteen hundred and seventy-six, the total vote was one hundred and fifty-five thousand eight hundred. Now we see by going back to eighteen hundred and sixty there was no great increase of votes, and when you look at it closely you will find that it will not be imperatively necessary to increase the representation either in the Senate or Assembly. We do not increase as fast as some of the northwestern States. The State of Wisconsin, two years older than California, has a million and a quarter of inhabitants to-day, and it is estimated that we have eight hundred thousand. The State of Minnesota, that has a snow bank six months in the year, to-day is not a great ways behind California. Tracing the history of the State back twenty-nine years, and looking forward, gentlemen, I do not think that it looks reasonable that there would be any need of placing this elasticity in the Constitution to increase the representation in either house.

MR. BARNES. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

The Convention then took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M.

President Hoge in the chair.

Roll called, and quorum present.

Mr. John J. Kenny, duly elected as a delegate to fill vacancy from San Francisco, after taking and subscribing to the usual oath of office, took his seat as a member of the Convention.

LEGISLATIVE DEPARTMENT.

MR. TERRY. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from San Francisco, Colonel Barnes.

THE PREVIOUS QUESTION.

MR. LAINE. On that amendment I move the previous question.

Seconded by Messrs. Evey, Hager, Van Dyke, and Heiskell.

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

Carried.

THE CHAIRMAN. The question is on the adoption of the amendment.

Lost.

ORGANIZATION—RULES, ETC.

THE CHAIRMAN. The Secretary will read section seven.

THE SECRETARY read:

SEC. 7. Each house shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

THE CHAIRMAN. If there is no amendment, the Secretary will read section eight.

THE SECRETARY read:

SEC. 8. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

THE CHAIRMAN. If there are no amendments, the Secretary will read section nine.

THE SECRETARY read:

SEC. 9. Each house shall determine the rule of its own proceeding, and may, with the concurrence of two thirds of all the members elected, expel a member.

THE CHAIRMAN. If there are no amendments, the Secretary will read section ten.

THE SECRETARY read:

SEC. 10. Each house shall keep a Journal of its own proceedings, and publish the same, and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the Journal.

MR. REYNOLDS. Mr. Chairman: I move to add the following.

THE SECRETARY read:

"Add to the section: 'Any member may dissent from and protest against any act or resolution which he thinks injurious to the public or to any individual, and may have such protest and his reasons therefor, without alteration, commitment, or delay, entered on the Journal.'"

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: There is no such provision found anywhere in the report of the committee, and in order to save any question that might arise in the course of the deliberations of the Legislature as to the right of a member to have his protest entered against any action which he deems injurious to the public or to any citizen, I offer this amendment so that there may be no doubt about it, provided such a provision should not happen to be inserted in the rules of the house. And for authority I will refer to the fact that this identical proposition is found in the Constitutions of fifteen States at the present time.

MR. LARKIN. I am opposed to the amendment offered by the gentleman. It would make a very lengthy Journal if any member might enter a written protest to every measure which does not suit him. The rules of the house are a sufficient protection to the members, and it is unnecessary to be embodied in the Constitution.

MR. REYNOLDS. I will simply state this fact. The rules of the house do not sufficiently protect the members. The rules of the house simply provide that the member may protest, but not that he may spread it upon the Journal. And it so happens, sir, that at the last session but one there was a new Court created for the City and County of San Francisco—a Criminal Court. The Act was passed by both houses, and sent to the Governor for his signature. But it was passed and went to him in such a shape that he positively refused to sign it. It gave the most monstrous and exclusive jurisdiction in certain cases, and for that reason the Governor refused to sign it. By a joint resolution that bill was taken back, and it was then amended by the Clerk, and then, without ever having been repassed or sent to the other branch of the Legislature, it went to the Governor, amended by the Clerk, sufficiently to obviate the objections raised by the Governor, was signed by him, and became a law. And a member who knew all these facts, protested against the action of the house, but not having the privilege of putting that protest on the Journal, a record of it was never kept.

MR. EDGERTON. The gentleman will allow me to correct him. He is entirely mistaken in regard to that bill. That bill was passed at the unanimous request of the San Francisco delegation; and as to the error he alludes to, it was corrected by a joint resolution passed by a unanimous vote in both houses.

MR. REYNOLDS. I thank the gentleman for the correction, which is not a correction. The bill was brought back upon a joint resolution, but it was not corrected by a joint resolution. I had occasion to examine that record, and I know whereof I speak. The law creating the

City Criminal Court never passed the Legislature. And that is the reason why there ought to be such a provision as this. It is a privilege that every member ought to have granted to him. Every member should have the privilege of showing on the Journal, if the house has acted contrary to law, doing an injury to the public or to some individual. These are reasons enough why the amendment should be adopted.

MR. LARKIN. My suggestion is that the rules of the house govern that matter. I am in favor of going still further, and providing that no bill shall become a law, unless passed by the ayes and noes, and that will indicate the vote of each member, and do away with the necessity of such a provision as this. I don't think any bill should become a law unless passed by the ayes and noes in each house. With that provision each member would be present and indicate his own vote.

MR. McCALLUM. I will ask the gentleman, Mr. Larkin, if he is not aware that in this report that is already provided for. More than that, it ought to be required to pass by a majority of all the members elected to each house. In the absence of the Chairman of the committee I have simply to say, with reference to this proposed amendment, that section corresponds with section ten of the present Constitution. The same line of argument which the gentleman has just made, was made use of in the committee, and we could not see any application of the amendment. I do not suppose the committee will change the section—I beg leave to correct myself—I thought Judge Terry had left. [Laughter.]

MR. ROLFE. I wish to offer an amendment.

THE SECRETARY read:

"Add the following: 'provided such protest shall not contain a stump speech.'" [Laughter.]

THE CHAIRMAN. Out of order. The question is on the amendment offered by the gentleman from San Francisco, Mr. Reynolds.

Lost.

THE CHAIRMAN. If there are no further amendments the Secretary will read the next section.

MEMBERS EXEMPT FROM ARREST.

THE SECRETARY read section eleven as follows:

SEC. 11. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

THE CHAIRMAN. If there are no amendments the Secretary will read the next section.

FILLING VACANCIES.

THE SECRETARY read section twelve as follows:

SEC. 12. When a vacancy occurs in either house, from any cause, during the session of the Legislature, the house in which said vacancy occurs shall proceed immediately to elect, from the constituency deprived of representation, a member to fill said vacancy for said session. If the Legislature is not in session at the time the vacancy occurs, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancy.

MR. DUDLEY, of San Joaquin. I move to strike out section twelve, and insert the section of the old Constitution.

THE SECRETARY read:

"SEC. 12. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies."

MR. DUDLEY. That, Mr. Chairman, is the old Constitution. I move to strike out the section reported by the committee. I am not in favor of placing any such power in either house.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: With all deference to the gentleman, I think, in view of the experience of California, there is merit in section twelve. We had here—only during the last session, I believe—during the sitting of the Legislature, certainly four, and I am not sure but five deaths, and to fill one or two of these vacancies—three of them, I believe—special elections were called at great cost to the people of these counties. Indeed, sir, the cost was so great that there was a desire on the part of the people to evade the responsibility; and in the case, I believe, of Amador County, left without representation, the Governor, in deference to the will of the people, and the expressed wishes of the people of that county, took it upon himself to violate the plain letter of the Constitution. And yet there was no serious complaint. He did so, and was almost unanimously justified. Now, to meet a contingency of that kind, this new section to the Constitution is proposed. If a death occurs a few days before the close of the session, I contend there is no alternative for the Governor, if he is to strictly conform to his oath, but to issue an election proclamation. And since these things are liable to occur; since we have had expressions from the people that they would rather temporarily forego representation than to have this extra expense heaped upon them—I say it becomes us to insert that clause. The committee refused to give that power to the Legislature in all cases. It is only in cases of urgency or necessity. They may act on petitions in making these selections. The Legislature, in calling this Convention, no doubt acted upon their own experience, when they provided that the Convention should fill vacancies. They were no doubt induced to do so from the result of experience, and the complaints arising from former actions. Now, sir, it is in deference to that sentiment, so clearly expressed, that this amendment is offered. Has that privilege been abused in any case by this body? Is there any evidence that we have abused the privilege? Is there any evidence that the gentleman chosen to fill the seat of Mr. Strong was not a fit representative—a satisfactory representative—to his constituency? Is there any evidence that the gentleman from Alameda is not a satisfactory representative to the people? Have there been any complaints here from the people that they would rather have had the power of choosing for themselves? And yet all these vacancies were filled under the same rule which we here provide for the Legislature. I ask, in the case of Mr. Strong and Mr. Kenny, would it have been wise to send back to their counties and impose the expense of a special election, for the short time yet remaining of the session? I say, sir, that the people will indorse the proposition, especially those who have had experience with special elections. I hope, in defense of this section, that the representatives from Santa Clara, and Alameda, and Amador, will rise and inform the Convention as to the sentiment of the people on this matter.

MR. WEST. If a vacancy is filled by the Senate, will the candidate so elected remain and fill the unexpired term, or only during the session during which he was elected?

MR. FILCHER. Under that provision, he will fill the position during the entire term. I would have no objection, so far as I am concerned, to an amendment providing that he should only hold for the remainder of the session. I find it so provides here, upon closer examination. It is plain. The primary object of the amendment is simply this: to save money; to economize, and at the same time without restricting unnecessarily the rights and privileges of the people. The right of the people to be provided with representation is provided for better than in the old section. In case a member dies two weeks before the session closes, you can see how utterly impossible it would be to have an election; and yet, by this means, it is possible for them to have a representative on the floor the very next day, and it would be the duty of the Legislature to fill the vacancy at once.

REMARKS OF MR. WEST.

MR. WEST. I hope the amendment will prevail. I believe the Legislature entirely incompetent, as this Convention is, however able they may be, to judge of other matters, to elect a member to a deliberative body, to represent a constituency of whose wants they are entirely ignorant. I believe the people of the counties would be better off without any representative until the next election, if there is not time to call a special election. They had better spend the time and money necessary to an election than to have the vacancy filled by some political hack belonging to the dominant party, who could get in no other way. I hope the amendment will prevail, and that the people will have the power to elect their members to both houses of the Legislature under all circumstances.

REMARKS OF MR. HEISKELL.

MR. HEISKELL. Mr. Chairman: I regret exceedingly to have to differ with the committee, but I hope the substitute will prevail. It is, in my opinion, a blow at the representative character of our government, to which I cannot consent. There is no certainty that the people will be represented when a vacancy is filled by the Legislature, and to be misrepresented is far worse than to be unrepresented.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: It seems to me, sir, if there is any branch of the government in which the people ought to be directly interested by their votes, it is in the Legislative Department. That is the true idea of popular government. Now, we have known cases where such rules prevailed—that, for instance, where the Democratic party is in the minority in a particular district to be represented, the House or Senate has elected a man to fill that place from the minority party, contrary to the wishes of a majority of the people of that district. And it is equally true, in cases where the Republican party happens to be in the minority, that the House, if a vacancy occurs in that particular district, will do the same thing, if it happens to have the power. I think it is much better to leave them vacant than to fill these seats with persons who do not represent the people, and that very frequently occurs under such a rule as this proposed by the committee. Now, the amendment that is offered is the same provision as in the old Constitution. And, sir, it is a very proper provision, in my judgment, to have members elected by the people whom they are to represent, and only by such men as they may elect. Now, the gentleman from Placer raises a question. He compares the filling of a vacancy in this body to that of filling a vacancy in the Legislature. This body has elected a man who has been rejected by the people whom he attempted to represent, and rejected a man who was the choice of the people. I will further inform him that we did our best to elect a man who would properly represent the people. As to the question of expense, I will say, so far as I am concerned, that I do not deem that of so much importance as it is to have the principles of our government sustained. Let us establish the right principle of representative government here, and let us stand by those principles. The people are in favor of economy, but a representative government costs something. The fact that it costs something ought not to deter us. We can afford to pay something, in order to sustain those principles. That is why Legislatures and Conventions are organized. I am in favor of the amendment. I believe in having this in the new Constitution exactly as it is in the old.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: It seems to me, sir, that we are making an innovation, the end of which no man can tell. It appears to me that in the report of the committee the principles of republican government have been departed from. Now, for instance, suppose the majority of the members of the Legislature to be Republican, or a majority Democratic, it is to be supposed at once that the body has full power, and would exercise that power, to elect a man of the political sentiment which the majority thought right. And in this way a Republican county or Senatorial district might be deprived of its choice of a man of the political sentiment which it approved. Now that would certainly be improper. It is certainly an aggression upon American liberty, and ought not to be tolerated. We should look at this thing as it is. As to

a few dollars and cents coming into consideration, it ought not to be mentioned. What if it does cost a few dollars, the people will elect their own men to represent their wishes, wants, and sentiments. I say this section is contrary to the spirit of republican government. With due respect to the committee, it is contrary to everything we have been taught to believe is right. It is wrong to deprive the people of a representation, and it is wrong to force a man upon them that they do not want. I hope the substitute will be adopted.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I must concede that the argument is a very plausible one, and if the proposition was to make a serious innovation from the general rule of electing legislative officers, I would myself oppose the report of the committee. I am of the same view with regard to any radical innovation. But when this section is carefully read, gentlemen will see that it is the only remedy for a great evil which the committee propose to cure. It is not a simple question of economy, though that is very serious. In our county a vacancy occurred at the last session, which was filled near the end of the session, at a cost, I believe, of between two and three thousand dollars. In the County of Santa Clara two vacancies occurred. I believe I am authorized in saying that those who have had experience in that way have had enough of it. I prefer this course, outside of the mere consideration of dollars and cents. It is economy of time. Now, remember, we have provided for a sixty days' session of the Legislature. These vacancies have to be filled by the Legislature only during the session, and at the next general election the vacancy will be filled by the people. The law requires thirty days' notice for an election. The Legislature is not in session but sixty days. You give thirty days' notice, after a reasonable time, and the members elected will have but a few days of that session to serve, in any case. As the law now stands it is imperative that the Governor shall issue a writ for a special election. That is the amendment offered, and that is the present Constitution. In those cases where the vacancy occurs towards the end of the session, it is a serious question whether the Governor shall obey the mandates of the Constitution or not. Sometimes he would not do it, and if he does not choose to take that responsibility, and disregard the Constitution, he puts the people of the county, or of the district, to a very heavy expense, without any real benefit being realized from his action, because the member hardly gets here before the term expires. Why, sir, this idea was illustrated by the election in this Convention. There was a necessity, if the people were to be represented at all, that they ought to be represented at once. We have filled those vacancies, and I cannot see why the intimation should be thrown out here that we have not acted wisely and well. I have never heard any complaints. I know the Convention has acted intelligently in this matter, with a desire to do what is right. In our county, these special elections, the people won't attend them, and you do not in fact get an expression of the popular will. The opposition to this section is based, in the main, upon the theory that if they are to be appointed by the Senate or Assembly there might be a person of different politics chosen from that which prevails in the county or district. Perhaps even that would not apply, in view of the fact that there is always such a small vote. But that is a mere partisan view, unworthy the consideration of this Convention. As to the idea of its being unrepublican, from the very necessities of the case we have to have officers appointed, and there are cases in which our Constitution requires them to be appointed. If a vacancy occurs in the office of Secretary of State, State Treasurer, or any of those offices, what is done? It is republican to elect in all these cases, but the Governor appoints for the time being. That is all there is in this proposition. It is only for the time being. When we consider that the session will only be sixty days, you will readily see that very often a district will have to go unrepresented. It will save a heavy expense in every case, and I consider it ought to stand.

THE CHAIRMAN. The question is on the adoption of the substitute.

Division being called for, it was adopted by a vote of 65 ayes to 38 noes.

THE CHAIRMAN. The Secretary will read the next section.

THE SECRETARY read:

SEC. 13. The doors of each house shall be open, except on such occasions as in the opinion of the house may require secrecy.

THE CHAIRMAN. If there is no amendment, the Secretary will read the next section.

THE SECRETARY read:

SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

MR. LARUE. I move to amend as follows:

THE SECRETARY read:

"Amend by adding: 'Nor shall the members of either house draw pay for any recess or adjournment for a longer time than three days.'"

THE CHAIRMAN. The question is on the amendment.

Adopted.

MR. AYERS. I move to amend by adding, after the word "sitting," the following: "unless by a two-thirds vote of each house."

THE CHAIRMAN. The question is on the adoption of the amendment.

MR. AYERS. There may be floods or other calamities in this State, which might make it necessary for the Legislature to adjourn to some other place.

The amendment was lost.

THE CHAIRMAN. The Secretary will read section fifteen.

THIRD READING OF BILLS.

THE SECRETARY read section fifteen, as follows:

SEC. 15. No law shall be passed except by bill. Any bill may originate with either house, but may be amended or rejected by the other, and on the final passage of all bills they shall be read at length, and the vote shall be by ayes and noes separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each house.

MR. CONDON. I move an amendment.

THE SECRETARY read:

"Insert after the word 'bill,' and before the word 'any,' in the first line, the following: 'No bill shall become a law until it has been read three different days of the session, in the house in which it originates.'"

MR. REYNOLDS. I propose an amendment to the amendment.

THE SECRETARY read:

"Amend by inserting after the word 'bill,' in the first line, the following: 'Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each house, unless, in case of urgency, two thirds of the house where such bill may be pending, shall, by a vote of ayes and noes, deem it expedient to dispense with this rule.'"

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: This amendment commends itself to the consideration of the committee, without any remarks or waste of time in discussion. It simply provides, in addition to the provisions of section fifteen as reported, that the bill and the amendments, if any, shall be printed before the bill, with the amendments, shall be put upon its final passage. It seems to me that a provision of this kind needs no comment; need not be urged upon the attention of this committee. We have had sufficient experience here, in this Convention, and in early legislative experience, to prove, I think, to every man, that it is impossible for a member to understand what he is voting for, or what the provisions of a bill are, by hearing them read at the desk. I undertake to say that of the legislation which goes through under a suspension of the rules, simply by being read at the desk, not one quarter of the members know what they are voting for, and the object of the provisions of the amendment is that the bill shall be read, or, what is the same thing, considered on three several days, before being put upon its final passage; the object of that is apparent; it is to prevent hasty legislation, unless in case of urgency, when the rules may be suspended by a two-thirds vote. I think they are both wise provisions, both tending to guard legislation. These are the only two provisions intended by this amendment. They are both wise. They are not intended to, nor will they hamper legislation, but to compel it to be done decently and in order, after the legislation has been well considered.

MR. MCCALLUM. Why, sir, if they put that provision in the Constitution, it might be construed that the bill cannot be read by title.

MR. REYNOLDS. The section says that "on the final passage of all bills they shall be read at length." That part of the section, construed with the amendment, will not be understood as meaning that the bill shall be read at length on the second and first readings, but considered on three several days before passage.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I hope neither of these amendments will prevail. I make this statement in behalf of a majority of the Committee on Legislative Department, and I wish to say this in addition: that the very able and faithful Chairman of the committee is necessarily absent during this day and to-morrow. I ask all the members of this committee to carefully consider the terms of this fifteenth article, or section, as it was framed by a majority of the entire committee, though not by the unanimous voice of the committee, yet with the concurrence of a large number of its members. As to all the details about printing, and the procedures to be had under it, we thought that might safely be left to the discretion of the Legislative Department. The thing which we aimed to accomplish was to require that upon the final passage of a bill in either house of the Legislature, it should be read at length, considered at length, and when adopted, done so by a majority of all the members of each house. It seems to me that in that guarantee—in its results—we have guarded, as fully and safely as it is possible to do by a constitutional provision, against hasty legislation, and I hope, in behalf of the members of this committee, that you will scan this section very closely; and I think you will be satisfied that the evils of hasty legislation are sufficiently guarded against by the provisions of that section. Now, I trust these amendments will be voted down and the section adopted.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I hope the amendment of the gentleman from San Francisco will prevail. Looking over the Constitution of Pennsylvania I find the same provision. Section two, of article three, of that Constitution, reads as follows:

"SEC. 2. No bill shall be considered unless referred to a committee, returned therefrom, and printed for the use of the members."

Section four of that article reads as follows:

"SEC. 4. Every bill shall be read at length on three different days in each house; all amendments made thereto shall be printed for the use of the members, before the final vote is taken on the bill, and no bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the persons voting for and against the same be entered on the Journal, and a majority of the members elected to each house be recorded thereon as voting in its favor."

Now, I understand the purport of this amendment to be to guard against hasty legislation. Bills and the amendments are to be printed before the bills are put upon their final passage. That acquaints every member with what is before the house, just as we have been acquainted with the substance of these various propositions, and of which we can have no knowledge, and we could not have been made acquainted with

their contents without having them printed. That is one proposition. And the next is that they shall be read three different days, and it seems to me that also should commend itself to our approval, so that a bill shall not be hurried through. I say it is a good provision. It is a guard against improvident legislation, and I hope it will be adopted.

MR. ANDREWS. Does the Pennsylvania Constitution contain this limitation that no bill shall become a law without the concurrence of a majority of the members elected to each house?

MR. JOHNSON. Yes, sir, it does.

MR. ANDREWS. I hope the amendment will not prevail.

MR. BARNES. I rise to a point of order. The gentleman is out of his seat.

THE CHAIRMAN. He has a right to address the house there by permission of the Chair.

MR. SCHELL. It is in the discretion of the Chair.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: In the way of an apology, I will say that I might as well almost have no seat in this Convention or in the Committee of the Whole. I am satisfied I am not trespassing upon the gentleman, Mr. Tinnin, as he is not occupying his seat to-day. He is absent on account of sickness. As I was going to say, I don't know but the amendment would be uncertain in its effect—as to whether that two-thirds rule—as to what that rule would apply to—to the whole section, or only to the amendment offered by the gentleman from San Francisco. I think, sir, that the guards thrown around legislation by this section, as reported, are amply sufficient. Here is a guard that does not exist now: "On the final passage of all bills they shall be read at length." That is a guard that does not exist now. "And the vote shall be by ayes and noes upon each separate bill." That is a guard that is not in the present Constitution. This is the most important guard, and I do not believe it is one that exists in the Pennsylvania Constitution—certainly not as cited by the gentleman. "No bill shall become a law without the concurrence of a majority of all the members elected to each house." That is a guard, and a very important one. Now, sir, there frequently arise emergencies, in which it is necessary that immediate action should be had in the way of legislation. I think it is sufficiently guarded, and if we make it more so, we may prevent legislation very often; and what they do would amount to naught, for the reason that there would not be time to effect it.

MR. FILCHER. Isn't printing—the gentleman has had a good deal of experience—isn't that usually provided for by the rules of the house?

MR. ANDREWS. Yes, sir; generally, in legislative bodies in which I have served, there is a standing rule that all bills of a general nature shall be printed. That has been the rule in every legislative body in which I have served, that all bills of a general nature shall be printed. As I understand, it is the intention now that our legislation shall all be of a general nature hereafter. I am in hopes that the section as reported by the committee will stand, and not be amended.

MR. JOHNSON. I will read sections four and five of the Constitution of Pennsylvania:

"SEC. 4. Every bill shall be read at length on three different days in each house; all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law unless on its final passage the vote be taken by ayes and noes, the names of the persons voting for and against the same be entered on the Journal, and a majority of the members elected to each house be recorded thereon as voting in its favor.

"SEC. 5. No amendments to bills by one house shall be concurred in by the other, except by the vote of a majority of the members elected thereto, taken by ayes and noes, and the names of those voting for and against recorded upon the Journal thereof," etc.

MR. ANDREWS. That may be, but it is for us to judge what this State requires. I think the section as reported by the committee is sufficiently guarded, and as we have rejected the example of Pennsylvania to-day upon one occasion, I don't know why we should not reject it again.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I won't detain this Convention long. This section fifteen as reported is the least guarded of any I can find in any Constitution. It dispenses with the reading of bills on three several days. That is ordinarily a matter of safety. If the Constitution requires that a bill shall be read on three different days, any person can get up and object to its being read more than once on that day. It dispenses with the reading, except on one day; dispenses with the printing, and I consider it less guarded than the existing provisions of our Constitution. The Constitution of Pennsylvania has been adverted to, and as it is among the late Constitutions, it is taken as a guide——

MR. MCCALLUM. Our present Constitution——

MR. HAGER. This requires that "no law shall be passed except by bill. Any bill may originate in either house, but may be amended or rejected by the other, and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each house." A bill may be introduced in the house without referring to a committee, and voted upon immediately, and all be done in the course of fifteen minutes, and, perhaps, one half of the members know nothing about it. There is no safety in that, unless the laws of the Assembly should prevent it; then, of course, it would require the suspension of the rules.

Now, as I said, in this Constitution of Pennsylvania, they require that all bills shall be printed; that all amendments shall be printed and engrossed, and when the final vote is taken it shall be recorded with the ayes and noes, entered upon the Journal, and that the bill shall be read on three several days. Take the Constitution of Missouri:

"Bills may originate in either house, and may be amended or rejected by the other; and every bill shall be read on three different days in each house."

"No bill shall be considered for final passage unless the same has been reported upon by a committee, and printed for the use of the members."

Every bill shall be reported by a committee.

"No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section forty-four of this article) shall contain more than one subject, which shall be clearly expressed in its title."

"All amendments adopted by either house to a bill pending and originating in the same, shall be incorporated with the bill by engrossment, and the bill, as thus engrossed, shall be printed for the use of the members, before its final passage," etc.

"No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the Journal, and a majority of the members elected to each house be recorded thereon as voting in its favor."

Now, these are new provisions, which is a precaution against hasty and ill-considered legislation. I have known very important amendments to be put in bills passed, in the enrollment of them, and when we came to read the law we found the substance in many respects changed from what they were when they were passed by the Legislature. I know whereof I speak, because I have known these things to take place myself. There may be fifty bills in the Enrolling Committee's hands at one time at the last end of the session, when it is almost impossible to accomplish the work. They have to employ men from the outside to assist——

MR. ANDREWS. I wish to ask the gentleman a question. Do you not know, in your legislative experiences, cases that required immediate action by the Legislature?

MR. HAGER. Sometimes, I believe, I have known that to occur, where bills have passed in emergencies; where it was said that it was important that it be done at once. I have known such instances. But in looking over these provisions I see some that I think it would be well for us to adopt in this State. I do not know of any State where they do not require that a bill shall be read on three different days. I thought it was in our Constitution, but it seems it was only a rule of the House and Senate. I know they were required to be read by the rule, and I presumed it was in the Constitution. I should like to have incorporated here an amendment requiring all bills to be referred to a committee, and to be printed before they shall be finally passed. Others go to the extent that all amendments shall be printed, and that may be a precaution well enough to observe. In Missouri and Pennsylvania they require that all amendments shall be printed, and engrossed before the house takes action, or either branch. I hope the amendments will prevail requiring a bill to be read on three different days, requiring it to be referred to a committee, and requiring it to be printed, in order that the house may know what they are acting upon, in order to prevent this hasty legislation that has from time to time crept in, in the course of our legislative experience in this State.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: Consistency is a jewel. In eighteen hundred and sixty-nine–seventy, the first day of the session, a bill was introduced here, and my friend from San Francisco, Judge Hager, came from San Francisco, and urged the great necessity of passing that law, and it passed immediately. My worthy friend, Judge Hager, done that, and I appeal to him now if it is not customary for the Legislature and parliamentary bodies to have their rules so that all bills shall be read and printed; and I ask him if that is not the best guarded clause in the United States. That old Constitution of Missouri, where it required a majority of all the members of each house—isn't that a safeguard? Then the ayes and noes has to be called. Does the gentleman now propose that every bill shall be read, section by section, three days? He has been a legislator, and knows parliamentary rules. It is first read by title, and before it is finally passed it is read section by section, and it is unnecessary to tell the Legislature, when they have the power to establish their own rules governing the sessions of the Legislature, that all bills shall be referred to committees, that all bills shall be printed, and all amendments printed. More than that. We want to have every vote recorded. I want my friend, Judge Hager, to be consistent. When he came here, he came here and almost seduced me, to get me to vote for an unconstitutional bill. He recollects it. He came here with tears in his eyes and begged me to vote for the lottery bill.

MR. BARNES. Allow me to make an observation. He says the bill was an unconstitutional bill. On the contrary, it was a constitutional bill, so held by the Courts of this State, and the debates of the Convention that passed the Constitution will show that the clause against lotteries was a lottery maintained by the State, and not private lotteries.

MR. BIGGS. My friend is a great lawyer, and he can make black white and white black; but I tell him the Constitution of California says there shall be no lotteries. I hope this amendment will not pass.

MR. HAGER. Now, in regard to that lottery bill, the committee that were interested in the library—and I believe it would have gone under—came up with a bill for a gift enterprise—not a lottery—for the purpose of saving that institution. I introduced that bill for a gift enterprise. The bill originally was drawn for the purpose of inaugurating a gift enterprise for the purpose of saving the library from being sold for debt. It didn't originate with me, but I introduced it, and held myself responsible for it to that extent. But it was not unconstitutional and never was so declared.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I cannot understand the objections made by my friend from Shasta, Mr. Andrews, to the amendment offered by the gentleman from San Francisco, Mr. Reynolds. The amendment desires merely to guard against hasty legislation. Hasty legislation has been the curse of this State, and the curse of several States in this Union, until they have been obliged to guard against it. Now, all that the amendment of Mr. Reynolds contemplates is merely that every proposition introduced into the Legislature shall be printed. That it shall be read three times before it is put upon its final passage; but in case an emergency exists it can be avoided by a two-thirds vote. And I don't see any objections to that. In fact, everything stands in favor of it. It prevents hasty legislation. It allows members to have printed copies put upon their desks, and then they are able to consider them fully and read them. A bill is introduced and kept in the hands of the Clerk, and he reads it, and it is put upon its passage, and no one sees the bill until it is enrolled, and oftentimes an entirely different bill is enrolled than the one passed. An entirely different Act becomes a law without the Assembly contemplating it. This is a guard put on the Legislature. It prevents and guards against hasty legislation. It seems to me that this should be adopted.

MR. O'DONNELL. I move the previous question.

Not recognized.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: It seems as though every person has spoken who wants to speak upon the amendment, and I would like to refer the Committee of the Whole to the authority of more than half or about two thirds of the States of this Union that have provisions of this kind in their Constitutions—twenty-one States and several others besides, but I have twenty-one States here now. And I deem this matter of enough importance to refer you to a few of these authorities. Alabama, Kentucky, and Texas provide that no bill shall have the force of law until on three several days it shall have been read in each house. Arkansas, every bill or joint resolution shall be read three times on different days in each house, unless two thirds of the house shall dispense with that rule. That is precisely the amendment here. Now I will omit a few that have the same thing, and come down to Illinois—"Every bill shall be read at large on three several days." Now, I do not ask that in this provision. I only ask that it shall be considered on three several days. But as a substitute for reading the bill at large on the second and first days, I propose that it be printed. But the Constitution of Illinois provides not only that it be read at large on three several days, but printed too. "Every bill shall be read at large on three different days in each house, and the bill and all amendments thereto shall be printed before a vote is taken on the final passage." And so on down the list of twenty-one States. "Every bill shall be fully and distinctly read on three different days, unless in case of urgency, three fourths of the house shall have dispensed with the rule." Constitutions of Nebraska and Ohio. Now, I deem these authorities sufficient for us to establish this rule. It is to prevent hasty legislation. It is to prevent legislation that should not be passed; but in case of urgency, upon a call of the ayes and noes, the rule that they shall be considered on three different days may be suspended.

THE PREVIOUS QUESTION.

MR. O'DONNELL. I move the previous question.

Seconded by Messrs. Van Dyke, Smith, of Santa Clara, and Weller.

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

Carried.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from San Francisco, Mr. Reynolds.

Division was called, and the amendment was adopted by a vote of 60 ayes to 42 noes.

THE CHAIRMAN. The question is on the amendment to the amendment.

MR. CONDON. I accept the amendment of Mr. Reynolds, as it embodies the same principle.

The amendment to the amendment was adopted.

MR. SCHELL. I offer a further amendment.

THE SECRETARY read:

"Strike out in the first line the following words: 'No law shall be passed except by bill.'"

MR. SCHELL. I don't suppose there was ever a bill introduced into the Legislature and became a law except by bill. The reason I move to strike out these words is, that they are absolutely unnecessary and superfluous.

MR. LAINE. There is a case of a joint resolution. One of the largest grants the railroad companies now have was made by joint resolution.

MR. JOHNSON. I would suggest to Judge Schell that the Pennsylvania Constitution has the same provision.

The amendment was lost.

MR. HARRISON. I offer an amendment.

THE SECRETARY read:

"Strike out all that part commencing with the word 'and' in the second line, and ending with the word 'Journal' in the fourth line, and then insert a new section, to be numbered section sixteen. 'Every bill.'"——

THE CHAIRMAN. That is not an amendment to section fifteen.

MR. HARRISON. The only difference between mine and Mr. Reynold's is, that I leave part of the original section stand, and introduce an additional one. The additional section makes the matter more full.

THE CHAIRMAN. The question is on the amendment.

Lost.

THE CHAIRMAN. The Secretary will read section sixteen.

APPROVING BILLS.

THE SECRETARY read:

SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it he shall sign it; but if not he shall return it with his objections, to the house in which it originated, which shall enter the same upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by ayes and noes, by a majority of two thirds of the members of each house, it shall become a law, notwithstanding the Governor's objection. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the house in which the bill originated, a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

MR. SHURTLEFF. I offer an amendment.

THE SECRETARY read:

"Strike out in the sixth line, after the word 'nays,' the words 'a majority of,' and insert after the word 'house' the words 'voting therefor,' so as to read as follows:

"SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, by two thirds of the members of each house voting therefor, it shall become a law, notwithstanding the Governor's objection. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return; in which case, it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor."

MR. SHURTLEFF. The object of the amendment is to correct the phraseology. As it reads, it does not appear very creditable.

MR. HALE. As I understand the effect of it, it is to not allow a bill to be passed over the Governor's veto by less than two thirds of the members of each house.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: It seems to me the amendment proposed entirely changes the section as it now stands. It says, by a majority of two thirds of the members of each house. That means two thirds elected to each house. Not merely two thirds of the members voting. But by the amendment of the gentleman from Napa, exactly half the members elected to each house could walk out of the room, and allow the other half to vote, and two thirds of those remaining would have a right to carry the bill over the veto. I do not believe we desire to do any such thing as that. We desire to have two thirds of all the members elected, and if you change the phraseology in this way you will entirely change the meaning of the section.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: The remarks of the gentleman from San Francisco are correct. Now, there is no gentleman who has had any experience in a legislative body but knows that a very important bill may be passed when there is a bare quorum present. And by the same rule a bare quorum could pass a bill over the Governor's veto. I think if members will look at this matter they will see the necessity of a provision that will require a two-thirds majority of all the members in order to pass a bill over the Governor's veto.

MR. VAN DYKE. It does not change that at all. The members of each house never has been understood as all the members elected to each house, and the object of the amendment proposed is to remove the ambiguity.

MR. FILCHER. I wish to call attention to this fact, that if this phraseology is wrong, we have been working under it for twenty-eight years in California, for it is precisely the same as in the old Constitution, which reads: "If, after such reconsideration, it again pass both houses by a majority of two thirds of the members of each house present," etc. The committee thought it was better to leave out the word "present," so as to require a two-thirds vote of all the members elected to each house.

I claim that the idea is a good one, and that the section is sufficiently clear.

MR. AYERS. I offer an amendment.

THE SECRETARY read:

"Substitute between the word 'nays' and the words 'of the,' the words 'by a two-thirds majority.'"

MR. MCCALLUM. The present Constitution reads, "a majority of two thirds." That has stood for twenty-nine years, and I see no reason for changing it. I wish to call attention to one matter. The theory of this report is that no law shall be passed without a majority of all the members elected. Now, if this amendment of the gentleman prevails, in the Assembly, twenty-seven members, which is two thirds of a quorum, can overrule the veto of the Governor, whereas it actually required forty-one votes to pass the law in the first instance. In the Senate it requires twenty-one of the forty members to pass a law, while, if the Governor vetoes it, two thirds of twenty could override the veto. The theory of the amendment is contrary to the theory of the report.

MR. LAINE. Mr. Chairman: It is perfectly obvious what the committee is intending to do. I would suggest that we vote down the amendments and then strike out these words, and then it will be perfectly clear. Strike out the words, "a majority of."

MR. VAN DYKE. Strike out the word "majority," and insert the word "vote."

MR. WILSON, of First District. It seems to me very plain. Reading it, there is no obscurity in it, as it is proposed to be amended by Dr. Shurtleff—"if, after such consideration, it again pass both houses by yeas and nays, by a majority of two thirds of the members in each house, it shall become a law." Two thirds of the members of each house is a phrase easily understood. But a majority of two thirds of the members of each house seems somewhat obscure. Is it a majority consisting of two thirds, or when you select two thirds do you then take a majority of that two thirds? It seems to me the amendment of the gentleman from Napa clears the thing up. "If, after such reconsideration, it again pass both houses, two thirds of the members voting therefor, it shall become a law." If two thirds of the members vote for it, it shall become a law. How can you make it any more clear?

MR. REYNOLDS. I will suggest an amendment of two words to the amendment offered by the gentleman from Napa, which will make it perfectly clear and impossible to be misunderstood. I will suggest to his amendment the words "elected to," so as to make it read in this way: "If, after such reconsideration, it again pass both houses, by ayes and noes, two thirds of the members elected to each house voting therefor, it shall become a law." It is impossible to misunderstand that. I think it is just the thing.

MR. SCHELL. Suppose there should be a vacancy of one or two seats in either house at the time a bill was voted on, would you have to have two thirds?

MR. REYNOLDS. That is just the contingency that this amendment seeks to cover.

MR. SCHELL. Would it not be better to put in the word "all," so as to read, "two thirds of all the members voting therefor?"

MR. REYNOLDS. No, sir; the committee, in considering this question, came to the unanimous conclusion that they desired, in order to have a bill passed over the veto of the Governor, that it should pass by two thirds of all the members elected to each house, notwithstanding any vacancy. That was the unanimous wish of the committee, and as far as has been expressed, seems to be the wish of the Committee of the Whole. I think this is the only amendment suggested which will clear away all possible doubt and obscurity.

MR. HAGER. Mr. Chairman: What do we desire to accomplish? Now, if it is proposed to require a majority of all the members elected to each house, that is one thing; if it requires a majority of those present, that is another thing. I have never known it to be required that a majority of two thirds of all the members elected should vote in order to pass a bill over the Governor's veto. The practice has been, in this State, that a majority of those acting were sufficient. Now, I think if we require two thirds of those present in the chamber to vote in the affirmative, it is sufficient. We should not require a majority of all the member selected, because half of them may be absent when the bill is under consideration, therefore, it ought to read, a majority of those acting upon the bill, that would be two thirds of all the members constituting the house for the time being. But if it is the wish that it shall be two thirds of all the members elected to each house, it ought to read so; but I am opposed to that.

MR. MCFARLAND. It does seem to me that this is unnecessary, as the words employed in the report are the same that have been in the Constitution since it was first adopted. I venture to say that there is not a Court in the world, nor a man on this floor, but knows what is meant by a majority of two thirds. The words "two thirds," qualify the term. The report says that it must be a two-thirds majority. This language has been in the Constitution ever since it was made. You can't find a gentleman here who does not know what it means.

MR. REYNOLDS. The gentleman from Napa, I believe, accepts my amendment.

MR. SHURTLEFF. The gentleman misunderstood me. That brings in a new principle right at once. It is not customary to require two thirds all of the members elected to each house. If there is any such case it is exceptional. In the Constitution of the United States no such term is used; it is two thirds of the members voting in the United States Senate and the House of Representatives, and it is also so in the various State Constitutions; there may be exceptions to the rule, however.

MR. WILSON, of First District. Mr. Chairman: Notwithstanding what the gentleman says as to the Constitution of the United States, we have adopted a new principle in section fifteen here, that no bill shall become a law unless voted for by a majority of the members elected to each house. Now, in order to be consistent, it seems to me we should adopt the amendment of the gentleman from San Francisco, Mr. Reynolds. Therefore, to be consistent, we must say two thirds of the members elected to each house voting therefor. In section fifteen we require a majority of all the members elected to each house to pass a bill, while here, if the Governor vetoes a bill, two thirds of a bare quorum may pass it over his veto. It seems to me it is very necessary to adopt an amendment requiring two thirds of all the members elected to each house to vote in the affirmative, in order to pass a bill over the Governor's veto.

THE CHAIRMAN. The question is on the amendment of the gentleman from Napa.

MR. MCCALLUM. Will the gentleman explain what he means by a two-thirds vote.

Division was called for, and the amendment was adopted by a vote of 65 ayes to 55 noes.

MR. REYNOLDS. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Strike out the word 'of' and insert the words 'elected to' in line six."

THE CHAIRMAN. The question is on the amendment.

MR. REYNOLDS. This will make the language absolutely unmistakable, as I have endeavored to explain before.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I hope this amendment will not be adopted. It introduces a doubtful feature into the Constitution, one not contemplated by the committee. I think the gentleman from San Francisco is mistaken when he says that it is contemplated by the committee. It is true, sir, that the change which the committee presented has been voted down. The Legislative Committee proposed that when a vacancy should occur in either house, the same should be filled by the body for the session, and that afterwards it should be filled by an election, so that there would be the full number of members in each house. Now, it never was contemplated by the Legislative Committee to require more than a two-thirds vote of the members present, in order to pass a bill over the Governor's veto. I say it never has been contemplated. It has not been required by any State Constitution in the Union. It has never been required by the Constitution of this State. The rule was that it should be passed by a two-thirds vote of the members present in each house. Suppose that one, or two, or three members of the Assembly have died, according to the amendment made by the Committee of the Whole, these vacancies could not be filled, except by election. Then, sir, it would consist of seventy-seven members. Now, the intention of the committee was to require two thirds of the house, as then constituted, and no more. The rule which they intended to establish was, that in order to pass a bill over the Governor's veto, it must have a vote of two thirds of the members in each house. Two thirds of the members present and voting should be sufficient.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I took it for granted that when this committee had adopted section fifteen it was their deliberate intention thereafter to proceed to carry out the theory. That theory was that no bill should become a law unless by a concurrence of a majority of all the members elected to each house. Now, in considering the amendment proposed by the gentleman from San Francisco, Mr. Reynolds, we must keep in view the fact that we have adopted section fifteen, and we can only argue this question upon that assumption. Now, if this Convention intends to stand by section fifteen, that no bill can become a law without a majority of the members elected to each house voting therefor, it is necessary to adopt the amendment to section sixteen proposed by Mr. Reynolds. Suppose we illustrate the workings of section fifteen. Under that section, assuming that the Senate shall consist of forty, it would require twenty-one Senators to vote for the law in order to pass it, twenty-one being a majority of forty. After it has been passed by both houses, the Governor vetoes it, and it comes back again. Then, under this section, two thirds of a quorum may pass it over his veto. Twenty-one being a quorum in the Senate, and fourteen being two thirds of twenty-one, it could be passed over the veto by fourteen votes, whereas it required twenty-one votes to pass the bill in the first place. That is an absurdity. You are, therefore, in order to avoid this inconsistency, compelled to adopt the amendment, or else go back to section fifteen and change that. Section fifteen was adopted in order to guard against hasty legislation, so that a bill could not be rushed through when there is a very thin house. I say you must necessarily require two thirds of all the members elected in order to pass a bill over the veto, or you will be doing a very absurd act.

MR. HALE. What objection would there be to correcting section fifteen, so as to read in this wise: "A majority of all the members of each house."

MR. WILSON. Why didn't they make it so?

MR. HALE. The committee did that because they had provided that in case of the death of a member, the house should fill the vacancy immediately, and there would always be a full house. That is the reason they made that section that way.

MR. WILSON. Mere accident or death should not change a great rule.

MR. EDGERTON. Mr. Chairman: I have no doubt myself that as the phraseology now stands it means simply two thirds of a quorum. It has always been the rule in this State, and I believe it has been the rule in Congress, that a bill may be passed over the veto by a two-thirds vote of those acting. Now, if it is the intention that a bill cannot be passed over the veto except by a two-thirds vote of all the members elected, why not say so, and done with it. But if it is the intention that two thirds of a quorum may pass a bill over the veto, say so in plain words.

MR. REYNOLDS. I will say that this amendment is clearly in accord with the intention of the committee, because they struck out of the old Constitution the word "present." That word was left out purposely and intentionally.

MR. EDGERTON. Then I will say that they didn't more than half do their work. If they meant it, why didn't they say so in plain English?

MR. REYNOLDS. That is precisely what this amendment is attempting to say.

MR. WILSON. It would only require twenty-seven to constitute two thirds of the Senate.

MR. McCALLUM. I wish to corroborate the statement that when we said two thirds of the members of each house we meant two thirds of the members elected to each house, and not two thirds of those who happened to be present. But there is ambiguity there, and it is becoming worse confounded. I undertake to say that it is the desire of the Committee of the Whole that it shall be two thirds of the members elected to each house. Now, if that is the judgment of the Committee of the Whole, then we ought to adopt the amendment proposed by Mr. Reynolds.

MR. HAGER. Mr. Chairman: I stated here before that I was opposed to the amendment proposed by Mr. Reynolds. I have changed my mind. I was of the opinion that it ought to be two thirds of the members present, but upon reflection, I think it better to adhere to the rules adopted by most of the recent Constitutions. I find such a provision in the Constitutions of Missouri and Pennsylvania. They require a two-thirds vote of all the members elected to each house, upon which the ayes and noes shall be recorded. Upon reflection, I am inclined to support the amendment.

THE CHAIRMAN. The question is on the adoption of the amendment proposed by Mr. Reynolds.

Adopted.

MR. FREEMAN. I move that the committee now rise.

Ayes, 57; noes, 57. The Chair voted in the negative, and the motion was lost.

THE CHAIRMAN. The Secretary will read section seventeen.

THE POWER OF IMPEACHMENT.

THE SECRETARY read:

SEC. 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected.

MR. AYERS. I move that the committee rise.

Lost.

THE SECRETARY read:

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

MR. AYERS. I move that the committee rise.

Lost.

THE CHAIRMAN. If there are no amendments, the Secretary will read the next section.

THE SECRETARY read:

SEC. 19. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by election by the people.

MR. EDGERTON. I move that the committee rise.

Lost.

MR. WEST. There are some of these sections that require amendment. Section eighteen will require amendment.

THE CHAIRMAN. The Secretary will read section twenty.

THE SECRETARY read:

SEC. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia, to which there is attached no annual salary, or local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

MR. BARNES. I don't understand that provision, that officers and Postmasters shall not be deemed lucrative.

MR. WHITE. I move the committee rise.

MR. WEST. Mr. Chairman: Before we pass to the next section I hope the Convention will calmly consider, for there are some of them that need amending. Section eighteen needs amending, as well as others.

THE SECRETARY read section twenty-one:

SEC. 21. No person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of such embezzlement or defalcation as a felony.

MR. LARUE. I wish to offer an amendment.

THE SECRETARY read:

"Insert after the word 'municipality,' the words 'or any savings bank or trust fund.'

MR. DUDLEY, of Solano. I offer a substitute.

THE SECRETARY read:

"No public officer, nor any person who is holding a position of trust, and as such has been the collector or receiver of public money, shall be eligible to any office of trust or profit in this State, under the laws thereof, or any municipality therein, until he shall have accounted for or paid over all public moneys, for which he may be accountable. The Legislature shall provide, by law, for the punishment of embezzlement or defalcation of public funds as felonies."

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Sacramento.

MR. McCALLUM. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. WALKER, of Tuolumne. I move we do now adjourn.

Carried.

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

EIGHTY-FOURTH DAY.

SACRAMENTO, Friday, December 20th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Boucher,	Jones,	O'Sullivan,
Campbell,	Martin, of Santa Cruz,	Shafter,
Crouch,	McComas,	Stuart,
Eagon,	McFarland,	Swenson,
Estee,	Miller,	Swing,
Estey,	Murphy,	Terry,
Fawcett,	Noel,	Waters.
Howard, of Los Angeles,		

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Howard, of Los Angeles, and Terry.

Two days' leave of absence were granted Messrs. Estee and Swenson.

Six days' leave of absence were granted Messrs. Stuart and Martin, of Santa Cruz.

Mr. Jones was granted indefinite leave of absence, on account of sickness.

THE JOURNAL.

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

Carried.

REPORT.

MR. AYERS. Mr. President: I have a report to make from the Committee on Harbors, Tide-waters, and Navigable Streams.

THE SECRETARY read:

MR. PRESIDENT: The Committee on Harbors, Tide-waters, and Navigable Streams beg leave to report that they have carefully considered inclosed proposition number one hundred and seventy-eight, to secure the people in their right to free communication with their natural highways, and recommend its passage by the Convention.

JAMES G. AYERS, Chairman.

REGARDING THE FRONTAGES OF NAVIGABLE WATERS.

SECTION —. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SEC. —. No individual, partnership, or corporation, claiming or possessing the frontage, or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable, and that the people shall not be shut out from the same.

MR. AYERS. Mr. President: I move that the report be printed, and that it be referred to the Committee of the Whole.

Carried.

MR. SMITH, of San Francisco. Mr. President: I wish to offer a new proposition.

THE SECRETARY read:

"SEC —. Within three years after the adoption of this Constitution, every city in this State containing one hundred thousand people or more, shall, by condemnation, purchase, or appropriation and construction, become the owner of waterworks and water rights sufficient to supply its population with good water; *provided*, no city procuring its supply of water, or works, by condemnation or purchase, the sum paid for such works shall not exceed ($7,000,000) seven million dollars."

MR. SMITH, of San Francisco. I move that it be printed and referred to the Committee of the Whole.

Carried.

RESOLUTION.

MR. FILCHER. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the further services of four Pages, two Doorkeepers, one Porter, and one Mail-carrier be dispensed with, and that the Sergeant-at-Arms be authorized to designate the persons to be retired.

MR. FILCHER. Mr. President: I wish to say, in explanation of this, that it would seem to be very late in the day to be wakening up to this resolution, and yet it will be remembered that I endeavored early in the session to secure the same idea. I call attention to the statute providing for this Convention, where it reads: "The President of the Convention *may* appoint not exceeding one Doorkeeper and four Pages;" and to the further fact that those who serve here may possibly never receive anything at all for their services. It is incumbent upon us to get along with as little help as possible, and I believe that we can get along with the number that will be left.

MR. HUESTIS. Mr. President: It seems to me that there is just as much necessity for these boys now as there ever has been. These young gentlemen are willing to stay with the Convention until the last and take their chances on being reimbursed. It partakes of the nature of unjust discrimination between the Pages, and looks to me like a small piece of business. I move that the resolution lie on the table.

The motion prevailed.

ADJOURNMENT.

MR. WILSON, of First District. Mr. President: I have a resolution to offer.

THE SECRETARY read:

Resolved, That when this Convention adjourns to-morrow (Saturday) it shall adjourn until Monday, December thirty-first, instant, at two o'clock P. M.

MR. WILSON. Mr. President: I offer this resolution because, in the middle of next week comes Christmas. Every Christian—every person raised in Christendom—wants to be home on that day. It will take a day to go and a day to return, and the next week would be so broken up that it would be impossible to accomplish anything. The next business, I think, that this Convention strikes, is the important business of taxation. There ought to be a full Convention at that time. I see, myself, very little chance for a full Convention next week, and therefore I have introduced this resolution. If we adjourn to-morrow and meet the following Monday week, it just gives the Christmas week. So far as the succeeding week is concerned, I care nothing about it, and am willing to come here and stay at the pleasure of the Convention. But I think the week which embraces Christmas had better be a vacation than an abortive attempt to keep the Convention here. At least, it would be a very thin house during that week, and for that reason I offer that resolution.

MR. BARNES. Mr. President: There is another quite serious reason why we should be permitted to take this adjournment. It is the close of the year. Every man who has much to do has a good many settlements to make. The financial settlements of the year come about this time, and business all has to be closed up. There is a great deal that a man has to do that is extraordinary and exceptional. It certainly is so in my case; and while we are all willing to give all the time that may be necessary to the business of the Convention and the State, we ought to be permitted to take a little time for the arrangement of our own affairs. In my own case it is absolutely essential. It is unlike any other portion of the year. The business man, after having been here most of the time since the twenty-eighth of September, and likely to be here some time longer, ought to have a chance to look after his business a little, and maybe some of us want to shin around and raise the money to stay here through January and February. That is the reason I am in favor of it. I am free to say that it is absolutely essential for me to go home, and I propose to adjourn, unless the Sergeant-at-Arms shuts me up. I would like to be here during the consideration of this question of taxation, but I cannot go to absolute destruction, even for that. I think there are a good many other gentlemen in the same situation.

MR. ROLFE. I would suggest that while we are members here we are free from arrest or civil process.

MR. BARNES. I am very glad of it. That may explain the reason why the gentleman wants to keep on working, and stay here as long as he can. [Laughter.] But I am not so much afraid of civil process as I am of the almshouse, and I would like to go and look a little after my own affairs, and I think that all who are not too far away from home would like to do the same thing. For that reason I support Mr. Wilson's resolution.

MR. TULLY. Mr. President: I hope the resolution will not prevail. If the gentleman wants to go home we will give him leave of absence.

MR. BARNES. Thank you. Go ahead.

MR. TULLY. There are a number who cannot go home, and I think it is not fair. It don't matter if there are only five, if there is only one who cannot go home, why should he be compelled to stay here on expense? I must say that this is his regular fight pretty nearly every Friday or Saturday, and, if you were to judge by the roll-call, he has been absent a great deal, and we have got along without him; notwithstanding he is entertaining, instructive, and useful, but still I am satisfied the Convention can do without him. I shall vote to give him leave of absence, and he can go home for a reasonable time. I hope that the Convention will proceed with the business. I hate to vote against Mr. Wilson, but I must do it in this case.

MR. BARBOUR. Mr. President: I suppose that the true reason might as well be stated at once: By the extraordinary construction that is placed upon the law calling this Convention, the hundred days of session are made to mean one hundred consecutive days. There is another law that if the Convention adjourn over three days they do not get pay for any of it. Now, you ask gentlemen to continue on here and their pay not go on—heads I win, tails you lose. I shall vote against the amendment. As well as any other gentleman I can give the State my services for nothing, but I do not propose to.

MR. BARNES. Mr. President: I wish to correct the statement of the gentleman from Santa Clara, Mr. Tully. The gentleman is mistaken when he says I have been absent a great deal.

MR. WYATT. I rise to a point of order. No one member is allowed to speak twice on any one question until others have spoken who wish to. There are others who desire to speak.

THE PRESIDENT. No one claimed the floor when it was assigned to Mr. Barnes.

MR. BARNES. I will be brief. I have not been absent a great deal. When the preliminary business was going on, and this folly of calling the roll and allowing everybody to be stuffing in two propositions a day, I saw no occasion for my sitting here, and I attended to my own business. Since there has been any serious business before this Convention I have been here all the time in my seat, as much, and I think more, too, than the gentleman who has charged me with being absent. If the members are so fortunate as my friend from Santa Clara to be able to remain here I do not want them to go away. I want them to stay here, and if there is any money I want them to get it. Get it all. But I understood that Mr. White's resolution forbid anybody going except for sickness. I presume I might get off, for I am sick enough of it; and if I can go I do not care. I shall vote against no man's rights in the world so long as I can secure my own.

MR. WELLIN. Mr. President: I hope that this resolution will not pass. I deem it a serious act of injustice to those gentlemen who live at a distance from the Capital. The gentlemen from San Francisco have had weekly opportunities to go home, while the delegates from the southern and northern and eastern parts of the State have not had an opportunity to go to their homes at all. Now this resolution provides that we shall take another week, and leave these gentlemen here at the Capital doing nothing, and at their own expense. Those who desire to go home for a day can do so, but I do not think it is just or fair that we should leave those here who live far away and are not able to reach home. I hope the resolution will be voted down.

MR. SMITH, of Fourth District. Mr. President: I am surprised that members who live so near the Capital that they can go home every week should favor a resolution that will be such an inconvenience, and such an expense to members who live at a distance from the Capital, as many of us do. Now, what will be the effect? I do not know of anything that could be introduced into this Convention that would tend more to prevent the framing of a Constitution than a matter of this very kind; to take away the per diem of the few days that are left in the hundred days, and leave members on an added expense during the time. Perhaps additional expense to go home will cripple many members and extend the time of keeping them away from their business that they cannot attend to at all during the time of the Convention. I say there is nothing that would tend to defeat the Constitution more than the loss of time by such a resolution as this.

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

MR. WILSON, of Fourth District. Mr. President: I would ask the gentleman to withdraw the motion temporarily.

MR. MORELAND. I withdraw it for an explanation.

MR. WILSON, of First District. Mr. President: I wish to say a single word in regard to this resolution. I simply offer this resolution for the general good. Now, we have at least thirty, maybe forty, days yet of hard work to do. We have reached one of the most important parts of the Constitution, and I know that it is the opinion of a number of gentlemen that we will not have a quorum, or at least that we will have a very thin house, as we had Saturday, when this Convention had scenes which were not very creditable to it. On Saturday afternoons, even the negroes, in slave times, had a holiday. This Convention undertook to sit on Saturday afternoon, and look at the result. This is not the time——

[Confusion.]

MR. RINGGOLD. I understand that there is a motion to lay on the table.

THE PRESIDENT. The gentleman misunderstands. There is no such motion.

MR. WILSON, of First District. Mr. President: I say that I have no personal interest in the resolution, but we will make nothing by sitting here during Christmas week.

MR. McCALLUM. It is said that the Controller will count the time in the one hundred days.

MR. WILSON, of First District. My understanding is that we will draw pay for one hundred days. I do not regard the Controller as the Supreme Court.

MR. MORELAND. Mr. President: I renew my motion.

[Cries of "Division."]

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

The ayes and noes were also demanded by Messrs. Tully, Joyce, McCallum, and Ringgold.

THE PRESIDENT. The question is on the motion to lay the resolution on the table. The Secretary will call the roll.

The roll was called, and the resolution laid on the table by the following vote:

AYES.

Andrews,	Holmes,	Reynolds,
Ayers,	Howard, of Mariposa,	Rhodes,
Barbour,	Huestis,	Ringgold,
Barry,	Hughey,	Rolfe,
Barton,	Hunter,	Schomp,
Bell,	Inman,	Shoemaker,
Blackmer,	Johnson,	Shurtleff,
Brown,	Joyce,	Smith, of Santa Clara,
Burt,	Kenny,	Smith, of 4th District,
Caples,	Keyes,	Smith, of San Francisco,
Chapman,	Kleine,	Soule,
Condon,	Lampson,	Stedman,
Cross,	Larkin,	Steele,
Crouch,	Lavigne,	Stevenson,
Davis,	Lindow,	Sweasey,
Dean,	Mansfield,	Thompson,
Dowling,	McCallum,	Tinnin,
Doyle,	McConnell,	Tully,
Evey,	McCoy,	Turner,
Farrell,	Mills,	Tuttle,
Filcher,	Moffat,	Vacquerel,
Finney,	Moreland,	Van Voorhies,
Freeman,	Morse,	Walker, of Marin,
Freud,	Nason,	Walker, of Tuolumne,
Garvey,	Nelson,	Wellin,
Glascock,	Neunaber,	West,
Grace,	O'Donnell,	Wickes,
Graves,	Ohleyer,	White,
Harrison,	Porter,	Wyatt—91.
Heiskell,	Prouty,	
Herrington,	Reed,	

NOES.

Barnes,	Hall,	Schell,
Biggs,	Harvey,	Townsend,
Cowden,	Hitchcock,	Van Dyke,
Dudley, of San Joaquin,	Laine,	Webster,
Dudley, of Solano,	Larue,	Wilson, of Tehama,
Edgerton,	Lewis,	Wilson, of 1st District,
Gregg,	Martin, of Alameda,	Winans,
Hager,	Overton,	Mr. President—24.

MR. DUDLEY, of San Joaquin. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section twenty-one and pending amendments are before the committee. The Secretary will read.

THE SECRETARY read:

SEC. 21. No person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of such embezzlement or defalcation as a felony.

"Amendment offered by Mr. Larue:

"Insert after the word 'municipality' the words 'or any savings bank or trust fund.'"

MR. McCALLUM. Mr. Chairman: I call the attention of the Committee of the Whole to the fact that the amendment proposed by the committee is section twenty-two of the present Constitution as it is, amended so as to include embezzlement or defalcation of the public funds of any county or municipality. With reference to the pending amendment, I have to say simply that the object of the section is with reference to the embezzlement of public funds, and the embezzlement of private funds ought not to be mixed up with it. The gentleman's proposition is right in itself, but it has no connection whatever with the object of the section, which refers exclusively to the matter of embezzlement of public funds. I suggest, when a section is drafted as this has been by the Committee on Legislative Department, that these other matters be left for the Committee on Miscellaneous Subjects. Let us confine this matter, and not vote for every proposition because it is right in the abstract. It has no place there.

MR. ROLFE. Mr. Chairman: I believe that the amendment is not in the proper shape. It is tautology in the way it reads. It would be better to say at once that no person who shall be convicted of embezzlement shall ever be eligible to any office of honor, trust, or profit under the State.

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

MR. REYNOLDS. Mr. Chairman: I move to amend by inserting the word "any" in place of the word "this," so that it will read: "defalcation of the public funds of any State," etc. I do not know of any reason why, if a man was convicted of the embezzlement or defalcation of the public funds of the State of New York, it should not be the same as if he committed the same crime in this State. If the question is raised on him it ought to disqualify him. The crime is the same, whether committed in this State or anywhere else.

MR. McCALLUM. Mr. Chairman: I am surprised that a member of the Legislative Committee should come into the Committee of the Whole with this amendment. What have we got to do with any other State? If we go on in this way we shall not get through in a year. There is no necessity for that amendment at all. We have nothing to do with the affairs of any other State. I hope that the amendment will be voted down.

MR. REYNOLDS. Mr. Chairman: That very amendment I sought to get adopted in the committee, and I met with the very same remark that the gentleman makes now, that we have nothing to do with the affairs of any other State. That is far-fetched, and entirely aside from the question. We do not propose to have anything to do with the affairs of any other State; but if a felon comes here from another State, convicted of felony, why should we give him an opportunity to hold an office of public trust that we do not give to our own felons.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected, on a division, by a vote of 43 ayes to 41 noes.

MR. DUDLEY, of Solano. Mr. Chairman: I have a substitute pending there.

THE SECRETARY read:

"No public officer nor any person who has held an office of trust, and who, as such, has been a collector or receiver of public moneys, shall be eligible to any office of trust or profit in this State under the laws thereof, or of any municipality therein, until he has accounted for and paid over all public moneys for which he is accountable. The Legislature shall provide by law for the punishment of the embezzlement of public funds as a felony."

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

THE CHAIRMAN. The Secretary will read section twenty-two.

CARE OF ORPHANS.

THE SECRETARY read:

SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws of every regular session of the Legislature.

MR. STEDMAN. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Insert after the words 'by the State' and before the words 'an accurate statement,' in the seventh line, the following: 'Provided, that nothing herein contained shall prohibit the Legislature from granting to orphan asylums or other institutions in this State in which orphans or abandoned children are received and provided for, such pecuniary aid as may be deemed appropriate, which aid shall be based upon the number of such orphans or abandoned children received or provided for, and shall apply alike to all institutions in the State.'"

MR. WELLIN. I second the amendment.

SPEECH OF MR. STEDMAN.

MR. STEDMAN. Mr. Chairman: The question before the committee, so far as it involves a consideration as to what the duty of the State toward the orphaned and abandoned children within her limits, is one which, I take it, requires no particular argument. In this age, and in the light of our present civilization and enlightenment, I think I may be safe in assuming that no gentleman in this committee will deny or resist the acknowledgment of this duty as one which the State must discharge if she would exercise any fostering care over the well being of her future citizens; a duty which is equally as obligatory as that other one of providing educational facilities for all of her children.

There being no question as to the position in which the State stands as to this unfortunate class in our community, there only remains for consideration the question as to how and in what manner the necessary provision for their maintenance shall be made, and what restrictions are required to prevent this aid from being improperly expended or diverted from its proper application. Dissenting, as I do, from the close and narrow methods which the adoption of the section proposed by the Committee on Legislative Department would confine this charity to, I have submitted the amendment which I have just sent up, the object of which is to leave the question of State aid to our benevolent and charitable institutions, both public and private, exactly where it stands now, with the Legislature; and I propose in what few remarks I may make, to treat of the proposition only with reference to the economical aspect presented, leaving the higher social and humanitarian aspect to be treated by other gentlemen who have doubtless given the subject the necessary investigation to enable them to treat it completely in all its phases. Prior to the year eighteen hundred and seventy, whatever of aid was provided by the State was given to private asylums by special legislative enactment upon their own presentation of their claims for sympathy and support, but by this time, however, the experience of the various instituions of the State, which were mostly under church auspices, had developed the fact that those institutions which were the best able to bring to bear on Legislatures influences favoring their particular claims for aid, were the most considered in the disbursements made for this purpose, and, as a consequence, glaring inequalities were sometimes found to have crept into the system. The dissatisfaction with this state of things, together with the fact that exposition of such favoritism was having a tendency to operate against even the continuance of the charities themselves, called forth the first Act for relief based upon the per capita plan. This Act, approved March twenty-eighth, eighteen hundred and seventy, provided for a donation to the various orphan asylums, and other institutions having orphans under their care, the sum of fifty dollars per annum for every whole orphan, and twenty-five dollars per annum for half orphans. The intent of the Act being, by this equitable settlement of the pro rata amount of aid to be furnished, to put an end to the hitherto unjust divisions, as well as the perpetual lobbying of the various institutions at every session of the Legislature.

Notwithstanding this, however, many of the institutions continued during the next five or six years to secure, by means of specious representations of their necessities, direct appropriations to their benefit, in addition to the amounts allowed them under the per capita law. To obviate any such necessity or justification for these continual applications for additional aid over that provided for in the general law, the Legislature of eighteen hundred and seventy-three and eighteen hundred and seventy-four raised the amounts given by the per capita law to seventy-five dollars per annum for each whole orphan, and fifty dollars per annum for each half orphan, and fifty dollars per annum for each abandoned child. The Legislature, at the same time, defined what was an abandoned child. These amounts were subsequently increased by the Legislature of eighteen hundred and seventy-five and eighteen hundred and seventy-six, to one hundred dollars per annum for each whole orphan and seventy-five dollars per annum each for half orphans and abandoned children, at which amounts the law still remains, these sums having been found sufficient to allay and shut out any further successful importunities for State aid. Now, sir, having briefly recapitulated the history of the system now in force in this State, I desire to submit, for the information of the committee, some of the statistics of the expenditures made under it. There are now within this State sixteen aylums which are in receipt of aid from the per capita tax, and they have received from this source, and direct aid since October eighth, eighteen hundred and seventy, to June thirtieth, eighteen hundred and seventy-eight, the following amounts:

Protestant Orphan Asylum, San Francisco.

Support of inmates, per capita	$69,845 96
Direct State appropriations	16,000 00
	$85,845 96

Roman Catholic Female Orphan Asylum, San Francisco.

Support of inmates	$93,988 85
Direct aid	10,500 00
	$104,498 85

St. Boniface Orphan Asylum, San Francisco.

Support of inmates	$4,909 53

St. Joseph's Roman Catholic Branch Orphan Asylum, San Francisco.

Support of inmates	$30,697 74

Pacific Hebrew Orphan Asylum, San Francisco.

Support of inmates	$12,314 08
Direct aid	3,000 00
	$15,314 08

Protestant Orphan Asylum, Sacramento.

Support of inmates	$22,201 12
Direct aid	3,750 00
	$25,951 12

St. Joseph's Roman Catholic Orphan Asylum, Sacramento.

Support of inmates	$4,360 28
Direct aid	1,500 00
	$5,860 28

Good Templars' Home for Orphans, Vallejo.

Support of inmates	$23,636 62
Direct aid	2,000 00
	$25,636 62

St. Vincent's Boys' Asylum, San Rafael.

Support of inmates	$108,014 86
Direct aid	8,500 00
	$116,514 86

Grass Valley Roman Catholic Orphan Asylum, Grass Valley.

Support of inmates	$47,146 60
Direct aid	2,000 00
	$49,146 60

San Juan Roman Catholic Orphan Asylum, San Juan.

Support of inmates	$2,743 66

Santa Cruz Orphan Asylum, Santa Cruz.

Support of inmates	$5,661 82

Pajaro Valley Male Orphan Asylum.

Support of inmates	$16,312 09

Los Angeles Orphan Asylum.

Support of inmates	$7,574 81

St. Vincent's Female Orphan Asylum, Santa Barbara.

Support of inmates	$8,715 45
Direct aid	2,000 00
	$10,715 45

St. Vincent's Orphan Asylum, Petaluma.

Support of inmates	$3,640 00

Making a total, for the same period, to all the institutions of the State:

On account of per capita aid	$461,773 77
Direct State appropriation	49,250 00
Total	$511,023 77

Now, sir, from an examination of the figures of the cost of maintenance in the various asylums in the State, I select as a fair exhibit the figures connected with the operations for the past year for four out of the list, and located, as they are, in different sections of the State, and presenting as widely diversified characteristics as can be found in the whole list, they will give us the fairest idea of the whole number.

The Grass Valley Orphan Asylum, with one hundred and thirty-eight inmates, reports a total expenditure for maintenance of children of twenty-six thousand four hundred and fifteen dollars and thirty-five cents—an average of one hundred and ninety-two dollars and forty-two cents per capita. The Good Templars' Home, at Vallejo, with seventy-five inmates, reports expenditures of thirteen thousand two hundred and twenty dollars and seventy-four cents—an average of one hundred and seventy-six dollars and twenty-five cents per capita. The Pacific Hebrew Orphan Asylum, of San Francisco, with fifty-nine inmates, expenditures of fifteen thousand one hundred and sixty-three dollars and six cents—an average of two hundred and fifty-seven dollars per capita. The Santa Cruz Orphan Asylum, with twenty-three inmates, an expenditure of three thousand three hundred and five dollars and ninety-five cents—an average of one hundred and forty-three dollars and seventy-three cents per capita. Or in a total of four different asylums, in different sections of the State, under different managements and of different sizes as to capacity and number of inmates, we have: Number of inmates, two hundred and ninety-five; cost of maintenance, fifty-eight thousand one hundred and five dollars and ten cents; average cost per capita per annum, one hundred and ninety-six dollars and ninety-seven cents.

The average amount of State aid under the present law is about eighty-three dollars per capita per annum, and less than one half the amount shown to be required for actual maintenance. The foregoing figures have made no estimate and included none of the items which would properly be chargeable as a part of the expense, such as cost of buildings and improvements, and which I am perfectly within bounds in saying that it would represent an annual charge upon this charity of fully as much as the amount represented in the actual working expenses; therefore, Mr. Chairman, I am forced to conclude that the aid now extended by the law is no more than about one fourth of the cost of this benevolence that in the eight years covered by the figures I have given. Had the State been the sole almoner and dispenser of this fund, an expenditure of at least two million dollars would have been required to have secured a service which under the present system has been secured at an expense to the State of a half million.

The total number of children provided for by the private institutions in the State, as nearly as I have been able to get them, is one thousand seven hundred and three, and to provide for them as the committee contemplates would cost four times the present expenditure. And now, sir, to collect together and average some of the statistics of other States upon this question. In the comprehensive report of the Board of State Charities for Massachusetts, for the year ending September thirtieth, eighteen hundred and seventy-six—and I may perhaps remark here in passing that in Massachusetts the system of official oversight and careful

management of all public charities, reformatory institutions, and State supervision of provisions for the destitute, has received doubtless as much attention, and been the subject of as careful consideration, as in any of the States of our country—I find that in the eleven public institutions under the control of the State direct, that the average expense per capita ranged from ninety-seven dollars per annum in the Monson School to two hundred and thirty-six dollars and sixty-six cents in the Springfield School, and it appears, in commenting on the exceptionally low average attained in the Monson School, that the Board remarks of the Superintendent that "he has sometimes carried frugality to the verge of parsimony or beyond." Of the entire State the tables show that there were in all the public institutions an average number throughout the year of one thousand five hundred and thirty children, and the average cost per capita of maintenance was one hundred and twenty-nine dollars and seventeen cents per annum. This, of course, being the simple expense of maintenance, exclusive of any charges to improvement or repairs of buildings, and, of course, also excludes any estimates of interest invested in these institutions. In addition there are shown to be thirty-two private institutions for the care and support of destitute children, who, in the aggregate, support about two thousand children, at an expense of two hundred and twenty-five dollars per capita per annum.

The cases cited in the report of the minority of the averages of other States: Wisconsin, one hundred and forty-nine dollars and twenty-nine cents; Minnesota, one hundred and forty-one dollars and seventy cents; Maine, one hundred and forty-six dollars and twelve cents; Pennsylvania, one hundred and ninety-five dollars and thirty-three cents, which with the figures for Massachusetts, the cheapest of them all, one hundred and twenty-nine dollars and seventeen cents, shows that in five States the average cost for bare maintenance is one hundred and fifty-two dollars and thirty-two cents.

These figures, Mr. Chairman, in every case justify the conclusion that the system of provision for our destitute and orphaned children, now in operation, is by far the most inexpensive one that could be adopted or applied; that in no case, either in the history of the private institutions of this State or the history of the public or private institutions of any of our sister States, has the support and maintenance of these objects of the public bounty been provided for at figures as low as the amounts which have from time to time been appropriated in our State; and as the very able and convincing report of the minority of the Legislative Committee aptly sets forth, no sustained charges of misappropriation or maladministration resulting from the following of this system has ever been put forth, and no demand has ever been made at the hands of any political party for its abrogation. The only question, therefore, remaining to us, Mr. Chairman, in the consideration of this subject, is this: does the present system discharge in the best manner the duties incumbent on the State with respect to the beneficiaries?

To this question, I submit that a careful and unprejudiced examination of the history it has made can leave no doubt in the mind of any gentleman on this floor. These charities are now under the control of a class of our citizens who are drawn to the work by the noblest impulses known to humanity—who labor in the cause with no hope of selfish reward and for the gratification of no groveling ambition. They are high above and beyond the reach of the dirty cesspool of politics; and in view of the almost certainty of corruption which creeps into the management of all institutions when they are made the subject of political strife and political reward, I am thoroughly convinced of the absolute necessity of setting up an absolute and impassable line of demarcation between the management of this charity and politics.

With the general idea of protection to the State treasury sought to be attained by the section reported by the committee, I have every sympathy, and feel as deeply as any delegate in the Convention the necessity of surrounding the strong box of the State with such safeguards as will forever hereafter make it impossible for the unscrupulous lobbies to manipulate our Legislature so as to rob the people through the means of subsidies, grants, and special appropriations for the benefit of enterprises in which the State has no direct interest; and holding this sympathy, I have aimed to draw my amendment so as not to impair the vitality of the general idea sought to be established, but for the sole purpose of excluding from its application one particular character of appropriations of which no public sentiment has ever complained, and which every sentiment of duty, humanity, and economy demands shall not be restricted or abolished. In my consideration of this subject I have, as I said in the beginning, only looked at it from an economical standpoint; but I cannot refrain from saying, in conclusion, that if we are to have these homeless, friendless orphans in our midst grow up into useful men and women, they must be provided for while they are in that tender and plastic age, that they may be molded into virtue, or else they must take their chances in the other avenues of life, where they are more likely to learn the ways of vice, and I moreover do not desire to throw any discouragement upon the labors of that noble army of men and women who labor in this cause without hope of reward other than the consciousness of their own labor, and to whom weariness of heart is but the too frequent attendant of their efforts.

THE CHAIRMAN. The gentleman's time has expired under the rule.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: This subject has presented a fine opportunity for aspiring gentlemen to shoot reams of legal cap, and foolscap, and all kinds of cap at the devoted heads in this Convention. It was a sense of imperative duty that compelled the committee to offer this fine opportunity to these gentlemen, and I make no doubt but what the opportunity will be availed of to indulge in all kinds of buncombe.

MR. WELLIN. Mr. Chairman: There was a motion made to extend the time.

THE CHAIRMAN. No gentleman was recognized. The gentleman from Sacramento secured the floor.

MR. CAPLES. Mr. Chairman: I merely wish to make this apology to the Convention, and to say that that committee never contemplated for one moment the idea of leaving these orphan children unprovided for. On the contrary, they contemplated from the first that they should be provided for at least as well as they are at present. But it was a part and parcel of the general plan of that committee to take away from the Legislature this game of grab—this grabbing with both hands into the public treasury. This was a part of the general plan of that committee, and I myself say, in justice to that committee, that they gave this subject the most thorough, patient, and painstaking investigation; and they acted from the first with the view of cutting off from the Legislature the opportunity for special legislation and for special grabbing into the treasury, and this, as I aver, is a part of that system that they adopted to prevent indiscriminate pilfering of the treasury. It was discussed and understood that these orphans should be provided for by institutions over which the State should have control; and the chief argument and the chief motive that impelled the committee was to carry out the original design, the primary, central idea of our public school system. As everybody knows, the central idea of that system is to secure homogenitiveness in that system, by securing uniformity of text-books, etc., it is hoped in the future to secure something like uniformity of sentiment, so that we may have peace and quietness, and a oneness of sentiment in American people in the coming generation. This system of educating orphans in sectarian institutions, so far as it extends, has a tendency to educate them in hostile systems, so that the tendency in the future, instead of being homogenity, will be hostility of sentiment. Mr. Chairman, after gentlemen shall have expended their Fourth of July spread eagle oratory upon the poor orphans that they will tell you have been thrown upon the world by this section—after they have expended their ammunition—I hope to have a chance to say something more to the committee.

REMARKS OF MR. WILSON.

MR. WILSON, of Fourth District. Mr. Chairman: I propose to amend by substituting the provision I have sent up to the desk, and which I ask the Secretary to read.

THE SECRETARY read:

"Provided, that notwithstanding anything contained in this or any other section of the Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, half orphans, or abandoned children, or aged persons in indigent circumstances, such aid to be granted on a uniform rule, and apportioned to the number of inmates of the respective institutions."

MR. WILSON, of Fourth District. Mr. Chairman: There are several sections of this report of the Committee on Legislative Department which cover the same proposition which my amendment is intended to reach. The proposition offered by the gentleman from San Francisco, Mr. Stedman, does not go as far, because it does not reach any section except section twenty-two. The gentleman will find, by turning over the report of the committee, that there are four or five sections which will also have to be amended in order to reach the desired result. My amendment would accomplish this, for it reads: "Notwithstanding anything contained in this or any other section of the Constitution," etc.

I desire to say very little on this subject, because I think that very little will cover the whole subject-matter. I regard orphans and abandoned children as a rightful charge upon the State. They are wards of the State, and should be supported and taken care of by the State. There seems to be no public institution of this character at present in the State, and these orphans and abandoned children are supported by different private institutions. I believe that all the different religious denominations have orphan asylums—not only the Catholic, but the Protestant, Hebrew, and others. Now, these children are well taken care of by these institutions; according to my information, their general maintenance and support, their health, their morals, and their education, are all considered and cared for by these different institutions. I know of no instance of abuse existing in regard to the condition and management of the poor children in these establishments.

I do not know why the State from time to time should not grant aid to the institutions that are supporting the wards of the State. They have an equitable and just right to claim some aid from the State, and the State is, in reality, simply paying its own debt and supporting its own wards by making appropriations to these institutions for taking care of them. I do not care anything about what sect these children belong to, or to what religious denomination. I only stop to think that they are poor, unfortunate, fatherless children, independent of any religious question or any religious dogma. It is a question of common humanity. It appeals to our generosity in its broadest and widest sense, and I do not care anything about the religion of the parents of these children. The fact that the child is left without its natural support by the death of its parents, or by abandonment of the child by the parent, is sufficient, as it thereby becomes a charge upon the State, and the State should support it. I have attempted to word this amendment so that it would not conflict with any provisions of the Constitution, except those which are specified, and to make it as guarded as possible, and providing for aid by a uniform rule and apportionment according to numbers, thus avoiding favoritism and inequality. I think this covers all of the subject-matter necessary for the Constitution, and the rest could be well left to the discretion and judgment of the Legislature. I have embraced in this not only the maintenance of orphans and half orphans, but also of abandoned children. Now, in all ages of the world there have been inhuman parents who, for one cause or another, have abandoned their children. I look upon the abandoned child as being in a more hopeless condition than even the orphan. The orphan may have collateral relatives who may look after his welfare; but when a child is abandoned by its parents,

its identity is gone, and it has no person to care for it. These abandoned children are left, generally, to the hospitals and asylums, and are orphans in fact. If I desired to elaborate a speech on this subject, I could refer back to ancient history—even back to the enlightened city of Athens. Athens, in its most refined period, had many children abandoned by their parents. They were abandoned because their parents did not care for them, or were in poor circumstances, or for some other reason, and they were left in public places to be picked up and adopted by strangers, or to perish. My understanding is that this class of children, as a general rule, has been taken to the orphan asylums, or those institutions which take care of poor children. They are as much the wards of the State as the orphan or the half orphan. There are also persons taken care of in such places as the Old Women's Home.

I think the State should be permitted to grant aid to such institutions as that. An old woman in poor circumstances is as much an object of charity and care on the part of the State as anything that can be imagined. For these reasons, I think this amendment should be adopted. I have nothing to say against the amendment offered by Mr. Stedman, except that it does not go quite as far as mine does. It does not reach those other provisions of the Constitution which my amendment reaches, and is, perhaps, subject to some other objections. I think that all there is that is good in his amendment is contained in mine, while mine is a little more guarded.

Whilst I am in favor of every retrenchment or reform, and against any appropriation of the public funds to any institution that is not entitled to aid, I think it would be unwise to take away from the Legislature the power to aid those meritorious institutions, who are maintaining the unfortunate children and destitute persons in whose behalf I intercede. I will further say that the language which I have used here in the amendment—orphans, half orphans, and abandoned children—is taken from the Act of the Legislature of eighteen hundred and seventy-seven-seventy-eight, page one thousand and eight, and seems to have come into general use in speaking of this class of persons, and for that reason I think the phraseology must be unobjectionable.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I wish to say that when this section, limiting State appropriations to State institutions was first inserted by the committee, a great principle was aimed at. I do not believe that the idea of orphans ever entered the head of the one making the suggestion. The principle has been declared in every State platform for years. It was to the effect that parties were opposed to this limitless power of the Legislature to vote away the people's money. The people have never tired in asserting this doctrine, and it was to strike out this great principle that the committee inserted this section. When it was seen, on review, that their amendment cut off the appropriation to orphan asylums, the committee reconsidered it. Parties appeared before them, on behalf of these institutions, and made strong arguments in their favor, and yet the committee, conscious of the great reform covered by its amendment, still decided to retain it there by a vote of eleven to four.

MR. BIGGS. Say a portion of the committee—not all of them.

MR. FILCHER. There were only four that could be rallied to sign the report against the proposition. Now, I repeat, it was a principle that we aimed at. Let us look at the evils that this amendment cuts off. I have taken the pains to obtain from the Controller of State the amount of the appropriations made for the year, and it may be interesting to the Convention to know that they reach almost one million of dollars—nine hundred and ninety-four thousand one hundred and forty-one dollars and some cents are exactly the figures. In this amount, to be sure, is included much for the support of purely State institutions. For instance, one hundred and fifty thousand dollars for this Convention. But for miscellaneous purposes, outside of the essential elements of government, for this person and that person, for this object and that object, the appropriations amount to over one third of a million—three hundred and eighty-three thousand two hundred and ninety-one dollars and sixty-seven cents. Now, sir, that is a great burden. I know that the people are in favor of supporting the government and all the institutions necessarily incident thereto.

MR. WELLIN. How much of that money went to the orphan asylums?

MR. FILCHER. One hundred and ten thousand dollars, I believe. I wish to say that I have been misrepresented on this proposition. I say that I do believe in my heart that there is not a man on this floor that has more inate sympathy for these poor abandoned waifs than I have. I am poor myself, and liable, like others, to be called away at any time. I have small and helpless children; and I sometimes shudder when I think that if I were taken suddenly away they would be left in poverty; and I want a provision, and a wise one, for the protection of all little innocents who are thus unfortunate. I am opposed, however, to the present system. I think that a State system or county system, such as could be devised, would be much better. Under the present system the orphan is shut in from all the busy and instructive world around him. I do not pretend to criticise the management of the institutions, nor the character of the treatment the children receive, but I know of reason that if the child lives to the age of fifteen its struggle is a hard one at the best, and when he or she is turned out at that age what does the child necessarily know? In what condition is it for battling with life? In what condition is it to contend with the world and to start out to make a living? How can it know, when it has been confined nearly all its days behind those high walls, that which is necessary for the struggle of further existence in this world? It is turned out with a knowledge perhaps of some little needlework and a little arithmetic, but it knows nothing of the outside world or of the contests it has got to engage in.

Now, I wish to read from the report of the Board of Charities of Massachusetts, where they adopted this very proposition in reference to orphan asylums. They assert that:

"Institution life, in its best estate, is but a poor substitute for family life, and it is a very meager affair, indeed, when it does no more than give food and clothing, neglecting the weightier matters of such teaching as looks to self-subsistence, and such training as furnishes the moral stamina on which success in life depends. Careful examination of the yearly and special reports that have come to hand, gives the impression that only a portion of these institutions take any particular pains to train inmates to the habit of intelligent and vigorous industry. There is danger, on the one hand, that the child will find the asylum which receives him and enters his name on its books, hardly more than a halting-place on the downward ways of poverty; while on the other hand, it is to be feared that he may come to regard an institution of some kind as his proper home, and support by the public as his rightful heritage."

Take for instance the Children's Mission to the Children of the Destitute: "The current expenses of the Mission average about eight thousand dollars annually, though during the past year they reached the sum of eight thousand four hundred dollars."

That is but a sample of the whole thirty-two institutions in that State that receive their income and support from other sources. Not one of that thirty-two does the State aid in any particular. Then, again, I claim that if we should withdraw this aid these institutions would not necessarily go down. So far as they are established by religious denominations, they are largely the outgrowth of Christian charity, and Christian charity will maintain them to the extent of its ability. Yet, what they fail to do, it becomes the province of the State to do, or the State through the counties—and to do it well. And I say, sir, that inasmuch as they have established these institutions, and contributed the money for building the houses and setting them in motion, so should they continue to keep them in running order. When the orphan asylums were built did they get State aid? Had they any reason to believe that State aid would be contributed to support them? No. It is a provision that has been made by the Legislature, session after session. They must realize that they are dependent upon themselves.

But again, while some gentlemen urge us to support this system, they oppose the very same doctrine when applied in another direction. It is the doctrine advocated by Zach. Montgomery on the school question. His idea of the school management corresponds precisely with the principle that is now brought forward and sought to be maintained in reference to orphan asylums. The eloquent gentleman from San Francisco declared that it became the duty of the State to assist in maintaining these wards, since charity people had started in to do it, and because the State had assisted them so far it ought to continue to assist them. Now, will not the same argument hold good in reference to our school system? Are not the children the wards of the State? Are we not under the same obligation to support these children—to educate them? I say we are. And yet, following up that same line of argument, if I should come here and start a school, will I have the right to obtain State aid to assist me in my enterprise? I would be taking from the State a portion of its burden; I am taking so many children and assuming to educate them; I take that responsibility off the State, and I have the right to come in and ask State aid, if the arguments on the other side are to hold good. And yet, when you are asked by Mr. Montgomery to apply this to the school system, you say no. In this respect Massachusetts has been consistent. She has established a school system and provided for the education of the children; and she has carried the same principles into the asylums.

While I repeat I am in favor of the very best protection to the orphans that can be given them, I do not believe that the best results can be obtained from the present system of asylums. Assuming that all these institutions should go down if we cut off these appropriations, which I hold would not be the case, then it would become the duty of the State to make every necessary provision for the protection, education, and support of these children. Suppose we should make a provision that each county should take care of the orphans within its limits; I can readily imagine how some good old man or woman, or both, could be found to take charge of them and bring them up as their own, in the presence of other children, and under the eyes of the friends and neighbors of their deceased parents.

THE CHAIRMAN. Time.

SPEECH OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I shall not detain the Convention very long. In the feeble health I am in, it would be impossible for me to say what I should like to say; but, having been one of the committee that signed the minority report, I believe it my duty to make some explanation or statement to this Committee of the Whole. In doing so, I do not intend to make any spread-eagle speech, as has been suggested by Dr. Caples. It is known that I was one of the members of the Committee on the Legislative Department that took the position that it was the duty of the State to make some appropriation for the private asylums of the State. I believed it was best to support the orphans in that way, and I believed it was economy to the State; that they would be better trained and cared for than they would be to allow the State to go on and build asylums, and employ teachers, and have them educate them. I took that position as an economist. That, sir, was one of the reasons why I made this minority report. That is one of the reasons why I opposed the action of the Legislative Committee, and I thank God that there is a goodly number of that committee who will stand by this minority report; and I trust this Convention will adopt the amendment offered by my friend from San Francisco, Mr. Wilson. What are the facts? I do not propose to go into general details, but I propose first to state what I presume every one will admit, that the State is the guardian of these children, or stands in the same relation that the parent does to

the child. Now, I appeal to this Convention whether they are going to turn them loose upon the world, or put them in your large asylums under the care of paid officials. I believe it would be a bad policy. I believe they are wards of the State, and upon that point I believe there is no difference of opinion, that the State should take care of them. I ask the gentlemen of this Convention just to let it run through their minds for one moment. Take, for example, the State's prison, the insane asylums, and the deaf and dumb asylum. Gentlemen, if you put them into asylums you will have to employ people to take care of them. And you must erect your asylums, and, in doing that, we all know it is let out to the lowest bidder to say who will take charge of them. I say that it is better for the State to do as she has done on former occasions—to make appropriations to aid these institutions that are now taking care of these children, and pay about eighty-four dollars per capita for taking care of these orphans, as will be seen by the minority report of the committee.

Take the one hundred dollars for whole orphans, seventy-five dollars for the half orphans and abandoned children, and it makes about eighty-four dollars per capita that they are cared for under the present system, and they are brought up in the fear of God and become the admiration of the world. Some gentleman said that he did not want any spread-eagle speeches on this occasion. I do not intend to make any spread-eagle speech, but I propose to take the side of the orphans. I do not want to see the little female waifs cast upon the streets to fill houses of prostitution; neither do I want to see these little boys turned out upon the world to, alternately, fill prisons, or to have them crowded into large asylums where the teacher and the keeper of the asylum is paid a big salary to take charge of them. I ask you, Mr. President, and every gentleman upon this floor, if it is not economy for the State to provide for the support of these orphans as it has done in the past? You may take the history of the other public institutions in this State, and I will commence at the insane asylums at Napa and at Stockton, and the Deaf and Dumb Asylum and all other asylums in this State, and it costs one thousand dollars per capita to provide for the inmates of these institutions. Now, sir, when people—I care not whether they belong to one sect or denomination or another—when they propose to take them and keep them for the simple appropriation of eighty-four dollars per capita, to clothe and feed them, educate, and instruct them in the paths of virtue and teach them to shun vice, should they not be allowed to do so? What has happened here in the City of Sacramento within the past few days? The children in the orphan asylum of this city have been afflicted with the diphtheria, and the citizens of this town have appropriated between eighteen hundred and two thousand dollars for the relief of the Protestant Orphan Asylum in Sacramento City during that time. And yet, gentlemen say, we propose to erect asylums. I tell you it will cost over one thousand dollars per capita to take care of them, if you take as a basis the Napa Asylum and the Deaf and Dumb Asylum of this State. My friend, Mr. Filcher, knows that in the committee I made an urgent fight on this thing. My friend Judge Hale and I disagreed only upon one question, and that was, that while I thought it was best to leave the orphans in charge of those who are now taking care of them, he thought it was best, even if it cost more, to let the State build these institutions.

Now, gentlemen, suppose any of you were to be overtaken by misfortune, and were to leave a wife and family of helpless little children—and this is only supposing that which might happen to any of us; upon her death she leaves these little children, and would you say to her that she should not be allowed to designate where these little ones should go—whether they should be sent to a Catholic, or Protestant, or any other asylum? Are you going to deny that dying mother of the privilege of saying where these little children shall be reared, educated, taught, and cared for? I trust this Convention will never be guilty of such an outrage as that. I hope they will allow the mother, in such a case as that, to look after the careful moral training of her children. All over the world they say that California is the pride of America—that she is the pride of the United States. Now, with all her boasted pride and wealth, these gentlemen here propose that she shall cast her orphans out, or huddle them together like sheep in a corral. I believe that you had better turn upon them the artillery of your State and kill them at once, and prevent them from filling houses of prostitution, and the prisons, jails, and penitentiaries of the State. In regard to erecting asylums for them, I say that there is a job in every public building that has been put up in this State. I appeal to every gentleman upon this floor if there has ever been a public building erected in this State but what there has been a job in it. If you build your orphan asylums by the State, I want to know if you have not got to have your keepers, your stewards, and your teachers to educate them, and the State pays for it. Now the State does not pay a dollar. It is all done by these noble men and women who have charge of these institutions. I call the attention of the gentlemen to the minority report. My health will not permit me to go into this matter. I would have made that report more lengthy had it not been for the fact that I have been upon a sick bed for some time, and this is the only time that I have been up all day, and it may be the last time that ever I will attempt to address this Convention. If so, I thank God I have had the privilege of appealing to my colleagues and the delegates representing this State in forming our organic law, and I hope that as a crowning act they will adopt that amendment, and that we may in the future protect the orphans, as we have in the past.

MR. STEDMAN. Mr. Chairman: I withdraw my amendment in favor of Mr. Wilson's.

THE CHAIRMAN. If there be no objection, the gentleman will be allowed to withdraw his amendment.

No objection was raised.

REMARKS OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I am in favor of this amendment offered by Mr. Wilson. It provides that "notwithstanding anything in this or any other section of the Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, half orphans, or abandoned children, or aged persons in indigent circumstances," and that "such aid shall be granted on a uniform rule and apportioned to the number of inmates of the respective institutions." Now, Mr. Chairman and my fellow delegates, you all remember, as well as I do, that a few years ago, the State undertook to take care of the orphans, and what was the result? She expended eight hundred and ninety-four thousand dollars for an institute and finally she had to abandon it. Now, for instance, if you undertake to take care of these orphans, as a good many of the members have proposed to do, it will cost in the first place for a building, over a million of dollars, and it will cost over a million of dollars to support them afterwards. At the present time, it only costs twenty-three dollars and seventy-five cents for an orphan, according to the last report. Two years ago it cost the State something over seventy thousand dollars; now it does not cost quite twenty thousand dollars to take care of these orphans, and now you propose, in shape of reform, to saddle this State with a million of dollars expense every year, and a million of dollars this year to build an institute to take care of these orphans. How have they been taken care of for the last fifteen or twenty years? I say that the best educated children in the State have been educated in the orphan asylums, and I defy any man to deny that. The finest educated women and children in the State have been educated in orphan asylums at the expense of these private institutions. That you know is a fact. Now, Mr. Chairman, it is not necessary for any one to speak or take up any length of time in the discussion of this question, because we all understand how this has been conducted for the last fifteen or twenty years. We have seen the result of it, and we have seen the benefit to the State. I do not think that you or anybody else should dictate to me where I should send my orphan children in case I should die, and to say that they should be educated by the State is ridiculous. I am satisfied to leave it to the Legislature. This amendment seems to be a good provision, and I hope it will be adopted. I know it is satisfactory to everybody in the State.

MR. WELLIN'S REMARKS.

MR. WELLIN. Mr. Chairman: Owing to the short time we have to speak I shall not attempt to make much reply to the gentleman who speaks about spread-eagle speeches, because I prefer rather to deal with facts than to deal with spread-eagles. He says that the committee wishes to prevent grabbing from the treasury. I shall show him, by facts and figures, where the stealing comes in. He says that these institutions are hostile to the educational system of the State. I desire to know if we have any proof of that fact—that the tendency of Christianity has yet proved an injury to civilization. I maintain that from the very first day that the Pilgrims landed on these shores, that this has been a Christian community, and that Christianity has gone hand in hand with civilization, notwithstanding the sneers the gentleman may throw upon it. I also call his attention to section four of the Bill of Rights in our Constitution: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State," and no State will be a free and prosperous State without it. The gentleman from Placer, Mr. Filcher, asserts that we are arguing in favor of the same kind of proposition as that advanced by Zach. Montgomery the other evening. I assert that we are not, and that Mr. Montgomery is not supported by any one in his views, and that was shown when he attempted to talk the committee to death the other evening. He started in with forty or fifty people, and ended with an audience of seven. He complained bitterly that people did not side with him; but he must stand by himself. Here is one fact which I desire to state: I have been informed that not one of these orphans, reared in these institutions, has ever been found in the State Prison at San Quentin. I have not the proof of this myself, but persons who have had a good opportunity of knowing, have told me that not one of these children, who have been reared in the private orphan asylums of California, has ever been in San Quentin. A few years ago the State of California undertook to manage this thing itself. I might refer you back to the early days of California, in eighteen hundred and fifty, when the City of San Francisco undertook to manage the charities on its own account, and the result was that they lost two thousand acres of city property to settle the trouble they got into. Now, as I propose to deal with facts, and show these gentlemen something in regard to the economy that they talk about, and the grabbing from the treasury, I will refer to the Appendix to the Journal of the Assembly of the sixteenth session, and read to you a few extracts in regard to the institution built at Marysville, one of the institutions started by the State of California as an experiment.

MR. HALE. Do you not know that it perished, because it was in a malarious swamp?

MR. WELLIN. The facts are before us. And even if it was in a swamp, it showed the stupidity of officers in placing it there, and the fact of its being stupidly located does not change the figures or the facts as to the money it cost. Here are some of the items in the cost of taking care of thirty inmates:

Salaries	$10,940 84
Drugs and medicines	163 54
Groceries and provisions	4,284 53
Hats	186 00
Drygoods and clothing	2,188 85
Books and stationery	59 74

These are some of the figures. Now, if they bought a worthless piece of land, in order to make money for those who owned it, that does not change these expenses. I am glad the gentleman spoke of that, because it shows where the jobbery came in. There were thirty inmates. They must have been well supplied with hats, for it seems they spent one

hundred and eighty-six dollars for hats; and for "books and stationery, fifty-nine dollars and seventy-four cents." The teacher was paid three thousand seven hundred and twenty-five dollars to use up fifty-nine dollars and seventy-four cents worth of books and stationery. They must have been well supplied. The whole institution cost, for the year, twenty-five thousand five hundred and sixty-seven dollars and sixty-eight cents, or a per capita of about four hundred and twenty dollars. The same number, in one of the asylums, under the present management, would cost the State two thousand five hundred and fifty dollars; a saving of twenty-three thousand and seventeen dollars and sixty-eight cents. We are told that this is a spread-eagle speech, but I consider it solid facts. In their report, the managers say: "We have done all within our power, with the limited sum at our disposal, for the care and improvement of those whom the State has intrusted to our charge, but the condition of our finances has been such that, with every retrenchment and the practice of the strictest economy, we have been compelled to neglect many things which were of great necessity. The appropriation for the sixteenth and seventeenth fiscal years will be exhausted by the first of December, and we will need, for the balance of the present fiscal year, an appropriation of, say, seven thousand dollars, being one thousand dollars per month for the necessary current expenses."

Now, I wish to call attention to the report of the Joint Hospital Committee in eighteen hundred and sixty-seven-eight, in regard to this State Reform School, as found in the Appendix to the Journal of the seventeenth session. They say:

"The whole is surrounded by a high inclosure, and both internally and externally bears unmistakable evidence of neglect. The farm contains one hundred acres of fine land, very little of which is under cultivation. Your committee are decidedly of the opinion that the law creating a State Reform School should be abolished. As now conducted it seems more as a school for vice than for moral instruction. Convicts of some eighteen or twenty years of age are allowed not only to commingle with young children who are placed there for protection, but to control and in a measure direct them during the day, when it is not convenient for the Superintendent to be with them. The Trustees of the Industrial School at San Francisco propose to take charge of the boys now in the State Reform School for the sum of twelve dollars and fifty cents per boy per month, for the next two years, conditioned that the Legislature will appropriate two thousand dollars to such school for building purposes the present year, which are absolutely required if the said boys are received."

So much for a grand State school, where they mix the old and vicious criminal and the innocent youth together. Here is what the same committee says of the Protestant Orphan Asylum of San Francisco:

"Here, again, the committee can only express their gratification on witnessing the operations of this noble charity. Had they the time and space to dwell upon its merits, they could not in language half portray its substantial beauties. This is emphatically a home for the helpless. In this institution your committee found two hundred and nineteen children, nearly all of whom were under the age of twelve years, and undergoing the most perfect system of training of the Catholic Orphan Asylum. The committee are satisfied that this institution is also doing great good by dispensing a needed charity to many destitute children."

Now, perhaps gentlemen may think we have been particularly unfortunate in this matter of charity. Let me take them over the mountains, into Nevada, and read a few bills from the reports of the eighth session of the Nevada Legislature, eighteen hundred and seventy-five. They had the Nevada State Asylum, taking care of thirty-nine children, at a total cost of fourteen thousand three hundred and seventy-two dollars and thirteen cents. Among the items are:

Salaries	$4,985 00
Provisions, meats, and general supplies	4,052 99
Drygoods, clothing, boots, and shoes	2,001 89
Schools books and stationery	56 15

They must have been well educated there. Thirty-nine inmates, and it cost the State about three hundred and sixty dollars per capita—the salaries alone amounting to four thousand nine hundred and eighty-five dollars. And this is the grand State institution that the gentlemen ask us to come to. Now I call your attention to the report of an institution in San Francisco—the twenty-sixth annual report of the Protestant Orphan Asylum. The total expense for eighteen hundred and seventy-six was twenty-six thousand nine hundred and seventy-nine dollars and thirteen cents. Among the items are some extraordinary or unusual expenses, such as—

Repairs and improvements	$3,624 89
Furniture	1,541 63
Tax and insurance	1,390 19
	$6,551 69
Which leaves a current expense of	20,407 44

They took care of one hundred and seventy-one inmates, at a per capita of about one hundred and twenty-two dollars and fifty cents, and the State contributed nine thousand two hundred and seventy-six dollars and fifty cents. Had these been in a public State institution, it would have cost seventy-one thousand eight hundred and twenty dollars, and this after the erection of buildings and the purchase of grounds, and the other necessary outfit, which would cost from two hundred and fifty to five hundred thousand dollars. Now, to sum up: At Marysville, to take care of thirty inmates, the salaries were ten thousand nine hundred and forty dollars and eighty-four cents; in Nevada, thirty-nine orphans, salaries, eight thousand one hundred and thirty-seven dollars and ninety-nine cents; Protestant Orphan Asylum, one hundred and seventy-one inmates, five thousand and twenty dollars and fifty cents. And this is the system of reform proposed by the committee. This is the grab that the Doctor has told us so wisely about. I hope that this committee will see it in its true light, and adopt the amendment.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: There seems to be no one opposed to this amendment, and it is, perhaps, an act of supererogation to argue in favor of it; but I cannot refrain from expressing my views briefly upon the question. The principle involved in the section reported by the committee is a correct principle—that the treasury of the State should be protected from invasions from every quarter, if possible. But no rule was ever framed by human ingenuity to which there was not an exception, and if ever there was a proper exception it is in the case of the orphan asylums. I do not, although the argument is a good one, place my advocacy of this exception upon the ground of economy, although I believe the argument is immensely in favor of the present system of State aid to these institutions. But I place my advocacy upon the ground of the welfare of those little fatherless and motherless waifs of humanity. I remember of reading once a novel by Charles Dickens, entitled "Oliver Twist," I think that was the name of it, which contains a very extensive description of the method of official bringing up of orphans and abandoned children. We have there a picture of the parochial official, of the parochial father and the parochial mother. They are brought up according to mathematical principles—so much meat and so much bread. So also with regard to the clothing, and I believe they even played according to a stated mathematical principle. They were brought up by the ear, and when they were turned loose on the world the brand of the official parochial institution stuck to them through life. They were known all through life as the creatures of public charity. Sir, in the interests of humanity, in the interests of these poor little waifs, I protest against interfering with these benevolent and religious men and women who devote their lives, who devote their time, from principle and from conscience, to the welfare of these unfortunate children, and become *in loco parentis* to them. In a sense they are fathers and mothers to them.

Now, sir, a child requires the application of a different rule and of a different principle than those who are also proper objects of State aid, such as inebriates, deaf and dumb, blind, and destitute persons. These do not require training; their habits are formed already, and all they require is support. But as to the children, something more is necessary. You want to furnish him, as long as it is possible to do so, with that which is the life and soul of the child, and that is a home, and the surroundings of a home, the training of a home, and the influence of a mother. The thing that makes his little eye bright and his little heart glad is to be treated as if he were at home, surrounded by those influences. Brought under these influences, they will make good citizens, and good fathers and mothers. These, sir, are the reasons why I am in favor of a departure from the principle, and for the application of this exception. And I, sir, have no sectarian feelings. I do not fear to allow them to be taken care of in these institutions because some religious instruction may be given them. The State is in no danger. It has not been in the past, and it will not be in the future. These exaggerated fears never should deter any man from giving his support to this proposition, even assuming that these institutions are sectarian; that they are trying to sap the foundations of free institutions. It is only a flea-bite, anyhow; it is only a small portion of the community anyhow, and it is a fact that the line of training given is the same line of bringing up as they would have received from their natural father and mother if they had been alive, and the State never ought to descend to an inquiry into what were the antecedents or religious belief of the parents when it proposes to give the child aid of that character.

MR. FILCHER. If that is the case, why do you not favor the appropriation of the School Fund for sectarian schools?

MR. BARBOUR. Because the State cannot afford to split up the School Fund. It is necessary to the efficiency of the schools that the fund should be preserved intact. But now we are dealing with another matter. The State undertakes to furnish food and clothing to the children, and a home and shelter, that is the difference. If the parents of that child lived, and they had chosen to bring up that child at home, under the influences there with which they chose to surround it, the State could not have any objection to it. The principle is a different principle. As I understand it, the State does not exclusively support these children, and never was expected to. A large portion of their support is drawn from private charity that is given to these particular benevolent men and women, to be used in their own judgment and their own discretion. I do not believe that any of them entertain any designs against the State or against free institutions. Not at all. I do not suppose that there is one single man upon this floor who believes that there is anything but a purely disinterested and religious impulse that causes them to do this, and, therefore, it strikes me as exceedingly small, thin prejudice upon which this opinion is based. I hope this exemption will be made, and I hope it will go no further, because the rule that applies in this case does not apply in others.

PREVIOUS QUESTION.

MR. VAN DYKE. Mr. Chairman: I believe the committee have heard this matter discussed sufficiently. I move the previous question.

MR. REYNOLDS. I hope the gentleman will withdraw the motion for one moment.

THE CHAIRMAN. There is a second to the motion. The question is, Shall the main question be now put?

The main question was ordered, on a division, by a vote of 61 ayes to 36 noes.

THE CHAIRMAN. The Secretary will read the amendment.

THE SECRETARY read:

"Insert after the word 'State,' in line seven, as follows: 'Provided, that notwithstanding anything contained in this or any other section of

this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, half orphans, or abandoned children, or aged persons in indigent circumstances, such aid to be granted on a uniform rule and apportioned to the number of inmates of the respective institutions.'"

The amendment was adopted by ninety affirmative votes.

MR. VACQUEREL. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Add, after Mr. Wilson's amendment, 'Provided further, that the State shall have at any time the right to inquire into the management of such institutions.'"

MR. VACQUEREL. Mr. Chairman: My object in this amendment is, that the State, as has been said by Mr. Wilson, is the father of its children, and I want the father to look into the conduct of his children. I say, if a corporation receives any subsidies from the State, the State has the right to control the corporation, and on the same principle, if the State appropriates money for the support of these institutions, the State has the right to inquire into the management of them; not to direct them, but to see what use is made of that money granted by the State. I hope that the amendment will prevail.

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

THE SECRETARY read:

"Amend by adding after the word 'Legislature,' in the tenth line, the following: 'Provided, that no sum greater than fifty dollars shall ever be donated by the State to any one orphan or person per annum.'"

MR. FILCHER. Mr. Chairman: I second the amendment.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from San Francisco, Mr. Vacquerel.

The amendment was adopted by an affirmative vote of ninety-one.

MR. McCONNELL. Mr. Chairman: It occurs to me that fifty dollars would be an ample sum to donate to each and every one of the orphans of the State.

MR. EDGERTON. Do you think fifty dollars will support a child for a year?

MR. McCONNELL. It will partly support a child.

MR. EDGERTON. What part of the child do you propose to support? [Laughter.]

MR. FILCHER. Mr. Chairman: I second the amendment offered by the gentleman from Sacramento. I believe there should be a limit. The greater evil in this matter comes, perhaps, from the wrangle to procure the aid rather than the nature of the aid itself. Heretofore, if I have been rightly informed, the appropriation has not averaged that much a year. It has never been regulated in accordance with the absolute needs of any particular institution. It has never been shown, to my knowledge, when these appropriations have been asked for, that the whole of the institutions absolutely needed all the assistance asked, while it has been true that in many instances the institutions have been amply able to maintain themselves. Now, sir, I am in favor of fixing the amount and stopping future wrangles. If fifty dollars is not the right sum change it, but by all means have a limit. By doing so we will drive away the lobby. Different Legislatures have granted different sums—twenty dollars, forty dollars, and lastly seventy-five dollars and one hundred dollars; and this, not according to the need, but according to the influence that was brought to bear on members of the Legislature to make the amount greater or less.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I am opposed to this limitation, and I hope that this Convention will not fix any limitation in this matter. I believe that the Legislature is just as good a judge of the amount that ought to be appropriated as this Convention is. Here we are laying down a rule for all time. The Legislature, in its judgment, can make these regulations every two years, according to the exigencies of the circumstances. Now, sir, it may be that fifty dollars per year at present is enough, but I do not know of any abuse of this discretion that the Legislature has ever been guilty of. I do not know that the Legislature has ever been accused of giving the orphans any too much. Now, while fifty dollars may be amply sufficient at present, we all know that the purchasing power of money changes. Fifty dollars ten years ago would not go further than twenty-five dollars would go at present, and we do not know but in the next few years the purchasing power of money may decrease; we do not know but that the currency will be inflated. We have got a large party in the United States now in favor of an inflated currency. It might be that the currency will be inflated so that a bushel of money would not buy enough hay to feed a cow. I hope the Convention will take into consideration the fact of the financial condition of the country at this time, and that this may extend for a hundred years or fifty years. I certainly hope, sir, that this limitation will not pass, and I do not believe that the Legislature will abuse this discretion.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: It seems to me that there should be some limitation in this matter. It is urged that the Legislature will know just as well as this Convention knows. It may be that the Legislature will know just as well what should be constitutional law as this Convention knows, but there is pressure sometimes brought to bear upon Legislatures which in this case is evidently not brought to bear upon us. There will be pressure brought to bear upon the Legislature, and they might, under certain great influence, act different from what is demanded at their hands, but if there is a constitutional limit it will free them from this class of embarrassment. I am perfectly satisfied that most men would wish, under such circumstances, some constitutional provision for their protection. I can see nothing wrong in it, and I can see considerable of principle that is right, for the protection of right with regard to this matter.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I hope this amendment will not prevail. Now, as has already been stated, these orphans have to be taken care of, either by the State or by private charity; it is simply a question as to which is the best method—to have the State take care of them entirely, or to appropriate a sufficient amount as a supplement to private charity. In any event, it is the duty of the State to take care of them, and it seems to me that you must necessarily leave this matter to the Legislature. They have got to be taken care of by the State if we intend to live in a civilized country, and it is simply necessary to ascertain how much the State must donate as a supplement aid to private charity.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope this amendment will not pass. If we propose to do anything, let us place no limit upon the Legislature. As has been aptly stated, the purchasing quality of money changes. Fifty dollars may be considerably more or less to-day than it will be ten years from now. If we limit them to fifty dollars we give the Legislature no discretion at all. It is not merely a matter of sympathy or justice towards these orphans, but it is a matter of absolute necessity under the existing circumstances. If this Constitution goes into force and effect, and this aid is cut off from these orphans, or limited to the paltry sum of fifty dollars for each one, then these children who have been receiving aid, and these institutions who have been receiving donations from the State, will be cut off at once, and they will not be able to proceed with their charities. The State cannot by magic erect orphan asylums, or the houses necessary to take care of the poor and poverty stricken. It takes time to do these things, and even if the State intended to do it, this aid must continue for a time, and it must continue in its present form if we do not desire, by a simple amendment, to turn these poor children, these fatherless and motherless orphans, upon the cold charity of the world; and I, for one, shall never vote for anything of that character. I believe that the Legislature is qualified to deal with this question. It has never been charged that the Legislature has been corrupt in granting this aid, and I believe that the matter should be left in the discretion of the Legislature.

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

The amendment was rejected.

MR. McCALLUM. Mr. Chairman: I desire to offer a substitute for the section. I propose to offer the present section of the present Constitution for the section as it now stands. This is section twenty-three of the old Constitution.

THE SECRETARY read:

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

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: This is section twenty-three of the present Constitution. The Committee of the Whole, Mr. Chairman, have seen proper to reverse the action of the Committee on Legislative Department upon this subject, and I am not going to say but what the Committee of the Whole may have done right. That is not the question now before us. It is proper to say, however, that the main object of the majority of the committee was to accomplish the very point which has been reversed by the Committee of the Whole. It was that class of institutions which are provided for in the amendment of the gentleman from San Francisco, Mr. Wilson, that the committee had in view to stop appropriations for, intending that all these institutions or class of institutions should hereafter be managed by the State. Now, as this amendment has been adopted, it is an invitation, it is a suggestion in itself to the Legislature hereafter to make such provisions, cutting out of it appropriations for all other institutions whatever except the institutions specified in the amendment. I am aware, Mr. Chairman, that there are many persons who are opposed to appropriating money for agricultural societies and district fairs. They would be opposed to an appropriation for the State Fair, though I believe the Agricultural Society of the State is a State institution. I merely refer to it. It has been the custom heretofore to make appropriations for district societies to a limited degree, it being claimed that they were as much entitled to it as the State Society, and I do not know but there is about as much reason in the one case as in the other. My object is not, however, to advocate that there should be, but merely to present this point, that inasmuch as we have now changed the whole object of the amendment reported by the Committee on Legislative Department, we had better leave the Constitution as it was, and not give preference to any particular class of institutions which are not under the control of the State. Let them all stand alike. Therefore I offer this amendment.

THE STATE AGRICULTURAL SOCIETY.

MR. LARKIN. Mr. Chairman: I am opposed to the substitute offered by the gentleman from Alameda. The proposition embodied in the report, in section twenty-two, covers a variety of subjects. The only exception I think this Convention desires to make is the one they have already made. The other restrictions upon the Legislature are deemed to be very important, that, "No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation." Right there is the question. There is now five thousand dollars appropriated for the State Agricultural Society, and the Legislature would not have the power to repeal that Act. That appropriation should be stricken out. I do not believe that the State

should appropriate any money for State agricultural or district agricultural fairs; they have become horse-racing and gambling schemes.

MR. HILBORN. Does not the gentleman know that not one cent of the money can be used for horse-racing.

MR. LARKIN. That is the principal object of these appropriations.

MR. HILBORN. Not one dollar can be used for horse-racing.

MR. LARKIN. But the object is to encourage that class of gambling, which should be stopped. I hope the section will remain as amended; that this Convention will determine that it is proper in its present form, and not strike out the section.

MR. HILBORN. Mr. Chairman: I wish to read to the gentleman a clause in the Act appropriating money for the State Agricultural Society. In section one it says: "The money so drawn by each society shall be used for the purpose of paying premiums for the different kinds of live stock, and the various agricultural, mineral, mechanical, and manufacturing products of the State, and for no other purpose; and no part whatever shall be given, in any contingency, in purses for horse-racing."

MR. LARKIN. The principal object of the fairs is jobs to fleece the public. I am opposed to the State paying, directly or indirectly, for horse-racing, or any kind of gambling. Let them stand on their own bottom.

MR. REED. If I understand the gentleman from El Dorado, he says the object of the fairs is to put up jobs to fleece the public.

MR. LARKIN. I say it has been used for that purpose.

MR. REED. I pretend to say it is a slander upon the Agricultural Societies of this State. I know whereof I speak, and I know that the agricultural people of this State would deem it a slander. I say that not one dollar has ever been appropriated for horse racing that has ever been given by this State. I was President of this State Agricultural Society for ten years, and I know the charge of the gentleman to be a slander.

MR. LARKIN. The gentleman must misunderstand me entirely. I say that the conduct of these institutions is such that the gamblers come there.

MR. REED. Gamblers come to camp meeting also. I would ask the gentleman from El Dorado if he ever comes.

MR. BIGGS. Mr. Chairman: I had the honor of being a Director of the State Agricultural Society for six years, and I was President one year when we had no appropriation at all, and I most emphatically declare that we did not encourage gambling or any other vice, and there was never one dollar of State money appropriated to horse racing.

MR. REYNOLDS. Mr. Chairman: I hope the amendment will not be adopted. I was opposed to the amendment adopted by the committee, but having been adopted I hope it will be allowed to stand. There was several other lying-in hospitals and humbug institutions in San Francisco, that by one means or another obtained appropriations of money to private institutions, which are nothing in the world but a grab. I do not know but they are as bad as the horse races are represented to be by the gentleman from El Dorado. But now that we have adopted an amendment which especially excepts the orphan asylums and those for aged and indigent persons, let us adhere to that and exclude all other institutions for the purpose of grabbing money out of the treasury.

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

The amendment was rejected.

AGED AND INDIGENT FEMALES.

MR. WALKER, of Tuolumne. I desire to offer an amendment.

THE SECRETARY read:

"Add to Mr. Wilson's amendment: 'Provided, that institutions having care of aged indigent females shall not refuse to receive such on application.'"

REMARKS OF MR. WALKER.

MR. WALKER, of Tuolumne. Mr. Chairman: I offer this for this reason: The amendment of Mr. Wilson says:

"Provided, that notwithstanding anything contained in this or any other section of the Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, half orphans, or abandoned children, or aged persons in indigent circumstances; such aid to be granted on a uniform rule, and apportioned to the number of inmates of the respective institutions."

Now, sir, it is well known in the counties of this State—some of the counties I can positively speak for—there are three or four indigent females, ladies very aged, that are absolutely—and have been for many years—suffering and in great distress for the want of a proper institution in which to place them. I can speak from personal knowledge in my own county. In Tuolumne County the Supervisors have met on several occasions, and I have been called in to consult with them myself, and we have found it utterly impossible to take care of them. The county is so small that they could not be taken care of and respectably supported in connection with the County Hospital, as it would require the erection of an apartment which would have to be supplied with female help. There are some of them now in a deplorable condition. Now, sir, I am satisfied that if the State is going to give money to these institutions, there are institutions in this State that could take care of these people, and they ought to be compelled to take them in if they receive State money. The counties having one, two, or three of these people could make application to these institutions, and they would be compelled to receive them, and it would meet with the hearty support of every person in the State. I hope that the gentlemen of this Convention will give this matter serious consideration, and look upon it in the light that I hold it myself. There are very few who are acquainted with these peculiar cases; these come to my knowledge professionally. As I have said, there are one or two deplorable cases in my county, and we have not been able to get them into any institution. We have ladies who have stood in high position. Their friends have died off and left them in old age in this deplorable condition, and they certainly need some action from this Convention.

MR. REYNOLDS. I move to amend it so that it shall read: "Provided, that institutions having the care of orphans, half orphans, abandoned children, and aged indigent females, shall not refuse to receive such, upon application."

MR. WALKER, of Tuolumne. Mr. Chairman: I only wish my amendment to apply to those institutions that have charge of aged and indigent females. I would not expect them to receive aged females in an orphan asylum. The gentleman misunderstands me. My object is to have these institutions that are taking care of aged and indigent females take in all that apply. I do not allude to men, because they can go to the County Hospital. Under the gentleman's amendment, if they should make application to an orphan asylum they could not be refused.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: It seems to me that we are entering upon a domain that we are not entitled to enter upon, by adopting such an amendment as that. We have no right to say to these institutions how they shall manage their affairs, and what discretion they shall exercise, provided no great wrongs or improprieties are committed. Now, the amendment of the gentleman from San Francisco, Mr. Vacquerel, gives the State the right to inquire into the management of these institutions, and, if there is any improper management or abuse existing there, the State could refuse to make the appropriation, or take such other action as might be necessary. The power is left in the Legislature altogether. This merely enables them to give aid, and the Legislature would exercise sound discretion every time it would give. If any institution was improperly managed, or was conducted in such a manner as to offend the public morals, they would receive no appropriation. But to say that every institution should positively receive all applicants, is going too far. Suppose they are full. That is a good reason for refusing to receive an applicant, and yet, under the amendment offered by the gentleman from Tuolumne, they would have still to receive. They might have to go and employ more servants, or erect more buildings. There are various reasons why the institution should not be compelled to take all that make application. I hope the amendment will be lost, and that when these institutions show that they are actually supporting these children, they may receive aid. I do not think we have a right to say they shall receive everybody that may apply.

REMARKS OF MR. WALKER.

MR. WALKER, of Tuolumne. Mr. Chairman: The gentleman will understand that perhaps there are not twenty-five females in the condition which I state. It was to get the vote of my people for the Constitution. There has been a great deal of feeling in this matter, and I think, in this particular case, where there are so few persons of this class, if we should provide that when they make application to those institutions having charge of that peculiar class of people, they should be received, it would take that distinctive character out of it; it would take away that feeling of sectarianism. For instance, a church or private institution may be opened for the care of this class of persons, and will receive only a certain class. I say that such an institution has no right to call upon the State for money for its support, where it is of a distinct, sectarian, or private character. Now, if they will open their doors and make it of such a public character as to receive these twenty-five or fifty people, then they have grounds for applying to the State for money. I say these people are in a most deplorable condition, and I do not believe that these institutions are unable to receive these few individuals. I believe that they are supported mostly by ladies, and I am very sure they would not object. It is because these people never get to them. The counties never send them forward. I wish the gentleman to observe that I am looking out for the future. The State needs an institution of this kind, and this will be a stepping-stone. I think if gentlemen will take a proper view of it, they will find that the institutions would make no objection so far as the numbers are concerned, for it never can overrun them, and it would place the thing before the Legislature in a better light. The people of my county would understand it in that way.

MR. CAPLES. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and a quorum present.

MR. AYERS. Mr. President: I ask for a correction of the Journal of yesterday's proceedings. I find my name among the absentees. I was not absent. I was here all day, and answered to my name.

MR. REYNOLDS. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section twenty-three and pending amendments are before the committee. The Secretary will read.

THE SECRETARY read:

"Amendment offered by Mr. Walker of Tuolumne:

"Add to Mr. Wilson's amendment: 'Provided, that institutions having care of aged indigent females shall not refuse to receive such on application.'"

"Amendment to the amendment offered by Mr. Reynolds:

"Amend the amendment so as to read: 'Provided, that institutions having care of orphans, half orphans, abandoned children, and aged indigent females, shall not refuse to receive such on application.'"

MR. REYNOLDS. I wish to add to my amendment the words, "In their respective institutions."

MR. WALKER of Tuolumne. Mr. Chairman: I will accept the amendment.

THE CHAIRMAN. The question is on the adoption of the amendment.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I hope, sir, this amendment will not prevail. I suppose every one here understands these asylums are not public, but private institutions, supported mainly by the self-imposed charity of those who have hitherto voluntarily established and maintained them. In San Francisco there are Protestant and Catholic orphan asylums, and other institutions, which have been in existence for years, and been supported entirely by private charity, long before the State made any appropriation to aid them. The habitations which have been constructed for their use are quite insufficient to accommodate the whole State. If this amendment should be adopted it would be obligatory upon these institutions, if they received any aid from the State, to admit all who might apply, which, for want of accommodations, it would be impossible to do, even if they were so disposed, and necessarily they would have to close their doors against all, or decline all State aid. They could not comply with the conditions imposed upon them by a constitutional provision as proposed by this amendment. Whenever the State shall establish, and take the management of orphan asylums, or asylums of any kind, for the unfortunate or indigent, we will have the right as well as the privilege of declaring all shall be provided for. But whilst we are dependent upon private charity, and not exclusively on State aid, we should leave the management to those who have constructed the buildings and established the institutions.

The orphan asylums now in existence have not been established by the State, but by such funds as charitable ladies have contributed and solicited from charitable individuals, and the property does not belong to the State. Now, the amendment offered by my colleague, if it should prevail, would close up these institutions. Suppose the State should grant fifty dollars per year, or one hundred dollars, as the case may be, per capita, it would not be sufficient for the support of all these orphans. And yet you would say that unless they receive every applicant they should be denied all aid from the State. At the last session of the Legislature the appropriation granted to aid these institutions in supporting these children, was one hundred dollars for each whole orphan, and seventy-five dollars for each half orphan and abandoned child. Now, who would undertake to support these children, to clothe and feed them, give them house room, employ persons to attend to them in sickness and in health; I say who would undertake to do this for the sum of seventy-five dollars per year per head? I doubt whether any one would attempt such a thing.

The State has been quite liberal, and with the large charities of individuals, the children have been, so far, well taken care of. A hundred dollars each for orphans, and seventy-five dollars each for half orphans and abandoned children, is not sufficient for their entire support. And why should you make it compulsory upon these private asylums to receive every one that applies, or else deprive them of this donation? It would be exactly right, provided the appropriation of the State was adequate to the support of the inmates without any other aid from any other quarter. But it is not adequate. Why should you say, therefore, that the orphan asylums in the City of San Francisco should receive orphans from the whole State, when the State has not built these buildings, when the State does not maintain them except in part, and the buildings themselves are inadequate for the purpose of supporting all the orphan children in the State, or even of that city. I would agree to the amendment if the appropriation was adequate to the support of these children, but it is not adequate, and you have no right to ask private individuals to pay the money out of their own pockets to support all that may apply, in order to get the State appropriation. That is not the purpose of this charity. It should not be the purpose of any amendment to compel any asylum to do that thing unless the State apropriation is made sufficient to enable them to do it. I hope the amendment will be voted down.

MR. WALKER, of Tuolumne. Mr. Chairman: I would ask, if the State considers it necessary that these institutions shall take sole care of the orphans, etc., and contribute money sufficient for that purpose, whether or not these institutions do not become quasi institutions of the State?

MR. HAGER. They do so far as the State aid is concerned. But it is a partial aid, as I said; if the aid was sufficient for the entire support of the orphans, then it would be all right. These buildings cannot accommodate more than fifty or one hundred apiece. They have not the room. They are limited in their capacity. Why would you compel them to do that which it is impossible to do?

MR. WALKER. It would not be considered impossible. If these institutions are going to take it upon themselves, the supposition is that they will erect buildings to accommodate all.

MR. HAGER. How can they do it?

MR. WALKER. We have voted that the State shall contribute sufficient money.

MR. HAGER. The State has not contributed one dollar towards the building of the orphan asylums of the City of San Francisco. They were put up by private charity. They have not the capacity to accommodate all that apply at this time. They have no funds to build with, and all that the State has appropriated hitherto is not sufficient to maintain them. Why ask them to do that which they cannot do? If the amendment went so far as to provide buildings it would be all right. But it does not. Why, then, ask them to do what is impossible unless you wish to close their doors; because I am sure they will not undertake to do that which they cannot do.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: It seems that the result of this amendment would be to take from the managers of these institutions the discretion as to who they will receive. As I understand this measure, it would only be necessary for any person to make an application, claiming that they were within the description given, and if they were refused, that will be cause for the Legislature to refuse to make any appropriation for the institution. Now, it seems to me that this would place the institution entirely at the mercy of its enemies. I believe that it is necessary to give that discretion to the managers of these institutions, in any view of the case. Would it be proper for any such an institution to receive a woman without knowing anything about her, about her previous character, or know whether she was a proper person to be associated with children, or not? Certainly such a measure as this would tend to destroy the usefulness of the whole institution, if I understand the measure correctly.

MR. WALKER, of Tuolumne. It does not propose to put these women in the orphan asylums.

MR. REDDY. Mr. Chairman: That is the way I understand it. I do not understand that the section is so worded as that the aged female must make application to an institution provided for that class of people especially.

MR. WALKER. That is the provision.

MR. REDDY. Then I will abandon the ground I have been going over and take another view of it. Certainly, they must first provide accommodations, and after they have accommodations they must receive them; but they are compelled to do so under the amendment; they are compelled to receive the person, and they are to receive a small stipend for the maintenance of these persons, but nothing for the building. Each institution is compelled, under the law, to receive any person who may make application.

MR. WALKER. The supposition is that the Legislature will make provision for these emergencies.

MR. REDDY. For buildings?

MR. WALKER. If an orphan asylum refuses to receive an orphan what is to become of these orphans? It is proposed to make these institutions quasi institutions of the State. I want to make them the institutions of the State. I am in full and hearty support of the institutions, but I want to enable every place in the State to enjoy the benefits of them.

MR. REDDY. I did not understand the measure so when I first addressed myself to it. Your idea is that there shall be ample provision made to enable these institutions to erect buildings and furnish them?

MR. WALKER. If it becomes necessary.

MR. REDDY. And who will own the buildings then, the institution or the State?

MR. WALKER. That is for the Legislature to decide.

MR. REDDY. Then I have nothing more to say.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I am sure if the abandoned children and the orphans and the half orphans have understood what an immensity of political reputation depended upon their existence, they would be abandoned for life. I am sorry to see such a wonderful sensitiveness, and if there is any compensation for having been cut off from making my little speech this morning by the previous question, it is that forty-seven other gentlemen, whose desks are so full of manuscript on the subject, that they cannot get the lids down, were likewise cut off. Now, sir, I am in favor of this amendment, because these wonderful institutions, which have such a paternal care over the orphan and the half orphan and the abandoned child and the old woman, having received now the benefit of State appropriations—all they can get out of the Legislature—ought to assume some of the responsibility. Mr. Chairman, there is not, within the boundaries of the State of California, but one institution where there is any power by law under which you can place an orphan within their walls. For all that is on your statute books, the streets may be full of orphans and abandoned children, and no power on earth could compel an institution, except one, to receive one, notwithstanding the appropriations by the State. But what I wish to accomplish by the amendment which the gentleman from Tuolumne has accepted, is that we shall provide that, when the Legislature has enacted a law, giving them an appropriation under certain regulations, that it shall be compulsory upon them to receive all; they must receive them. If they are going to assume the care of the orphans to the exclusion of the State, let us provide by law that they must do it. Why not? I see no reason.

And further, Mr. Chairman, a good deal was said this morning of the cost. It was cheaper to do it this way than it was the other. I will allude to a single institution that has been kept out of politics. Thank God, there is one in the State! and thank God, also, that it is in the City and County of San Francisco! I refer to the City and County Almshouse. Sir, there is a model institution. It is the only one where there is any power to put an orphan. And what is the result? Why, sir, that notwithstanding all of the orphan asylums all over the State, that institution that was designed only for the aged and infirm, contained, on the average, during last year, sixty children, and has at present seventy-five.

Why? Because the other institutions in the City of San Francisco would not receive them; because there is power to put them into that institution. And as to the cost. It costs but little more to put them there than the State now appropriates to the orphan asylums. I am opposed to this whole business, because I believe that the State should care for its orphans. It is sound in theory, and it cannot be wrong in practice. I forgot to say that it cost in that institution but one hundred and forty-six dollars per year per head, and that is but little more than the State appropriates to the orphan asylums. There is no doubt that the correct principle is that the counties, and, if we had township organizations in this State, the townships, should take care of the indigent and the orphans. I hold that it would be better for the orphans to be raised in the communities where they belong—in the communities and among the friends of their youth, where they are born. I hold that the community itself will, in an awkward, stumbling way, raise these children better. They will send them to the public schools with the other children. They will grow up there with the other children, and when they become of age they will have a local habitation and a home among their acquaintances, an acquaintance among men of enterprise, an acquaintance with the world, and will be much better off than being herded in the large institutions now paid by the State.

MR. REDDY. I rise to a point of order. The matter being discussed by the gentleman now was fully discussed this morning.

MR. REYNOLDS. I am willing to stop if it will injure any of the reputations of these gentlemen.

MR. JOYCE. What institution did you refer to as being a model?

MR. REYNOLDS. I referred to the City and County Almshouse of San Francisco.

MR. JOYCE. Do you know anything about the money he spent here last Winter, trying to get into office?

MR. REYNOLDS. Do you know? How do you know anything of it? I do not know anything about it; and having been kept out of politics is sufficient reason for the success of the institution. The remark I make is that it can be done. I wish now that these institutions simply be held responsible, and that there be some power to compel them to receive and take care of the orphans of the State, if they are to be intrusted with that duty by the State and are to be paid by the State for it.

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman and gentlemen of the committee: This is a matter of much importance that we are dealing with, and I trust that we shall deal with it with prudence. I think it makes a difference of a good many thousand votes, and I address this to those gentlemen who are desirous that the people may adopt the Constitution which we may pass upon here. Now, the question as it stands, if I correctly understand it, is that section twenty-two is not emasculated. It is added to. Section twenty-two runs thus:

"SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws of every regular session of the Legislature."

As I understand, no part of that has been stricken out, but an amendment has been adopted, which reads in this wise—that is, by adding at the end of the section, after the word "State," this: "Provided, that, notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, half orphans, or abandoned children, or aged persons in indigent circumstances, such aid to be granted on a uniform rule, and apportioned to the number of inmates of the respective institutions."

Now, that has been adopted by the Committee of the Whole, and I shall assume, as I believe it has been done in good faith, that it is expressive of the sense of the committee. Now, the pending amendment, if I understand it, reads this way, by adding to Mr. Wilson's amendment: "Provided, that institutions having care of orphans, half orphans, abandoned children, and aged indigent females, shall not refuse such on application to their respective institutions."

I do not know who is the author of the last amendment, but I would suggest to him that in order to make it conform to the amendment already adopted, that the word "female" should be stricken out, and the word "persons" substituted for it. Will the gentleman accept it?

MR. WALKER, of Tuolumne. I do not think it is necessary. The County Hospitals take care of all indigent males.

MR. HALE. Mr. Wilson's amendment provides for "orphans, half orphans, or abandoned children, or aged persons in indigent circumstances."

MR. WALKER. I think it would defeat the whole object in view. I tried to explain that there was a small number of old infirm indigent females, who are now left entirely without support, and in a most deplorable condition. My object is to have these particular females taken care of.

MR. HALE. Your purpose is to require that they shall be received without distinction.

MR. WALKER. Of course. There is no distinction, in my mind; they are all in need.

MR. HALE. Of course, if it be not agreeable to the gentleman, I do not wish to urge it. I am in favor of the amendment with the suggestion that I have offered, so that it will apply to indigent persons whether male or female.

MR. WALKER. I do not presume that Mr. Wilson's amendment provides for indigent persons.

MR. HALE. Yes, it does. I will read it again: "Provided, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, half orphans, or abandoned children, or aged persons in indigent circumstances."

MR. WALKER. I see it does.

MR. HALE. Now will you accept the amendment?

MR. WALKER. No, sir. That is not my object.

MR. WHITE. Under your amendment could the fourteen thousand people who were starving in San Francisco last Winter get into the orphan asylums?

MR. HALE. I do not know whether they could or not. I am discussing the question from the standpoint of the committee's action. Now, what was the object of the Committee on the Legislative Department? They have little opportunity to explain the motives of their report on this floor thus far. It was this: that while we recognize the fact that the orphans, and half orphans, and abandoned children, and aged persons in indigent circumstances spoken of are properly the wards of the State; that they are entitled upon every just consideration to receive the support of the State; yet the purpose was to secure it to be done under general law, and upon terms that should be equal, and conducted in State institutions, so that the money which is drawn from the treasury might be applied to all those persons in the classes enumerated wherever they might be in the State. That was the policy of the committee. Now the Committee of the Whole has modified this to the extent of allowing this system of supporting the orphans in private institutions to be continued, and providing that the State treasury shall bear, in part, the expenses of such support.

MR. WALKER. I will accept that amendment proposed by the gentleman.

MR. HALE. Mr. Chairman: I still say with this amendment, as it now stands, we will accomplish the purpose in this way: while by your action you have allowed this duty of supporting them to be taken by private institutions, this amendment aims at this result, that wherever these wards may be, whether in San Francisco, San Diego, or Siskiyou, in Placer or Monterey, wherever they may be, they shall have a right to go to these institutions, and be permitted entrance there, and be supported upon equal terms with the others.

MR. BIGGS. Does not that take in Chinese women and children?

MR. ROLFE. Chinese prostitutes?

MR. HALE. I do not know how that may be. It will be determined by law. The State owes as a duty a guardianship to its wards. No gentleman will deny that it is a duty. You have decided that you will perform this duty through these private institutions. Suppose there be six persons in the county where I reside. By what right can they go to these institutions and demand entrance? By none whatever. There is no power to place an orphan in one of these institutions except the management of the institution upon their own sweet will see fit to do it. The amendment seeks to remedy this evil. Since the State proposes to allow these institutions the charge of the orphans, and proposes to pay for their support, all the wards of the State should have the benefit of the money.

MR. HAGER. The amendment already adopted provides that the aid shall be granted on a uniform rule. It does not apply to one any more than another.

MR. HALE. But suppose we have no such institution in Placer County? How can they get into institutions in San Francisco?

MR. HAGER. You cannot.

MR. HALE. The policy is, that since the State pays for it, all persons in like necessitous circumstances, wherever they may live, shall have the benefit of that fund and have the right to entrance and support there. I appeal to the sense of justice of this committee, is not this right? I am not one of those who agree with the policy of the committee here, to substitute private charitable institutions to perform the duty, but having adopted that, is it not right that you should give all of them the right, the common right of entrance there and of support? I ask every gentleman to weigh this matter well, and I implore you to do this act of justice. We have had orphans and indigent persons in our county, and have had no place to put them. Why? Because the State has none. Because of this system of appropriating money to these private institutions, there is no public asylum in the State. The State has none, never has had, and never will have, so long as you have this system. But you have adopted it, and as an act of justice, I hope that the committee will adopt this amendment, and provide that all these persons, wherever they may live in the State, shall have a common right of entry and support in these institutions, and it strikes me that the ends of justice will be accomplished.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: It seems to me that the amendment now proposed is only an adroit move to defeat the action of this committee, resolved upon this morning. If it were true that the State proposed to appropriate for these institutions a sufficient sum for the maintenance of all the orphans, half orphans, and abandoned children, then there would be a reason why every applicant should be admitted; but the State has not proposed to do anything of that kind. She only proposes to pay a portion of the expenses which the institutions are now compelled to maintain, and now, as a condition of her paying a portion of the expenses which are ordinarily incurred in these institutions, she insists that they shall assume an obligation, the extent of which cannot be measured.

MR. LEWIS. Does the provision adopted this morning prescribe the

amount the State may pay? Does it not leave it to the Legislature to pay anything that is necessary?

MR. FREEMAN. Yes, sir. The proposition adopted this morning might cause the Legislature to make an adequate compensation, but it is not to be expected that the Legislature is going to donate to these institutions the full amount necessary for their support. But it seems to me that the point must be reached in every institution when that institution is full, and when it is full I do not understand how it can accommodate any more. For instance, we have, within a short distance of this building, an orphan asylum. It is capable, I will assume, of accommodating fifty orphans. It may be full. Every orphan may be accommodated there that can possibly be accommodated, and yet, under the provisions of this amendment, that institution has no right to any appropriation unless it shall take every other orphan which shall thereafter apply. In other words, it must agree to do that which no institution can do, to bring itself within the section as agreed upon this morning, if this amendment is adopted. Another feature of the amendment is its broad character. They must admit every orphan and every abandoned child that applies. Under the provisions of that clause, it would be necessary for them to admit an orphan twenty years of age, that is fully capable of maintaining itself. The truth is, that these men who are controlling these institutions understand them better than we do. They have to take into consideration who are proper persons to be admitted there; and, again, it seems to be manifest that there are orphans or children in the State whose moral character is such that an institution of that kind could not afford to admit them indiscriminately—whose moral character is such that it would operate badly upon the other inmates of the institution. This discretion of who shall be admitted and rejected, must necessarily be left to the persons who maintain these institutions. I am asked what is to become of them? I do not know what is to become of them. It must be one of the ideas of this Convention that we shall shut off and shut up, as far as possible, the charities of the State. We have already adopted a section which will close the doors of the treasury to many worthy charities. We have cut off all appropriations for benevolent societies, and yet, because, under the limited language of this amendment as it has now been adopted, we cannot find a place to put these persons, it is urged that this matter should be made more objectionable than it is now.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman, and gentlemen of the committee: It seems to me that the true criterion of this whole matter is that of limit. The gentleman from San Francisco, Mr. Reynolds, says that by the amendment we have already adopted, we have placed the orphans exclusively in the control of these institutions. "Exclusively" is the word that the gentleman from San Francisco uses. The gentleman is mistaken. We have not attempted to place the care of the orphans and indigent persons exclusively under the control of these private institutions. Now, there is a vast difference between these private institutions and institutions that are maintained and cared for by the State, and the difference arises exactly upon the point of limit. These private institutions receive aid for the persons they have actually cared for. The basis of the aid is the number taken care of, and therefore it cannot be any injury to the State. If the institution says, "We will take care of one hundred orphans," or, "We will take care of two hundred indigent persons"—for, in the one case, the State pays for the one hundred orphans, and in the other case it pays for the two hundred indigent persons—it does not pay for any more than are taken care of. If the private institution limits its numbers, it thereby simply limits the amount of the appropriation; and who has got anything to complain of? If it limits the amount of the appropriation, certainly the State cannot complain. They have a right to place a limit upon the number of persons they take care of, and they have a right to say what kind of persons they will take care of. The State can only say: "If you do not take care of a certain class of persons, we will give you nothing at all;" but, after the class has been disposed of, the institution has the right to say how many they can accommodate, and the State cannot complain, whether they take care of a greater number or a less. There is always a limit to the capacity of private institutions, but there is no limit to the capacity of State institutions, in a certain sense. The State must take care of all of its poor, of its orphans, of its indigent, and of its sick. It is a duty that properly belongs to the State, and, where charitable institutions, benevolent institutions, or hospitals established by private enterprise, see fit to take the burden off the shoulders of the State, and the State says that, "By reason of your doing that which properly belongs to us, we will give you a certain amount of aid for every person that you take care of," they have a right to say how many persons they will take care of, and, consequently, will see just exactly how much aid they propose to appropriate. There is no harm done, there is no injury done to the State, and there is no wrong done to the institution. There are many reasons why these institutions should have the right to say who should be admitted within their quarters, why they should have the right to say how many persons shall be admitted, and if the institutions are not properly conducted, all the State can do is simply to say: "We will give you no aid. We will cut off the aid entirely." Under these circumstances they certainly have a right to designate who and how many they will take. I cannot favor that kind of an amendment. The amendment which has already been adopted does not place it exclusively within the control of private institutions. We desire to perpetuate and continue the existence of every benevolent institution within the limits of the State; and because we do desire to perpetuate, and because we do desire to continue them, therefore we desire to give them aid; but it in nowise cuts off the State from going into the same business.

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

The motion was seconded by Messrs. Joyce, Belcher, Tinnin, and Moreland.

The main question was ordered, by a vote of 70 ayes to 15 noes.

THE CHAIRMAN. The main question has been ordered. The question is on the adoption of the amendment offered by the gentleman from Tuolumne, Mr. Walker.

The amendment was rejected, on a division, by a vote of 53 ayes to 60 noes.

MR. WINANS. I desire to offer an amendment. I would like to read it myself. Amend section twenty-two by inserting in that portion of it which constitutes the amendment of Mr. Wilson, the words "or invalid" after the word "aged." It now reads: "Provided, that notwithstanding anything contained in this or any other section of the Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, half orphans, or abandoned children, or aged persons in indigent circumstances; such aid to be granted on a uniform rule, and proportioned to the number of inmates of the respective institutions." Now, my object is to reach that class of persons who are invalids, and I desire to insert before the word "aged" the words "or invalid," so that they will be embraced within the provisions of this amendment.

THE CHAIRMAN. The amendment is not in order. The amendment of Mr. Wilson has been adopted, and cannot be again amended.

MR. LEWIS. I propose to amend the section as it now stands. Insert between the word "circumstances" and the word "such" in line ten, the words "or to any benevolent institution." That is to go in the tenth line of Mr. Wilson's amendment.

THE CHAIRMAN. It is out of order.

MR. WINANS. I propose to amend section twenty-two by inserting the words "or invalid," so as to take in that class. Is that in order?

THE CHAIRMAN. No, sir. The Secretary will read section twenty-three.

THE SECRETARY read:

SEC. 23. The members of the Legislature shall receive for their services a compensation, per diem and mileage, to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either house shall have been elected.

MR. LARKIN. I have an amendment to offer.

THE SECRETARY read:

"Members of the Legislature shall severally receive for their services, a sum not exceeding six dollars per day; in addition to the foregoing per diem, members shall receive, as mileage, a sum not in excess of ten cents per mile for each mile necessarily traveled to and from the place of holding the session; each member shall receive at each regular session, an additional sum of thirty dollars, which shall be in full for all stationery, postage, and other incidental expenses."

"The members of the Legislature shall receive for their services in full, as compensation, a sum to be established by law, not exceeding five hundred dollars, for each regular session, and two hundred and fifty dollars for each called session; *provided*, that mileage shall be allowed at the rate of twenty cents per mile for one way only."

THE CHAIRMAN. The gentleman can only offer this amendment as an amendment to the amendment. Is there a second?

MR. BEERSTECHER. I second the amendment.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I would say, as an explanation of my position, in offering the amendment to this report, being a member of the Committee on Legislative Department, that I struggled hard, in the committee, to secure this amendment, and it was defeated in the committee, and obtained a universal consent of the committee to offer this amendment in the Committee of the Whole. I argued there on the general principles of fixing salaries; that it became incumbent upon us, if we at all believe in the principle, to at least fix the maximum to be allowed, whether we fixed the salaries of such officers or not. I contended then that if the maximum to be allowed was fixed, and it was fixed on an economical basis, with them having the power to regulate, that the principle would stand itself throughout the whole system of government. We have seen, sir, in the past, attempts, as often as each Legislature is convened, to reduce the salaries in California, and in response to that sentiment, the Convention has already reduced the salaries of the State officers; and, now, sir, to correspond with the reduction we have made, I claim that we should fix at least a maximum for the members of the Legislature. It is argued in reference to this, and also in reference to the salary of the Governor and State officers, that we must pay fair compensation for good services. I agree with the sentiment, Mr. Chairman; but I argue now, as I did then, that there must be a limit. It is conceded that the legislative office never was a money making office in California, while it would pay enough to support any man in the commonwealth, to live respectable, while he attended a session here, still it would not pay any more than that. It has been enough to pay his legitimate expenses, sufficient to maintain him respectably during the session, and it seems to me that six dollars a day is about a fair medium. In view of the changed condition of affairs; in view of the fact that the purchasing power of money is so much greater than it has been; that wages have come down in every direction; why should there not be a reduction in the pay of legislators? Why should they receive so much more than they are paid in any other portion of the Union? I will give some of the per diems paid in other States: In Illinois, five dollars; Indiana, three dollars; Iowa, five dollars and fifty cents; Maine, two dollars; Michigan, three dollars; Minnesota, five dollars; Missouri, five dollars; Nebraska, three dollars; New York, three dollars; Ohio, five dollars; Oregon, three dollars—I wish to call special attention to that in our sister State—it is three dollars. Now, if there be any good reason shown, why we, in California, should pay ten dollars, when three dollars has proven sufficient in Oregon, I would be glad to hear it. If it can be shown that high salaries produce com-

petency; if it can be shown that the Legislatures in Oregon are proportionately weaker, I wish to hear it. Pennsylvania, seven dollars; Rhode Island, one dollar; Wisconsin, three dollars and fifty cents; Alabama, six dollars; Louisiana, eight dollars; Texas, eight dollars; Virginia, six dollars; West Virginia, three dollars; Nevada, eight dollars; California, ten dollars. It will be observed that the average is below four dollars. The State of Nevada, situated the same as we are, prompted by flush times and mining excitements, and induced by the general high prices, fixed a maximum, and fixed eight dollars per day, even two dollars less than we have allowed here in California. We find outside of this State, that the highest prices are paid, in some of the southern States, where these carpet-bag governments have secured the supremacy and rule. The average per diem in the conservative States, the good States of the Union, where wisdom, intelligence, patriotism, and everything good in government prevails, is less than four dollars a day. In view of that fact, it seems to me that this is a fair maximum for California.

MR. BLACKMER. Mr. Chairman: I would like to ask the gentleman if he does not know that the last Legislature cut down the pay to eight dollars a day, to take effect next December?

MR. FILCHER. I am aware of that. Now, the bills of members of the Legislature for stationery have been as high as fifty, sixty, and eighty dollars. I am satisfied that that privilege was greatly abused; and it amounts to nothing less than legalized stealing on a small scale. I am satisfied that thirty dollars is amply sufficient for all incidental necessary expenses of a short session, for the length of the time fixed here in the Constitution. Thirty dollars will buy all the stationery that any member will use during the ordinary term, and by all means it ought to be fixed; and this privilege of drawing indiscriminately and packing home stationery by the trunk full ought to be stopped—a thing which I have known to be done.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I am opposed to the provision of the general amendment, and in favor of paying a gross amount to a member of the Legislature, and that that pay shall be in full for all services; that there shall be no consideration for postage stamps; for stationery; for paper bills; or for washing, or for anything else. Each man shall provide himself with everything he needs connected with his position as member of the Legislature. Five hundred dollars is sufficient compensation for any member of the Legislature of California under the provision of the Constitution which we propose to enact here, doing away with special legislation, limiting our term, etc.; and I believe that the true policy is to pay our members by the term. It will encourage members that come to the Legislature to take hold of the work and proceed without delay, and not depend simply upon their per diem; for if they complete the work in forty days it is five hundred dollars, and if it takes them eighty days, they receive but five hundred dollars. If members of the Legislature come here with the understanding that this is the only compensation, they will complete their labors in less time than if they draw a per diem for an indefinite period. The idea of giving stationery and stamps to members; there is no reason in it. The practice has been followed in many of the States. When the Sergeant-at-Arms had the privilege of purchasing and dispensing stationery, the stationery consisted of anything and everything—from a corkscrew to a barrel of whisky, or a bouquet. The stationery necessary for a member here will not exceed ten dollars; many will not use five dollars' worth. Let each member buy his own. Limit them to twenty cents a mile for one way only; they can return or not, as they please; that will be sufficient for them.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I was in hopes of getting an opportunity to offer an amendment to Mr. Filcher's amendment. I desire, at the proper time, to offer an amendment to that amendment, striking out "six" and inserting "five"—five dollars per day. Permit me to say, Mr. Chairman, that I believe—and I will repeat the remark made the other day on the floor of this committee—that whatever time we limited the Legislature to, we should pay the members a per diem. There is always an element in the Legislature, whether in California or any other State, that is in favor of adjourning and getting home with the least legislation possible, whenever their interests may not be served by remaining. Therefore, if the session of the Legislature should be a short one they will receive a per diem, and if it is a long one they will receive a per diem, and if the interests of the State require a longer session they will receive pay for that longer time. I hope that the committee will not adopt the amendment offered by the gentleman from El Dorado, Mr. Larkin, but will adopt the amendment offered by the gentleman from Placer, Mr. Filcher, with an amendment making it five dollars a day instead of six.

MR. LARKIN. Mr. President: The reason of my offering that amendment I might have stated more fully. I propose to again move in Convention to strike out all limit to the session of the Legislature. I believe in limiting the pay and not limiting the time that the session shall last. I am in favor of that proposition, and others in favor of that proposition favor striking out the limit which we have already passed, as to limiting the time in which the Legislature may sit, and placing the limit upon the pay.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I hope the amendment of the gentleman from El Dorado will not prevail, because it ignores the fact—remarked by some philosopher, I do not know when or where—that there is a great deal of human nature in mankind. By giving a salary of five hundred dollars, unconditioned as to time, I presume we might have very brief sessions of the Legislature. I do not know any good reason why a session should hereafter extend over thirty days, in view of the fact of the report of the committee here in section twenty-five, which, if it should be adopted, contemplates general legislation in all cases. Why the Legislature should be in session over thirty days is more than I can comprehend, and I believe in some of the States their Legislatures have remained in session but thirty days; therefore, five hundred dollars would be entirely too much. I am opposed, also, to the amendment offered by the gentleman from Placer, Mr. Filcher; first, because it is unnecessary legislation in the Constitution. An Act of the Legislature has already passed——

MR. FILCHER. Most all of the other States have found it necessary.

MR. MCCALLUM. Not most all of them. A number of them, it is true, have done so. It was formerly provided in this State, in the first instance, that the per diem should be sixteen dollars per day. Afterwards, in eighteen hundred and fifty-three, I think, the per diem was reduced to twelve dollars per day. In eighteen hundred and fifty-seven, the per diem was reduced to ten dollars per day; and at the last session of the Legislature the per diem has been reduced further, to eight dollars per day. That is one half. It may be that eight dollars a day is a dollar or two too high. That may possibly be true; but to fix an inflexible rule in the Constitution that it shall be six dollars a day, or eight dollars a day, or five dollars a day, it seems to me would not be very wise legislation. It is true that the purchasing power of a dollar now is considerable more than when the per diem was fixed at sixteen dollars, at twelve dollars, or at ten dollars per day. I am not enough of a financier, and I do not know of anybody else who is, to tell what is going to be the purchasing power of a dollar, while this Constitution shall last, provided it shall be adopted by the people. It appears to me the Legislature has done very well in making a reduction of eight dollars, and it is beneath the dignity of a Constitutional Convention to attempt to legislate to the extent of two dollars on a per diem, and fix that inflexible rule, and a specific rule, as I understand.

Another argument in favor of the section is this that it is section twenty-three of the present Constitution. It proposes no change. Again, we have adopted an amendment already which provides that after sixty days there shall not be any compensation whatever. Now, if there should be a session, necessarily extending beyond the sixty days, ten or twelve days, it is understood that the legislators get nothing for their additional time. That certainly is an argument in favor of not fixing this inflexible rule. The Legislature has already fixed the per diem, and in the absence of anything in the Constitution, it stands as the rule, therefore there is no necessity to legislate upon the subject. Among the numerous objections which are made to us outside of the Convention, that which I hear most frequently is, that we are legislating too much. I am perfectly aware that that comes from ignorance of what we have done, for there are a good many who are taught to believe that such is the case. They read the original proposition and do not read any further; perhaps that is enough for them. No, sir, I submit that we had better take the Constitution as it is, with the action of the Legislature, upon that subject, and inasmuch as we have reduced the session to sixty days—no per diem after that. The per diem has been reduced by law to eight dollars per day, and we might as well leave it right there; but to fix an inflexible rule, without knowing the purchasing power of a dollar in the future, is to do a very unwise thing in a Constitution. There are many things which may operate to change the purchasing power of a dollar. Why, if in the city where you reside, persons who are engaged in mining operations are to be believed, the Comstock is worth one hundred and fifty millions of dollars, with a prospect of being worth fifteen hundred millions of dollars, it will have its effect upon the value of coin. I do not think these things are very probable, but they are within the range of possibility, and even such things as that do affect the purchasing power of a dollar throughout the whole world. The gold which has been produced in California has revolutionized the world, as regards the purchasing power of money. Sir, I do not know how it is elsewhere, but in the part of the State which I have the honor, in part, to represent, the complaints have not been made on that score; the objection has been to the scheme connected with legislation, and not to an honest compensation of honest and faithful officers.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: It is surprising to see the mania which affects a large portion of this committee. Propositions are brought up from time to time which seem to aim at economy, but when sifted down it is in effect but a degradation of the public service. So it is with this amendment. It would be, in my opinion, demoralizing and degrading to the public service. If any portion of the remarks which have been urged upon this floor against our legislators in the past is true, then, sir, there is still greater reason why the law should remain as it now is, that legislators should receive the sum of eight dollars per day. In the past they had ten dollars; but as I understand it now, the pay of legislators is eight dollars per day and mileage. Now, sir, I believe that is little enough for any man of honor to come to the Legislature and do his duty to himself and to the people of this State. If you lessen the amount, then, sir, in my opinion you open the door to the corruption which has been charged to have been used so freely. It is sufficient, in my opinion, for this committee to judge of the conditions of men; judge of the motives that may impel them; consider human character; consider its human frailty; consider that men are liable to be tempted; that they are subject to the tempter; that men are necessarily imperfect, and that those imperfections always will remain; admit that there is a growing sentiment in this State among the people who are desirous of selecting a higher standard of men to fill public stations. Admitting that the people are more likely in the future to select men who cannot be bought, then, sir, let these men be paid a proper amount for their services. Do not let it be said that the great State of California, with all its resources, has cut down the pay of its officers to the level of the States which have been named by the gentleman, like Rhode Island and others, where the pay is three or four dollars a day. But here, in a

State that is well able to pay eight dollars, it is well to keep up the high standard of morality and worth. And let it not be said that we are unable to pay our public servants such an amount as they ought to be paid. For one, I know that the people whom I have the honor to represent, are against the reduction. I have talked with them freely upon it, and I believe that is the general sentiment. What they demand is that taxation shall be equal and uniform; that the rich shall pay for what they are worth, and that the poor shall not pay any more; and that something shall be done about lands; and that uncultivated lands shall be taxed as well as cultivated lands, if they are worth as much and are of equal producing capacity; and to provide for the public revenue, in such a manner that they will be better able to sustain the government. Now, prevent the corruption which is said to exist in our State—and it must be admitted that corruption does exist, and that it is likely to exist more or less—but our main endeavor should be to pass such laws as shall prevent this corruption as much as it can be prevented. Let us do this and we shall do our duty. But let the amount of the salary of the legislators remain as it is. The gentleman from San Francisco, Mr. Stedman, suggests that a man may live on five dollars a day, but there are very few who will come here and live on that amount. There are very few who can come here and live on that amount. And the greater number of the legislators are, I am happy to say, men of families—married men. They cannot leave their families at home, and they cannot sustain themselves and their families and live as they ought to live, for such a compensation. Therefore, I hope, Mr. Chairman, that this amendment to cut down the pay, will be promptly voted down.

MR. RINGGOLD. Mr. Chairman: I shall favor the section as reported by the committee. I do not know that the gentleman from Placer, or any other gentleman, has returned any conscience money, though they have received ten dollars a day.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I hope that the amendment offered to this section will not be adopted by the committee, and for the reason that after all is said and done about this per diem business of the members of the Legislature, or the question of salaries, it amounts to nothing to the member, and it amounts to nothing comparatively to the State, and there is no need of spending a great deal of time on contriving to tie up the matter in any particular way. We have found that the Legislature itself has gone on reducing the per diem as far as expenses have been reduced, and that seems to be one of the things that we can trust the Legislature with. I do not see why we should not adopt the section of the old Constitution which has been reported by the committee.

[Cries of "question," "question."]

MR. REYNOLDS. That seems to be an invitation for me to bring my remarks to a close. I will.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from El Dorado, Mr. Larkin.

The amendment was rejected.

MR. WEST. I move to amend by striking out the word "six," and inserting in lieu thereof the word "five."

MR. McCONNELL. I second the amendment.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: I am in favor of the proposition as originally offered. Now, I have seen here shameless proceedings in regard to this matter, and had the resolution passed that was offered here at an early day, that no member of this Convention should be a candidate for office at the first election after the adoption of the Constitution, I should receive with much more pleasure a statement of what is beneath the dignity of this Convention. I have known, in times past, absurd scrambles over mere matters of postage stamps, stationery, and newspapers. These things have occurred, and the whole State is ashamed of it. Now, why not put in here a reasonable compensation for services, and not leave it for these scrambles. Now, no further back than eighteen hundred and seventy-three-four, I find that for the mere matter of newspapers there was expended seven thousand three hundred and sixty-nine dollars and ninety-one cents—just for newspapers. Then for extra compensation to their clerks, in the same session, they spent seven thousand eight hundred and forty-eight dollars and eighty-six cents; making in these two items alone the enormous sum of fifteen thousand two hundred and eighteen dollars and seventy-seven cents. Now, I say that was a shame and an outrage, and as the people have called us together here, it becomes our duty to see that it never occurs again. I am in favor of this amendment, and that there shall be no extra pay or compensation. If five dollars is not enough, fix it at twelve dollars, but fix it somewhere, so that the people may know, and not leave it to the arbitrary judgment of the Legislature. They form combinations for the purpose of enlarging their pay, and in this most shameless manner, take the money that belongs to the State.

REMARKS OF MR. INMAN.

MR. INMAN. Mr. Chairman: I hope the gentleman's amendment will not prevail. I do not know that I shall ever get here again. I hope I won't. We have got nine dollars and fifty cents a day. Now you propose to pay five dollars a day. I hope this Convention will not be so niggardly as to cut these gentlemen down to five dollars a day, so that they cannot live respectably. I suppose that they are not going to have any clothes. I object to anything so niggardly. Eight dollars a day is low enough, and I do hope that this Convention will not fix it below eight dollars per day. If the gentlemen's consciences hurt them so much, they can pay back five dollars a day that they have received here. I do not presume any of them will. I hope that the amendment will not prevail.

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: I hope the amendment will prevail, not for the reasons, mainly, that have been stated here. It is notorious that, in every department of the Government, there has been extravagance. We have tried, even in our County of Alameda, to reduce the salaries of officers. We find that it is impossible, while at the head of the Government salaries are out of all proportion to the services rendered. I think, sir, that in order that this reduction may run through the whole system, that we must begin here. Here is the place. We have tried it with the county governments. That, sir, is like trying to stop the progress of a monster, which is eating out our substance, by cutting off his tail. I believe in cutting off his tail two inches behind his ears, and that is right here. I know that it is not the per diem that brings any member here on this floor, or on the floor of the Legislature, that is worthy of the place. I hold, sir, that there is not a member here but what would have come just as readily for five dollars a day as he did for ten dollars. It was conceived, sir, that there was some honor attached to this position. It was formerly conceived that there was some honor attached to the position of a legislator, and the reason why there is no honor is, that it is a scramble for office and for the emoluments of office.

I hold that we want to come down to the old principle when the office will seek the man and not the man the office. We must have it so that men will come here for the love of the State and its service; for the honor that is attached to the position and not the money. In every department of the Government we need a curtailment and reduction of expenses, and we come here, avowedly, for the purpose of reduction. Now, sir, if we begin here this reduction, this curtailment, this retrenchment will follow down through every department of State, and we can hope for nothing in that direction without we do begin here. I hope the amendment will prevail, with the difference between five dollars and six dollars.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: It has been charged that the motive and intention of this motion is to represent the people of this State as niggardly, or in other words, as being unjust to their public servants. It has also been represented that in those States which have prescribed a lower limit the Legislatures were dishonest or incompetent, and that the services of the best men of the State could not be obtained for such paltry sum. I deny it; and I insist that the greater price you pay the more likely you are to have men seeking office for dishonorable motives, who expect to speculate either in the per diem or the perquisites of the office, directly or indirectly. I contend that in those States which have been mentioned as paying low salaries, there are men in the Legislature every year who are as competent even as Mr. Barry is. I claim that the States that have paid three dollars a day are no more niggardly than is the gentleman on my left; and the members of the Legislature in those States dress themselves just as respectably as the gentleman on my left. Every laboring man's club that has passed a resolution on this matter, as far as I have seen, have fixed the figure at five dollars per day. The public has demanded that the per diem of the Legislature shall be fixed in the Constitution, and as the gentleman from Alameda has well said, when you fix their per diem you fix the criterion by which the Legislature will fix the salaries for the county officers and the other officers of the State. You cannot expect retrenchment and reform when you make the fountain head impure. You must commence at the fountain head, and if you fix the per diem of members of the Legislature at five dollars, they will fix the per diem of other officers in proportion. I assert that there are just as competent men as there are in this Convention that would be glad to get three dollars a day and work with a pick and shovel; men who are fit and competent to sit in this Convention, so far as talent and education is concerned, and because fate stands cruelly in their way, it is no sign that they are not competent. Sir, there are hundreds of citizens of California to-day that would be glad to make one dollar a day. I contend that five dollars is sufficient to get honorable and honest men to come here and legislate for the people of this State. And I believe that the intelligence of this committee will bear me out in saying that there are men here who could have made twenty dollars a day at home, and yet they have come here like yourself and others to serve the State—not for the sum they receive as a per diem, but because they expect to build a monument for the State, to insure and enhance its future prosperity.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: I do not think these gentlemen ought to vote for this limitation, for I cannot imagine that a man can live here for five dollars a day. Certainly he leaves a family behind him and comes here. He is compelled thus to keep up two establishments, and doubles his ordinary expenses. We should make some allowance for burying unfortunate men who die in this town. I do not understand how you can expect men to attend the Legislature, leaving their business at home, for five dollars a day. Five dollars per day will not pay their ordinary expenses; if they bring any member of their family here they cannot pay their hotel bills; they cannot go into society. I think that eight dollars a day is small enough pay—four hundred and eighty dollars for a session of a Legislature. Men have to leave their business and come here from distant parts of the State, and even at ten dollars per day they would make no money at it. Why, it is simply niggardly to pay five dollars a day. This great State is able to pay a man a fair and reasonable compensation for his services. I say that at eight dollars a day I do not think anybody will go home rich, unless they are good hands at poker. [Laughter.]

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I am in favor of carrying on econom-

ical government as much as anybody. We have limited the time for which the Legislature shall receive pay to sixty days. Now, gentlemen say that is ample time for them to do their work. I hope it is. I fear it will not be. The Legislature limited the time for which we should receive pay to one hundred days. Everybody thought it would be ample time. Some thought we would get through in thirty days. There was nobody that thought we were going to stay over the one hundred days. Now we find that the one hundred days will not more than half complete our business. Now, it may be that we will find the Legislature in the same situation. We may find that we are mistaken, and that we have not allowed them sufficient time. Even if they finish their work in sixty days, I say that eight dollars a day is none too much for them to receive, taking into consideration the fact that they have to abandon their business—and any man who has got no business is not fit to go to the Legislature. No man, unless he has got brains enough to have some business, is fit to occupy a seat in the Legislature. If, however, the purchasing power of money should change, and the Legislature should in the future be satisfied with a less amount, then leave it to them to change it, and I have no fears but what they will act honorably in this matter. I will admit that some of our Legislatures heretofore have acted extravagantly; but this extravagance has not been in the per diem. It has been in the little incidental matters, such as newspapers and stationery. Nobody knows what this amounts to. If we make any limitation, let us make it in these incidentals. I protest against putting into the Constitution a provision cutting down the pay. And I predict that in limiting the time for which they shall receive pay we will find hereafter that we have made a mistake. I fear we have made a mistake in cutting down the time of the session, when we take into consideration how slowly work progresses in the Legislature. Therefore I shall vote for the original section, as it stands in the old Constitution and in the report of the committee. I will say that if a proper amendment is proposed which will limit the amount of stationery which can be drawn by a single member, or something like that, I have no objection to it. I think there has been a great abuse of that privilege, and I believe that in the future the legislators themselves will prevent it.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I am in favor always of economy in the right direction, but I am not in favor of public servants working for nothing. My constituents do not want men to come up here and serve them for five dollars a day. We expect to send business men to represent us; men who have got plenty of business; men quite as worthy and as well qualified and competent as ourselves. There may be those who would be willing to come here for five dollars a day who have nothing else to do, but they are not at all suitable to represent us, because they know nothing about our interests. We want business men. It is not the expense alone here. A man who receives a nomination for the Assembly is expected to go around his county and express his views upon various topics. He spends a month or six weeks in canvassing his county. That is attended with considerable expense. There is no provision made by which his ticket is published, or his card in the paper. He has got to pay a little at the cross roads, or at least that has been my experience. We are not in the habit of taking these Jersey drinks in our county. We ask those around us to join; we expect to keep up that habit, and our voters expect to pay men so that they can run for office respectably, come to Sacramento in good shape, acquit themselves with dignity, and live at first class hotels. I am against the proposition, and I am in favor of the section as it came from the committee, leaving it to the Legislature in the future to reduce it if they see fit. They have reduced it fast enough in the past, and I claim that they are just as competent to fix it as we are. We are not more honest than they are, and they have treated us a great deal better than we are proposing to treat them. They have given us ten dollars a day and cut themselves down to eight dollars. I do not think they gave us any too much; I am not going to get home with any money. I wish they had given us more, and more days to draw it.

MR. CONDON. Mr. Chairman: I demand the previous question.

Seconded by Messrs. Joyce, Gorman, Barbour, and Heiskell.

The main question was ordered.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Los Angeles, Mr. West, striking out "six," and inserting "five."

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Placer, Mr. Filcher.

The amendment was rejected, on a division, by a vote of 47 ayes to 60 noes.

MR. WALKER, of Tuolumne. I have an amendment to offer.

THE SECRETARY read:

"Add after the word 'treasury,' the following: 'Provided, that the per diem shall not exceed ten dollars, and no incidental or other allowance shall be made.'"

MR. WALKER. Mr. Chairman: My object is that the per diem should be fixed and established by the Legislature, and I think ten dollars per day is as low as it is safe to fix it. My object is to stop this outrageous extravagance spoken of by the gentleman from Santa Clara, Mr. Laine.

MR. KENNY. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Members of the Legislature shall receive for their services a compensation per diem, to be fixed by law, and mileage, not exceeding the actual amount of fare charged by common carriers to convey members to the seat of government for a single journey, and the same shall be paid out of the public treasury; but no increase of compensation shall take effect during the term for which the members of either house have been elected."

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from San Francisco, Mr. Kenny.

The amendment was rejected.

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

THE SECRETARY read:

"Members of the Legislature shall each receive for their services a per diem and mileage, to be fixed by law, which compensation shall not exceed the sum of five hundred dollars for each regular session of the Legislature, and the sum of two hundred and fifty dollars for each called session; said mileage not to exceed thirty cents per mile for one way only. Said compensation and mileage shall be in full for compensation, mileage, stationery, postage, papers, and all other incidental expenses."

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

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

THE SECRETARY read:

"Amend section twenty-three by inserting in the second line after the word 'compensation' the words 'not to exceed seven dollars.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

MR. FREEMAN. Mr. Chairman: I desire to offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'Treasurer,' in line three, and insert the following: 'Such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile. No increase in compensation or mileage shall take effect during the term for which the members of either house shall have been elected.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was adopted, on a division, by a vote of 63 ayes to 42 noes.

MR. TINNIN. Mr. Chairman; I have an amendment to offer.

THE SECRETARY read:

"Add 'and the pay of no attaché shall be increased after he is elected or appointed.'"

MR. TINNIN. Mr. Chairman: I offer that amendment for this reason: it has been customary in the Legislature of this State, at the last hours of the session, to offer resolutions increasing the pay of attachés, and it is in this manner that a great portion of the money has been filched from the treasury of the State.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was adopted.

THE CHAIRMAN. If there be no further amendment to section twenty-three the Secretary will read section twenty-four.

THE SECRETARY read:

SEC. 24. Every law enacted by the Legislature shall embrace but one subject, which shall be expressed in the title, and no law shall be revised or amended by reference to its title; but in such case the Act revised, or section amended, shall be reënacted and published at length as revised or amended.

MR. FREEMAN. Mr. Chairman: I have a substitute for that section.

THE SECRETARY read:

"Every law enacted by the Legislature shall embrace but one subject, which shall be expressed in its title; but if any subject shall be embraced in any Act which shall not be expressed in its title, said Act shall be void only to so much thereof as shall not be so expressed, and no law shall be revised or amended by reference to its title; but in such case the Act revised, or section amended, shall be reënacted and published at length as revised or amended."

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: The section, as reported by the committee, is precisely the same as the section in our present Constitution. In the case of Washington against Page, reported in Fourth California, and also in a case in Tenth California, it has been decided that this section was advisory only; that the Legislature were at liberty to reject it, and if they passed a law which was not in compliance with the section, that such law was nevertheless valid. Now, as I understand the object of this section in the Constitution, it is this: that the members of the Legislature, and others, shall not be deceived by the mere title. That there shall not be inserted in a bill something foreign to its title, which comes in in the nature of a "little joker," and which is generally not discovered until after the bill has become a law. Now, in several of the States the section, as I have proposed it, is in force. That is to say, so much matter as is put in a bill, as is different to the object expressed in the title, is considered to be void, and the other part is permitted to stand.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: Before the vote is taken I wish merely to say this: that I hope this amendment will be adopted. I did not understand exactly the remarks of the gentleman from Sacramento, and for fear that others did not understand the object of the amendment, I will state it: I will say that this provision has been construed to be directory, and that it is not mandatory. Provisions are sometimes voted for by members thinking they are mandatory, and they are liable to be deceived in this way. If a provision is merely directory, and they vote upon it considering it to be mandatory, they are deceived. Now, the purport of this amendment is to this effect, that so much of a law as is not expressed in the title shall be void; therefore this provision will be mandatory. It will put every person on his guard in voting for an

Act when he discovers in the body of a bill matter which is not expressed in the title. We have statutes which are construed to be directory, and all law, even constitutional provisions, have been construed in certain cases to be directory. I say that this should not be, and that we ought to guard against it by putting in a provision of this kind, so that every one in voting for the provision may know that it is mandatory.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: I hope that the amendment will not prevail, and for the simple reason that in my judgment it would increase litigation. In every case you would have to go to the Supreme Court to determine whether an Act was a proper Act under the provisions of the Constitution. It seems to me that in view of the section adopted here yesterday, section fifteen, requiring all bills to be read on three different days, that no member of the Legislature voting upon it could be voting under a trick, and could not certainly be misled by the title of a bill. I think the amendment is entirely unnecessary, and I believe that its adoption would have a tendency to increase litigation, because it would raise the question in the Courts as to whether certain portions of an Act were constitutional. In view of the stringent character of section fifteen, it seems to me this amendment is absolutely unnecessary.

MR. VAN DYKE. Mr. Chairman: I call the attention of the gentleman from Sacramento, Mr. Freeman, and of the gentleman from Sonoma, Mr. Johnson, to the fact that in article one, already passed upon by the committee, we have a section which meets the decision referred to, and makes this Constitution, except where otherwise expressly stated, mandatory—every provision of it. That is in the first article adopted in Committee of the Whole.

MR. JOHNSON. Is not that provision confined to the Bill of Rights?

MR. VAN DYKE. No, sir; to the whole Constitution.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I will vote for the amendment, provided nothing better can be done. In my judgment the first part of the section should be stricken out at once. That would give rise, as it has before, to litigation. The idea of expressing in the title all that is in the law, is simple nonsense. You pass a law, and then you have got to put the whole of it on the back as an indorsement. We have passed Codes in this State. How would you indorse the title Civil Code, so as to express the subject in the title. Why, the title would have to be as long as the Civil Code itself, and as complicated. It seems to me as impossible. I think the first portion of the section ought to be stricken out entirely, and it ought to commence to read at the word "no," in the second line. The first part of the section is not only unnecessary, but it is mischievous, because you have got to look in construing a law to see whether the title embraces the whole subject-matter in the law, which I say is impossible. It think the amendment of the gentleman from Sacramento, Mr. Freeman, will remedy it to some extent, and I shall vote for it.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: It seems to me that the amendment proposed by the gentleman from Sacramento, will have exactly the contrary effect from that stated by the gentleman from Stanislaus, Mr. Schell, and that is to prevent litigation. The amendment is to save that which is expressed in the title and prevent it all from being declared void, because there may be in the Act something that is not in the title. The objection of the gentleman from Sacramento, Mr. McFarland, is not well taken. It is a proper and useful thing to provide that the subject-matter of an Act should be expressed in the title, and more especially in relation to Acts appropriating money. It is not true, as stated by the gentleman from Stanislaus, Mr. Schell, that we have already provided that bills shall be read at large three times. We have provided that they shall be read three times, but not at large. They may be read by title, and in the careless way in which legislation is carried on mischievous provisions may slip in, unless you have such a provision as this in the Constitution.

MR. SCHELL. How long a title would be necessary for a bill to amend the Civil Code?

MR. BARBOUR. About two lines.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: Certainly either this section should be stricken entirely out or it should be put in such a shape that it means something. Now I am reminded by the gentleman from Alameda, Mr. Van Dyke, that we have already adopted in our Bill of Rights, a provision which says every section of this Constitution shall be mandatory. Now, if that is adopted, then this section must be construed as meaning something. The question would at once arise before the Courts, does this Constitution mean that a law in violation of that section shall be entirely void, or that it shall be void only to so much of it as is without the range of the title? That question ought to be settled by clear language here, and not be reserved for contest in the Courts. It is true that an Act may be in such a shape that the parts cannot be segregated, but often that is not the case; in fact, the legislation which the section is intended to provide against, is legislation of a different character; is that legislation which introduces into an Act some entirely foreign topic. I, myself, have seen Acts of the Legislature which were apparently upon some general subject, and which, somewhere near the middle of the bill, contained a provision for the condemnation of a toll-bridge across the Sacramento River. Now, if this amendment was adopted, the people would naturally be informed that such legislation was pending. Few persons read the entire Act, and they suppose, when these bills are presented, that some Act of a general nature is before the Legislature, and do not know that they are being made liable for the purchase of a toll-bridge across the Sacramento River. The idea is, that a bill which contains a "little joker" of that description shall not be entirely void. At all events, one policy or the other ought to be pursued. This section, if it is right in spirit, should be amended as I have suggested, or in some other manner, so that we shall know precisely what it means.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: If I understand the gentleman from Sacramento, it is for the information of the people that he desires that the title shall express the substance of the Act. That gentleman knows, or ought to know, that the title is the last thing acted upon in the passage of a bill; therefore the people would have no information, so far as they are concerned, by the title pending during the discussion of the bill, because the title is amended at the last stage of its passage. That, I presume, every gentleman is familiar with. Mr. Chairman, as Judge Schell has said, we have adopted a provision requiring that a bill shall be read three times. Gentlemen say it does not say three times at large. I say that that rule, in parliamentary usage, which says that a reading of a bill by title is a reading of the bill, does not apply to the construction of a Constitution; therefore, when our Constitution says that a bill shall be read three times, on three different days, it means as it says, a reading of the bill. It is unnecessary to put in this surplus clause, which would be necessary if the other had not been adopted. I do not know that the amendment of the gentleman from Sacramento would do any harm, but I am apprehensive of changing the language of the section apparently plain enough, and which has been the subject of judicial construction in years past. What construction would be put upon it if the gentleman's amendment should be adopted, I do not know. He refers to a case wherein you may declare a portion of an Act unconstitutional, and let the remainder stand. The rule of construction by the Courts is this: that if a portion of an Act is unconstitutional, and it can be so held, that the balance of the Act can remain without being impaired; it may be rejected as unconstitutional. But here the gentleman from Sacramento proposes to lay down the rule of construction for the Courts, that they shall reject that portion of the bill. His amendment reads:

"Every law enacted by the Legislature shall embrace but one subject, which shall be expressed in its title; but if any subject shall be embraced in any Act which shall not be expressed in its title, said Act shall be void only to so much thereof as shall not be so expressed, and no law shall be revised or amended by reference to its title; but in such case the Act revised, or section amended, shall be reënacted and published at length as revised or amended."

As it now reads, the question will come up: is the provision embraced that stated in the title? Many questions will arise. This very proposition was before the Committee on Legislative Department. We discussed it at some length there, and it was thought that it might be a dangerous innovation. The committee were of the opinion, that inasmuch as this section has stood for many years, and as we have provided that these laws should be mandatory, we might as well let it stand as it is. The object of this was not the information of the people.

MR. BARBOUR. I will state a case. A bill went through the Legislature, providing for the opening of Seventh street in San Francisco. It contained the usual provisions for a Commissioner, etc. In the middle of the fifth section was interjected a proviso for paying two thousand three hundred or two thousand four hundred dollars of a defeated claim for the same purpose, and that went through because it was overlooked. It related, in one sense, to the same subject-matter, although in another sense it was outside of the matter. The object of this amendment is to authorize the saving of the bill and the rejection of that matter.

MR. McCALLUM. We have already agreed to an amendment, that every bill shall be read at large, by sections, and the ayes and noes called, and that it shall not pass unless it shall receive the votes of a majority of all the members elected to both Houses, and I suppose that such mistakes, if they were mistakes, will not be so likely to occur. I do not know how we are to go to work to make the men intelligent and honest who shall make our laws, and I do not propose for my part to fix up the Constitution that way. Certainly somebody was derelict in that case. I do not know that it will do any harm, but I believe it would be a dangerous innovation, for reasons which I do not propose to state at length. I think we ought to stand upon this rule. It is now well settled. These errors are not likely to occur again, and I have no doubt that if the amendment is adopted, it will be the subject of any amount of litigation, in attempting to lay down the rules of construction for the Courts in these cases.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: The Committee on Legislative Department undertook to put in an iron-bound provision, and have overruled all the decisions of the Supreme Court.

MR. McCALLUM. The committee have not changed the Constitution at all.

MR. McFARLAND. They determine when language is mandatory and when it is directory. Now, this Convention has said that they shall not declare anything directory. I am opposed to the first proposition of the section, because I say that under the rule that it is mandatory, you might get into the greatest kind of difficulty. We suppose that the law of the land is what the Legislature enacts, if it is constitutional. When the Legislature passes an Act, and it is signed by the Governor, that is supposed to be the law, and yet if they do not give a title to it that expresses all that is in the law, then, according to the section reported by the committee, it is not the law of the land. There is an opening for the greatest kind of litigation. I shall vote for the amendment of the gentleman from Sacramento, and if it is not adopted I shall move to amend by striking out the first part entirely. I repeat that it is impossible to express all there is in a law in its title without making the title

nearly as long as the law. A law may cover twenty pages, or it may cover three; and it may have several sections, and then you have got to relate in three lines what it is about, and after you have passed it solemnly, and it has been signed and become a law, if the title is not long enough it is void. Is not that nonsense? How can a man put into a title what it takes twenty sections to put into a law? He cannot do it. I do not think it ought to be in the Constitution at all under this rule, that everything is mandatory. I am in favor of one portion of the section, that no law shall be revised or amended by its title, but I am entirely opposed to this rule that you have adopted here in this Convention, that a Court shall not exercise its ordinary functions. If you adhere to that rule you will have any number of lawsuits.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: The object of the section is very well understood, and it is a very easy matter for any person to state in the title the subject of a bill. When the amendment was first offered I was inclined to support it, but I desire to call, very briefly, the attention of the committee to what may follow such a rule. The question presented is simply this: if a bill should pass that had a provision in it that was not within the title, the whole bill would fall. By the amendment offered by the gentleman from Sacramento, that result would not necessarily follow, but the law would fall only as to the portion not within the title. Now, here is the danger. Suppose the gentleman from Sacramento is a member of the Legislature, and he is a good lawyer. Under the Constitution, he knows very well, in drafting his bill, that all will be held constitutional that is within the title; but finding that his bill cannot receive a sufficient support if there is nothing in it which embodies something else that will catch other members of the Legislature, he can safely put in other matter, knowing that one portion of it must fall. That may be the very portion that passes the bill. Thereby members that are unwary, or not well skilled in constitutional law, will be induced to vote for a bill that they would not otherwise vote for. Only that part falls that is without the title, and it may be that very part that has induced the Legislature to pass the bill. I see no reason why a bill should not fall if it is a cheat.

MR. BARRY. Mr. Chairman: As I think we have done a very good day's work to-day, I move that the committee do now rise, report progress, and ask leave to sit again.

The motion was lost.

MR. EDGERTON. Mr. Chairman: I call for the reading of the amendment.

THE SECRETARY read:

"Every law enacted by the Legislature shall embrace but one subject, which shall be expressed in its title; but if any subject shall be embraced in any Act which shall not be expressed in its title, said Act shall be void only to so much thereof as shall not be so expressed; and no law shall be revised or amended by reference to its title; but in such case the Act revised, or section amended, shall be reënacted and published at length as revised or amended."

MR. EDGERTON. I would suggest to the gentleman that he insert the word "as" before the word "to," so that it will read: "Such Act shall be void only as to so much thereof as shall not be expressed in its title." That is from the Constitution of Iowa.

MR. LAINE. There are several Constitutions that use that language.

MR. JOHNSON. The Constitution of Indiana, also.

MR. EDGERTON. It is in the Constitution of Iowa of eighteen hundred and forty-six, and in the new Constitution of eighteen hundred fifty-seven they incorporated the same provision; and somewhere in some of the decisions of the Supreme Court of that State—I do not now recollect which—that question has been discussed, and they illustrate there, it seems to me, very satisfactorily, the wisdom of this provision. I suppose everybody understands that the object of the provision is to prevent collusion in a legislative body; to prevent the passage of what are called omnibus bills—uniting various interests in order to get them passed. It seems to me that this constitutional provision is very much needed. I think the amendment is a good one, and I shall vote for it. I will say that the Court in Iowa held that this provision was mandatory. I shall offer the amendment I have suggested as soon as I can prepare it.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: The amendment proposed by the member from Sacramento is contained in the Constitution of Indiana, Illinois, Iowa, and Oregon. In the Constitution of New Jersey it reads:

"To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one subject, and that shall be expressed in the title."

That is the reason of the rule. They express it there in the Constitution itself. The object of this provision, that a bill shall embrace but one subject, is to prevent these omnibus bills. For instance, a bill is called up and somebody puts in an amendment which nobody would pass if he knew it was there. That is the way legislation takes place in the Congress of the United States, and accounts for the vicious legislation which takes place there. An appropriation bill comes up and somebody gets up and moves to add a few thousand dollars for some other purpose than that already mentioned, and it is adopted, and all bills are passed in that way. Now, if we should take this clause out altogether, it would open legislation here to the same rule. Combinations would be made and influence brought to bear to put a number of schemes together, and rush them through; whereas, either one of them alone, would not pass. That is the reason of this provision that bills shall contain but one subject, and that shall be expressed in the title. I think the amendment is contained, verbatim, in the Constitution of Illinois, and also, as I see, in Indiana, Iowa, and Oregon. These are the only variations from the general rule. There is one objection to the amendment, which I will state. If we open the door to any subject that is expressed in the title, and then some foreign subject should be introduced into a law, the Supreme Court will have to decide in all cases, and the provisions of a law would be uncertain in its various sections until the Supreme Court had passed upon it, one section after another. Otherwise, I do not object to the amendment. But, I think, perhaps, as we have already gone on in this State nearly thirty years with this limitation upon the legislative power, and have got accustomed to it so that the legislators and the people generally know and understand that a bill should relate only to one subject-matter, that perhaps we had better adhere to the rule as it has hitherto existed in this State. We might, of course, lose a good law because it had in it a provision not expressed in the title. As it now stands, special legislation is prohibited, and there will not be the same danger as there has been heretofore.

MR. EDGERTON. Mr. Chairman: I have prepared a substitute, which I understand the author of the amendment is willing to accept.

THE SECRETARY read:

"Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act, which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title."

MR. EDGERTON. That is a precise copy from the Constitution of Iowa.

MR. FREEMAN. I am willing to accept that amendment.

MR. VAN DYKE. I wish to ask the gentleman from Sacramento, Mr. Edgerton, if that is not the rule of construction now; if the part cannot stand which is not void.

MR. EDGERTON. I understand that some allusions have been made to the decisions of the Supreme Court in reference to this section. I did not hear the whole of this discussion. If I recollect right, the decision of the Supreme Court was, that this provision as it now stands is merely directory; that it does not amount to anything.

MR. VAN DYKE. My question is aimed at the proposed amendment. I ask if that is not now the rule of construction, that which you have embodied in your amendment? That is if an Act can stand, the Courts allow it to stand. Therefore, this would be unnecessary.

MR. EDGERTON. I do not know how they would decide. Perhaps the Court might decide that the whole thing should stand.

MR. VAN DYKE. But if it can be separated the Courts allow that which is valid to stand. Now I do not see any necessity for this amendment, and it might complicate matters. I hope the amendment will not prevail.

MR. EDGERTON. A Court might allow the whole thing to stand. The object is that nothing shall stand except that which is expressed in the title.

MR. VAN DYKE. That is the effect now under the common law of construction, and the Courts always allow that which is valid to stand. I say that this amendment is unnecessary although it may be in a dozen Constitutions.

MR. WILSON, of First District. Mr. Chairman: It seems to me that the amendment offered by the gentleman from Sacramento, Mr. Edgerton, should be adopted, so far as it goes, together with the balance of section twenty-four, which reads: "No law shall be revised or section amended by reference to its title; but in such case, the Act revised, or section amended, shall be reënacted and published at length as revised or amended." I like this very much better than the original, as reported by the Committee on Legislative Department, because it contains the clause, "and matters properly connected therewith."

MR. VAN DYKE. I have no objection to that.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. The old section, that it shall embrace but one subject, made it very difficult in some cases to limit it to one subject, and that subject to be expressed in the title. If you had two subjects that were not closely related to each other, or were two distinct subjects, the whole Act would be void. For instance, take the Act of the Legislature of eighteen hundred and seventy-seven and eighteen hundred and seventy-eight, entitled "An Act to authorize the maintenance of booms in Elk River, and the removal of obstructions from said stream," there are really two distinct subjects, and yet they are so related to each other that there could not be any rational cause assigned why they should not be joined. The maintenance of the boom, and the keeping of the river free from obstruction, must necessarily go together, and yet, under the present provision of the Constitution they would be held to be two distinct subjects. But taking this amendment, as proposed by the gentleman from Sacramento—that it shall embrace but one subject, and matters properly connected therewith, the maintenance of the boom, and the keeping of the river, would be akin to each other, and would be properly in the same bill. Many illustrations of the same character might be found. It makes the law a little more sensible, and would prevent many laws being declared void, against which no rational objections could be assigned. Now, so far as the question raised by the gentleman from Alameda, Mr. Van Dyke, that it is the common rule of construction that only that part of the law is declared void which is not expressed in the title, I have to say, if that be the common law rule of construction, there is no objection to putting it in here. There may be some doubt about it. There is sometimes great difficulty in deciding just how much of the law pertains to the subject expressed in the title, and sometimes the Courts decide that the whole law must go out. I do not see any objection to retaining the last part of the section which I have read, and it seems to me that, with the amendment proposed by the gentleman from Sacramento, Mr. Edgerton, is just what we desire.

MR. MCCALLUM. Mr. Chairman: I desire to ask how the Courts are going to construe an Act of this kind? An Act which is not specified

in the title is, by the terms of that amendment, to be rejected only so far as not expressed in the title. Now, suppose it so mingled up with the balance of the Act that the Courts, under any other rule of construction, won't reject the whole of it, is not the Court then compelled to change the whole system of construing laws on this rule attempted to be fixed upon the Courts here, by saying that it shall be rejected only so far as not expressed in the title.

MR. EDGERTON. Mr. Chairman: It seems to me that I can give the gentleman an illustration in a moment: Take a simple appropriation bill, "An Act to provide for the support of the State government." Now, suppose that somebody should succeed in getting into that bill an appropriation for some other purpose, I do not see that the Supreme Court would have any difficulty, under this amendment, in holding that that was not expressed in the title, and, *pro tanto*, was void.

MR. MCCALLUM. In that case it would be perfectly clear; there would be no difficulty so far as the case supposed is concerned. The question I have asked is this: Suppose, in a different case, where the matter was not referred to in the title, and was so commingled with the balance of the Act that, under the old rules of construction, the Court would reject it all, then does not this rule in this amendment compel the Court to change the whole rules of construction?

MR. WILSON, of First District. Not at all.

MR. EDGERTON. Not at all.

MR. MCCALLUM. I ask the Secretary to read it.

THE CHAIRMAN. The Secretary will read.

THE SECRETARY read:

"Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act, which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title. No law shall be revised or section amended by reference to its title; but in such case, the Act revised, or section amended, shall be reënacted, and published at length as revised or amended."

MR. MCCALLUM. I would say that in such a case as I have mentioned, where the matters contained in a bill were so mingled that the Court would now hold that the whole Act must fall, it would be compelled to decide the other way under this provision. This is clouding up the matter in a peculiar way. It says that every Act shall embrace but one subject and matters properly connected therewith. Now, I ask if this very phrase does not in itself invite any amount of litigation, discussion, and difficulty, as to what would be properly connected with the matter. This language in the Constitution, at present, is not ambiguous. The only difficulty is that the Court says it is directory and not mandatory. The Bill of Rights, which we have adopted, says that these provisions shall be mandatory. That removes the objection. The Committee on Legislative Department have reported the section the same as it was in the old Constitution. It reads:

"SEC. 24. Every law enacted by the Legislature shall embrace but one subject, which shall be expressed in the title, and no law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be reënacted and published at length as revised or amended."

That sounds like a Constitution. Then comes in this piping amendment: "but notwithstanding, nevertheless, if you don't do what the people by their sovereign authority commanded you to do," etc. Now, we tell the Courts to disregard this other part, though you have commanded the Courts to construe this as mandatory.

MR. WILSON, of First District. The gentleman raises an objection here, and because he cannot answer it himself he thinks nobody else can. Now, there is no sort of difficulty in this question, the gentleman is very easily answered, and has been already answered by the gentleman from Sacramento. If you have a vicious matter connected with a good matter, and you can separate the vicious from the good, you simply leave it off and the vicious falls and the good remains. That always has been the rule. But if the vicious is so intermingled and commingled with the good that you cannot separate the two, the Courts have always held that the whole is bad. That is laid down in the books, and this amendment does not change it in the slightest degree. It simply says that if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title. It follows as a necessity that the Court has got to separate the two in order to leave off the bad. The very moment you cannot separate the two the whole is bad. That is the rule laid down in the elementary books everywhere.

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

Seconded by Messrs. Hunter, Condon, Morse, and Joyce.

The main question was ordered.

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

The amendment was adopted on a division, by a vote of 56 ayes to 35 noes.

MR. MCCALLUM. I gave notice yesterday that I would move to reconsider the vote by which the committee adopted the amendment offered by the gentleman from San Joaquin, Mr. Terry, to section six. I wish to save the motion. I make that motion now to reconsider, and I will ask the Chair if this question can properly come up to-morrow.

MR. HAGER. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

MR. HUESTIS. I move that the Convention do now adjourn.

Carried.

And at five o'clock and ten minutes P. M., the Convention stood adjourned.

EIGHTY-FIFTH DAY.

SACRAMENTO, Saturday, December 21st, 1878.

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

President Hoge in the chair.

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

PRESENT.

Andrews,	Heiskell,	Reddy,
Ayers,	Herold,	Reynolds,
Barbour,	Herrington,	Rhodes,
Barry,	Hilborn,	Ringgold,
Barton,	Hitchcock,	Rolfe,
Beerstecher,	Holmes,	Schell,
Belcher,	Howard, of Los Angeles,	Schomp,
Bell,	Howard, of Mariposa,	Shoemaker,
Biggs,	Huestis,	Shurtleff,
Blackmer,	Hughey,	Smith, of Santa Clara,
Boggs,	Hunter,	Smith, of 4th District,
Brown,	Inman,	Smith, of San Francisco,
Burt,	Johnson,	Soule,
Caples,	Jones,	Stedman,
Casserly,	Joyce,	Steele,
Chapman,	Kelley,	Stevenson,
Charles,	Kenny,	Sweasey,
Condon,	Keyes,	Swing,
Cross,	Kleine,	Terry,
Crouch,	Laine,	Thompson,
Davis,	Lampson,	Tinnin,
Dean,	Larkin,	Townsend,
Dowling,	Larue,	Tully,
Doyle,	Lewis,	Turner,
Dudley, of San Joaquin,	Lindow,	Tuttle,
Dudley, of Solano,	Mansfield,	Vacquerel,
Dunlap,	McCallum,	Van Dyke,
Edgerton,	McConnell,	Van Voorhies,
Evey,	McCoy,	Walker, of Marin,
Farrell,	McFarland,	Walker, of Tuolumne,
Filcher,	McNutt,	Webster,
Finney,	Mills,	Weller,
Freud,	Moffat,	Wellin,
Garvey,	Moreland,	West,
Gorman,	Morse,	Wickes,
Grace,	Nason,	White,
Gregg,	Nelson,	Wilson, of Tehama,
Hager,	Neunaber,	Wilson, of 1st District,
Hale,	Ohleyer,	Winans,
Hall.	Overton,	Wyatt,
Harrison,	Porter,	Mr. President.
Harvey,	Prouty,	

ABSENT.

Barnes,	Freeman,	Noel,
Berry,	Glascock,	O'Donnell,
Boucher,	Graves,	O'Sullivan,
Campbell,	Lavigne,	Pulliam,
Cowden,	Martin, of Alameda,	Reed,
Eagon,	Martin, of Santa Cruz,	Shafter,
Estee,	McComas,	Stuart,
Estey,	Miller,	Swenson,
Fawcett,	Murphy,	Waters.

LEAVE OF ABSENCE,

For two days was granted Mr. Kelley.

For one week was granted Messrs. Townsend and Waters.

Indefinite leave of absence was granted Mr. Graves on account of sickness.

THE JOURNAL.

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

Carried.

BILLS.

MR. HILBORN. Mr. Chairman: I wish to report back the following resolution from the Committee on Mileage and Contingent Expenses, with the recommendation that it be adopted:

Resolved, That the sum of thirteen dollars and seventy-five cents be and the same is hereby allowed to pay the bill of Pacific Ice Company for ice from December second to December thirteenth, eighteen hundred and seventy-eight, the same to be paid out of the funds appropriated for the expenses of the Convention, the Controller to draw his warrant in favor of the Sergeant-at-Arms for the amount.

Adopted.

MR. HILBORN. Mr. President: I also wish to report back without recommendation the bill of Mrs. Margaret Galt. The bill is not authorized by any resolution, and the committee are unable to ascertain the amount which this person is entitled to. There is no doubt but what she has performed some service, but we are unable to find out how much washing has been done.

THE SECRETARY read:

SACRAMENTO, December 13, 1878.

Constitutional Convention of California, in account with Mrs. Margaret Galt, debtor: To washing towels twelve weeks, seven dollars.

MR. FREUD. I move the bill be paid.

Carried.

FUTURE AMENDMENTS.

MR. BLACKMER. Mr. President: I send up a report from the Committee on Future Amendments.

THE SECRETARY read:

SACRAMENTO, CALIFORNIA, December 21, 1878.

MR. PRESIDENT: Your Committee on Future Amendments, to whom were referred propositions numbers one hundred and seven, two hundred and twelve, three hundred and twenty-three, three hundred and sixty-nine, and four hundred and eight, beg leave to report that they have had the same under consideration, and herewith report the same back, and recommend that no further action be taken thereon.

So much of such propositions as your committee deem it expedient to adopt have been incorporated in the article herewith submitted, which your committee recommend for adoption by the Convention, as article ten of the new Constitution.

E. T. BLACKMER,
J. R. WELLER,
J. M. CHARLES,
J. V. WEBSTER,
P. T. DOWLING,
J. A. GORMAN,
CONRAD HEROLD,
DANIEL LEWIS,
WM. P. GRACE.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon; and it shall be the duty of said Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as may be deemed expedient. Such amendment or amendments shall be published in full in each county in the State wherein a newspaper is published for at least three months next preceding the election at which they are submitted. Should more than one amendment be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that they can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the electors qualified to vote for members of the Legislature voting therefor, such amendment or amendments shall become a part of this Constitution.

SEC. 2. Whenever two thirds of the members elected to each branch of the Legislature shall think it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at said election, on the proposition for a Convention, shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. Said Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, which shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election, at such place as the Legislature may direct. The Constitution that may be agreed upon by such Convention shall be submitted to the people at a special election to be provided for by law, for their ratification or rejection, in such manner as the Convention may determine. The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare by his proclamation, such Constitution as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

MR. BLACKMER. Mr. President: I move that the report be printed and referred to the Committee of the Whole.

Carried.

REPORT.

MR. VAN DYKE. Mr. President: I send up a report from the Committee on Preamble and Bill of Rights.

THE SECRETARY read:

MR. PRESIDENT: The Committee on the Preamble and Bill of Rights, to whom was referred the following proposition, to wit: number three hundred and seventy-seven, introduced by Mr. Edgerton; number four hundred and eighty-one, introduced by Mr. Mills; number four hundred and ninety-one, introduced by Mr. Ringgold, and one memorial, beg leave to report that the same relate to matters on which the committee had already acted and reported their action to the Convention, and, therefore, return the propositions and memorial, and recommend that no further action be taken thereon.

Respectfully submitted. WALTER VAN DYKE, Chairman.

THE PRESIDENT. The report will lie on the table.

MR. DUNLAP. I move to take up the resolution to pay Patrick Leavy for services as Gas Porter.

THE PRESIDENT. The motion is not in order at present.

MR. AYERS. I send up a proposition and ask that it be referred to the Committee on Apportionment and Representation.

MR. DUNLAP. I renew my motion to take up the resolution to pay Patrick Leavy.

The motion prevailed.

THE PRESIDENT. The Secretary will read the resolution.

THE SECRETARY read:

Resolved, That Patrick Leavy be allowed thirty-eight dollars out of the appropriation for the expenses of this Convention, for nineteen days' services as Gas Porter, viz., from September twenty-eighth to October seventeenth, eighteen hundred and seventy-eight, prior to his regular appointment by this Convention, which nineteen days' services were not included in the pay-roll heretofore certified to.

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

The resolution was adopted on a division, by a vote of 53 ayes to 31 noes.

NOTICE.

MR. VACQUEREL gave the following notice:

MR. PRESIDENT: I wish to give notice to this Convention that on Monday, December twenty-third, I will rise to a question of privilege in regard to section five and section six of an Act to provide for a Convention to frame a new Constitution for the State of California.

A. P. VACQUEREL.

ASSEMBLY CHAMBER, December 21, 1878.

REVENUE AND TAXATION.

MR. BIGGS. Mr. President: I move that the report of the Committee on Revenue and Taxation be made the special order for Monday, December thirtieth, eighteen hundred and seventy-eight, and in making that motion, I would say that it is necessary. I am opposed to special orders, but I want to be present when that question is considered. I want to go home and have time enough to pay my taxes and return. I am not able to go into the consideration of that report now. I would thank the Convention kindly for just making it the special order for December thirtieth. It is one of the most important reports that will come before this Convention. There are plenty of other reports that can be taken up. The report on suffrage and other reports can just as well be taken up, and we will have a fuller Convention then.

MR. HOWARD. Mr. President: I would like to see the gentleman accommodated, but the fact is, that we are postponing everything too much, and if we expect to get through with the business here at all, we must take it up in its order. This report follows next after the report of the Committee on Legislative Department, and if we postpone the reports of the committees for one gentleman, we must for another.

MR. WHITE. Mr. President: I hope that it will not be put off. Motions are made here every day by somebody to put something off. I think we will have a better Convention during the next ten days than we will for the ten days following that. I trust that everything will be done up in its order.

MR. CAPLES. Mr. President: "Procrastination is the thief of time." It does seem to me that if it be the desire and intention of this Convention to frame a Constitution, that the putting off, procrastinating anything, is certainly unwise; and, as to having a fuller Convention on the thirtieth than at present, I have no faith that such will be the case. I do believe that the longer we put matters off the thinner the Convention will be. I am opposed to putting anything off.

MR. BIGGS. I pledge my word that I will be here during every day of the Convention. I do not ask it on Biggs' account—God knows I don't!

MR. BROWN. Mr. President: If we put off matters of great consequence, we may expect to have a thin house. If the question of taxation is put off, there will only be matters of small consequence taken up, and members will not care whether they are here or not. Now, for the purpose of having a full house, it does appear to me that we should refuse to put off these important matters.

The motion was lost.

PROPOSED AMENDMENT TO RULE.

MR. McFARLAND. Mr. President: I desire to send up a notice of intention to move to amend a standing rule.

THE SECRETARY read:

I hereby give notice that I will move to amend Standing Rule Number Fifty-Five so that it shall read as follows:

FIFTY-FIVE—COMMITTEE OF THE WHOLE.

In forming a Committee of the Whole Convention, the President may preside or appoint a member to preside. When propositions or resolutions relating to the Constitution shall be committed to a Committee of the Whole Convention, they shall be read in Committee of the Whole by sections. All amendments shall be noted and reported to the Convention by the Chairman. After report, the proposition or resolution shall again be subject to amendment before the final question is taken; but any report, proposition, or resolution may be considered in Convention without having been committed or referred to the Committee of the Whole.

I will also move to repeal Standing Rule Number Fifty-eight.

THE CHINESE MEMORIAL.

MR. LAINE. Mr. President: I desire to call the attention of the members of the Convention to this matter. One of the members, Mr. McComas, is at home, sick; knowing that this body is about to sign the memorial on the subject of Chinese immigration he has written to me to ask leave of the Convention to sign his name to that memorial. I now call the attention of the Convention to it, so that in case it is prepared I may sign it for Mr. McComas.

[Cries of "Leave! leave!"]

MR. TINNIN. Mr. President: I have a letter from Mr. Pulliam to the same effect.

MR. BARBOUR. Mr. President: I move that both gentlemen have leave to sign the names.

THE PRESIDENT. If there be no objection, it is so ordered.

MR. EDGERTON. I wish the gentleman from Santa Clara, while he is about it, would sign my name. It may come home to roost.

LEAVE OF ABSENCE.

MR. BARTON. Mr. President: I ask leave of absence until Monday for the Secretary, Mr. Johnson.

THE PRESIDENT. If there be no objection, it is granted.

LEGISLATIVE DEPARTMENT.

MR. TERRY. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section twenty-four was pending when the committee rose.

MR. SMITH, of Santa Clara. I wish to offer an amendment to that section.

THE SECRETARY read:

"Amend section twenty-four by adding, 'and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language.'"

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I understand that refers to all judicial proceedings. I hardly think that it is necessary, and in some instances it would work injury. We have a provision in our present Constitution, requiring laws to be translated and published in Spanish; that, I think, is entirely unnecessary, and should be rescinded. We have statutes, however, passed for the purpose of meeting exigencies in some parts of this State, allowing, in some kind of proceedings—judicial proceedings in the Courts—to be conducted either in the English or Spanish language. Now, while I would not make that mandatory, and while I would say nothing about it in the Constitution, I would leave it in the discretion of the Legislature to make that same provision, for I can assure this Convention that there are Justices of the Peace in my county, and their proceedings are judicial proceedings, who are intelligent men, and very able Justices of the Peace, who have no knowledge of the English language. There are settlements in that county, in certain localities and townships, in which the English language is scarcely spoken, the population being made up, almost entirely, of people who use the Spanish language. Now, in this instance, it would work a very great injury. It would be very inconvenient in such localities. I do not suppose that there are many townships in the State in that situation, but there are some within my knowledge. I can only speak as to my own locality, but I have no doubt that there are other localities in the same situation. Therefore I think that in these townships where almost the entire population is made up of a Spanish-speaking people, there would be no harm done in allowing the judicial proceedings of the Justices' Courts to be conducted in the Spanish language. In early days there were District Judges who had at least an imperfect knowledge of the English language. I do not suppose there is any such case now. There are judicial proceedings in the District and County Courts of this State, gentlemen will find, by referring back to the records, that are in the Spanish language. I do not suppose there is any objection to requiring the proceedings, in the District and County Courts, to be conducted in English, but there is no good reason why it should be required in the Justices' Courts. I will say further, that from my experience in looking over the dockets of a good many Justices of the Peace, who try to conduct their proceedings in English, that it would scarcely bear the test of correct English at least.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I hope this amendment will be adopted. There was a day when such proceedings were necessary—in the early days in this State—but I contend that day has now passed. Thirty years have elapsed since this portion of the country became a portion of the Government of the United States, and the different residents who were here at that time have had ample time to be conversant with the English language if they desired to do so. This is an English-speaking Government, and persons who are incapable of speaking the English language certainly are not competent to discharge public duties. We have here in the Capitol now tons and tons of documents published in Spanish for the benefit of foreigners.

MR. ROLFE. Do you call the native population of this State foreigners?

MR. TINNIN. They had ample time to learn the language.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I hope this amendment will not be indorsed by this Convention, but that it will be left with the Legislature to act as it sees fit. In the section of the State which I represent there are large portions of it which are entirely populated by a Spanish-American population, not a foreign population, but a population who were here before we were here, and I wish to say that almost without an exceptional instance these natives of California, who were adults at the time this State was ceded to the United States by Mexico, are still in the same condition, as far as their knowledge of English is concerned. There are but very few of them, if any, who understand our language at all, and, if I am not mistaken, in the treaty of Guadalupe Hidalgo there was an assurance that the natives should continue to enjoy the rights and privileges they did under their former Government, and there was an implied contract that they should be governed as they were before. It was in this spirit that the laws were printed in Spanish. As Judge Rolfe says, there are townships in Southern California which are entirely Spanish, or Spanish-American, and in those townships the Courts of Justice of the Peace are carried on sometimes exclusively in the Spanish language, and it would be wrong, it seems to me, for this Convention to prevent these people from transacting their local business in their own language. It does no harm to Americans, and I think they should be permitted to do so.

MR. BROWN. Mr. Chairman: I do not propose to say many words, but I am convinced that we should not load this Constitution down. We must recollect that there are a great many in this State, quite a considerable number, I might say, of Mexican descent, and it would agonize their feelings if this Constitution should have anything like a prohibition of this nature in it. I am, therefore, entirely in accord with the remarks of the gentleman from Los Angeles on this subject. Let matters remain as they are.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman and gentlemen of the committee: As has been aptly stated by the gentleman from Los Angeles, Mr. Ayers, there was an implied contract in the treaty of peace with Mexico that the Mexican citizen should enjoy the same privileges and immunities under the American rule as they enjoy it under the Mexican rule. And among these privileges and immunities was the right of having the laws of this State printed in Spanish, and having the judicial proceedings of this State, at least in certain districts thereof, and, to a certain extent, conducted in the Spanish language. And the Codes of this State, to-day, contain a special provision that in certain counties of this State the proceedings may be in the Spanish language. Further, this clause will provide that all laws of the State, and all official documents, shall be published only in the English language. Now, it is not the policy of any State in the Union to publish exclusively in the English language. In the State of Michigan, where I resided for eight years, our public documents were published in the English, the German, and the French languages. In the State of Wisconsin the public documents are printed in the English, German, and Norwegian languages. In Pennsylvania, in English and German; and it is the policy of the Western States, generally, with their cosmopolitan population, to publish State documents in more than one language. Be this proper, or be it improper, it is a matter that ought to rest in the discretion of the Legislature, and we ought not to put any Know-Nothing clause into the Constitution. We ought not to allow that sort of antagonism to raise in the Constitution. I hope there will be no declaration of that kind in this Constitution. I hope that it will be promptly voted down. I hope that the Spaniards will have their rights, as they have them to-day, and if the Legislature can assist them by having documents published in their language, I hope they will do so.

MR. TINNIN. Where do you find in the treaty of Hidalgo any such contract?

MR. BEERSTECHER. I said that I found it in the Acts of the State.

MR. AYERS. I say that the treaty implied that.

MR. BEERSTECHER. It says that they should have the same privileges and immunities.

MR. SCHELL. If we are to be so exceedingly cosmopolitan, would it not be equally reasonable that our laws should be published in German and French?

MR. INMAN. And Chinese.

MR. SCHELL. And every other language that we have here.

MR. BEERSTECHER. I do not say that our laws ought to be published in any but the English language; but I do say that there should not be any inhibition contained in the Constitution that would prevent the Legislature from publishing official documents in any other language, if it was desirable to do so. I do not see why the Governor's messages should not be published in German and French, and any other language, if it is desirable.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope the amendment will not prevail. As the Constitution is at present it is compulsory upon the Legislature to have the laws printed both in English and Spanish. That, I think, is not necessary now, but I think this Constitution should be left without any direction in regard to that, so that the Legislature may, if in its wisdom it should think proper, publish public documents, the laws for instance, in other languages, to be distributed in certain counties of this State where there is a large population of that kind. There are some portions of this State where all business and all proceedings are carried on in the Spanish language, and one or two of the Justices of the Peace in Southern California cannot carry on the proceedings of their Courts unless they do it in the Spanish language, and they are among the best Justices of the Peace we have. Now it is not right to say that the Legislature shall not publish anything but in the English language.

MR. HEISKELL. Mr. Chairman: Do the English-speaking constituents down there all understand the English language?

MR. BLACKMER. No, sir, not all of them, because there are a great many there who cannot read or understand the English language, and it is but just that the Legislature should be allowed to publish State documents in the Spanish language for these particular localities, so that they might know about them. In most of the counties where there is so large a proportion of Spanish population, a great majority of the English-speaking people understand the Spanish, and speak it so that they can make themselves understood back and forth. I hope it will be left with the Legislature.

MR. SCHELL. How many voters are there that speak the Spanish language down there that can also speak the English language?

MR. BLACKMER. There are a great many, but there are a great many who are able to speak the English language who cannot read it.

MR. GREGG. Can they read the Spanish?

MR. BLACKMER. Most of them can.

MR. HEISKELL. I demand the previous question.

The main question was ordered.

THE CHAIRMAN. The main question has been ordered. The question is on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Smith.

The amendment was adopted, on a division, by a vote of 46 ayes to 39 noes.

MR. ROLFE. Mr. Chairman: I offer an amendment to the last amendment.

THE SECRETARY read:

"Add to the last amendment to section twenty-four the following: 'Provided, that the Legislature may, by law, authorize judicial or other official proceedings in any designated counties or other localities, to be conducted in the English or Spanish language.'"

MR. AYERS. Mr. Chairman: I second the amendment.

Mr. SCHELL. Mr. Chairman: If that amendment were to prevail we might as well strike out the amendment already adopted; and besides, it would be special legislation. I believe the policy of the Convention is to do away with special legislation.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: It is true that there is an endeavor to cut off special legislation as much as possible; but in some instances special legislation must be had, and under this amendment we have just adopted, there is an instance in which I think it is very proper that special legislation should be had. Now, I offer this by way of an amendment, and as an addition to the section. Now, if that is added, this will be the rule, that unless there is a special provision made by the Legislature, all these proceedings must be conducted and published in the English language. That would include the proceedings of the Legislature and the laws of the Legislature. This amendment which I propose now does not interfere with the laws of the State, proclamations of the Governor, or anything of a State nature. It only refers to proceedings of a local nature, and then, unless the Legislature specially authorizes that to be done, these local proceedings must be conducted in the English language. But I do say that, in localities in this State, where the population are almost universally of the Spanish-speaking people, it is unjust to them to compel them to conduct their proceedings in the English language. Gentlemen ask here if these Mexican-Spanish-speaking people do not speak English as a general thing. I say, as a general thing, they have an imperfect knowledge of English, and few of them have a perfect knowledge of English. Some of the best educated people of that race that we have in this State only have an imperfect knowledge of the English language, the same as some of the best educated have but an imperfect knowledge of the Spanish language. Now, I say that some localities in this State are almost universally populated with a Spanish-speaking people. There are some English-speaking people there, it is true, but most of them understand the Spanish language. They conduct their business and all their proceedings in Spanish. They make their contracts in Spanish. Although a man may be very well educated in Spanish, and may have a very ordinary knowledge of the English language, it may still be very inconvenient for him to conduct his proceedings in English; and in these judicial proceedings, where a man, whose mother and father is Spanish, although he may have a very ordinary knowledge of the English language, it is wrong to compel him to conduct his entire proceedings in a Justice's Court in the English language. He will make mistakes in language which will be injurious to litigants before his Court. It will be not only an inconvenience to him, but it is the right of parties before his Court.

Now, I say that we should take into consideration the fact that the American, or English-speaking people, of this State are the new comers. We settled this State and took it from these people when the Spanish was universally the mother tongue of the people. They are a conquered people. Now, I say when we take their country and the people too, and make American citizens of them, we must take them as they are and give them an equal show with us whether it was so contracted in the treaty or not. I say it is nothing but just, as long as there is one township in the State which is populated mostly by these people. I say, although it may be not more than one township of five hundred inhabitants, it is nothing but just that we should allow that locality to conduct their proceedings in the mother tongue of the people who inhabit it. But there is more than one township in that situation, there are large sections of some counties, and large counties, in this State, in the same situation. Now, I do hope that the Convention will do these people the justice to make this one exception to the amendment which has just been adopted, that everything should be conducted in the English language, and to allow this one exception in the case of a great many localities in this State where the people are so situated as I have stated.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I have as high regard, sir, as any man for the foreign element of citizens of this State who have come here and identified themselves with the institutions of this country, and assimilated, they and their families, with its institutions; but I have no regard for that demagogism that panders to this foreign element, that follows it for years and years for the sake of the votes it affords on election days. I speak whereof I know when I say that hundreds of those who pretend to be citizens of California are recent immigrants from Sonora and other portions of Mexico, some of them bandits, cutthroats, and robbers, that come in and are placed on the Great Register, and vote there. I believe that they are not citizens, and yet they are at once placed upon the Great Register, while the Dutchman, and the Irishman, and the Frenchman must be naturalized and come in in the regular way. It is an abuse, it is an outrage upon the institutions of our country. On election day they are corraled and voted, when they have not been in the State five days. Many of them are admitted or classed as citizens under the treaty who were born in Mexico since the treaty was ratified. Many of them make it their business to rob and plunder, and they avail themselves of this opportunity to deprive the citizens of the United States of the influence of their votes. We have opened the doors of our public schools to them and their children, and attempted to educate them under the general influence of our schools, and if thirty years will not do it, I think we had better send missionaries into the county from which the gentleman from San Bernardino comes. I do not know that these gentlemen spoken of are competent to perform the duties of Justices of the Peace or any other position, but I am satisfied that the Spanish element do not ask it. It is the demagogues who ask it, and not the educated, thinking, and reading part of that population. I respect that population, where they are bona-fide citizens, as much as any member of this Convention, but I want a period placed where the importation of Mexicans into this country and the collecting of them at the polls shall cease.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I wish to state that I am not in favor of printing the laws in Spanish. Neither am I in favor of any law that is intended to drive a certain population out of the State. Whether the statements of the gentleman from Los Angeles are correct or not, I do not know, but I do know that there are a great many districts where it would be impossible to get justice for these people if they are not allowed to go on with their proceedings in Spanish. I do not think it would be wise for us not to allow proceedings in Spanish in those localities where they all talk the Spanish language. I think the Convention ought to make some exception in these places. They are born on the soil, and they have the same rights as any one of us, and they ought to be allowed to have their proceedings, in the Justices' Courts, in the Spanish language. I hope that this Convention will not be unjust to these people, but will be fair to them, and make some exception in this Constitution that will allow of proceedings in Spanish in Justices' Courts. As to the publishing of the laws in Spanish, it ought to be stopped at once.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: This is not a question of demagogism, or partisanism; it is a question of right. Now, I know that in Southern California there are districts and communities that are so entirely Spanish that if you depriye them of the right to continue their proceedings in Justices' Courts in Spanish, you will deprive them of justice. I do not see what it has to do with this case, whether people are run in in bands, from Mexico, and put upon the Great Register or not. That is a question for the Courts. If they are run in, in that way, and falsely placed on the Register, it ought to be stopped; but even if that was the case, it is no reason for taking away the rights of any portion of this people. It is only five years since the Mayor of Los Angeles could not speak the English language, and he was a very efficient Mayor. I remember a case in San Luis Obispo, which was tried before a Spanish Justice of the Peace, when a distinguished gentleman on this floor was the counsel on one side, and the whole audience were Spanish, and the whole proceedings in the case were in Spanish. It does not harm this State any. I hope that the amendment of the gentleman from San Bernardino will be adopted on the ground that it is right and just. It is all well enough for us here, who are strong, to stand up and denounce them because they are weak. We have taken from them their patrimony and their lands, and now we are kicking them while they are down.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I am not in favor of the amendment; neither do I care for this sympathetic appeal. We have done it, it is true. We have done it honorably, and we have lived up to the contract. We have protected them for thirty years, and if they have not learned to conduct their business in English, I think it is about time they did learn. I do not think, Mr. President, that there is a township in this State that there is not some Americans, or some foreigners, who do not speak the Spanish language, and we are doing them an injustice if we allow proceedings to be carried on in a language they do not understand. These cases are subject to appeal, and if the proceedings of that Court is had in Spanish, there is not a County Court in this State the proceedings of which are conducted in Spanish, and therefore you cannot appeal. If you are going to permit one township to have it in Spanish, there is just as much reason why another should have it in Swiss and another in Italian.

MR. AYERS. Mr. Chairman: I would like to ask the gentleman whether the Swiss and Italians came here from other countries, or were born here, or whether they were found here?

MR. OVERTON. They came here under a treaty, and have got just as much right as those under the Hidalgo treaty. These people sold us their country, and we have paid them the money. I am not in favor of printing laws in Spanish. Our County Court House has a room that is occupied by statutes published in Spanish, and there they remain to-day, by the ton, and they are not worth anything. This State has paid out thousands and thousands of dollars—thrown it away—for the purpose of publishing books in Spanish, and we have got them there now, and no one ever has any use for them.

MR. ROLFE. We do not ask the laws to be published in Spanish.

MR. AYERS. Does the gentleman know that there are tons and tons of English literature in this building too?

MR. OVERTON. Yes; I know there are. We can read it too. When it comes to publishing laws in Spanish, I hold that it is useless. There is not a nationality in this State that has not got papers that publish them, and they can read them there.

MR. BLACKMER. Mr. Chairman: I move to amend the amendment by inserting after the word "conducted" the words "and published."

MR. ROLFE. I accept that amendment.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I do believe that these people have some rights that we ought to respect. I do not believe, because we are stronger, because we outnumber them and are continually increasing the ratio, that we should entirely ignore the rights that these people ought to have under a free government. It is a simple question whether we will do right because it is right, or whether we will do wrong because we have the power to do it. I look upon it in that light. I say that it is but simple justice that the Legislature be given the authority to allow, in certain localities, these Courts to conduct their business in that language, and, if necessary, that they may also publish in that language. It does not compel the Legislature to publish the laws in Spanish, but it simply gives them the authority to allow it to be done in

certain counties, or localities, if they think it proper; and I do think it is only a matter of justice that this be done.

MR. WICKES. Mr. Chairman: In addition to what has been said, I think it very good policy to give some official recognition to the Spanish language. It is a noble language, spoken by millions of people upon the American continent.

MR. WEST. I would like to hear the amendment. My opinion is that the amendment of the gentleman from San Bernardino nullifies the other amendment.

THE CHAIRMAN. The Chair knows of no point of order that would prevent the Convention doing a foolish thing.

MR. WEST. I accept the ruling.

MR. SMITH, of Santa Clara. Mr. Chairman: I wish to say that I am in favor of that amendment.

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

The amendment was lost on a division, by a vote of 27 ayes to 55 noes.

MR. AYERS. Mr. Chairman: I give notice that I will make a motion to reconsider the vote by which the amendment of the gentleman from Santa Clara, Mr. Smith, was adopted.

THE CHAIRMAN. If there be no further amendments to section twenty-four the Secretary will read section twenty-five.

SPECIAL LEGISLATION.

THE SECRETARY read:

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of Courts of justice.

Fourth—Providing for changing the venue in civil or criminal cases.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Vacating roads, town plats, streets, alleys, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates belonging to minors or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation, of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or incumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—Authorizing the laying out, opening, altering, or maintaining roads, highways, streets, alleys, or public grounds.

Thirty-third—For limitation of civil or criminal actions.

Thirty-fourth—In all other cases where a general law can be made applicable, no local or special law shall be enacted.

MR. VAN DYKE. I move to amend section twenty-five by adding to subdivision thirty-two the following: "Except such as belong to the State."

MR. DUDLEY, of San Joaquin. I move that we take up the subdivisions seriatim.

THE CHAIRMAN. If there be no objection, that course will be pursued.

MR. HERRINGTON. Mr. Chairman: I desire to offer a substitute for the entire section. I suppose I have a right to do that? I offer it as a substitute.

THE CHAIRMAN. The gentleman can offer his amendment but it will not be taken up at present. Is there any amendment to subdivision one?

MR. HERRINGTON. Then I cannot offer it at all?

THE CHAIRMAN. It cannot be taken up until we go through the section.

MR. REYNOLDS. I will suggest to the gentleman that he can offer his substitute for subdivision first of the section. If it be a substitute for the whole section, and be adopted, it will take the place of the whole remaining part of the section.

THE CHAIRMAN. We must travel through all these subdivisions first. The Secretary will commence and read each subdivision.

THE SECRETARY read subdivisions one, two, three, and four.

MR. ROLFE. I wish to offer a simple amendment to the fourth subdivision. I move to strike out of line seven the word "venue" and insert "place of trial." I think the object of that amendment will be obvious. If we conduct our proceedings in English this word "venue" is a very awkward word to be used here.

MR. HERRINGTON. I wish to ask the gentleman a question, and the Chair also: If the proposed amendment should be adopted to any portion of this section how would it be possible, after it is adopted, to strike it out with an amendment?

THE CHAIRMAN. It would be perfectly possible to do it.

MR. ROLFE. Mr. Chairman: If the gentlemen will examine the Code of Civil Procedure, and the old Practice Act, I think they will find that this word "venue" is not used, although I will admit that in old proceedings in England this word "venue" is common, especially when they used the barbarous law French and law Latin; it means the place of trial; that is plain English, which anybody who understands English can understand, and as we have already decided not to print our laws in anything but English, let us have our Constitution in English. I always did object to using this phrase, "change of venue," in the laws, although in our talk we may use it. But I will suggest to the gentlemen, and I think every lawyer will agree with me, that it is not a very proper word to use when we are using the English language, but "place of trial" is. If the gentlemen will examine section twenty-one, I think it is, of the old Practice Act, where we ordinarily say that it provides for a change of venue, they will find that the Act does not use the word "venue," but says "place of trial." I think the change will be an improvement, and certainly the meaning will be more generally understood.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was lost.

THE SECRETARY read subdivisions five, six, and seven.

MR. HAGER. Mr. Chairman: I have an amendment to offer to subdivision seven; I will explain it before I send it up. The Committee on City, County, and Township Organizations have made a report in which we have reported on the matter contained in subdivisions seven and thirty-two—they relate to the same subject. I propose to amend section twenty-five by striking out subdivision seven and thirty-two, and inserting what I will send up.

THE SECRETARY read:

"Amend section twenty-five by striking out subdivisions seven and thirty-two, and inserting the following: 'Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds, not owned by the State.'"

The amendment was adopted on a division by a vote of 77 ayes to 6 noes.

THE SECRETARY read subdivisions eight and nine.

MR. BURT. Mr. Chairman: I desire to offer a substitute for subdivision nine.

THE SECRETARY read:

"Amend section twenty-five by striking out subdivision nine and inserting the following: 'Regulating the internal government and business management of county and township organizations, or election and compensation of county and township officers.'"

REMARKS OF MR. BURT.

MR. BURT. Mr. Chairman: I presume that it was the intention of the Committee on Legislative Department to cover the same ground that is covered in my proposed amendment, but I regard this matter of special legislation, relating to county and township organizations, as of too much importance to leave any room for doubt as to its construction. In my opinion this matter of special legislation, relative to county and township organization, is more to be deprecated than all other matters of special legislation combined. It is not only detrimental to the interests of the counties and townships, but it is one of the greatest, if not the greatest source of corruption in our legislative halls. And not only this, but it serves to clog the wheels of necessary general legislation. It is not necessary, Mr. Chairman, to offer any evidence in support of this to any members on this floor, who have ever participated in the business of legislation in these halls. The fact that matters of vast importance to the State are pressed to the wall, day after day, during the session, to give room for this special legislation, is well known, and such matters if they are allowed to be considered at all, are postponed until the very close of the session, and then passed, if at all, without any consideration. To those who have never participated in matters of legislation, I have only to refer them to this volume of the statutes of the last session. I find upon a closer examination of this volume, that out of five hundred and seventy-two laws contained therein, sixty-nine of them are general in their purport and application, while five hundred and three of them are special; and this is but a fair average of the general legislation in this State.

Now, Mr. Chairman, I do not maintain, nor do I propose to maintain that such special legislation is unnecessary, or that it can be avoided. On the contrary, I know that it is necessary, but I do contend that it will better subserve the interests of the people for whom it is intended by being left entirely to the local Boards of Supervisors. Aside from this, if left to the local Boards, it will work a great saving to the State. It seems to me, Mr. Chairman, that our Legislature is squandering its time and funds in passing such special laws as our statutes are mostly

composed of. In examining, for instance, I find a special law passed to prevent hogs and goats from running at large in Rocklin precinct, Placer County, and another to prevent hogs and goats running at large in Adin township, Modoc County. It seems to me that the Legislature if they had appropriated the funds consumed in making this special legislation, to the payment of damages caused by the depredations of such hogs and goats, it would have been a saving to the State. I know it is held by persons who are in favor of continuing this special legislation in the hands of the Legislature, that in placing this power in the hands of the Boards of Supervisors we are concentrating too much power into a few hands—in other words, savoring of the one man power; while if left to the Legislature at large, there is wisdom in a multitude of counsel. But while this may be true in theory, I hold that in practice the reverse is the fact. I think with the exception of the City and County of San Francisco, there is not a county in the State whose delegation, including both Senators and members of the Assembly, is not less in number than constitutes the local Boards of Supervisors. And as regards the City and County of San Francisco, it seems to me that they have infinitely more to fear from their delegation in the Legislature, than from their Board of Supervisors. To use the California phrase, the City of San Francisco trembles in her boots during the entire session of the Legislature. But there is another reason why this should be left in the local Boards of Supervisors. They are of the people and constantly mingling with the people. They know the wants of the people of their locality better than it is possible for the Legislature to know them. What, for instance, Mr. Chairman, does the representative from Modoc, on the north, or San Diego on the south, know of the wants of the citizens of San Francisco. And yet, they know much more of those wants than it is possible for the representatives of San Francisco to know of the local wants of those remote counties. The representatives from the interior have access to the daily papers of San Francisco, which are filled with the wants of San Francisco. This source of information is beyond the reach of the representative from San Francisco with reference to the interior counties, simply because there are no local daily papers. Now, with reference to these local bills when they are passed especially for the benefit of communities, or of county officials, they are invariably passed at the urgent solicitation of those individuals or officials, and not at the request of the communities interested. For instance, during the last session of the Legislature, a law was passed increasing the compensation of the Recorder of Placer County. Now, while not pretending to say whether such law was just, or unjust, I do say that it was passed without a single request from any individual in that county aside from the Recorder interested; and had the matter been left to the Board of Supervisors I do not believe that his compensation would have been increased. But that is only one case out of hundreds that are passed nearly every session with reference to all the counties in the State. I believe, Mr. Chairman, that the public sentiment is tending towards increasing and concentrating this power of special legislation in the hands of the Boards of Supervisors. Such power has been greatly increased during the last two years, and I have yet to learn of the very first instance where such power has been abused. I think, therefore, Mr. Chairman, that we are perfectly safe in leaving all such matters of special legislation, with reference to county and township organization, in the hands of Boards of Supervisors.

MR. TERRY. Mr. Chairman: The gentleman is trying to arrive at the very position which the committee arrived at. I do not think his amendment is any improvement. I think that "regulating county and township business" is fully as comprehensive as "regulating the internal government and business management of county and township organization." I hope it will be voted down.

MR. HAGER. Mr. Chairman: As the committee, of which I am the Chairman, has considered this same subject-matter, I will send up the paragraph as reported by the Committee on City, County, and Township Organizations. It is fuller and more comprehensive than that of the Committee on Legislative Department. I will send it up. It reads: "Regulating the affairs of counties, cities, towns, townships, wards, cities and counties, Boards of Education, school districts, or other political or municipal corporations or subdivisions of the State." Of course, if it is adopted here it will be stricken out of the report of the Committee on City, County, and Township Organizations.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Placer, Mr. Burt.

The amendment was rejected.

THE SECRETARY read the tenth subdivision.

MR. WEST. Mr. Chairman: I wish to make an inquiry. I have known in my experience in township matters, and especially in school matters, where the local school officers have levied a tax and collected a part of the money for the purpose of erecting a school-house, and it required a special Act of the Legislature to enable them to collect the taxes. I want to know if, under the principle of this report, it could be collected?

MR. TERRY. Mr. Chairman: The object of this section is to get rid of all special legislation. We propose that the Legislature shall not say to these people they shall do this, or that, or anything.

THE SECRETARY read subdivisions eleven and twelve.

MR. CROUCH. Mr. Chairman: I wish to offer an amendment to subdivision twelve.

THE SECRETARY read:

"Amend subdivision twelve, by inserting after the word 'affecting' the words, 'estates of deceased persons.'"

MR. CROUCH. Mr. Chairman: I think it is quite important that there should be no special legislation respecting the estates of deceased persons, authorizing the administrator to sell at private sale, etc. I would like to prevent legislation of that kind.

MR. TERRY. Mr. Chairman: I move to amend by striking out the words "belonging to," so that the subdivision will read: "affecting the estates of deceased persons, minors, or other persons under legal disabilities."

MR. CROUCH. I accept the amendment.

The amendment was adopted.

THE SECRETARY read subdivisions thirteen, fourteen, and fifteen.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I think that section ought not to be in the Constitution. I would inquire of the Chairman of the committee if he has considered that proposition? It strikes me that this is one of the cases where it should be allowed to be special. Now we cannot pass a general law for refunding money. Suppose a case where the State has money belonging to one of its citizens which, in equity and common conscience, the State ought not to keep? I would like to inquire how that money is to reach the party to whom it in equity belongs? Suppose the State sells property, and it turns out there is no title to the property, and it is absolutely lost to the purchaser? Now, of course, we all recognize the fact that in equity and common conscience the money belongs to the party who has paid it. How is he to get it? You cannot sue the State.

MR. TERRY. The easiest matter in the world—by a simple provision in a general law, that any person who has paid money to the State for property, and it turns out there is no title, shall have that money restored to him—putting all men on the same plane.

MR. VAN DYKE. I think it is a much more dangerous provision than to leave it to the Legislature. I move to amend by striking out that subdivision. I do not think we ought to have a general law on the statute book allowing money to be refunded. There would be too many claims to get money from the State. We have no law now allowing the State to be sued, and I am opposed to any general law allowing money to be extracted from the treasury. In a case where the State has money that, in equity and common conscience, belongs to a citizen, the Legislature should be allowed to pass an Act to refund that specific money. I say that it is safer to let every case stand upon its own merits than to have a general law.

MR. WHITE. Mr. Chairman: I think a general law in such a case would be a great deal more dangerous than a special law, where it was evident to the Legislature that the money belonged to the citizen; therefore I hope the amendment will be adopted.

MR. LARKIN. Mr. Chairman: I consider that one of the most salutary provisions in this section. A general law may provide that any party who has paid money to the State, under those circumstances, that it should be refunded to him.

MR. WHITE. I would ask if a general law would not open the doors of the treasury to everybody?

MR. LARKIN. I think not.

MR. HALL. Mr. Chairman: I rise simply to remark that the Federal Government has a general law providing for the return of money paid for purchase of lands wherever the title of the Government proves to be defective. I do not see why a like rule should not be adopted by the State.

THE CHAIRMAN. The question is on the motion of the gentleman from Alameda, Mr. Van Dyke, to strike out subdivision fifteen.

The motion was lost.

THE SECRETARY read subdivisions sixteen, seventeen, eighteen, and nineteen.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I move to amend by striking out subdivision nineteen. I am sorry, sir, that the word "corporation" is in that subdivision, because that word throws certain gentlemen into fits, and I am not good on fits. [Laughter.] But I believe we are going too far if we adopt this subdivision. Now, we have at the end of section twenty-five, that no special law shall be passed when general laws will apply, and I believe there are some instances where it is proper to grant a special right to an individual or to an association. I do not believe it is safe to prevent the Legislature from doing so at all. I have in my mind's eye now a case like this. For instance, I have a large body of land here that lies five or six thousand feet above the level of the sea, valuable only for lumbering purposes. We have in that vicinity streams of water which would be very beneficial to this district if they could be improved so that lumber could be floated in them. Now, sir, no private individual could undertake to make the necessary improvement, and the Legislature, in several instances, for the benefit of large communities, have given special privileges to certain parties, authorizing them to charge a small amount for the privilege of floating lumber down. I do not understand how that could be done by a general law, because in a general law it would be granting too great privileges, and granting it upon too many streams. I refer to this simply as an instance where the Legislature should have the power to grant special privileges of this kind. Where it can be done by a general law let it be done; and this section provides that where a general law will apply no special privilege can be granted. I do not believe that this Convention ought to prohibit the Legislature from complying with the wishes of a large community by granting a special privilege of this kind. If it is a special grant, it can be limited to the conditions of the case, whereas a general law allowing any person or persons such privileges would be dangerous, because there might be cases where it would work an injury instead of a benefit. I believe that the Legislature ought to have power in these extreme cases to grant special privileges of that kind. I do not think it would be proper to cut off from the Legislature entirely the power in any imaginable case to grant special legislation of that character. A general law, it seems to me, would be more dangerous than to allow the

Legislature to do it in special cases, because a general law would be taken advantage of by those who would merely wish to monopolize right.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I was satisfied that the word corporation was somewhere ahead of us, or we would not have seen these gentlemen here all this morning. The first special Act of that character which was passed had a little job in it, and it was the same with the second. Persons floating lumber down these streams were required to pay certain amounts, and instead of proving a benefit to the entire community, as the gentleman says, it was found that there was a fortune in it for the few who had secured the franchise, but nothing in it for the rest of the community. It was detrimental to the best interests of the State. These Acts have been cursed by the people of the State ever since. So far as the word corporation is concerned, I do not think a corporation should have any more rights than an individual or association. All persons should have the same rights.

MR. MCFARLAND. I would like to ask the gentleman if he is opposed to the improvement of any stream.

MR. LARKIN. By a special Act I am opposed to it, but under general law I am in favor of it.

MR. MCFARLAND. I would like to inquire how he would improve a river.

MR. LARKIN. By a general law authorizing people to associate for that purpose.

MR. MCFARLAND. Then he wishes, by a general law, that he or anybody else can go on and take up streams. The first man that goes there gets it. That is his idea of being against monopoly.

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

THE SECRETARY read:

"Amend subdivision nineteen by adding at the end thereof the following: 'except as provided for in section twenty-two of this article.'"

MR. SCHELL. Mr. Chairman: I desire merely to remark that I understand that special privileges have been allowed to individuals or associations by section twenty-two. I understand that the Legislature may make special appropriations under that section. I offer this amendment for the purpose of bringing up the question. I do not fully understand it, but suppose it was some special appropriation for the support of these orphans, and that it would take a special law.

MR. LARKIN. As section twenty-two is amended I do not think this section would affect it.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Sacramento, Mr. McFarland, to strike out subdivision nineteen.

The amendment was rejected.

MR. SMITH, of San Francisco. I send up an amendment.

THE SECRETARY read:

"Amend section twenty-five, subdivision nineteen, by inserting, after the word 'association,' the word 'official.'"

MR. SMITH, of San Francisco. Mr. Chairman: The subdivision would then read: "granting to any corporation, association, official, or individual, any special or exclusive right, privilege, or immunity." The reason why I offer that amendment is this: that our last Legislature did grant special privileges to certain officials in the City of San Francisco, concerning the City Hall. They had done certain work which did not conform to the contract and specifications, and by doing so would have forfeited their bonds, and to protect themselves they came to the Legislature and secured special privileges in regard to it.

MR. TERRY. I would like to ask the gentleman if he can find an officer who is not a person? The word, "individual," includes all persons, and I would like to know if the gentleman can find an officer who is not an individual?

MR. SMITH, of San Francisco. It says "individual," and not "individuals." In this case there were two officials instead of one. [Laughter.]

The amendment was rejected.

THE SECRETARY read subdivisions twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, and twenty-nine.

MR. MCFARLAND. I move to amend by striking out subdivision twenty-nine. My reason is simply this, I do not believe that the business of this State has become so equalized that the fees of the county officers should be the same in every county. I do not believe that a man can do the business in Mono at the same price he can do it in Sacramento.

MR. LARKIN. I understand that each county is to have the control of all these things in the Board of Supervisors.

MR. MCFARLAND. If that is the proposition I am satisfied, but I do not see where it is. This certainly refers to no officer, State or county. I do not understand that anything has been passed allowing the county to determine the salary of its officers. I suppose the Legislature will determine the fees and salaries of officers in all counties. If you specify counties it will be a special law. You cannot pass a general law providing for the fees and salaries of county officers. This subdivision says that you shall not pass any law affecting the fees or salary of any officer. Now, if you pass a law saying that they shall have so much in San Francisco, and so much in Sacramento, it is a special law.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

THE SECRETARY read subdivisions thirty, thirty-one, thirty-two, thirty-three, and thirty-four.

MR. JOHNSON. I have an amendment to offer to subdivision thirty-four.

THE SECRETARY read:

"Strike out the words 'no local or special laws shall be enacted.'"

MR. JOHNSON. Mr. Chairman: I am sorry to say, Mr. Chairman, that those words are surplusage, and I think the Chairman of the Committe on Legislative Department will admit it. The first part of the section says: "The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say," etc.

MR. TERRY. I believe it is surplusage, and ought to be stricken out.

THE CHAIRMAN. The question is on the adoption of the amendment.

MR. HERRINGTON. I have a substitute which I desire to offer for section twenty-five.

THE SECRETARY read:

"Amend section twenty-five by striking out the section and inserting the following: 'The Legislature shall have no power to pass any special or local law, but may, by general law, authorize Courts to carry into effect the manifest intention of parties and officers by curing defects, omissions, and errors in instruments and proceedings arising out of their want of conformity to the laws of the State, upon such terms as may be just and equitable.'"

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I take it from the provisions of section twenty-five that it was the intention of this Convention—and if gentlemen will keep quiet I may be heard, for I have not got strong lungs to-day—I take it that it was the intention of this Convention to cut off all local and special legislation. I know of but two cases in which there would be a necessity for any special legislation, and such cases could only arise where great injustice would result to parties in consequence of a failure to comply with the law, so that the intention of the parties is entirely defeated by the act of the parties themselves; and in cases where officers have failed to conform to the laws, and in consequence injustice has been done by reason of nonconformity, and their acts are therefore invalid under the law. Now, this provides that the Legislature may make a general provision whereby the Courts may cure these errors, defects, and omissions.

MR. TINNIN. Mr. Chairman: I rise to a point of order. My point of order is that this Convention has already adopted section twenty-five. The gentleman now proposes to strike out what has already been adopted by the Convention.

THE CHAIRMAN. The amendment is a substitute for the entire section and will be in order.

MR. HERRINGTON. Mr. Chairman: That is what I expected. I expected that point of order to be raised. Now, I submit that all that is embraced in the section which has been passed upon by the Committee of the Whole is embraced in the section which I offer. It prevents all special and local legislation, and it authorizes the Legislature to provide, by a general law, for the correction of all errors, omissions, and defects, in instruments and proceedings. It is a provision which will be found in some of the Constitutions of the States, and is highly commended by eminent authorities on constitutional limitations. Mr. Cooley says that it is a perfect and effectual guard of the State against injurious and unwise legislation on the part of the Legislature. It is recommended as one of the wisest measures that has ever been adopted by any people in their Constitution to prevent the evils which flow from hasty and local legislation. I submit that that provision ought to be adopted, and I would like, if it can be done, to have it read again so that it can be fairly understood by the Convention.

THE SECRETARY read:

"Amend section twenty-five by striking out the section and inserting the following: 'The Legislature shall have no power to pass any special or local law, but may, by general law, authorize Courts to carry into effect the manifest intention of parties and officers, by curing defects, omissions, and errors, in instruments and proceedings arising out of their want of conformity to the laws of the State, upon such terms as may be just and equitable.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

MR. TURNER. Mr. Chairman: Being somewhat slow I failed to ask a question which I wish to ask in regard to subdivision eighteen. It provides that the Legislature shall not pass any local or special law "legalizing, except as against the State, the unauthorized or invalid act of any officer." If it does not mean that what does it mean? I understand that it means that if any officer commit an act against the State that the State may legalize it. If it does not mean that, what does it mean? I wish to ask if that is what the Convention wants to put into this organic law?

STOCK SALES.

THE CHAIRMAN. The Secretary will read section twenty-six.

THE SECRETARY read:

SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered, by the party paying it, by suit in any Court of competent jurisdiction.

MR. FILCHER. Mr. Chairman: I send up an amendment to that section:

THE SECRETARY read:

"Strike out all after the word State, in the fourth line, and insert the following: 'Nor shall any stock board or stock exchange, or other association for the buying or selling of the shares of the capital stock of corporations be allowed to exist.'"

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: The amendment is as first adopted in the Committee on Legislative Department. It was conceded, as I believe, that the evil aimed at is one that ought to be repressed, and yet the argument in committee was so overwhelming, that in the event of the adoption of a Constitution here, the power of the Stock Boards will defeat the Constitution, that it was changed. It was asserted that they could perhaps put in the field as much as two millions of dollars to defeat the Constitution, in the event of the adoption of a section of this character. I feel this way in regard to it: if we are going to do anything in the Constitution at all, let us strike at it effectually. If not, if our measure is not effectual, and will not accomplish the object aimed at, then I would be in favor of having nothing to do with the subject in the Constitution, for I recognize the fact that the Legislature has all the power in this matter, without any constitutional provision, that it would have with one, such as is suggested. I anticipate that this section, as it now stands, would bring upon this Constitution all the opposition from the quarters suggested that would be centered against it even in the event of the adoption of the amendment which I propose. If this Constitution should be adopted with the amendments as reported by the committee, it would be a continual source of lobbying and corruption about the Legislature. We have seen this matter tried. We have seen the California Legislature attempt to suppress to some extent the evil of stock gambling; and we have seen several of the most formidable lobbies perhaps ever assembled here, to defeat that measure. I, for one, am in favor, as far as possible, of removing all sources of evil, and the lobby is one of the worst; therefore, I say, if we trouble this stock gambling evil at all, let us touch it in a way that it will be effectual.

MR. WILSON, of First District. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Strike out all after the word 'association,' in line seven."

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: If this should be adopted as a substitute for the amendment of the gentleman from Placer, it would leave the original section, down to the word "association," in line seven, and would strike out the balance of the section, and would then read as follows:

"SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of a lottery in this State. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association."

As reported by the committee, it authorizes the Legislature to regulate or absolutely prohibit the sale of stocks in stock exchanges. It delegates that power to the Legislature. That is a very extensive business, and it may be that the Legislature may be able to regulate it in such a manner as to remove some of the manifest and prominent evils surrounding it. With my amendment it would leave it in that condition. If the Legislature should find that the evils were incurable, it would then have the power to prohibit it entirely.

MR. FILCHER. I would like to ask the gentleman if the Legislature would not have just as much power without the second sentence as with it?

MR. WILSON. No, sir; in the one case it is made mandatory and in the other it is discretionary. It would have the power, of course, without any amendment to the whole section, but the difference is that in one case it is made mandatory, and in the other it is not. For this body to undertake to prohibit absolutely the buying and selling shares of stock, is to undertake a great responsibility, because a vast amount of capital is invested in that business. If it is capable of being regulated, let the Legislature do it; but this section, as reported by the committee, would drive all the incorporated companies to Virginia City, and Virginia City would have the entire business. The people of San Francisco would deal as much in stocks in Virginia City as they do in San Francisco. It seems to me far better to authorize the Legislature to either prohibit or regulate, than to absolutely prohibit in the Constitution itself. The amendment which I propose, strikes out the last seven lines with the exception of the word "association." That is, it strikes out the following: "All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying, by suit in any Court of competent jurisdiction."

That is altogether too broad. It has been conceded heretofore in the debates in this Convention that corporations were necessary to conduct many of the great branches of business in this State. It is admitted by all that we cannot prosper without aggregated capital in the form of corporations. We have already passed some very strong provisions to regulate and control them, and the State and the Legislature has at all times the power to regulate and control them. If it be true that we intend to preserve corporations as a part of the great business machinery of the State, then there will be a large amount of capital stock that will always be necessarily owned by individuals. It embraces, as has been shown here by the record, a number of branches of business—banks, insurance companies, shoe manufacturing companies, railroads, rolling mills, manufacturing companies, lumber companies, carriage factories, and all these various interests. Assuming that I should own in a large carriage company three or four hundred shares of its capital stock, why should I not be permitted to sell it part cash and part on time? Is there anything in the transaction inconsistent with the public morals? Is there any just reason why I should not sell my private stock? In an insurance company, why should I not sell my own shares of stock part cash and part on time? Yet, this section would prohibit as simple a business transaction as that.

MR. FILCHER. In my opinion, it would not.

MR. WILSON. I will explain. After it has ended with the Stock Exchange it proceeds in a distinct and separate sentence and says: "All contracts for the sale of shares of the capital stock of any corporation or association on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it, by suit in any Court of competent jurisdiction."

It seems to me beyond the pale of contradiction, that if a man sells a hundred shares of his insurance stock for so much a share, half cash and half payable in thirty days, the Courts would declare the whole contract to be void, and the man who had voluntarily paid his first installment could recover at law. There are cases sometimes where an administrator or executor may deem it expedient to sell part cash and part on time. A man dies possessed of a large amount of stock in one of these many companies; in order to close the estate satisfactorily, the executor finds it best to sell that stock part cash and part on time, and the Probate Judge approves of it as an expedient and proper course to be followed, and such a sale is made—a public sale to a bidder is had—the stock to be delivered at the last payment. It is really a contract of sale between private individuals, because the balance is to be paid at a certain time, at which time the stock is to be delivered; this is a contract of sale. But in such a case the contract of sale would be void, although made under the direction of the Court, because the Constitution prohibits any such sale where the property sold is to be delivered at a future day. Take the case of a partnership. Two men are engaged in business, and in the course of their business are unable to agree, and must dissolve their connection. It becomes necessary to have a sale in the public market in order to close up their partnership affairs. They desire to sell. They agree to sell in the market at auction, and to divide the proceeds between themselves. In such a case they might deem it desirable to sell on time, or sell half cash and half on time. This section prohibits that transaction. This disposition of the Convention to regulate, or prohibit the private business of men, will be found to be wrong, and will not meet with the judgment of the great body of sensible voters of this State when they consider this section. I do not see why it is necessary to forbid sales of stock to be delivered at a future day. The evident intention of the section, as the gentleman from Placer says, was aimed at sales in the stock board. But it goes further, and seems to have no limit. It reaches private sales and private transactions. Then, too, it uses the words, "on margin." This would be a bad term to put in a Constitution. It is a technical phrase. If I understand a sale on margin, it is merely a sale of stock on time, the stock being retained as security, and not delivered until the final payment is made. That is what is generally called a sale on margin. If the stock falls in value before the time of final payment arrives, the buyer is called upon to advance more margin. At the end of the time the practical operation is, that instead of paying and taking the stock they generally pay the difference between the value of the stock, at the time of the first transaction, and the value at the time of the settlement. But here you do not aim solely at the stock board. You make it apply to a private transaction.

The question will be whether in the judgment of this Convention it is good business policy. This is a question which addresses itself to the sound business sense of the Convention. How far shall we determine these matters instead of leaving them to the Legislature. In the first portion of the section it is left to the Legislature to determine when it will prevent abuses, but this last sentence goes to the extent of preventing an ordinary business transaction, against which no valid objection could be made in point of morals or expediency, and it also interferes with the private rules of business men in numerous instances, such as I have cited, of administrations, partners, and many other instances which might be given of a similar nature. The section, with the amendment I propose, would place it within the power of the Legislature to regulate or prohibit sales in the Stock Board as it might see fit, and would permit men to make their own private contracts, as they ordinarily do in business transactions, exercising their own judgment, and not calling upon the State to direct or regulate them.

MR. TERRY. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

EXPENSES.

MR. REDDY. Mr. President: I have a resolution to offer.

THE SECRETARY read:

WHEREAS, The balance of the money appropriated for this Convention amounts to about three thousand nine hundred dollars, which is about two days' pay for the members; therefore, be it

Resolved, That the members receive for those two days certificates, and that the money above referred to be set aside for the expenses of this Convention.

MR. REDDY. Mr. President: It will be seen that in two days the fund will be exhausted. The Convention will then be without any money at all, any ready cash, anything to pay with, and inasmuch as we must take certificates after two days more, we might as well commence now and leave this money for contingencies which may arise during the remainder of the session. These certificates which it is generally understood will be given to members, can be cashed at a discount of ten per

cent. In that case the loss to each member would be simply two dollars on these two days. I hope there are no members here but what can spare that two dollars for that purpose. It will not be much loss to the members and in the aggregate amounts to a pretty good fund. I hope the resolution will receive the favorable consideration of the Convention.

MR. ROLFE. Don't you intend to put the attachés on the same footing with the members? Don't you think they should be put on the same footing with the members?

MR. REDDY. I don't know. The resolution is to retain this sum for the expenses of the Convention, except the per diem of the members. Now, members will lose but two dollars, simply the discount on the two days' pay, and if it should go to the attachés I certainly, for one, would be willing to let it go. It may be necessary to have a call of the house before many days, and if we have no money we will be unable to enforce the rule. We will have to have some printing done, and if we have no cash I presume the printer will refuse to do it.

MR. FILCHER. It is understood that the printing will be done on the same terms as we have.

Mr. REDDY. There may be, for instance, a call of the house; the Sergeant-at-Arms must have money to start on. The fund will be paid out on the order of the Convention any way. It is reserved for the expenses of the Convention and can only be paid out by the action of the Convention. I apprehend that if this resolution is adopted there are no members on this floor who will demand it or who will stand about this two dollars.

MR. VAN DYKE. I call for the reading of the resolution.

THE SECRETARY read the resolution.

MR. VAN DYKE. Mr. President: I am in favor of that resolution. We might have occasion for the use of a little money and then we would find ourselves in an awkward position. I think we had better allow that fund to remain for contingent expenses.

MR. WHITE. Mr. President: This is the third time this resolution has been brought up; each time in a new form. It is very indefinite what this money is intended for. It is, as I am informed, to be divided among the attachés of this Convention. I know it; because they come to me and told me so. I think we are as good as they are, and they are as good as we are, and we ought to all stand together.

MR. WALKER, of Tuolumne. I move to amend by inserting the word "incidental" before the word "expenses."

MR. DUDLEY, of San Joaquin. I move to lay the resolution on the table.

The motion prevailed.

MR. WALKER, of Tuolumne. I move that the Convention do now adjourn.

The ayes and noes were demanded by Messrs. Larkin, White, Howard, of Los Angeles, Dean, and McCallum.

The roll was called, and the Convention refused to adjourn by the following vote:

AYES.

Barton,	Gorman,	Porter,
Belcher,	Gregg,	Rolfe,
Blackmer,	Herrington,	Turner,
Casserly,	Keyes,	Van Voorhies,
Chapman,	Lindow,	Walker, of Marin,
Doyle,	Mills,	Walker, of Tuolumne,
Dudley, of Solano,	Overton,	Winans—22.
Freud,		

NOES.

Andrews,	Heiskell,	Prouty,
Ayers,	Herold,	Reynolds,
Barbour,	Hilborn,	Rhodes,
Barry,	Hitchcock,	Schell,
Beerstecher,	Holmes,	Schomp,
Bell,	Howard, of Los Angeles,	Shoemaker,
Boggs,	Howard, of Mariposa,	Shurtleff,
Brown,	Huestis,	Smith, of 4th District,
Burt,	Hunter,	Smith, of San Francisco,
Caples,	Inman,	Stedman,
Charles,	Jones,	Stevenson,
Condon,	Joyce,	Terry,
Cross,	Kenny,	Thompson,
Crouch,	Kleine,	Tinnin,
Davis,	Larkin,	Tully,
Dean,	Larue,	Van Dyke,
Dowling,	Lewis,	Webster,
Dudley, of San Joaquin,	McCallum,	Weller,
Evey,	McConnell,	Wellin,
Farrell,	McCoy,	West,
Filcher,	Moffat,	White,
Freeman,	Morse,	Wilson, of Tehama,
Grace,	Nelson,	Wilson, of 1st District,
Hager,	Neunaber,	Wyatt,
Hall,	Ohleyer,	Mr. President—76.
Harrison,		

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and a quorum present.

EXPENSES.

MR. ROLFE. Mr. President: I have a resolution to offer.

THE SECRETARY read:

WHEREAS, The balance of appropriation for this Convention amounts to about three thousand nine hundred dollars; therefore, be it

Resolved, That hereafter the members, officers, and attachés of this Convention receive certificates of service, and that the money aforesaid be set aside for the incidental expenses other than pay of members and attachés.

THE PRESIDENT. The Convention has already voted down such a proposition.

MR. ROLFE. Mr. President: I know that there are quite a number of members in this Convention who voted against the other resolution because it only referred to members, and therefore it would leave this balance in a few days to be taken up by the attachés, and leave us without any money for other incidental expenses. Now, it is proposed to not pay either members or attachés after to-day, because we all understand it will only be about two days' pay for us anyhow, and that will be a very small matter with any of us. The attachés, the Sergeant-at-Arms, and Pages, will, under the law, be entitled to their pay as long as this Convention lasts. They are not limited to the one hundred days. The members of this Convention will have to do without pay after the one hundred days unless the Legislature should hereafter see fit to make an appropriation for us, which is somewhat doubtful. But there are other expenses which we must save some money for, I believe, and the amount of money in the fund is now getting very small. I think we had better save a little so that we will not have to go into our own pockets for it.

MR. AYERS. Mr. President: I move to amend the resolution by adding "or for printing or gaslight." The idea is that if we leave this sum in the treasury the printing expenses and the gaslight expenses will exhaust it all, and it will not subserve the purpose which the gentleman seems to aim at. There may be some purposes for which this money ought to be reserved, such as expenses of the Sergeant-at-Arms, but it should not be reserved for any such purposes as printing and gaslight.

MR. ROLFE. I accept the amendment.

MR. WHITE. Mr. President: I hope this resolution will not be adopted. It takes away from the attachés and members both. The attachés ought certainly to get it to the last day there is any money there. It will be wasted in something; somebody will get hold of it in some way. I think we had better go right along as we have, and let us go to the last day and we will all get along some way, just as well as by keeping three or four thousand dollars for incidental expenses. I do not know but that it means to give an extra pay to some Porter. We do not want any extra expenses. I do not think the law would allow us to keep it if a member asked for his pay, because he has a right to his pay for the one hundred days. I hope the resolution will go by the board just as these others have. I move to lay it on the table.

The motion prevailed.

MILEAGE.

MR. DOWLING. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That the Controller be ordered to issue warrants for the mileage of the newly elected members, representing the districts of Mariposa and Merced and San Francisco.

Referred to Committee on Mileage and Contingent Expenses.

MR. TERRY. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question before the Convention is section twenty-six, and the amendments thereto.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: When the committee rose last we were discussing the amendment offered by the gentleman from San Francisco, Mr. Wilson, to strike out of section twenty-six the following words: "All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any Court of competent jurisdiction." Now, the object of that provision is to place these contracts, which are, in any way that you may regard them, mere gambling contracts, upon the same footing that other gambling contracts are, and let these parties take the same chances that other gamblers do. The gentleman from San Francisco objects to the phrase "sales on margins." That term, I believe, is well understood. I suppose, perhaps, if the gentleman himself is ignorant of the term, he is the only gentleman from his city who is. A great many of them have the very best of reasons for knowing what that phrase means, and they will never forget that knowledge, because they have paid very dearly for it. Sales on margin compose the principal part of the business in these stock boards. It is the very worst species of gambling that can be indulged in. In almost any other gambling a man knows what he is going to lose. If he puts up his money on a game of faro he knows what he is going to lose; but when he buys stock on a margin he never knows where his losses are going to stop. In the language of the gentleman he is called on for "more mud." He is in a condition to lose thousands for a failure to put up more margin. He is never certain where his loss is going to end. If, as was suggested, this clause was confined to those contracts made in stock boards, it would easily be avoided by making such contracts on the streets, and the object of the committee was to prevent such dealings anywhere in the stock board, on the street, or in any private office. Men do not buy stock. That is a mere pretense. The seller has got no stock in his possession, the buyer don't want any stock, and the seller knows it.

The fact is, as I learn from those who have had dealings with these boards, no stock is ever delivered or intended to be delivered. If at the

end of the time, say ten days, the stock has advanced in value, why he gets his check for the difference between that and the price he agreed to pay for it. If, on the contrary, the stock has declined in value, the purchaser must pay the difference, and that is the end of it. But if this provision is adopted, as I think it will be, then no man can sell stock unless he has got it to sell, because he is required to deliver the stock at the time of the sale; and whether he chooses to sell for cash or not, he must have it and deliver it when he sells it. It is not a perfect remedy, but it is some remedy. It will prevent a great deal of the evil. Persons will not have so much object in putting up and down price of stocks, which is simply done for the purpose of robbing the people. These fine stories are simply flies to catch gulls. If these men who have been indulging in that kind of swindling had justice meted out to them in the same measure and at the same rate that it has been meted out to poorer, though less guilty, they would have to live more than a thousand years or cheat the State out of years of service. Now, we propose to put some sort of check upon such operations. We propose to say that they are dealing with a man as other gamblers, and that it is at his option whether he will pay them or not; that if he objects, he can sue them and recover his money. It puts them exactly on the same footing with other gamblers and allows a party to recover the money out of which he has been fleeced.

It has been said that the effect would be to drive this stock board to Virginia City. Well, as far as I am concerned, and I think the people of the State are of the same opinion, I would be perfectly willing to see the whole business in —— a climate very much farther south than Virginia City. It would be "good riddance to bad rubbish." The country would be prosperous now but for that. We have periodical rises and falls in this stock board. Whenever the season has been prosperous, some wonderful discovery of millions of ore is made in the fifteen hundred-foot level or the twenty-four hundred foot-level of some mine, and a great excitement is raised and kept up until the profits arising from the wheat crop has been stolen from the honest farmers, and then it is discovered that what was supposed to be a large body of ore was only a little bunch that did not amount to much anyhow; the mine peters out and there is nothing left of it except a few miserable persons who have lost their homesteads or their savings of years, and are driven into the almshouse or into the penitentiary in time. This provision is not going to interfere with an honest sale by anybody, of any honest stock that he may have. If an administrator makes a sale of stock, there is no reason why the stock should not be delivered. The party delivers other property when he sells, and takes security for the purchase money, and no harm can be done in that way. If a man has got the stock he can deliver it; if he has not got the stock, he has no right to sell it in a manner which simply means a bet upon the rise or fall. I say that no injury can be done to any honest man or any legitimate business, and the only effect will be to prevent these swindling sales of stock which the seller has not got, and the purchaser does not want, and which is simply betting upon the rise or fall of that stock within a given number of days. The section without that would be of very little benefit to anybody. To be sure, the Legislature is directed to regulate or prohibit the buying or selling of stock. They may regulate in a way which will afford no benefit to the people. I hope that they will regulate it so as to put an end to it. But we should do something. An attempt was made last Winter to try to do away with some of the evils which flow from the dealings in stocks, and it is a matter of public history, as far as newspapers can make history, that a bill was presented to parties in San Francisco for twenty-eight thousand dollars, the expenses in defeating that bill in the Senate, and the bill was paid. I do not know whether it was transferred to the "India rubber account," or what was done with it. That was to prevent the passage of a bill regulating that traffic. Now, it is for us to protect the people against it. We cannot do it as fully as the Legislature can, but we can do this much: we can make these contracts void, and in that way we will do away with more than one half of the injury and loss which is inflicted upon the people by this manner of dealing.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: I am satisfied that the section will not work out the good which the gentleman proposes. His speech sounds well. As to the Grangers around here that have gone to the city and bought on "buyers 30," I spoke to several of them, and they deny it. Mr. McConnell says he has done none of it. This does not remedy the evil, and the evils that are in the section are greater than those aimed at. This class of contracts only exist between dealers carrying large capital. It is the smaller transactions wherein the people are injured. I am sorry about these grangers, but I do not see that the part Mr. Wilson proposes to strike out is of any benefit to them. I think that Mr. Terry is mistaken, and that by adopting this section, you are increasing the chances of the poorer classes being robbed. It is for the Legislature to regulate or prohibit, and the knocking off of the latter part of the section does not reduce the chances of the Legislature doing that. Mr. Wilson's amendment leaves it this way:

"SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association."

The latter part of the section could easily be avoided. In spite of prohibitory legislation, and in spite of this clause in the Constitution, it will only be necessary for one broker to deliver the stock to be delivered to another broker as security in order to avoid it. It is simply a little more circumlocution in doing the same thing, and the only thing that can be done is to leave it to the Legislature to make proper laws in regard to it. This clause in the Constitution is simply a catchpenny and will not save the grangers who send their money to the stock board.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: The argument of the gentleman from San Joaquin, Mr. Terry, in support of the section, is impracticable. He seeks to remedy an evil, and in proceeding to do so he destroys the rights of innocent business men. There is just the trouble and the exact difficulty. While it cures the evil, it destroys more honest and regular business transactions, and does greater injury to the public than the benefits which it confers. It prevents the sale of any shares of capital stock to any person to be delivered at a future day, and it does not reach the point to which he would address himself. If he intended to reach fictitious sales of stock he has been singularly unfortunate. I claim that this is destructive of business principles. It is a violation of the dictates of good common sense. It is interfering with the business of men who are capable of conducting their own affairs; and I am opposed to this Convention acting as a wet nurse to individuals who are able to manage their own affairs; and I am opposed to declaring any transaction void after a man enters into it with his eyes open and is dealing according to his own judgment. It seems to interfere with the ordinary business transactions of life which are free from any immoral tendency. We had better delegate it to the Legislature. We had better understand now and at once what is the object and meaning of a Constitutional Convention. The Legislature, after all, is a branch of the general government, and we must leave to it ordinary powers of the legislative branch of the government. The section without this last clause permits the Legislature to exercise a sound discretion on the subject of stock transactions; but this last clause is a violation of all business principle, and, in my judgment, the dictates of common sense, and is productive of more evil than the evil which is sought to be remedied. This does not prevent the fictitious sale of stocks at all; it goes further. It is hardly related to that purpose, yet it prevents the ordinary business transactions of which I have spoken, and it prevents sales being made part cash and part on time. The gentleman says, deliver the property and take security. There are many instances where the best security is the property itself. A man sells a piece of land, and the purchase money is to be paid in the future. He retains the title to the lands as his security. That is an every day transaction.

MR. TERRY. But if he retains possession of personal property the sale is void.

MR. WILSON. You are speaking of a case of fraud.

MR. TERRY. If a man sells personal property and a creditor attaches it in his hands, the sale is void as to that creditor.

MR. WILSON. The gentleman knows that a transaction between a buyer and a seller, and one between a buyer and a sellor and a creditor who is being injured, are two different things. This does not affect the creditor at all. That is merely one of those delusive lights which the gentleman throws out. No gentleman more thoroughly understands the art of presenting the worse as the better reason. He has the capacity, as shown in his argument, beyond any man that I know of on the floor. It is with the greatest difficulty, at times, that I resist him, for he rises with that earnest, honest expression of his, and can almost make us believe that wrong is right. But he evades the question. I ask him to walk up to the mark and say if this does not interfere with the common transactions of which I speak, and that if a man who owns insurance stock, or stock of a carriage company, is not prevented from selling it payable in the future? I say that to place that in the Constitution would make us the laughing stock of the world at large, and it will be criticised and commented upon as a simple case of corporation-phobia. I say to put that in the Constitution is not to be thought of.

MR. TERRY. The gentleman is objecting that this will interfere with business transactions, and knows that sales of personal property, unaccompanied by actual and continued possession, are not good.

MR. WILSON. Is it not good between the parties?

MR. TERRY. Certainly it is good between the parties.

MR. WILSON. That answers the question.

MR. TERRY. If a man has got property to sell, I can see no wrong that is done, either to the buyer or the seller, by requiring the property to be delivered when it is sold. That is what the statute of fraud requires.

MR. WILSON. It does not as between the parties.

MR. TERRY. You say that it will derange business. Does not the statute of fraud do the same thing? If I buy property of you and allow that property to remain in your possession, don't I have to take the chances?

MR. WILSON. If we introduce a third person into the proposition I have nothing more to add. It has nothing to do with the matter under consideration.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: The gentleman says that it is wrong for this Convention, or for the Legislature, to constitute itself the guardian of grown men, and to say that they shall not do as they please with their own. Why, the same kind of argument can be used against the law to prevent the sale of lottery tickets. The gentleman may say, why, here is a man who says: "I am willing to give you twenty-five dollars for a lottery ticket," and the Legislature has no right to come in and say that the man shall not make the contract. Here is a man who is willing to sell, and here is a man who is willing to buy, and yet the State prohibits it, because it is against good morals, or against public morals to allow it. What right has the State to step in there? Yet the State does step in and prevent the transaction. Not one man has been driven to crime by faro and monte, and other kinds of gambling, to a thousand by the transaction of these stock boards in San Francisco. Public officers, men of the highest reputation, men who have been

looked upon as the soul of honor, have been drawn into this whirlpool, have gambled off what did not belong to them, and have only escaped the penitentiary by committing suicide. Men employed in banks—employés, clerks, and tellers—rob their employers in order to obtain money to keep up their gambling operations in stocks. I do not put this forward as a perfect remedy, but in some degree it protects the people against these swindlers. It makes all such contracts void. No man is going to sell to another when he knows that the man can repudiate the contract and sue him, and recover his money back. The gentleman from Kern says that these things are principally confined to the manipulators of the stock board. Let them. Let the dogs eat the dogs. Let the thieves rob the thieves. Let the swindlers make a Kilkenny cat business of it, and put each other in the poorhouse; I have no objection to it. But I want to protect the honest people outside of the stock board. The laws are not to protect gamblers against each other, but to protect other men against gamblers. This section is not to protect stock gamblers against each other, but to protect honest people against stock gamblers, and I ask the members of this Convention to adopt it.

REMARKS OF MR. CROSS.

MR. CROSS: Mr. Chairman: There has been some question raised by members of the Convention that individuals not speaking upon this floor the views which they have, are inclined to have an influence here which they ought not to have. The argument has been offered to us that it will not do to interfere with the matter of the sale of stock; that whenever we do that we are going against the interests of our constituency. I know not how that may be, but I know something of the history of the relation of the stock boards, and their transactions to the legitimate business of mining in this State; that so far from the transactions of the stock boards being in any way an aid to the mining interests of California, they are the means of diverting from the legitimate business of mining the very capital which ought to be invested in legitimate mining, and investing it in the worst form of gambling. Now, the gentleman talks about wet nursing people; I will give him a sample of this wet nursing. Now, sir, about a year ago the curbstone brokers in San Francisco became hungry because for some time past there had been no great excitement in mining stocks. They concluded that they must have a mining excitement. They commenced to talk about a certain stock, and how they had had the advice of men who knew to put their money into that stock. They concluded that if this stock could be run up to a high figure, it would carry others with it, and there would be sales of stock and plenty for them to do. They secure some newspaper—some one of those great leading journals of San Francisco—and blow about this certain stock. They then begin to talk about a rise. Stocks are going up! Everybody soon talks about it. Even young people, just starting out in life, think it would be a great thing to make a fortune, or make a few thousand dollars that will give them a start. They put into these stocks all the money they have saved with which to begin life. Go to a broker to buy stock; they do not want to sell stock; they want a man to give so much margin, and they will carry so much stock for him; presently the stock begins to boom, and a few more buy. Everybody puts into it all the money they can raise. Stocks are going up and the people think they are rich. This lasts until all the loose money in the State is on margin. Then what? Then, all of a sudden, the papers quit blowing, and the curbstone brokers quit talking, and in a day the margins are swept away. And what goes with them? Why, the savings of years; the earnings of men and women who have labored for years to save a small amount of money, and the homes of people who had their little homesteads. Why one hundred and eighty-eight million dollars went into stocks in this State. Did it go into the pockets of the people? No, sir; it was swept over a few bankers' counters. Now, the whole system is wrong. It is a system of robbery; it is a system of false assertions, and it is as much worse than the game of three-card monte as a lie is worse than a mistake.

MR. WILSON. Can you name any honest newspaper that you can pick out, that will lend itself to any such swindling operation as you have described?

MR. KLEINE. You say that the brokers will not buy any stock except on a margin. I say the leading brokers will not buy any stock on margin except good stock on Comstock. They won't buy you a share.

MR. CROSS. Now, sir, the result is this, that the whole earnings of the year are sometimes swept away in a few days into the hands of a few men. The unfortunates who have been ruined by this stock gambling are not in San Francisco alone. They are all over the State. I tell you, Mr. Chairman, this opposition does not come from a fear that this section will not have any effect. The fear is that it will have some effect. The sales that are so dangerous are the very class that this section strikes at—this business of selling stock that is never delivered. It is the great means of robbing the industries of this State of a large share of their earnings. The mining interests of this State demand not that stocks shall be sold on margin, not that stocks shall be sold to be delivered at some future day, but that when the stock is sold, that it shall be a bona fide sale, and that is all they do demand.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I shall support the provision as reported by the committee, and if the language of the committee was stronger, and could go further towards repressing the evil of stock gambling in this State, I should support it more heartily. If there is any one evil, above all other evils, that is affecting the people of California to-day, it is the evil of stock gambling, in my opinion. And as I believe it a part of wisdom to legislate, and to treat of the evils that we have, and not of those that have ceased to operate, and gone out of existence years and years ago, I propose, in so far as I can, to have a clause in the Constitution repressing this evil, and if the introduction into the Constitution of new clauses for the purpose of repressing this evil should bring upon us the laughter of the people of to-day or of succeeding generations, I am willing to stand my part of the laughter. I feel upon this subject very much as the old darkey is represented to have felt, when he asked the white friend of his to write him a letter, which he wanted to send to a rival in the affections of a certain lady. The young man asked, "What shall I say?" "Well," says the old darkey, "you can commence 'hell and damnation,' and grow hotter and hotter as you go on." Upon the subject of stock gambling that would be the kind of clause I would introduce into this Constitution, and clinch it as much as it would be possible to do. I have no more sympathy with a stock gambler than I have with any other kind of gambler. If we are going to protect this kind of gambling I am in favor of having lotteries and gift enterprises—a new way of getting around lotteries; and I do not see why three-card monte, and, equally, why the national game of faro should not be attended with all the dignity that it once held among men. I read a definition not long ago of what buying and selling stocks upon margin was, and it strikes me as being a most admirable definition of that transaction. It is about as Mr. Wilson and Mr. Terry gave it, except that it is a little more sententious. It said that the transaction was one where the man who sold that which he did not have, and the man who purchased, was a man who had nothing with which to purchase. That was selling stocks upon a margin. After all other kinds of concentrated capital has been let loose upon the people of this State, unrestrained by law; after Stanford has thrown to each all that he sees proper; after land monopoly can run right along with all the fraudulent transactions of the Land Office that can be conceived of to monopolize the land; after all the water can be taken up in the like way and under like transactions; after all these things can be concentrated in order to rob the producing classes of this State; then it is that this stock gambling board is reared up in this City of San Francisco, which is intended for the benefit of the washerwoman and the hands who work in the harvest field, as a place for all their little loose cash. It is held up as a glittering prize by which they can become millionaires; that they can make a short road to fame and fortune: that they can grow up and be the O'Briens; and they can be these great names that are constantly kept before the people by the public press of this State; and the whole people of this State are set in a flame with the idea of obtaining fortunes by gambling, or in any other way than that of patient industry by which a nation succeeds and is exalted. If it would not be improper here I would just say that righteousness exalteth a people, but sin is a reproach to any nation. We would come under that saying in a very short time more. I hope there will be no elimination; that there will be nothing that will make this section thinner, or more like milk and water. I want it concentrated and stewed down until it will be like one of those concentrated drinks frequently taken on California street. I want it concentrated and made strong, if it is possible, so far as I am concerned. I am induced to say this much because I told those who voted for me that when this proposition came up I would say it, and then I would vote it. I have said it to redeem that pledge and to discharge the duty I owe to my conscience. And having said it I am not the least afraid that any lobby will prevent me from voting it. I will be on hand to vote it whenever the vote comes.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: As I moved this proposition in the committee which has excited some discussion here, and I have no doubt, if we adopt it, will excite a great deal more throughout the State, I propose to say a few words in support of the proposition. First, permit me to say, with regard to the last clause, that that was inserted after the committee had agreed to the proposition as I had first moved it and after a motion to reconsider. I confess I was not entirely satisfied with it, and believe still that it ought to be amended; and if some gentleman should move such an amendment, I would be in favor of making that clause read this way: "All contracts made in the stock board or other stock market for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void; and any money paid upon such contracts may be recovered by the party paying it, by suit in any Court of competent jurisdiction."

I do think there is some point in the objection which has been made as to the manner in which that last clause reads with reference to sales in all other places. The object of the committee is to remedy what I believe to be the greatest evil of the Pacific Coast. I am disposed to believe it is the greatest evil in our whole country anywhere; and it is not confined, as some suppose, to one class or locality. The evil is widespread. It extends all over the State. There is scarcely a town in the State of California that has a telegraph station, that does not daily receive the reports of the sales of the stock board in San Francisco for the information of the numerous people in the different locations throughout the whole State, who are engaged in stock gambling. It is confined to no particular class. It includes all—professional men, merchants, laborers, rich and poor, of every condition in life; and, as the gentleman says here, ministers also. In fact I remember as an illustration of the widespread nature of the evil in one community, that it was said, during the great mining excitement in San Francisco about three years ago, that the ministers were so absorbed in this mining speculation, that when stocks were about at their highest, a certain clergyman was heard to close one of his prayers with "over three hundred and fifteen—amen!" The manner of doing business has been referred to by gentlemen, and I need not dilate upon it. Everybody who has been in San Francisco "knows how it is himself." A good many of us have been there, not on the inside, unfortunately. I have no connection with stocks myself; have not had for a long time. I am aware that there is a great deal of good advice given—some of it for sale, some of it that is given freely. One of the very best points perhaps which they give and which is thought to be a certain rule and not fail, is to "buy 'em when they are low and sell 'em when they are high." My friends lost most

of their money by buying them when they were low and they went a good deal lower.

The Committee on Legislative Department thought this was an evil which ought to be treated in this Constitution, and therefore we put in this brief proposition:

"The Legislature shall pass laws to regulate or prohibit the buying and selling of shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association."

We could not reach the sale of stocks elsewhere. The object of this is to give the Legislature the authority to regulate or prohibit the whole business; and I believe if the Legislature should do so, it would remedy one of the greatest evils the State has ever known. I think, when the passions of this hour have passed away, and the history of the great excitement in San Francisco shall come to be written, it will be found that the real source of the great public discontent in this State, especially in the City of San Francisco, was the widespread ruin occasioned by speculation in mining stocks, sold in the boards. The object of all law is to commend what is right and prohibit what is wrong. We have proposed in this section, so far as possible, to authorize the Legislature to prohibit this great wrong. I do not propose, however, to discuss this matter any further. I hope that the Committee of the Whole will agree to the section as reported by the Committee on Legislative Department, and while I do not wish to discuss this last proposition, I will say, if the gentleman from San Francisco will move an amendment to insert the words as I have stated, so as to confine these transactions, so far as sales on margin or on time are concerned, and rendering such contracts void, to the contracts connected with the sales in the Boards, I should vote for it. I do not see any difficulty in that respect.

MR. MCCONNELL. I demand the previous question.

The main question was ordered.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from San Francisco, Mr. Wilson, to strike out all after the word "association," in line seven.

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Placer, Mr. Filcher.

The amendment was rejected.

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

THE SECRETARY read:

"Amend section twenty-six by inserting the words 'gambling and' after the word 'prohibit,' and before the word 'the,' in the second line."

MR. GREGG. Mr. Chairman: The amendment is only to prohibit gambling.

MR. TERRY. Mr. Chairman: I think there is no necessity for that amendment. The Legislature has always prohibited gambling. This section is intended to affect a very large interest in this country, and the word is unnecessary. There is no necessity for instructing the Legislature upon that subject. I prefer to have it passed as reported by the committee.

MR. REYNOLDS. Mr. Chairman: I offer a substitute for the amendment.

THE SECRETARY read:

"Strike out all down to the word 'State,' in line four, and insert as follows: 'No lottery, nor any gift enterprise, nor any scheme in the nature of such, shall be permitted in this State; and it is hereby made the duty of the Legislature to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery or gift enterprise.'"

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

The amendment was rejected.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I will call the attention of the committee to the fact that the section, as reported by the Committee on Legislative Department, is not as strong as the old section of the present Constitution. The present section says that the Legislature shall have no power to authorize lotteries. I do not apprehend that it is necessary to prohibit the Legislature from authorizing lotteries or gift enterprises, and I am unwilling to leave out the prohibition of the present Constitution. That expressly says that no lottery shall be permitted in this State, nor shall the sale of lottery tickets be allowed. Now, the section, as reported by the committee, departs from that and says that the Legislature shall have no power to authorize lotteries. Now, I apprehend that it will be better to outlaw lotteries, to prohibit lotteries and gift enterprises the same as the old Constitution does, say that no lottery nor gift enterprise, nor any scheme in the nature of such, shall be permitted. That will be substantially the provision of the old Constitution, and then I have added, "and it is hereby made the duty of the Legislature to prohibit the sale of lottery or gift enterprise tickets or tickets in any scheme in the nature of a lottery or gift enterprise." This goes a little farther than the present Constitution does in this. That, whereas the present Constitution only prohibits lotteries in the State, and does not prohibit the sale of lottery tickets of other States in this State, this will prohibit the sale of foreign lottery tickets in this State. It is a large business. The sale of tickets in the Havana lotteries, the Mexican lotteries, and the numerous schemes gotten up in the various States on the other side of the Rocky Mountains is carried on extensively in the City of San Francisco, with ramifications all over the State, all over the coast. It is that I wish to prohibit.

MR. MCCALLUM. If you will just insert section twenty-seven of the old Constitution, that "No lotteries shall be authorized by this State, nor shall the sale of lottery tickets be allowed," that will cover the whole ground. I do think there is a little omission in the phraseology.

MR. REYNOLDS. My amendment goes a little farther than that. Everybody knows that a Constitution is not self-executing, and we simply provide that the Legislature shall enforce the provision. I have added that it is especially made the duty of the Legislature to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of such, in this State.

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

The amendment was rejected on a division, by a vote of 35 ayes to 42 noes.

MR. MCCALLUM. Mr. Chairman: I move to insert, to precede the section, the present section of the old Constitution, "No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed."

MR. HAGER. If the gentleman puts in, as an amendment, the section of the old Constitution prohibiting lotteries, and the sale of lottery tickets, then he ought to strike out the provision that the Legislature shall pass laws to prohibit the sale of lottery tickets.

MR. CAPLES. Mr. Chairman: If I know anything of the English language, this section is complete and ample, and all that is necessary is reported by the committee, and to prefix anything before it would be simply surplusage and tautology. It would be repeating the same thing over again. It is complete as it is. It says, "The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose." Very well; it has no power to authorize it. "And shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery in this State." Now, I submit that it covers the whole ground, and if you repeat it forty times you would not, and could not, make it more comprehensive than it is. First, it prohibits the Legislature from authorizing a lottery or gift enterprise for any purpose. Then it goes on to say that the Legislature shall pass laws to prevent the sale of lottery tickets or gift enterprise tickets. I submit that to prefix anything would be surplusage. There is no need of anything more than is expressed in that section. It covers the whole ground.

[Cries of "Question," "Question."]

THE CHAIRMAN. There is no question before the committee at present.

MR. WALKER, of Tuolumne. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Amend by striking out the words 'or prohibit,' in the fourth line."

MR. WALKER, of Tuolumne. Mr. Chairman: I offer that because the effect of the section is to destroy, as must be well known to every gentleman, associations which are formed, and which have been formed in all commercial cities, for the purpose of carrying on stock operations. Every large city has a stock exchange, and almost all stock transactions are carried on in that way, through brokers in stock exchanges. It is not to be supposed that a person who may desire to buy or sell a few shares of stock would want to go to San Francisco for the purpose of transacting that business himself. I do not see any way in which that class of business can be transacted except through the stock exchange. It seems to me that it is granting too much license to the Legislature to say that they shall prohibit one of the grandest institutions of the world, and that is the stock exchange.

MR. HAGER. Mr. Chairman: I am opposed to striking that out, sir. It says, "The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association." It only applies to these private stock boards. I think it is right. It does not apply to sales in open market, but only where the stock board is controlled by an association where they shut the public out.

MR. WALKER, of Tuolumne. It says in any stock board. There no free stock boards. It is so all over the world. I do not expect this amendment to be voted for; I merely want it to be shown where I stand on it.

MR. HAGER. These stock boards in San Francisco are not open to the public; you cannot get into them unless you have a permit. I do not buy stocks, and I do not sell stocks, but I know, to get into the stock board, you have to have a permit. It is under the control of some association. If it was public, I would say that the words "or prohibit" ought not to be there, but, as I understand this section, it does not apply to public places; and that association can exclude anybody they see fit.

MR. HERRINGTON. Mr. Chairman: I think the section can be adjusted by striking out the first line and the second line down to the word "prohibit," and inserting in lieu thereof the words, "no lottery or gift enterprise shall be allowed for any purpose in this State, and the Legislature shall;" and then it reads right on.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Tuolumne, Mr. Walker.

The amendment was rejected.

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

THE SECRETARY read:

"Amend section twenty-six by striking out down to the word 'prohibit' in line two, and inserting the words, 'no lottery or gift enterprise shall be allowed for any purpose in this State, and the Legislature shall.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

The question was put.

THE CHAIRMAN. There is no quorum voting. There is evidently a quorum in the house. I will put the question again.

The question was again put.

THE CHAIRMAN. Only seventeen in the affirmative; manifestly a minority of the committee. The amendment is lost.

MR. HERRINGTON. That is a majority of those voting.

MR. MCCALLUM. I ask leave to read my amendment to section twenty-six: Insert, "No lotteries shall be authorized by this State, nor shall the sale of lottery tickets be allowed;" and strike out all between the words "shall," in line one, and the words "pass," in line two. That will meet the objection of the gentleman from San Francisco, Judge Hager.

THE CHAIRMAN. The question is on the adoption of the amendment.

A division was called for and the question put.

THE CHAIRMAN. No quorum voting. There is manifestly a quorum in the house. The Chair will put the question again.

The amendment was rejected, on a division, by a vote of 28 ayes to 51 noes.

CONGRESSIONAL DISTRICTS.

THE CHAIRMAN. If there be no further amendment to section twenty-six, the Secretary will read section twenty-seven.

THE SECRETARY read:

SEC. 27. When a Congressional District shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county or city and county shall be divided in forming a Congressional District so as to attach one portion of a county or city and county to another city and county; but the Legislature may divide any county or city and county into as many Congressional Districts as it may be entitled by law.

CORPORATIONS.

THE CHAIRMAN. The Chair hears no amendment to section twenty-seven. The Secretary will read section twenty-eight.

THE SECRETARY read:

SEC. 28. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation, and no person shall be selected who is an officer or stockholder in any corporation.

MR. GREGG. Mr. Chairman: I move to strike out section twenty-eight. It is provided for in sections nineteen and twenty of the article on corporations.

MR. TERRY. I do not see it.

MR. SCHELL. I desire to offer an amendment to the amendment.

THE SECRETARY read:

"Amend by inserting after the word 'corporations,' in line three, the following: 'other than railroad and other transportation companies.'"

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman and gentlemen of the Committee: Section twenty-eight as reported by the committee, as the same now reads, seems to me to be in conflict to a certain extent with certain sections adopted and forming a part of the article on corporations other than municipal. In that article we have designated three persons as Railroad Commissioners, who shall have power to fix the rates of fare and freight, and generally have control of the railroad and transportation companies of this State. Now, section twenty-eight, as the same now stands, says the "Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations." Here the Legislature is given the power to regulate charges and generally to control corporations, and in the article on corporations other than municipal, we give this power to three Railroad Commissioners. There seems to be an apparent conflict between the Legislature and these three Railroad Commissioners. I think, Mr. Chairman, that this can be avoided, and unless an amendment be offered to that effect, I propose, at the proper time, to offer the following amendment: by inserting after the word "corporations," the last word in the present section, "Provided, that nothing in this section shall be construed to give to the Legislature the authority to act contrary to the provisions of article ——, of this Constitution, relative to corporations other than municipal." That is, to prevent the Legislature from having any power or authority over those things specially given into the hands of the three Commissioners; and unless we make this express reservation there will be a conflict of authority. I am not in favor of striking out the present section. I am not in favor of the motion of the gentleman from Kern, to strike out this section, because if this section is stricken out we will have no right or authority to control companies and corporations other than railroad corporations. I believe that the present section gives us the power to control water companies, and if we were to strike this out we might not have the power to control the Spring Valley Water Company and other gigantic water companies. I will read it:

"SEC. 28. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation, and no person shall be selected who is an officer or stockholder in any corporation."

A water company furnishes a commodity. Of course, under this section, the Legislature has power to fix the rates of charges that a water company can charge for its water. Unless a section of this character be contained in the Constitution, water companies and companies other than railroad corporations may escape under their charters. They may claim exemption from legislative control. I believe the section to be absolutely necessary in order to control these companies which furnish the commodities of gas and water. I believe the section as it stands should remain, word for word, with the addition that the Legislature shall have no power, by reason of the existence of this section, to in anywise control the acts of the Railroad Commissioners. I think the section ought to remain as a part of the Constitution.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: When this section was reported, which was, of course, before the Committee of the Whole had acted upon the report of the Committee on Corporations other than Municipal, it was intended to cover all corporations, by providing that the Legislature should fix the rate of charges for services and commodities. Since the adoption by the Committee of the Whole of the twenty-second section of the report of the Committee on Corporations other than Municipal, this section, perhaps, ought to be modified. That is, to insert after the word "corporations" in the third line, the words "other than railroad and other transportation companies."

THE CHAIRMAN. That is the amendment offered by the gentleman from Stanislaus, Mr. Schell.

MR. TERRY. That is all that is necessary. The Legislature has all the powers we do not prohibit them from exercising; but we can require of them to do some things, and they are here required to pass laws for the regulation and limitation of charges for services performed and commodities furnished by corporations.

MR. BEERSTECHER. I would ask the gentleman if the effect of the amendment of the gentleman from Stanislaus would be to simply except those corporations over which the Railroad Commissioners are to have control?

MR. TERRY. That is what I understand.

MR. BEERSTECHER. Then I am satisfied with the amendment.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I rise more for information than anything else. This section seems to be very general. It says that "the Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations." I see no limitation in it. Now, I would like to know whether it is intended that the Legislature shall regulate the charges for services performed and commodities furnished by all corporations? It seems to me that it would be imperatively their duty, for another section of the Constitution makes this mandatory. Now, would it not be obligatory on the Legislature to regulate the price of all services by all corporations, and all commodities of all corporations? For instance, if we had some of these corporations that have been mentioned by the gentleman from Monterey, Mr. Wyatt, for hatching chickens, raising pigs, etc., it would be obligatory upon the Legislature to fix the price of chickens and pigs.

MR. WYATT. I think those gentlemen would disincorporate then and it would act most admirably.

MR. ROLFE. It would require them to set a price upon the blankets of this woolen mill over here—they are now incorporated. They must go into these details. And I would just suggest would it not be advisable for us to amend our previous section limiting the session of the Legislature to sixty days? Now, I do not know as there is anything wrong in it but it seems to me that it would be imposing a great labor upon the Legislature, whereas the intention is to relieve them of business. With that understanding I think I shall vote in favor of striking it out.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: If gentlemen will look at proposition number two hundred and thirteen, on file, they will find this proposition. I confess that the effect of this would be to require the Legislature to pass laws to regulate all that class of corporations which are generally known as monopolies. The proposition, as I presented it, will be found numbered two hundred and thirteen, in this language: "Corporations other than municipal may be formed under general laws, but shall not be created by special Act. All laws heretofore passed, or which shall hereafter be passed in pursuance of this section, may be altered from time to time, or repealed."

That language occurs in the report of the Committee on Corporations other than Municipal, and therefore it should be omitted here. Therefore it should start in at this place: "Laws shall be passed for the regulation and limitation of the rates of freights and fares, and the rates of gas and water, and other services and commodities performed and furnished by such corporations. In case of the selection of any persons or officers to regulate such rates, they shall be selected as may be provided by law, which shall in no case authorize the naming of any such person or officer by any corporation."

MR. TERRY. Suppose a wharf company should monopolize all the frontage on the City of San Francisco.

MR. ROLFE. The Legislature has the power to do it anyway.

MR. MCCALLUM. I think the language is not sufficiently specific; that it might be made more so, so as to cover the particular kind of corporations that the gentleman means. But as to the point of the gentleman—that same point was made in the committee, and I confess I thought there was something in it. It was answered that it would do no harm, as no action would be taken. Perhaps that is a sufficient answer. I confess that I would prefer the proposition as originally presented, with perhaps some slight amendment, so as to meet the point made by the Chairman of the committee, so as to legislate on that class of corporations doing business for the public at large. Therefore, when an opportunity shall present itself—I believe there are a couple of amendments pending now—I propose to offer an amendment to cover that ground. With reference to the conflict between this section and the article on corporations other than municipal, that can be remedied by inserting, after the word "corporations," in line three, the words "except as otherwise provided in this Constitution," because the report of the Committee on Corporations does not cover other transportation companies than railroad companies. If you put in "except railroad and other transportation companies," you leave other transportation companies than railroad companies wholly unprovided for, either in the report of the Committee on Corporations or in this article. The point is, that in the railroad article it refers exclusively to railroad cor-

porations. I am aware that others thought it would bear a different interpretation, but the Chairman of the committee held that that was the object.

MR. HOWARD, of Los Angeles. It is evident to me that this section requires some examination, and we cannot get through with this article to-night. I move, therefore, that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

RESOLUTION.

MR. DOWLING. Mr. President: I ask leave to introduce a resolution.

THE SECRETARY read:

Resolved, That the State Controller be and is hereby ordered to issue warrants to be used in transmitting memorials relative to Chinese to the President of the United States, Senate and House of Representatives, Governors of the Pacific States and Territories, and to all the Governors of the several States of the United States, to the amount of five dollars in favor of the Secretary, for purchasing postage stamps, and for other correspondence of the Convention.

Referred to the Committee on Mileage and Contingent Expenses.

NOTICE.

MR. DOWLING. Mr. President: I send to the desk a notice I want to give.

THE SECRETARY read:

Mr. President and gentlemen of the Convention:

I give notice that I intend to rise to a question of privilege on Monday, the twenty-third day of December, at two o'clock P. M., in regard to certain criticisms on my conduct in connection with articles five and six relative to calling a Constitutional Convention for the State of California; for the free exercise of my own judgment, and having a desire to represent my constituency with extreme fidelity, I was cited to appear before a private caucus to answer, and was ignominiously expelled.

Herewith is appended a correct copy of such citation:

SENATE CHAMBER, December 21, 1878.

P. F. Dowling, Esq.:

DEAR SIR: In accordance with resolution passed at meeting of the Constitutional Club, held Thursday evening, December twentieth, eighteen hundred and seventy-eight, you are requested to attend the meeting of said club, to be held this evening, in room fifty-nine, State Capitol, and show cause, if any, why you acted contrary to the wishes of said club in relation to the election of representative to fill vacancy occasioned by death of B. F. Kenny.

Yours respectfully,

JAMES N. BARTON, President.

J. FLYNN, Secretary.

MR. TERRY. Mr. President: I move the Convention do now adjourn.

Carried.

And at four o'clock P. M. the Convention stood adjourned.

EIGHTY-SEVENTH DAY.

SACRAMENTO, Monday, December 23d, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Harrison,	Overton,
Ayers,	Harvey,	Porter,
Barbour,	Heiskell,	Prouty,
Barry,	Herold,	Reddy,
Barton,	Herrington,	Reed,
Beerstecher,	Hilborn,	Reynolds,
Belcher,	Hitchcock,	Rhodes,
Bell,	Holmes,	Ringgold,
Blackmer,	Howard, of Los Angeles,	Rolfe,
Brown,	Howard, of Mariposa,	Schell,
Burt,	Huestis,	Schomp,
Caples,	Hughey,	Shoemaker,
Casserly,	Hunter,	Shurtleff,
Charles,	Johnson,	Smith, of 4th District,
Condon,	Jones,	Smith, of San Francisco,
Cross,	Kenny,	Soule,
Crouch,	Keyes,	Stedman,
Davis,	Kleine,	Steele,
Dean,	Lampson,	Stevenson,
Dowling,	Larkin,	Sweasey,
Doyle,	Larue,	Terry,
Dudley, of Solano,	Lewis,	Thompson,
Dunlap,	Lindow,	Tinnin,
Eagon,	Mansfield,	Turner,
Edgerton,	McCallum,	Tuttle,
Estee,	McConnell,	Vacquerel,
Evey,	McCoy,	Van Voorhies,
Farrell,	McFarland,	Walker, of Tuolumne,
Finney,	McNutt,	Webster,
Freeman,	Miller,	Weller,
Freud,	Moffat,	West,
Garvey,	Moreland,	White,
Gorman,	Morse,	Wilson, of Tehama,
Grace,	Nason,	Wilson, of 1st District,
Gregg,	Nelson,	Wyatt,
Hager,	Neunaber,	Mr. President.
Hale,	Ohleyer,	

ABSENT.

Barnes,	Hall,	Pulliam,
Berry,	Inman,	Shafter,
Biggs,	Joyce,	Smith, of Santa Clara,
Boggs,	Kelley,	Stuart,
Boucher,	Laine,	Swenson,
Campbell,	Lavigne,	Swing,
Chapman,	Martin, of Alameda,	Townsend,
Cowden,	Martin, of Santa Cruz,	Tully,
Dudley, of San Joaquin,	McComas,	Van Dyke,
Estey,	Mills,	Walker, of Marin,
Fawcett,	Murphy,	Waters,
Filcher,	Noel,	Wellin,
Glascock,	O'Donnell,	Wickes,
Graves,	O'Sullivan,	Winans.

LEAVE OF ABSENCE.

Leave of absence for two days was granted Messrs. Chapman, Biggs, Wickes, and Walker, of Marin.

Leave of absence for three days was granted Mr. Boggs.

Four days' leave of absence was granted Mr. Swenson.

Leave of absence for one week was granted Mr. Swing.

Indefinite leave of absence was granted Messrs. Laine, Tully, and Filcher.

Leave of absence until two o'clock was granted Messrs. Hager and Joyce.

THE JOURNAL.

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

Carried.

MR. AYERS. Mr. President: I ask that the proposition presented by me on Saturday and referred to the Committee on Apportionment and Representation, be referred to the Committee on Legislative Department. I understand that the Committee on Apportionment and Representation is not in working order.

THE PRESIDENT. If there be no objection it is so ordered.

LEGISLATIVE DEPARTMENT—CORPORATIONS.

MR. TERRY. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section twenty-eight, and the amendments offered thereto, is pending before the committee. The Secretary will read the amendment.

THE SECRETARY read:

"Mr. Gregg moves to strike out the section.

"Amendment by Mr. Schell:

"Amend by inserting after the word 'corporations,' in line three, the following: 'other than railroad and other transportation companies.'"

MR. HOWARD. Mr. Chairman: I wish to offer an amendment, to go in after the word "corporations," in line three.

THE SECRETARY read:

"Insert after the word 'corporations,' in line three, the words 'in all business in which the public has a use.'"

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I will state that this is the language of the Elevator cases. I do not understand that we have a right to control the business of corporations in any other class of cases except that in which the public has a use. That is the language used in the Elevator cases. The Chief Justice says:

"When, therefore, one devotes his property to a use in which the public has an interest, he, in fact, grants to the public an interest in that property, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

Now, we are going as far as I think the recognized principles of law, as they have been determined by the supreme tribunal of the country, have gone, and not beyond it. For instance, we have in this country corporations for the manufacture of soap, and the gentleman from San Bernardino suggests, for the manufacture of blankets, and for the manufacture of brooms, and all that class of business in which the public has no interest, and therefore I see no propriety and no necessity for acting upon that class of business. Let us act upon that class of business in which the public has an interest. That is as far as the Supreme Court of the United States has gone, and, I think, is quite far enough, and will cover every evil at which we aim. Therefore I hope that the Chairman of the Committee on Legislative Department will agree that that amendment is correct.

MR. TERRY. Mr. Chairman: I do not suppose that there is any very great objection to the amendment offered by the gentleman from Los Angeles; but the idea of the committee in reporting this section was, that there should be no corporations except for public benefit. That is the rule which is laid down in the books, that corporations are not formed for the profit of the individual corporator, but are rightly only formed for such purposes as are beneficial to the general public. In that view of the principle it occurs to me that there would be properly no corporation which the public had not the right to use; and it was the purpose of the committee to discourage the formation of corporations, simply for the private advantage of the corporators.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: I heartily support the amendment of Mr. Howard, and in fact, withdraw the motion to strike out the motion

made by me on Saturday. The section as it originally reads does not meet the evil that is complained of in debate. I believe that the water companies, the gas companies, and the wharf companies are engaged in business in which the public has a use. This section is not directed at individuals. I suppose that these gas companies and water companies could put all their property into the hands of an individual in trust for them, and still go on with their monopoly. This word "corporation" seems to be sufficient for the Convention. If the word "corporation" is there, they expect to go at it like a trout for a worm. I cannot see that the report of the committee brings about any good results. It simply makes them change their form of business, and allows them to continue their monopoly. The evil is nothing if the word "corporation" is not there. They go for it simply because the word "corporation" is there. Now, then, under the statute, a corporation can be dissolved, and can sell its property. A water corporation can do so, a gas corporation can do so, the telegraph companies can do so, and then you have nothing to resort too but the common law, and your Constitution is no good to you at all. It is simply there as a catchpenny, and amounts to nothing that is real. If it had meant business it should have said "individuals, or corporations engaged in a public employment," which would have included the words of the Supreme Court of the United States, and would have included all classes of business. But as it is, it is insufficient.

MR. HOWARD. I would say to my friend from Kern, that under the amendment which I have offered the Legislature would have the right to control the water companies in their charges for the distribution of water both in the cities and for irrigation purposes; and also gas companies.

MR. GREGG. I admit that, but you do not include the word "persons," or "individuals."

MR. HOWARD. If you suggest that amendment I will accept it.

MR. GREGG. I will suggest that the word "individuals" be inserted into the amendment offered by General Howard.

MR. SCHELL. Would it include telegraph companies?

MR. HOWARD. It will include them, of course, because they are corporations in which the public has a use. I will except the case of individuals, because in the Elevator cases it was not a corporation.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope the amendment of Mr. Schell will not prevail. I hope the amendment of Mr. Howard will prevail. The amendment of Mr. Schell proposes to insert in line three, after the word "corporations," the following words: "other than railroad and other transportation companies;" so that the section will read: "The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations other than railroad and other transportation companies." Now, if these words are inserted, it clearly limits the Legislature from doing anything in relation to the regulation of railroad or other transportation companies, and we do not propose to prevent the Legislature from acting in regard to railroad and other transportation companies where the power to act has not been exclusively given to some other body. We have given the power to regulate fares and freights to a Railroad Commission, but we have not lodged all power in that Railroad Commission. There may be a great many things to be done which the Railroad Commission would have no power to do. In the course of time, as new matters arise, it may become necessary to enact laws and to regulate in particular departments and directions where the Commission would be powerless, and the Legislature ought to have the right in the premises wherever the power is not specially conferred upon the Commission. But, if you go and cut the Legislature off absolutely from acting at all, then the Commission not being able to act, and the Legislature also being unable to act, of course, by inserting the words that Mr. Schell has suggested, you virtually legislate in favor of the corporation. There is no doubt but what cases may rise where there ought to be a discretion lodged outside of the Commission, and it seems to me that the insertion of the words offered by Mr. Schell, preventing the Legislature absolutely from doing anything at all in relation to corporations and transportation companies is very dangerous. Very dangerous! And in the course of years may prove to be suicidal to this State. I am opposed to it. The amendment of Mr. Howard is a proper amendment.

MR. BROWN. I would like to hear that amendment read.

THE SECRETARY read:

"Insert after the word, 'corporations,' in line three, the words, 'in all business in which the public has a use.'"

MR. SCHELL. Mr. Chairman: I am willing to accept the amendment offered by the gentleman from Los Angeles, Mr. Howard.

MR. SMITH, of Fourth District. Mr. Chairman: I understand that General Howard consented to the suggestion made by my colleague from Kern to insert the word "individuals," after the word "corporations."

MR. HOWARD. Let me see how it would read.

MR. MCFARLAND. I understand that the gentleman from Los Angeles accepted the amendment to insert, after the word "corporations," the word "individuals."

MR. HOWARD. I think it had better be omitted and an addition can be made to the section afterwards to cover the case of individuals.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Los Angeles, Mr. Howard.

The amendment was adopted.

MR. MCFARLAND. Mr. Chairman: I move to amend by inserting after the word "corporations," in the third line, the words "and persons."

MR. BEERSTECHER. (*Soto voce.*) Vote it down.

MR. HOWARD. There is no objection to it.

MR. BEERSTECHER. I hope the amendment will be voted down.

THE CHAIRMAN. There is no such amendment before the committee as yet.

MR. BEERSTECHER. The idea of the Legislature regulating private business enterprises.

MR. MCCALLUM. I have not heard any amendment read. I will offer an amendment to prevent the apparent conflict between this section and the article on corporations.

THE SECRETARY read:

"Insert in line three, after the word, 'corporations,' the words, 'except as otherwise provided in this Constitution.'"

MR. HOWARD. I second that amendment.

MR. SCHELL. I rise to a point of order. That amendment will strike out the amendment of General Howard.

MR. MCCALLUM. Not at all.

THE CHAIRMAN. It cannot come in after the word "corporations." We have already adopted an amendment to follow the word "corporations."

MR. HOWARD. The gentleman might make that precede the section.

THE CHAIRMAN. It can follow the amendment, but it cannot precede it. I think it will read badly, but I will put the question.

The question was put.

THE CHAIRMAN. There is no quorum voting. There is evidently a quorum in the committee. Those in favor of the amendment will rise and stand until the Secretary counts them.

[Cries—"Read, read:"]

MR. HAGER. Mr. Chairman: I hope this amendment will not prevail. I do not see any conflict between this section and section twenty of the article on corporations. This says: "The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations." Now, if the Legislature should pass laws or regulations in conformity with the action of the three Railroad Commissioners, there would be no objection to that. Then section twenty of the article on corporations has nothing in regard to commodities furnished. Then it goes on—Mr. Howard's amendment—"in all business in which the public has a use; and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation, and no person shall be selected who is an officer or stockholder in any corporation." There is nothing in conflict in these provisions. Beside that, we cannot tell what may be done with section twenty. I would prefer to allow the section to stand as it is, for the time being at all events. I hope the amendment will be voted down.

MR. JOHNSON. Mr. Chairman: I think that the original section is good enough if the word "corporations" is limited, and if I get an opportunity I shall offer an amendment limiting it to telegraph, gas, and water companies. I think that will meet the case exactly. If an opportunity presents itself I shall offer that substitute.

MR. MCCALLUM. Mr. Chairman: I am very much surprised that there should be any objection to this amendment. In the article on corporations it is provided that the Commissioners to be elected by the people shall regulate the freights and fares of the railroad companies. This section, as it now reads, provides that the Legislature shall regulate the rates in all cases of services performed or commodities furnished. Certainly it is inconsistent with what we have done on the subject of railroads. The object of this amendment is to except what we have already agreed to. We cannot act intelligently, it appears to me, except by assuming that the Convention is going to ratify what has been done in Committee of the Whole. To leave the section to read as it now does, without this amendment, is to adopt a section here contradicting what we have already adopted in Committee of the Whole on corporations. I have paid a great deal of attention to this section, and I have drafted it in a great many ways.

MR. HOWARD. Mr. Chairman: I hope the amendment of the gentleman from Alameda will be adopted. I think it cannot possibly do any harm, and it may be that it will do a great deal of good. That amendment removes all doubt.

MR. BROWN. Mr. Chairman: I am in favor of the amendment offered by the gentleman from Alameda. Now, it is evident that this Convention does not want to indorse any principle that will come in conflict with anything that has been done heretofore. I find in section twenty of the article on corporations, as indorsed by this body, that "said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies," etc. Now, should we pass this and give this power to the Legislature, and it would appear by this section twenty-eight to be given entirely to them, it would be directly in conflict, in my opinion, with what has been done already, and would to a great extent destroy section twenty of the article on corporations as it has been adopted by the Committee of the Whole. I am, therefore, in favor of the amendment offered by the gentleman from Alameda, that there may be no conflict whatever, and that the provision may be clear in this respect and agree with that which has gone before.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was adopted.

MR. MCFARLAND. I offer an amendment to section twenty-eight.

THE SECRETARY read:

"Amend by inserting after the word 'corporations,' in line three, the words 'and persons.'"

THE CHAIRMAN. The amendment is out of order. The committee has already adopted an amendment to follow the word "corporations."

MR. MCFARLAND. This is an independent amendment.

THE CHAIRMAN. The Chair does not think so.

MR. MCFARLAND. I do not understand——

THE CHAIRMAN. The Chair has decided the question.

MR. SCHELL. I move to insert the words "persons or," before the word "corporations," in the second line.

MR. McFARLAND. I second the amendment.

MR. HOWARD. That is right, Mr. Beerstecher, let it go.

MR. BEERSTECHER. No, it is not. Mr. Chairman: I hope that an amendment of that character will not prevail. The idea of placing into a Constitution a provision that the Legislature shall have the power to fix, and regulate, and limit the charges for services performed, and commodities furnished by persons. That would allow them to regulate the price of a pound of butter, or a hundred pounds of wheat. The thing is absurd. The people who read the Constitution would laugh and sneer at it. It is encroaching upon private rights, and I hope it will be promptly voted down.

MR. BARTON. Mr. Chairman: If this Convention, or rather the Committee of the Whole, want to make themselves extremely ridiculous, and their actions and conduct such, it will be very proper for them to support this amendment, offered by Mr. Schell. I cannot see how any man can be so blinded as to fall into this trap.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I hope this amendment will be adopted. I do not see anything ridiculous about it, and I think it would be extremely ridiculous if we should not adopt it. The gentlemen opposing this must be laboring under the impression that we would give the Legislature power to regulate the price of everything that any person had to dispose of. That is certainly a mistaken idea; it is only commodities and services in which the public have a use, and if the gentlemen will refer to section one thousand two hundred and thirty-eight, and one or two sections following, they will see that this is strictly in accordance with the Codes of this State regulating the right to exercise eminent domain. Now, that section does not use the words "person" or "corporation," does not apply to either, particularly, but the right of eminent domain can be exercised in any manner in which the public have a use. Now, I understand that the object of this is to direct the Legislature to pass laws to regulate the price of water and gas. If a corporation appropriates water out of some of the streams, which they can do under the Act of Congress, for the purpose of supplying water to some city or town, they are subject to control and regulation because the use is public; but according to this provision, without the amendment, if an individual appropriates the water and furnishes it to the city or town, although the public have the same interest, yet then the Legislature cannot regulate the price. Now, I say it makes no difference who it is that performs these services or furnishes these commodities—whether it is an individual or a corporation—the public interests are the same; therefore, I say, when the use is public, and not private, the Legislature should come in and regulate the price, or should have the power to regulate the price; but when the use is strictly private of course there would be no sense in the Legislature coming in and regulating the price. As was said by the gentleman from Los Angeles, a corporation formed for the purpose of making butter and cheese, manufacturing blankets, and such things, is not a public use any more than an ordinary drygoods store. But where the use consists in supplying a city with gaslight, and where the person or company who is supplying that gaslight have a monopoly—maybe the only company or person who is authorized or who can come in and supply that gas or water—then I say that the Legislature should have the right and it should be their duty to come in and regulate the price. Under the laws of Congress, as they stand now, I, as an individual, could go and locate a ditch for the purpose of taking out water, where it had not been previously appropriated, for the purpose of supplying water to a town, and it might be the only source of supply of water for that town, and I, by my diligence as an individual, go and appropriate all the water, and take it out of that river, and make a ditch and supply the town with the water, then I have a monopoly of that water, and unless I incorporate myself as a corporation the Legislature cannot regulate the price of that water. I may own all the water, appropriate it, or by some other means own all the water which would supply a whole neighborhood for farming—and I know of such instances existing in this State—and the whole neighborhood will be dependent upon the supply of water which they will have to purchase of me. It is, in the highest sense, a public use. Now, if this section stands as it is now, without this amendment offered by the gentleman from Stanislaus, then that right of the Legislature to regulate the price of water is restricted to corporations, and unless I go and form a corporation of myself, or associate three or four other gentlemen with me, I am not subject to control. I have a monopoly in that case where I have all the waters to supply a whole neighborhood for farming, or a whole town for domestic use, and it is in the highest sense a public use, and the whole neighborhood or town is at my mercy because I am an individual and not a corporation. According to these Elevator decisions, where it is a use that is public, the Legislature has a right to come in and regulate the price, and it makes no difference whether it is supplied by a corporation or an individual. If the gentleman will take the pains to read the decision of the Supreme Court of the United States, in the Elevator cases, he would see that it does not apply to corporations any more than to individuals. It is the use that governs the case.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I am in favor of this amendment, for the same reasons stated by Judge Rolfe, and for the further reason that in the article on corporations, in regard to railroads, where we have made transportation companies common carriers, and not individuals, it will give the Legislature the power to control freights and fares where an individual runs a railroad and owns a railroad; whereas, otherwise, neither the Commission nor the Legislature would have all the powers that the State should have under the Constitution. It is held by many, and I presume it is the law, that the Legislature would have the power without any provision in the Constitution—but then there might be a doubt when the State, by its Constitution, undertakes the whole power. Now, in the article in regard to railroads it is provided that all railroads and transportation companies shall be common carriers. If an individual owns a railroad, or if an individual owns a steamboat line, he is not a common carrier under the Constitution, but he must be a company to make him a common carrier—that is, if you go on the idea that you are confined to the definition in the Constitution as to what is a common carrier. Now, I hope that when we go back to that it will be remedied. It is better to have the Legislature control this than not to have any power in the State to control it, which may be the case under some construction. I do not see why one individual doing the same that a corporation is doing in any business in which the public have a use should not be subject to the same control.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: It appears to me that this amendment will embrace, in the connection in which it would stand, more than any man would desire. Now, it seems to be admitted by the gentleman from Kern, and I suppose would be regarded as a correct principle in law by the members of this Convention, that the Legislature would have the right to regulate corporations, but I do not believe that it is admitted that without a constitutional provision, the Legislature would have any right to regulate the charges for services performed by individuals; and it is upon this ground that I would utterly object to the position taken by the gentleman from Sacramento, Mr. McFarland, because, in every case of service performed by individuals, the Legislature would be called upon to regulate charges; and not only called upon, but it is mandatory. In selling fruit, in selling grain—anything of the kind, the Legislature shall pass laws for regulating and limiting the charges. It is a plain case. Now, I am not under the impression that this body wishes to descend to any such course as this, or to the indorsement of any such principle as this. Besides, the inconvenience and evil would be manifest. Now, I am under the impression that it has been intended to regulate the business of corporations, but let this amendment come in, and it comes down to all private dealings; and the Legislature shall do it—not only may, but *shall* regulate everything of this nature; that is, charges for services performed and commodities furnished by individuals. Now, this is not buncombe; it is the fact of the case. That is what it would do. In this ridiculous way this Constitution would be loaded down. I am in hopes that all such amendments at this time and henceforth will be promptly voted down.

MR. LEWIS. Will the gentleman allow me to ask him one or two questions? I would like to ask if he contends that this Convention, or any body of the people in the State, can give the Legislature any more power than they have?

MR. BROWN. They can give to them any power that is put into this Constitution, and make it mandatory.

MR. TERRY. Can we give the Legislature any power? Can this Convention confer any power upon the Legislature?

MR. BEERSTECHER. No.

MR. BROWN. I must admit that Judge Terry is rather heavy timber to run against, but if this body says so it is so.

REMARKS OF MR. LEWIS.

MR. LEWIS. Mr. Chairman: I presume that this Convention takes this position that the Legislature has the control, or has the power to control, the operations of individuals or corporations where their operations become public, and when they are engaged in a business in which the public has a use; that this Convention can confer no power on the Legislature to control individuals in their individual action, but if an individual, as an individual, enters into any business by which his business becomes public, where the community at large is dependent upon his action for their welfare, under the common rule of self-protection, the Legislature would be compelled, or ought to, at least, and would step in and control it the same as if he were a corporate body. In certain towns in this State there are corporations for the purpose of taking wharfage. They control some portions of the waterfront and individuals own other portions of it. Without this amendment the individuals, not being controlled, could freeze out the corporate bodies, and cause them to abandon their business.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman, and gentlemen of the Convention: I find that the amendment which was offered by General Howard, and which was adopted, materially changes the reading of the whole section, and when I objected to the insertion of the word "persons," it was considering the section as it stood without the amendment of General Howard. The amendment of General Howard, following the word "corporations," in line three, reads, "in all business in which the public has a use," so that if the words, "persons or," were inserted it would read: "The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by persons or corporations in all business in which the public has a use;" and in the light of the amendment which is put to the section by General Howard, I am in favor of the words, "persons or," being inserted. If the section read as it was originally, of course the words would be objectionable because it would give the Legislature the right to interfere with private business. It certainly would raise the question as to the right of the Legislature to interfere with private business; but as it stands with this amendment it limits the interference of the Legislature to those classes of business in which the public has a use. Of course whether the business be performed by an individual, by a single person, or whether it be performed by a company, or by a corporation, as long as the public has a use and an interest in that business, the public ought to have a right to regulate it. That, certainly, was the decision in the Elevator cases; and therefore I am in favor of the amendment.

MR. ROLFE. We accept your apology.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: It seems to me there is danger of going too far—the danger of going so far that what was a good purpose may end in an absurd result. Now, if I understand the purpose of the amendment, it is to insert the word "persons," and if I understand the result of it, it seems to me it would be to make a very bad section in our Constitution. If we propose to fix this matter so that the Legislature shall regulate the price of all services performed and commodities furnished, certainly we are going much too far. I cannot consent to any such proposition as that.

MR. HOWARD. I will ask the gentleman, whether we insert it or not, if under the decision in the Elevator cases the Legislature would not have that power anyhow.

MR. CROSS. It would in certain cases; but that modification has not been made to this section.

MR. HOWARD. They have the right under the Elevator cases. The Elevator cases refer to a private company. The Supreme Court held that the Legislature had the right to regulate it, because it was a business devoted to a public use. Now, whether we insert it or not, the Legislature has the power.

MR. CROSS. Mr. Chairman: In answer to this interruption, I have to say that I have studied the Elevator cases with great care, and I understand why the ruling was made as it was. It was because the prosperity of the whole Northwest depended upon that case. Let me amplify what I mean. In Chicago there was a system of elevators in connection with the system of railroads. A man shipped a carload of wheat to Chicago; that carload of wheat was sampled by a Commissioner; when sampled by the Commissioner, the wheat was dumped into a bin of the same grade of wheat—grade one, two, or three, as the case may be. Then when the man went to get his carload of grain, he could not get his own grain; he could simply get a carload of grain out of the same class of wheat into which they said his had been dumped. He could not see where it had been dumped, and he could not ship to A, B, or C. He could ship his grain and it went into whatever elevator the railroad chose to dump it. Now, sir, these companies, and the elevators themselves, attempted to take control of private property, and to do it by such rules as they saw fit to adopt, and hence the Supreme Court of the United States said that they would protect the public good. I do not pretend to say that the Supreme Court of the United States ever did intend to say that the Legislature could fix the price which A, B, or C could charge for his commodities or for his services. No power in the State has a right to say that a man shall work for one dollar a day. If we can do this, we can say that the State can corral Mr. Grace, and say that he shall work for a dollar a day. We do not want anything of that kind in the Constitution. I do not believe that any member of this Convention does. In this State we have granger stores. They produce eggs, sugar, tea, etc. If we adopt this amendment we will make it mandatory on the Legislature to say what the price shall be that they may charge for their commodities. This word "commodities" should be defined by those gentleman who put it into this section, and so also should the word "services," and if we add to it this word "persons," we shall make something monstrous in the way of a Constitution. To say that the Legislature shall regulate by law and shall limit the charges to be charged for services performed by persons, and commodities furnished by persons, would be something ridiculous, and I cannot consent to it.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: The section reported by the committee does not fully define the terms, but it is just as good because the word corporation, as defined by section thirty-three of our Constitution, is this: "The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships." It is apparent how words have a tendency to throw the whole section into ridicule. I do not entirely agree with the proposition which has been presented here, that the Constitution of the State of California can confer no power upon the Legislature. At any rate, I believe that it can practically confer power in this view. After all that has been said about what has been decided by the Supreme Court of the United States, it is a fact, that the Supreme Court of California has not expressly passed upon these questions. The decisions of the Supreme Court of the United States are not necessarily authority in the State of California, in cases arising in our State Courts. It is argument, it is reason for such decision. I suppose were we to insert in the Constitution of the State, that the Legislature shall have the power to do some certain things, that no Court in the State of California would ever go behind that declaration in the Constitution; and that is one reason, perhaps, why this should be asserted as to the power; but so far as the phraseology of this section is concerned it expresses more—that is, it says that the Legislature *shall* pass laws for the regulation, limitation, etc., and the provision agreed upon in the Bill of Rights, declares that the provisions in this Constitution shall be mandatory, and in no case directory. Then here is a mandatory expression to the Legislature. I will assume, however, that the Legislature has this power, which it has been decided by the Supreme Court of the United States to possess. In that view it is unnecessary to assert it in this section. The theory heretofore upon which it was argued that corporations could be regulated as to their charges, was, at least so far as understood in California, generally, because they were corporations; and it was under that clause of section thirty-one, article four, which gave the right to alter or repeal the Acts under which corporations were organized, that that authority was claimed. In the case decided by the Supreme Court of the United States it seems to proceed mainly upon another ground, because the services performed or the commodities furnished were a public use. Now, if we insert the words "persons or," before the word "corporations," as suggested by the gentleman from Stanislaus, there would be some embarrassing questions arising as to what might be deemed public use when furnished by persons; but when furnished by corporations we have that authority, and there is reason why it should be exercised, for the two following reasons: First—Because corporations are for the public use; next, because the services performed and the commodities furnished are by corporations, which, as I have said, include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. If this committee seriously would desire to adopt such a proposition as that which has been suggested here, it had better be done by a separate section. I hope that the friends of this proposition, and I certainly regard it as a very important one, will stand by the proposition as it has been presented. I confess that my preference would have been to specifically name every great corporation which we recognize as a monopoly. I have thought upon this subject a good deal, and can think of none except gas companies, water companies, and the telegraph companies. That includes all the great corporations, and my preference would have been to have inserted them in general terms.

MR. SMITH, of Fourth District. Are not the words "public use" well understood in the Courts?

MR. MCCALLUM. I think so. Well, I will not say to what extent they are understood in this country.

MR. SMITH, of Fourth District. Would not that prevent objection in this case?

MR. MCCALLUM. I think that while the words "public use" are pretty well understood, that there are questions that might arise which would be very questionable. I believe in Europe the "public use" has been held to extend to the furnishing of bread, to the price of loaves of bread, as well as to the weight of loaves. At any rate there is no necessity of embarrassing our action here by inserting such a proposition.

MR. ROLFE. Do you think the Legislature should regulate and limit the charges which this carriage manufacturing company shall charge for their carriages and wagons?

MR. MCCALLUM. I think not. Whether that would be the effect of the present section or not I am not prepared to say; but to avoid that, and to avoid all questions of that kind, I hope that my fellow delegates, if they agree with me upon that proposition, will yet restore the original proposition, so that so far as commanding the Legislature is concerned, we shall specify the corporations that we refer to—water companies, gas companies, and telegraph companies. I do not mean by water companies the companies furnishing to the cities and towns alone, but to all water companies throughout the State which come under the general head of corporations, as defined in section thirty-three, of article four, of our present Constitution. That is my judgment about it, and it would avoid all these embarrassing questions which may arise.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: What is the object of this section twenty-eight? If it has any object at all, the object is to regulate any persons who may acquire a monopoly either of some of the natural resources of the country or of some business. Now, sir, what is the difference whether that monopoly is in the hands of a corporation, joint stock company, or individual. Some gentlemen have an idea that a large class of work cannot be done without the formation of corporations. That is not so at all. Let us take the ordinary case of a water company. We all know that, under the laws of this State, parties who first appropriate the water of a stream on the public domain own it, and there is no power to take it away except by the power of eminent domain. Now, suppose a company got possession of some water right—and it must not necessarily be a corporation—they can supply a town as an ordinary partnership or as an individual. If you pass a law of this kind, they can transfer their property to private individuals, and they can go on with their monopoly the same as before. Now, sir, if you intend to regulate things of that kind, why not regulate them in the hands of private individuals as well as in the hands of corporations. You might say there is no necessity for this section at all, so far as the Legislature having the power is concerned; that all laws may be amended or repealed. Of course, the power to amend a corporation law is limited. That is the decision of the Courts. That is the law as announced on this floor—that under the general law, reserving the power to amend or repeal a general corporation law, you may regulate it in any way, if you can regulate it to any extent.

MR. MCCALLUM. In the case of water companies—simple companies, not incorporated—I ask if they do not come within the definition of our Constitution?

MR. MCFARLAND. Certainly not.

MR. MCCALLUM. "The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships."

MR. MCFARLAND. I would like to know what powers of a corporation Booth & Company, of this city, have? An ordinary partnership has none of the peculiar powers of a corporation. What powers have an ordinary partnership or association not having any special privileges? What powers have they that are akin at all to corporations? None whatever! Now, sir, a great many of the water companies in this State are owned by individuals, with none of the powers of corporations, and those that are incorporated could easily disincorporate. Supposing we adopt this section, leaving out the word "persons," and a water company that has an exclusive property chooses to sell out to individuals, and disincorporate. Where are you then? They own the water that supplies the town, but they own it as individuals. You cannot regulate them under this law at all, sir; unless you can do it under the general doctrine of the Elevator cases, and then you can do it without this. As

the gentleman from Los Angeles says, if we can do it under the Elevator cases there is no necessity of this provision.

MR. HOWARD. I do not oppose its being put in. I am in favor of its being put in.

MR. McFARLAND. If you are going to say that the Legislature shall regulate corporations that enjoy monopolies, why not apply that to persons as well as corporations? The individuals can do the same thing in their individual capacity just as well as the corporations. A corporation is nothing more than an individual formed under a general law; for instance, with the power to sue and be sued. That is about all there is of it. Now, under the law as it stands you can regulate corporations to your heart's content, but you cannot regulate individuals or ordinary partnerships. Now, if you are going to do this thing, why not put in persons or individuals? then you are in a position whenever they have conducted a business in which there is a public use, as they did in the Elevator cases, you can regulate them. If you leave it as it is you will find that nearly all the corporations in the country will convey their property to individuals, and be out of reach of the Legislature.

MR. McCONNELL. Mr. Chairman: I move to amend by striking out all after the figures, "twenty-eight," in the first line. I hope that we will not incorporate this in the Constitution. It is entirely unnecessary. I hope that the whole thing will be stricken out. The Legislature possesses power sufficient to regulate any abuses that may exist in relation to these matters, and I think the whole section should be stricken out, and I hope that it will be.

MR. STEDMAN. Mr. Chairman: I now move the previous question on the pending amendments.

The main question was ordered.

THE CHAIRMAN. The first question is on the adoption of the amendment offered by the gentleman from Stanislaus, Mr. Schell, to insert before the word, "corporations," the words, "persons or."

A division was called for.

The question was put and there were 45 ayes and 30 noes.

THE CHAIRMAN. There is no quorum voting. There is evidently a quorum present. Those in favor of the amendment will rise and stand until counted. All the members are requested to vote.

The amendment was adopted by a vote of 44 ayes to 33 noes.

THE CHAIRMAN. The question recurs on the motion of the gentleman from Sacramento to strike out section twenty-eight.

MR. McCALLUM. I rise to a point of order. Having inserted some amendments it is not in order to strike out.

THE CHAIRMAN. The Chair entertains no doubt in the world that the motion to strike out is in order.

The motion prevailed on a division, by a vote of 56 ayes to 22 noes.

THE CHAIRMAN. The section is stricken out.

MR. JOHNSON. Is a substitute in order now?

MR. McCALLUM. I give notice that I will on to-morrow move to reconsider the vote by which the section was stricken out.

THE CHAIRMAN. The Secretary will read section twenty-nine.

TAXATION OF CORPORATIONS.

THE SECRETARY read:

SEC. 29. Dues from corporations shall be secured by such individual liabilities of the corporators and other means as may be prescribed by law. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as the property of individuals, and the franchises of such corporations shall be assessed at their actual cash value, and taxed accordingly.

MR. GREGG. Mr. Chairman: This section, sir, is almost the identical section two of the article on corporations reported by the committee. I move to strike it out.

MR. HOWARD. I second the motion.

The question was put, resulting in 45 ayes and 31 noes.

THE CHAIRMAN. No quorum voting. Gentlemen will please vote.

The question was again put.

THE CHAIRMAN. No quorum voting.

MR. McCALLUM. There are a number of us not voting. If he refers to section two of the article on corporations, it is not a similar section. We do not vote because we think there is a misapprehension.

MR. SMITH, of Fourth District. It should be in the article on taxation.

MR. GREGG. That is where it belongs; one part in the article on corporations and the other in the article on taxation.

MR. EDGERTON. This section says: "dues from corporations shall be secured by such individual liabilities of the corporators and other means as may be prescribed by law. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as the property of individuals, and the franchises of such corporations shall be assessed at their actual cash value, and taxed accordingly." I believe that the proper place for that is in the report of the Committee on Revenue and Taxation. It is considered there and set forth in detail. I do not see why it should be in a provision relating to the Legislature.

MR. SCHELL. Mr. Chairman: It appears that we cannot get a quorum to vote upon any of these propositions. I understood the Chair to say that there was no quorum voting. For one, I do not desire to sit here unless we have got a quorum, and therefore I move that the Committee rise and report progress.

THE CHAIRMAN. The Chair will put the question again. There is a way to ascertain whether there is a quorum present or not.

MR. BARBOUR. The gentleman from Alameda says there seems to be a misapprehension. I will call attention to sections two and three, with the amendments adopted by the Committee of the Whole in considering the report of the Committee on Corporations other than Municipal. I call his attention, then, to the report of the Committee on Revenue and Taxation. They cover the ground of the taxation of the property of corporations more fully than is done in section twenty-nine. That is the proper place to deal with the subject, and I do not see the necessity of wasting our time upon it here.

MR. CROSS. Mr. Chairman: I understand that these subjects are fully covered by provisions in other articles. This is not the place to determine what shall and what shall not be taxed. In this article we are trying to define the powers of the Legislative Department. We are not taxing property in this part of the Constitution. That is the reason why I vote to strike this out.

MR. McCALLUM. I think it right now. It belongs to that department.

THE CHAIRMAN. The question is on the motion to strike out section twenty-nine.

The motion prevailed on a division, by a vote of 68 ayes to 12 noes.

THE CHAIRMAN. The section is stricken out. The Secretary will read section thirty.

THE SECRETARY read:

SEC. 30. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued in all Courts, in like cases as natural persons.

MR. TERRY. That is the same as section four of the article on corporations. I move it be stricken out.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section thirty-one.

BANK CHARTERS.

THE SECRETARY read:

SEC. 31. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit of gold and silver and other lawful money of the United States; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

MR. TERRY. I move that be stricken out.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section thirty-two.

PAPER MONEY.

THE SECRETARY read:

SEC. 32. The Legislature of this State shall prohibit, by law, any person or persons, association, company, or corporation, from exercising the privileges of banking or creating paper to circulate as money.

MR. GREGG. I move that section be stricken out.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section thirty-three.

LIABILITY OF STOCKHOLDERS.

THE SECRETARY read:

SEC. 33. Each stockholder of a corporation or joint stock association shall be individually and personally liable for his proportion of all its debts and liabilities contracted or incurred while he was a stockholder, and the Trustees or Directors of such corporation or association, and each of them, shall be responsible individually for the misappropriation by the officers thereof of the funds or deposits of such corporation or association.

MR. TERRY. That is provided for in section three of the article on corporations. I move that it be stricken out.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section thirty-four.

MUNICIPAL INDEBTEDNESS.

THE SECRETARY read:

SEC. 34. It shall be the duty of the Legislature to provide, by general laws, for the organization of city, town, and county governments, and for assessing and collecting taxes for the support of the same; *provided*, that no city, city and county, town, or county, shall ever incur a debt which, together with existing indebtedness, shall exceed two per cent. of the assessed value of the property therein. Such value shall be ascertained from the assessment roll for State and county purposes made immediately previous to incurring such indebtedness; *provided, however*, that a city, city and county, town, or county, may borrow money under and in accordance with the following conditions and limitations in addition to any other conditions and limitations contained in the Constitution, namely: The debt must be for some single work or object only; and must be authorized by a resolution passed by a vote of three fourths of all the members elected to the Board of Supervisors, Common Council, or local Legislature. Such resolution shall also distinctly specify the single work or object for which the debt is to be created, and the amount of the debt authorized, and shall contain provisions for a sinking fund, to meet the same at maturity, and requiring at least ten per cent. of the principal to be annually raised by taxation and paid into the Sinking Fund. Such resolution shall not take effect until it shall be ratified at an election held in said city, city and county, county, or town, at which no other matter is voted upon, and which shall be held within —— days after the passage of said order or resolution. The Legislature shall make such laws as may be necessary to provide for holding such election and ascertaining the result thereof.

MR. TERRY. I move to fill the blank by inserting "thirty."

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was adopted.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: It seems to me that that subject properly comes within the report of the Committee on City, County,

and Township Organizations. That committee have already made their report, and in that report they have covered every proposition contained in this section. It seems to me that this is an improper place for this section. The report of the Committee on City, County, and Township Organizations has fully covered all the points, and I have no doubt will be satisfactory to every member of this Convention; and it seems to me that it should properly come within the report of that committee. I move that the section be stricken out.

MR. TERRY. Mr. Chairman: This is a very good section and ought to be adopted. It does not make any difference. If it happens to be in the wrong place, as I do not think it is, the Committee on Revision and Adjustment can put it in its proper place. I think it a good provision to put a limitation upon the power of local legislation to run in debt upon the people and the taxpayers. The fact that this is incorporated in another report makes no difference. I do not know whether the points are covered or not, as I have not got them here. I do not think that is a reason for striking it out; it may be a reason for postponing it.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: The report of the Committee on City, County, and Township Organizations covers the whole proposition reported in this section. A committee was appointed by this Convention, the title of which is Committee on City, County, and Township Organizations. Now, this section says: "It shall be the duty of the Legislature to provide, by general laws, for the organization of city, county, and town governments." That is the very subject-matter that was referred to the Committee on City, County, and Township Organizations, and of course if this should be adopted it would cover substantially the report that has been made by the Committee on City, County, and Township Organizations. The report of the committee is number five hundred and twenty-one, and I suppose the members have it upon their desks. By referring to it it will be seen that everything relating to counties, cities, and townships, is embraced in that report. It takes in city governments, county governments, and consolidated city and county governments, and provides for township governments. Section four provides that the Legislature shall establish a system of county governments, which shall be uniform throughout the State. In regard to cities it provides for their government by general laws, and it provides a government for townships whenever the Legislature shall see fit to authorize the organization of townships. Then it contains a limitation upon indebtedness.

MR. FREUD. Where does it provide a limitation?

MR. HAGER. There are a great many sections to this report; take section twenty, it says:

"SEC. 20. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the assent of two thirds of the voters thereof at an election to be held for that purpose; and in cases requiring such assent no indebtedness shall be incurred (except by a county, to erect a Court House or Jail) to an amount, excluding existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring such indebtedness, and unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within forty years from the time of contracting the same."

The committee decided to insert the word "forty;" originally it was "thirty." The point to be submitted to the Convention is simply this: The committee appointed by the Convention to take into consideration this proposition—all these things that relate to the government of cities, counties, and townships—having reported upon the same, I suppose that we could consider the merits of that report in discussing the proposition here presented by the Committee on Legislative Department. I do not say that it is not within the province of the Committee on Legislative Department to go as far as they have gone, but I do say that the first paragraph in section thirty-four, "It shall be the duty of the Legislature to provide by general laws for the organization of city, town, and county governments," is comprehensive enough to take in the whole scope of the duties of the committee on that subject; I therefore think that this matter had better be deferred—this section thirty-four—until the report of the committee on the subject is taken up for consideration, and if there is anything in section thirty-four which the Convention would prefer to that which is contained in the report of the committee on that subject it can be adopted. I suggest, therefore, that section thirty-four be not considered by the Convention at the present time.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I hope that the motion to strike out will prevail. So far as relates to the sections which have been stricken out are concerned, it will be noticed that under the arrangements of subjects in the old Constitution these matters in reference to corporations, banking, etc., came under the head of the legislative department, and they were properly enough considered by the Committee on Legislative Department; but I think the Committee on Legislative Department trenched upon the ground of the Committee on City, County, and Township Organizations. That committee has presented a very full report, and it seems to me that the proper time to consider this subject will be when that report comes up. I hope the motion will prevail.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: It has occurred in the introduction and reference of the propositions which have been submitted to the Convention, that the same subject-matter has been referred to more than one committee. In some of the propositions—I think the proposition of Mr. Laine—the whole subject of legislative department was referred to the Committee on Legislative Department. Some of them referred to corporations; some of them referred to municipal and other indebtedness; some of them to the power of municipalities. As they were referred to the committee the members of the committee thought it was their duty to report upon them, without any intention of trenching upon the ground of any other committee. They simply report to the Convention their ideas upon the subjects referred to them by the Convention. I have no objection to defering this section thirty-four until the report of the Committee on City, County, and Township Organizations is taken up, but I do object to having it stricken out, because I think it is more full and explicit, and throws more safeguards around the interests of municipalities and counties than the section reported by the Committee on City, County, and Township Organizations. We provide here a rule under which a city, county, or town may borrow money; that it must be for some single object; and we provide for a sinking fund. I think the section should be adopted by the Convention. I do not care whether it is adopted while we are considering the report of the Committee on Legislative Department, or whether it is adopted when we consider the report of the Committee on City, County, and Township Organizations. I oppose the motion to strike it out, but have no objection to the motion of Mr. Hager to postpone it.

MR. SCHELL. I believe that Mr. Hager did not make the motion, but if he will make it as an amendment to my motion, I will accept it.

MR. HAGER. Mr. Chairman: I have no objection, as I stated, to having any recommendation of the Committee on Legislative Department considered in connection with this report when it is taken up. I think, as a matter of respect to the committee, that it should not be stricken out, but deferred. I have no objection to that. I move as an amendment to the motion, that instead of striking out the section we defer action upon it until the report of the Committee on City, County, and Township Organizations is taken up for consideration.

MR. SCHELL. I accept the amendment.

MR. HAGER. The Committee of the Whole will report that they have deferred action upon this section thirty-four until the report of the other committee is taken up.

MR. LEWIS. Is not the section passed; is it not passed by the Chairman?

THE CHAIRMAN. Section thirty-four is now before the committee.

MR. LEWIS. It seems to me that the section had better be passed, and then let it take its chances.

MR. SCHELL. I withdraw the motion.

MR. SMITH, of Fourth District. I would suggest that it would be in order to move as an amendment to withdraw this section from the report and consider it in connection with the report of the Committee on City, County, and Township Organizations. It seems to me that it is out of place in this article. It seems to me that system and order would require that this be placed in the article on city, county, and township organizations.

MR. HAGER. Mr. Chairman: I presume that the proper motion would be that the committee report to the Convention that they have deferred action on section thirty-four, and recommend that it be reconsidered in connection with the report of the Committee on City, County, and Township Organizations. That will be the report of the Committee of the Whole to the Convention, and the Convention will so determine.

MR. SMITH, of Fourth District. That would not withdraw it from this article.

MR. BROWN. Mr. Chairman: It appears to me, sir, that this Committee of the Whole has rather resolved itself into a Committee of Revision and Adjustment. Now, when there is anything before this body from one committee, and it is correct in principle, although it may be supposed that there is something from another committee that covers the same ground, I do not think it fair in this body to propose to state that that ground is entirely covered, and for us to take action upon it. I am convinced that when anything comes from a committee that it is our duty to act upon it, and afterwards if it covers the ground that the report of another committee has covered, the Committee on Revision and Adjustment will regulate it. But I am convinced that we cannot do it properly in the Committee of the Whole. It may be that the Committee on City, County, and Township Organizations has something equally as good as this, and it may be better, but it takes up more time to investigate and talk over the matter, than it would to discuss the section and dispose of it. I would be in favor of going through with this report.

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

THE CHAIRMAN. This Committee of the Whole is bound to go through with the whole report. We can postpone it temporarily. The only other way that it can be got at is by rising and recommending the Convention to refer it.

MR. BELCHER. Mr. Chairman: I move that the section be stricken out. When the other report comes up it can be amended by inserting this section if the committee so desire. There is no necessity of acting upon it here, because it can be acted upon then although it be stricken out here.

MR. TERRY. Can it be offered in connection with any other report?

THE CHAIRMAN. Undoubtedly it can.

MR. HAGER. If we strike the section out it will come up for consideration in full Convention just the same as now. I think the best way would be to strike it out.

THE CHAIRMAN. The question is on the motion to strike out section thirty-four.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section thirty-five.

ELECTIONS BY THE LEGISLATURE.

THE SECRETARY read:

"SEC. 35. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal."

THE CHAIRMAN. There being no amendment to section thirty-five, the Secretary will read section thirty-six.

THE GENERAL APPROPRIATION BILL.

THE SECRETARY read:

SEC. 36. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government and of the institutions under the exclusive control and management of the State.

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

THE SECRETARY read:

"Amend by adding 'and such aid as may be granted to private institutions conducted for the support and maintenance of orphans, half orphans, abandoned children, or aged persons in indigent circumstances.'"

MR. STEDMAN. Mr. Chairman: The reason I offer that amendment is in order that there may be no conflict between this section and section twenty-two, which provides that money can be drawn from the treasury for the support of these orphans; and, Mr. Chairman, I want to give the Legislature the power in this section to place it in the general appropriation bill, where it should be.

MR. BEERSTECHER. Mr. Chairman: Mr. Wilson's amendment covers the whole ground. It states that nothing contained in any other portion of the Constitution shall interfere with the carrying out of the section allowing the appropriation to orphans. It is sufficiently comprehensive.

MR. STEDMAN. Mr. Chairman: I consulted with Mr. Wilson, and Mr. Wilson thought that it did not provide for it. In fact, he originated that amendment, and I promised him to offer it in his absence, and if he had not done it, I should have offered some such amendment.

MR. EDGERTON. Mr. Chairman: There is no conflict between this section as it now stands, and the amendment adopted the other day to section twenty-two. This section is limited expressly to the general appropriation bill, and it is generally understood that that bill should be confined to appropriations to the State government; but as it now stands, there is no conflict at all. So far as Mr. Wilson is concerned, he called my attention to it, and upon that suggestion he said that he thought the section should stand.

MR. STEDMAN. He wrote that amendment himself.

MR. MCFARLAND. Mr. Chairman: I would like to ask the gentleman from Sacramento, if this section was adopted, if it would not be an entire limitation against passing any appropriation at all except for the expenses of the government?

MR. EDGERTON. Not at all. There is nothing in the section but what is limited to the general appropriation bill. That phrase, "general appropriation bill," controls the whole section. The last appropriation bill embraces appropriations for various charitable purposes—for the orphans, etc. All these appropriations should be in the nature of special appropriations, and ought not to be combined in any instance with the appropriations for the State government.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: The member from Sacramento has very correctly stated the nature of the general appropriation bill. It is a bill which should appropriate money for the institutions of the State fixed by law. The special appropriation bills include those items that are not definitely fixed, and there is a large number which are not definitely fixed, and they are usually reported in all legislative bodies in a different bill. They include all appropriations, the amount of which is not fixed by law. It would be entirely improper to place this in this section, and from this consideration: that the amount to be allowed to these different institutions is optional with the Legislature, and each case being contingent upon their judgment, they will recommend what special amount shall be allowed to this, that, or the other institution. Therefore they will properly be placed in a special appropriation bill.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I call the attention of the author of this amendment to the fact that the section limits the appropriations in the general appropriation bill to the salaries of the State officers, the expenses of the general government, and of the institutions under the exclusive control and management of the State. That includes the insane asylums, the State prisons, and Normal School, etc. But the difficulty has been found in every session of the Legislature that I have been a member of, that some person will want an appropriation for this charity, and another for another charity, and they combine and clog legislation in reference for the appropriations for purely governmental purposes. This section, as it now stands, is eminently proper, and would prohibit such special appropriations as were contemplated by the amendment that was adopted the other day being put in the general appropriation bill. I think the section should stand as it is.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. Chairman: It seems to me that it is immaterial whether the section stands or falls. In section sixteen we have introduced an amendment which does away with the objections which the gentleman from Sacramento has pointed out. It is true that it is customary to load down the general appropriation bill with various appropriations not connected with the expenses of State government, but there is an excellent provision embraced in section sixteen, that the Governor at the time of signing a bill may object to any of the items, and the appropriation so objected to shall not take effect unless passed over the Governor's veto. That removes that objection, and makes this section, it seems to me, absolutely unnecessary. It makes no odds, whether the appropriations are in one appropriation bill, or whether they are in special appropriation bills, for if the Governor does not approve of any special appropriation he can strike it out. Under the former rule they could group their appropriations and get them into the general appropriation bill which was passed near the close of the session, and the Governor had to sign it or else have a special session of the Legislature. If that condition of affairs was continued, it would be proper that this section thirty-six should be in the Constitution, but since the Governor has the right to strike out any particular item of the appropriation, I cannot see any reason for putting this section thirty-six in the Constitution.

MR. LARKIN. Mr. Chairman: I perfectly agree with the gentleman from Sacramento. This section is as it should be. It should not be left to the Governor to determine this question. This section will preclude him from having that power. This puts a limit upon the general appropriation bill, by saying that it shall contain nothing except for the support of the government. This is in the interests of legislation. It is one of the most important sections we have acted upon.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: I hope this amendment will be adopted. While it might be true, as the gentleman from Sacramento, Mr. Edgerton, intimates that it is already sufficiently covered by section twenty-two, and that this is somewhat in the nature of special appropriations, that is, the objects to be attained by the amendment to section twenty-two which the committee very wisely and properly adopted, yet I think, in order to make assurance doubly sure, it would be well to adopt this amendment. I believe that the committee, when they adopted the amendment to section twenty-two, were of the opinion that special appropriation should be granted to these charitable institutions. That being the case, I presume they are still of the same opinion, and if they are to make this matter safe and to provide that these appropriations may be considered to be included in the general appropriation bills of the Legislature, then it would be well to adopt this amendment. In constitution making we cannot have matters too clear. It ought to be so clear that there would be no question about it whatever. It should be so in law making of any kind. That has been the great trouble with the Legislature in many cases. The laws were too ambiguous and it was rather difficult to ascertain what the law makers intended by a certain section of a law. If we adopt this it removes all doubt.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: The object evidently of the committee in getting up this section was to protect the State appropriations of this State. Now, of course, every one knows that the appropriations for the pay of State officers is a matter that cannot be avoided. There must be money appropriated to run the State government. Now, when that bill comes up in the Legislature these institutions that are demanding aid from the State come forward, through their friends in the Legislature, and ask for appropriations in the general appropriation bill. One institution wants one sum, and another another, and so on, and they get their friends in the Legislature to demand that these appropriations be included, or they will fail to appropriate anything for the sustenance of the State government. It is only necessary for me to call attention to the last moments of the last Legislature. The appropriations were all tacked on to the general appropriation bill, and those who were in control said to the Legislature: "You must vote this enormous appropriation or we will not let you have anything to run the State Government." And the Legislature was for a number of hours placed in that ridiculous predicament that they were compelled to observe the will of the lobby or call an extra session of the Legislature. I say this section should be allowed to stand.

MR. HILBORN. Would not that be entirely cured by section nineteen, lines fourteen and fifteen?

MR. TINNIN. I propose that the appropriation to pay the salaries of State officers and the expenses of State government shall stand alone. This body has voted to pay a certain amount to the orphans. Suppose they come here and tack their appropriations on to the general appropriation bill, and compel the Legislature to pay them or call an extra session. I hope the section will stand as it is.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I hope the section will remain exactly as it is, and I will briefly state my reasons. Now, the section, as drawn, relates exclusively to the general appropriation bill; not to special appropriation, but to the general appropriation bill. It says: "The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State."

Now, that is the general appropriation bill; it must be acted upon and passed by itself. It should not be cumbered up with extraneous matter that would delay its passage until the last moments of the session. This section does not prevent the Legislature from passing any special appropriation bill. All that has been said in regard to the Governor having power to veto certain items in a bill applies to a special appropriation bill as well as to the general appropriation bill. The vice is not because something improper may get into an appropriation bill and that the Governor may not veto it—that is not the trouble, but, as has been said, there is a contest in the Legislature in regard to the appropriation bill by loading it down with improper appropriations and endangering the whole bill. I have been compelled, sometimes, to vote for the general appropriation bill when I have disapproved of a great many of the items in it. By this section we get rid of this trouble at once. The general

appropriation bill is presented, providing for all the necessary expenses of the State, and then let all special appropriation bills come up afterwards, or at any time, on their merits, and the members may vote for it or against it, and then the Governor may veto it if he chooses. Now, look at appropriation bills of the Congress of the United States. More bad measures have been gotten through Congress in that way than in any other; why, they even admit a State into the Union in a general appropriation bill. The admission of the State of California was under the general appropriation bill, and the bill delayed the progress of that session of Congress until the time for adjournment had passed by several hours—that was in eighteen hundred and forty-nine—just because it came in in an improper place. The purpose is that the appropriation bill here should stand by itself, and contain only appropriations for the expenses of the State government. Suppose this section was not adopted, or this amendment should prevail, some one would come to the Legislature and ask for an appropriation for a canal for draining lands here, and another for a canal there, and by combinations they get it into the general appropriation bill—you are compelled to vote against the whole measure or else you have got to vote for it with these provisions in it. Now, if there is any merit in a proposition let it stand by itself, on its own merits, and not come up in the general appropriation bill. I hope that this amendment will be voted down, not for the purpose of depriving the orphan asylums of appropriations, if the Legislature see fit to make them, but that they may stand upon their merits in a special appropriation bill, and that they should not come up in the general appropriation bill that relates only to the expenses of the State government.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: The reason for the adoption of this section as it stands has been given by the gentleman from Sacramento, and the gentleman from Trinity. Now, if the amendment proposed is adopted it places it in the power of a combination in the Legislature to prevent the passage of the general appropriation bill, unless they can have whatever provision they please, no matter how extravagant, for the support of the orphans, half orphans, abandoned children, and aged persons in indigent circumstances. That is just what we desire to avoid. The gentleman from Solano refers to section sixteen. Section sixteen offers no remedy at all. The theory of our Constitution is that the legislative power is reposed in the Senate and Assembly. If the Legislature, not wishing to defeat an appropriation bill, would include in it a larger amount of subsidies than they ought to give for the support of these institutions, the Governor may disapprove it, says the gentleman. But the Governor may not disapprove it. We are, in that case, having the will of the Governor and a certain faction of the Legislature, who have forced the Legislature into the adoption of their measures against the express will of the majority of the Legislature. Now, there is no sort of difficulty in the Legislature providing by law for the support of orphans, half orphans, abandoned children, and aged persons in indigent circumstances, in a law by itself, which will stand upon its own bottom, and rest upon its own merit. That is all that anybody ought to require. The general appropriation bill ought always to be confined simply to the necessary expenses of running the government, and the support of the institutions which are exclusively under the management of the State. In that way there is nobody interested in making them more or less than they should be. There is nobody interested in adding on to an appropriation, or in detracting from it, because the salaries are provided by law, and the expenses are ascertained before the appropriation bill is passed. To be sure, a great many of the objections to the present mode of conducting legislation, have been done away with by the clause prohibiting special legislation; but that does not do away with the whole evil. We will have, as we know, strong outside influence brought upon the Legislature for the purpose of increasing the amount of these appropriations. They started out with twenty-five dollars and thirty dollars; they then got up to fifty dollars, and seventy-five dollars, and now it is seventy-five dollars and one hundred dollars; and they may come to the Legislature and ask two hundred dollars and three hundred dollars. If they ask it and are entitled to it, if they show any reason why they should have it, then the Legislature can give it to them; but we do not want it in their power to come forward and say, your general appropriation bill shall not pass unless you will appropriate two hundred dollars apiece for half orphans, and three hundred dollars apiece for orphans. Let them get their appropriation in a bill by itself. The bill can provide for aid in the support of orphans cared for in these institutions, and let the general appropriation bill perform only its legitimate object, that is, carrying on the running expenses of the government, and paying the salaries of its officers.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: Gentlemen are in favor of this amendment because they think it will be a benefit to the orphans. Now, I am just as strongly in favor of allowing the Legislature to appropriate money to aid in the support of orphans as any gentleman on this floor. I would be the last man to do anything which would prohibit that. But gentlemen who are in favor of adopting this amendment, seem to forget that it cuts both ways. Now, as has been illustrated here, there might be a small faction that could compel the Legislature to attach on to the general appropriation bill an exorbitant amount for the support of orphans. That is so; but while they could do that, they could, on the other hand, compel a majority of the Legislature to only allow the orphans a very insignificant amount before they would allow the general appropriation bill to go through. Therefore, I am in favor of letting the general appropriation bill stand on its own merits, and the orphan appropriation bill stand upon its own merits. And, as for making this doubly sure, I think we have already made it sure enough. I am in favor of it, but why reiterate it here? Why, if it is sure, what is the use of making it doubly sure?

MR. HOWARD. I move the previous question.

The main question was ordered.

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

The amendment was rejected.

THE CHAIRMAN. The Secretary will read section thirty-seven.

GRANTS TO RELIGIOUS SOCIETIES.

THE SECRETARY read:

SEC. 37. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

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

THE SECRETARY read:

"Insert in section thirty-seven, line seven, after the word 'whatever,' as follows: 'Except as otherwise provided in this Constitution.'"

MR. FREEMAN. I send up an amendment.

THE SECRETARY read:

"Amend section thirty-seven, by adding thereto: 'Nothing in this section contained shall prohibit the granting of aid by the State to institutions or associations for the maintenance of orphans, half orphans, abandoned children, or indigent persons, although such institutions or associations be under the control of some religious sect or association.'"

MR. STEDMAN. Mr. Chairman: I have no objection to that except that it is not concise enough. I think that the amendment I have offered covers it. We have provided in section twenty-two that the Legislature shall have power to appropriate money to these various institutions. My amendment to this section is to add: "Except as otherwise provided in this Constitution," that is, in section twenty-two. I think that covers it amply.

MR. EDGERTON. I would ask the gentleman if that is not Mr. Wilson's amendment.

MR. STEDMAN. That don't make any difference.

MR. EDGERTON. Well, perhaps it might make a good deal of difference.

MR. STEDMAN. The committee have the power to vote it down.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I doubt whether the amendment proposed by the gentleman from San Francisco is sufficiently specific. We have one section, it is true, section twenty-two, which authorizes aid to be granted to orphan asylums. Now, we have here another section, which prohibits any aid being granted to any institution under the control of a church. Now, it seems to me that these two sections standing together would simply mean that we might grant aid to orphan asylums, provided they were not under the control of any church or sect. It seems to me, therefore, that my amendment, or one more explicit than that offered by the gentleman from San Francisco, is necessary to harmonize these two sections, and show what the two together mean.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I call the attention of the authors of both these amendments to the language of the amendment adopted to section twenty-two. It seems to me, in view of that, that no amendment is necessary. It reads: "Provided, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances." There is no necessity for either of these amendments. There is an explicit provision that, notwithstanding anything contained in any section of this Constitution, the Legislature shall have that power.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I hope that the amendment of the gentleman from Sacramento will not be adopted. The effect of it is to authorize grants of money and donations to any religious society that can manage to connect itself with an asylum. I am opposed to that. If the authors of the American revolution achieved anything, or one thing more particularly than another, it was the separation of church and State.

Now, sir, I am opposed to all measures by which any connection between church and State can be run in. What is the effect of it? Suppose a Buddhist church establish itself, as has been threatened, in San Francisco? It is a religious sect. Suppose it connects itself with the support of orphans? Then the Legislature can grant to it donations of money, and in that way uphold the sect; and so with every other sect. Suppose that the Chinese—as they will do if they are permitted to continue coming here, and get the right of suffrage—connect their Joss houses with the support of orphans, or charities of some other character? Then the Legislature may make an appropriation to support a Joss house. It seems to me that we are running wild on this subject. We ought to take care that we do not infringe upon the principles of the American Government, and that is by the State not to support any church or any religious creed. In what we have done the other day, we have gone far enough, God knows, and let us stop there. It seems to me that the proposition that you will support a church because it connects itself with some charity, is perfectly monstrous, and this Convention ought to set its face against it.

MR. TINNIN. Mr. Chairman: I think this subject has been fully illuminated. I move the previous question.

The main question was ordered.

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

The amendment was rejected.

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

The amendment was rejected.

THE CHAIRMAN. The Secretary will read section thirty-eight.

THE SECRETARY read:

SEC. 38. The Legislature shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may hereafter be established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any grant, or authorize the making of any grant of any public money or thing of value to any individual, municipal or other corporation whatever; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

MR. SCHELL. I move to strike out the section. I do so for this reason, that in the article on corporations which has already been adopted, is this section: "Sec. 13. The State shall not subscribe to or be interested in the stock of, or in any manner loan its credit to any person, company, association, or corporation." The Committee on City, County, and Township Organizations have reported a section which reads as follows:

"SEC. 14. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes."

Section twenty-one of the same report reads:

"SEC. 21. No county, city, town, or other public or municipal corporation, by a vote of its citizens or otherwise, shall become a subscriber to the capital stock, or a stockholder in any corporation, association, or company, or make any appropriation or donation, or loan its credit to, or in aid of, any person, corporation, association, company, or institution."

That section, in connection with the section already adopted by this committee in the article on corporations, covers the whole subject-matter of this section completely, and therefore I think it is proper to strike it out, and for the further reason that the subject-matter would more properly come in under the article on city, county, and township organizations. So far as the State matter is concerned, it is provided for in the article on corporations.

MR. BARBOUR. I second the motion.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: I can find no place more appropriate for limiting the power of the Legislature than in the article on legislative department. I can find no committee who can more properly report a limitation upon the power of the Legislature than the committee who have in charge that portion of the Constitution. Now this section, as reported, is simply a limitation upon the power of the Legislature; that the Legislature shall not authorize the State, or any county in the State, to do certain things. It comes peculiarly within the province of that committee, and was reported by that committee. So far as this section of Committee on Corporations is concerned, I will say that when that section thirteen was read I did offer this section as a substitute for it. It was afterward recommitted to the committee, and I think that it belonged to the Committee on Legislative Department. It does not cover the provisions of this section, and if it did there is no reason why this should be stricken out. This reads:

"The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal, or other corporation whatever; nor shall it have power to make any grant, or authorize the making of any grant, of any public money or thing of value to any individual, municipal, or other corporation whatever; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever."

It is a limitation upon the power of the Legislature; and where can it be more properly put than in the article on the legislative department. If the section is a good one, this is the time to adopt it, and this is the place where it ought to be put.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: It seems to me that if this provision is to be found in the Constitution at all, it should be found here. The question might arise when we are considering the power of municipalities, as to whether they might be permitted to subscribe for stock in any corporation, but it belongs to the power of the Legislature; because whatever a municipality does in the way of subscribing for stock, it does only under the authorization of the Legislature. It seems to me that this section ought to remain here, and when the other sections covering the same ground are reached in the other place, they ought there to be stricken out. This ought to stand.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I believe it was the general understanding that if this section was adopted when we came to it, in this report, that we should strike out the section in the article on corporations when it was taken up again. It was conceded by a large number of gentlemen on this floor that this limit should extend in some section to each municipal subdivision in the State, so that there should be no doubt, and not be embodied in four or five different sections. I believe it should be passed as it is. If I understand this matter it is one which belongs in the article on legislative department.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: This article is the very place in which to limit the power of the Legislature. It is true that the report of the Committee on Corporations limits what the State may do in regard to loaning its credit to corporations, but this section goes farther, and provides what the State may not do, not merely in aid of corporations, but in aid of city, county, township, and other political organizations; also, in favor of individuals. Now, if we should strike this section out, a very important portion of this provision would not appear anywhere in this Constitution. It seems to me that there are provisions in this section that are not contained in any other section.

THE CHAIRMAN. The question is on the motion of the gentleman from Stanislaus, Mr. Schell, to strike out the section.

The motion was lost.

MR. SMITH, of Fourth District. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Insert in line eleven, after the word 'State,' the words 'or of any county, city and county, or other political corporation.'"

MR. TERRY. Is that any more comprehensive than "or any political subdivision thereof?"

THE CHAIRMAN.. The Chair hears no second.

MR. STEDMAN. I second it.

MR. SMITH, of Fourth District. Under the decisions of the Supreme Court, as I understand them, that does not mean anything, because the subdivisions of the State heretofore have been allowed to contribute and subscribe to the stock of railroad companies. I do not see why it should be left out here, when it is in the first part of the section.

MR. HAGER. Mr. Chairman: I would like to offer an amendment to the first line, and make it conform to the report of the Committee on City, County, and Township Organizations.

THE SECRETARY read:

"Amend section thirty-eight, line one, by inserting, after the word 'power,' the words 'by a vote of the electors or otherwise.'"

MR. HAGER. The object is——

THE CHAIRMAN. The gentleman's amendment is not in order. There is another amendment pending. The vote will be taken on that first.

MR. SMITH, of Fourth District. Mr. Chairman: If there is no particular reason for this I will withdraw the amendment. I know no reason why they should not be included in the latter part of the section.

MR. TERRY. The reason is, that the whole matter is covered by the words, "or any political subdivision thereof." That is broad enough to cover them all.

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

The amendment was rejected.

MR. HAGER. Mr. Chairman: This provides that the Legislature shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision; but the Legislature might authorize a county or city by a vote of the people themselves to do this thing.

MR. GREGG. In the sixth line it is provided for. It says in "any manner whatever."

MR. LEWIS. Does not the word "authorize" in the second line cover the amendment?

MR. HAGER. Perhaps it is strong enough; I do not know but the section is strong enough. I will withdraw my amendment.

MR. BARTON. I move that the committee rise, report progress, and ask leave to sit again.

Lost.

MR. HERRINGTON. I send up an amendment.

THE SECRETARY read:

"Insert in line eleven, after the word 'any,' the words 'municipality or.'"

MR. GREGG. Is there any political subdivision in a municipality?

MR. HERRINGTON. Mr. Chairman: The reason I propose this amendment is because we all understand how easy it is, when the Court makes up its mind that a political subdivision of a State might possibly not with propriety be extended to a municipality, or rather that a municipality was a kind of political subdivision of a county, that they could so decide. I think it will make it a little more explicit, because municipalities are carved out of counties, and are really subdivisions of a subdivision; and as long as that course has been pretty general throughout the Constitution, I think it not inadvisable to insert that word, so as to make it definite and certain, in consequence of having made use of the word in another provision of the Constitution, that it was really intended that they should not be construed as a political subdivision.

MR. HITCHCOCK. I move the previous question.

THE CHAIRMAN. The question is on the adoption of the amendment.

THE CHAIRMAN. The Secretary will read section thirty-nine.

THE SECRETARY read:

SEC. 39. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

MR. BARRY. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Legislative Department, have made progress, and ask leave to sit again.

NOTICE.

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

THE SECRETARY read:

I hereby give notice that I will move to amend Standing Rule Number Fifty-three, by striking therefrom the words following, to wit: "Two hundred and fifty copies of the file for each day shall be printed."

Laid over for one day.

The hour having arrived, the Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and a quorum present.

MR. TERRY. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Legislative Department.

MR. STEDMAN. I second the motion.

MR. VACQUEREL. Mr. President; I rise to a question of privilege. I want to explain in reference to a resolution published in various newspapers libeling me.

THE CHAIRMAN: The gentleman will have leave.

QUESTION OF PRIVILEGE.

MR. VACQUEREL. Mr. President: I regret to have to rise before this honorable body for a question of privilege, but, sir, when a few men try to dirty my name, try to stain my honor, I would be a coward and a man unworthy of the esteem of any one if I did not reply. When I see men who, for the sake of ambitious purposes, want to stain what I hold dearer than life, I declare that I will not be immolated as a lamb. This question, I want it well understood, is not one of party; the party is free from any of those acts, and I am glad to state it; it is a personal affair—it is only a question of supremacy of a few men over a few others. But, Mr. President and gentlemen of the Convention, if the men that have been the cause of such shameful proceeding have lost all sense of justice, I am determined to explain myself if the earth itself was to give way beneath my feet, and I should fight it on this line if it took all my life. I hold, sir, a letter which has been sent to me, and I wish the Secretary would read it.

THE SECRETARY read as follows:

SENATE CHAMBER, December 21, 1878.

A. VACQUEREL, ESQ.: Dear Sir: In accordance with a resolution passed at a meeting of the Constitutional Club, held Thursday evening, December twentieth, eighteen hundred and seventy-eight, you are requested to attend a meeting of said club to be held this evening at room fifty-nine, State Capitol, and show cause, if any, why you acted contrary to the wishes of said club in relation to the election of a representative to fill the vacancy occasioned by the death of B. F. Kenny.

Respectfully,

JAMES N. BARTON, President.

J. L. FLYNN, Secretary.

MR. HOWARD. I rise to a point of order, sir; that, under the authorities, this is not a question of privilege. I read from the Law and Practice of Legislative Assemblies, by Cushing, section fifteen hundred and three:

"It has accordingly been decided, in that assembly, that the following subjects, among others, may be entertained therein as matters of privilege—that is to say, questions relating to the right of members and delegates to be qualified—including, of course, their credentials—namely: members who are duly returned, but were not present at the organization of the house; members entitled to seats by the determination of a controverted election, and members returned to fill vacancies; questions affecting the right of members to their seats, whether existing in the shape of charges contained in a petition, or in resolutions reported by the Committee on Elections, or otherwise, and pending in the house; questions relating to the character or conduct of members—as, for example, resolutions to censure or expel a member; the right of a member to defend himself against the charge in a petition lying on the table; the report of a select committee for investigating certain charges against a member; a complaint of one member against another for a supposed insult in the house, for words used by the former in debate; and in considering and returning the letter of a public officer containing injurious reflections upon a member for words used by him in debate; questions relating to the conduct of persons in the employment of the house—as, for example, a resolution to dismiss one of its printers for charging a member with falsehood, or to expel a reporter from the house for giving a false and scandalous account of a debate; questions relating to the general or aggregate privileges of the house—as, for example, the remonstrance of a foreign diplomatic agent, to one of the heads of departments, on the passing of a certain bill of Congress; a common report that members had been threatened by a mob; resolution for correcting the Journal when it is not made up according to the facts, and the correction relates to some matter then pending before the house; a false account, in a public newspaper, of what took place in the house on a certain occasion; a report, lying on the table, concerning a personal conflict between two members; whether the Journal of the house has been printed, by its direction, according to the requisitions of the Constitution; the report of a committee, charging a witness before them with contumacy; questions relating to an impeachment, and to the report of a committee appointed to investigate the conduct of the Secretary of the Treasury in reference to a certain matter."

THE CHAIR. The Chair entertains no doubt in the world that the case presented here is not only a breach of the privilege of the member, but also a gross breach of the privileges of the Convention itself. The point of order is overruled.

MR. VACQUEREL. Now, gentlemen, have I been recognized as a delegate on this floor, according to section five of an Act to provide for a Convention to frame a new Constitution for the State of California? If I am a delegate, as such I am entitled to the same privileges as any other. Now section six says: "For any speech or debate in the Convention the delegate shall not be questioned in any other place." And further, "The Convention shall have the power to punish as a contempt," etc. (Section five.) I ask you, gentlemen, if that letter is not in direct opposition with the Act that created this Convention, and if it is not a control or influence over me as a delegate and over my vote? Now, Mr. President, I want to refer to malicious reports published in different papers. And paragraph three of section six says that the Convention shall have power to punish as a contempt any malicious report of the conduct of a member in his delegate capacity. A resolution has been published in almost all papers:

"WHEREAS, On the sixteenth instant, this Club, by its unanimous vote, agreed to nominate and support Hon. J. R. Sharpstein for delegate to fill a vacancy in consequence of the death of Hon. B. F. Kenny; and whereas, P. T. Dowling did, on the eighteenth instant, conspire with enemies of the Workingmen's party to place in nomination a candidate in opposition to said candidate of said Club, the said Dowling being himself present and participating without objection to said nomination; therefore,

"*Resolved*, That P. T. Dowling be and is hereby expelled from this club and his name be stricken from the roll.

"Vacquerel was also expelled for the same reason, except that he was not present and did not participate in the nomination of Sharpstein."

Now, gentlemen, I am punished for a crime that I have not committed. I am expelled because I was not present in the club, and because I did not participate in the nomination of Mr. Sharpstein. But it appears that I have conspired with the enemies of the Workingmen's party. Why? Because some gentlemen elected on the Non-partisan ticket voted for Mr. Kenny. Why, I ask, in the name of God, how, and by what means, did my opponents expect to name Mr. Sharpstein? Was it not with the aid of the votes of the Non-partisans? And am I a conspirator and they are not? I let you judge, gentlemen.

MR. REYNOLDS. Mr. President: I rise to a point of order. The gentleman in speaking to his question of privilege, as I understand it, complains that his rights have been infringed upon under the law which provides that for any speech or debate in the Convention the delegate shall not be questioned in any other place. He has read a resolution calling him to question and expelling him from a voluntary association, which states distinctly that it was not for any speech or debate, and he himself states that it was on account of a vote cast and after the vote was cast.

THE PRESIDENT. The gentleman cannot argue the question.

MR. REYNOLDS. No. The gentleman does not wish to argue it, but wishes, if possible, to state the point raised. Now, the section of the statute which he read does not say that he shall not be called in question for any vote. Now, the point I wish to make is, that he is pretending to have been influenced in casting a vote that was already cast and passed into the record. He has been called to question concerning what had already taken place, and, therefore, could not have been influenced.

THE PRESIDENT. The gentleman's point of order is not well taken. The gentleman from San Francisco, Mr. Vacquerel, will proceed.

MR. VACQUEREL. But, Mr. President, I do not want to argue my cause with the help of the law that created this Convention, as perhaps those men, having not created that law, do not care about its right, although when Saturday night comes they find the law to be a very good one. I will only take the platform, and constitution, and resolutions of the party which I am accused to have betrayed, and will explain and prove my reasons for voting for Mr. Kenny, as I have stated in my answer; I will not read it, it will be superfluous, and here it says: "Resolved, First—That we recognize the Constitution of the United States of America as the great charter of our liberties and the paramount law of the land." Therefore, if we do recognize the Constitution of the United States, I, as a citizen, claim my equal right. Further: "And, whereas, our Courts have been corrupted, the equal rights of the people violated until the administration of justice has become a mockery and a farce." As Mr. Sharpstein—and I wish you well to understand that I do not say anything against the gentleman; I do not know him, I never spoke to him—but this is the question: As Mr. Sharpstein has been a Judge, and administrator of justice, I thought, having no exception made in his favor, that he belonged to the whole crowd, and, to not make any mistake, I kept him there. Further it says: "Resolved, That all candidates for election to any office in the gift of the Workingmen's party of Cali-

fornia must be selected from the ranks of the clubs, trade unions, societies, and associations, and that the names of such candidates must be found on the rolls of such clubs, trade unions, societies, and associations." Having been a member of the Charter Oak Hall Convention, I know very well the gentleman came in just for the nomination, and was not a member of any club; if he is since I cannot say. But further, I will come to the pledge I have taken: "That I will discourage all office seeking." Then, as I took a pledge to not encourage office seeking I thought that a man beaten by the people, beaten by this Convention, bringing or authorizing his name to be brought up again to try to defeat others who never sought for the position, was an office seeker, and if it is not office seeking then I acknowledge that I am at a loss to know what office seeking means.

But, gentlemen, section eight of the same platform says: "We repudiate all spirit of communism." Do the authors of such resolutions and such proceedings against me know what communism means? Why, as French by birth, I can explain it to them. A Communist—not a communalist—is a man that wants liberty, fortune, land, privileges, and so forth, all to himself; providing that his neighbor shall have none of the same, no matter how he may need it. The maxim is: All for me—nothing for others; and I hope the Convention will judge if I am a Communist; because I claim for myself the same rights as I claim for others—which rights are denied to me. I ask you, gentlemen, if I have ever departed an inch from my oath? On the nineteenth of June last, the day of the election, was there any specification on the ticket that some of the candidates were to be speakers, others to manage the cat-o'-nine-tails, and I nominated to be whipped? No, we were all equal; same rights, no more nor less power one than another; and still, to-day some take the power to force me to vote, to gag me, and to try to stain me, but I will not submit to it.

But why all this trouble because I have voted for an honest workingman, a man that has done for the party more than a good many of his antagonists have done? Has it not been declared in this hall that we did not want any "old fossil," and because I vote for a young man I am treated worse than any criminal. Explain what you want, gentlemen. I try to do according to your own words, and you are not pleased. Really I cannot understand such inconsistency. Now, that is not the question. To serve your own purpose you want to destroy a man that acts right—a man that dares say to your face, "The Workingmen's party has no worse enemies than some of you." You might not do it purposely, but you do it independently, of your own free will. Why, you deny my right to vote. What would you have said on election day if you had been forced to vote for a Non-partisan, or Republican, or Democrat? Would you not have rebelled? And still you find it extraordinary that I protest. But why did you not take the same steps toward other delegates who voted for Mr. Kenny? Why do you attack only Mr. Dowling and I? Why, I will tell you. Because you dare not do it, knowing that these men would act as manly as I do, if not more. Do you for an instant suppose, gentlemen of this Convention, that I, who have abandoned friends, position, family, because I could not live under a despotic government—I, who came into this land of the free, where one can breathe freely, thank God, where the sun shines for everybody, should have come to be a slave? Why, Mr. President, have I fallen so low as that? No, thank God; the blood that circulates in my body is not the blood that will submit to slavery. Such resolutions as the one adopted—not unanimously, I am glad to say, for I know the best intelligences took my side; I know them, and I thank them—such resolutions, I say, I treat with the contempt it deserves; and I declare it in the face of all, and wish to God that my voice could be heard all over the State of California—nay, over the whole Union—that the meanness of such resolutions or slurs shall never, never attain the height of my disdain and contempt for its authors.

I have now but a very few more words to say. Last Friday night I happened to go to the office of a newspaper in this city—the Record-Union. I did not know that I was doing any harm. I really had no such intention; but several gentlemen came to me and said it looked suspicious to go to the Record-Union and try to have anything published. Well, gentlemen, I went to the Record-Union, and I want to tell you why: to have an article inserted in that paper, which is entitled "A Countryman of Lafayette Speaks for the Flag," and if I did wrong in going and defending the flag that I have sworn to sustain you can blame me for doing it. I thank you very much for your kind attention.

MR. DOWLING. Mr. President: I send up a resolution.

THE SECRETARY read:

WHEREAS, On the twentieth day of December, eighteen hundred and seventy-eight, the following named persons were nominated for election to fill the vacancy in this Convention caused by the death of Honorable Bernard F. Kenny, of San Francisco, namely: John R. Sharpstein, John J. Kenny, one Lloyd, and Leonard; and whereas, I cast my vote for the said John J. Kenny; and whereas, on the twentieth day of December, eighteen hundred and seventy-eight, I was cited to appear before the Workingmen's Constitutional Club, assembled in room fifty-nine, State Capitol, Sacramento, to show cause why I should not be expelled from membership in said club for having cast my vote as above stated; and whereas, at the time aforesaid I was a member of said club in good standing; and whereas, I refused to appear before said club for the purpose of being questioned or punished for having cast my vote as above stated, the said club proceeded to expel me, and did expel me on said day from said club, and cause my name to be stricken from the roll of said club, as a punishment for having voted in this Convention for the said John J. Kenny, and for the purpose of disgracing and degrading me in the eyes of the people of this State, and for the purpose of menacing and influencing me, and compelling me in the future to cast my vote according to the wishes of the other member of said club, and in utter disregard of my privileges as a delegate in the Constitutional Convention of the State of California, and in contempt of the law and the dignity of this Convention; and whereas, the said club is composed of the following named persons, who were present and who voted for my expulsion from said club, and who authorized the above citation to be served on me, namely: James N. Barton, President of said club; J. Flynn, Secretary; Clitus Barbour, C. J. Beerstecher, Barry, Bell, Condon, Cross, Davis, Dean, Farrell, Gorman, Grace, Harrison, Herrington, Joyce, Morse, Nelson, Reynolds, Smith, Stedman, Swenson, Wellin, West, White, and Wyatt; be it therefore

Resolved, That the above named persons, and each and every one of them, are guilty of a breach of my privilege as a member of this Convention, and of contempt of this honorable body; and be it further

Resolved, That they be cited to appear before this Convention to answer therefor; and be it further

Resolved, That a committee be appointed by the President to investigate the charges above fully set forth, and report thereon.

P. T. DOWLING.

December 21, 1878.

MR. CROSS. Mr. President: I wish to set myself right now. I wish to say that I never had anything to do with this matter. If I had I would stand up to what I did. I have not attended the meetings of the club, because I did not think I needed the counsels of anybody. My name appears in that list, and I wish to say now that I have not had anything to do with it.

MR. DEAN. I can say the same.

SPEECH OF MR. DOWLING.

MR. DOWLING. Mr. President: If the facts which I have stated in connection with the resolution just sent up to the Clerk's desk be true—and I invite investigation—it is quite clear to my mind that my privilege as a delegate to this Convention has been violated, and this honorable body treated with contempt, by the parties named in the resolution. The law denies the right to any person or association of persons to question a member of this Convention about anything which he may say or do on this floor. Yet this so called Constitutional Club has not only asserted this right, in defiance of the law, to question me for the way in which I cast my vote in the matter of filling the vacancy occasioned by the death of Honorable B. F. Kenny, but have assumed the right to punish and disgrace me. Considerable ill feeling has been created in the premises, owing to the part I have acted. Unfortunately, however, my real intentions have been dwarfed, contorted, and misconstrued. I have been accused of conspiracy, of treachery, to break up our organization, and create dissensions in the ranks of the representatives of the Workingmen. And what for? Because I considered I was right—for exercising my own cool, calm, and deliberate judgment; and certainly I was right. I can die for my principles, but I cannot afford to expire twice for a man. I do not like to see the organization to which I belong made an instrument by which political aspirants can rise themselves into prominence and power; or, in other words, I don't like to see Workingmen made stepping-stones of any longer. As I belong to the Workingmen's party, I certainly want to see workingmen nominated to fill positions for which they are capable. Why, sir, I can take a riata and swing it at leisure and lasso as many men from among the common people, with the same amount of intelligence, as this Convention possesses; and still, when an office is to be filled, we must have a lawyer to come forward. I have nothing against lawyers, in their particular sphere, at all, but our great misfortune is that they form the aristocracy in a democracy. De Tocqueville says that if he were asked where would he place the aristocracy of America, he would place it on the bench and at the bar. The great curse of our common country to-day is that the government is in the hands of the non-producing classes, and taken away from the source to which it properly belongs—from the hands of the great industrial masses of the community.

Who is Judge Sharpstein? I don't know anything about his antecedents prior to the time I tendered him the nomination to be a candidate on our ticket at large for a delegate to this Constitutional Convention. He never appeared in the movement until the party was built up, and then he only figured as a candidate for office. Subsequently, however, he gained considerable notoriety, and lately he has been looked upon as a sage, a martyr for the cause. I saw in the election of Sharpstein ominous signs for the Workingmen's party; indeed, the game was made, and every time that I can kick at a ring, I certainly will.

"I saw it all in fancy's glass—
Herself the fair, the wild magician—
Who bade each splendid day dream pass,
And named each gliding apparition."

If Sharpstein wants to be a benefactor to the people, he must not bite every time that an office is held out to him. Although Sharpstein was brought into the movement for a purpose, he nor nobody else must think that they can use it for a purpose. I do not care if he were the greatest man in the world, I could not conscientiously vote for him, under the circumstances.

Local representation is the great principle of democracy. It is nearer and dearer to me than all, and still for having adhered to this paramount principle I am disgraced in the eyes of my constituency, held up to mockery, and pointed at with the finger of scorn. This principle was admitted on this floor on more than one occasion. It was admitted in filling the vacant chair of the late lamented ex-Governor H. H. Haight, from Alameda; it was admitted in filling the seats made vacant by the two deceased members from Merced and Mariposa; but was it admitted when the vacancy occasioned by the resignation of Mr. Morris? No. The electors of the Sixth Ward in San Francisco were not consulted; but in that case it can be overlooked, from the fact that that ward had but a half organization. However, Mr. Sharpstein was nominated, and I sustained him; but he was defeated. One defeat is enough for any man to sustain on this floor.

On this occasion considerable animosity was manifested, and the private and public character of the man assailed on every side. In the present instance it is, however, different—the chair made vacant by the death of Mr. Kenny. The ward which he represented has an organization, and according to well established principles, every ward in San Francisco has a right to nominate its own representative, taken direct from the ward clubs; and Judge Sharpstein did not either belong to that club or reside in the ward at all. And for daring to give this ward a representation in this honorable body, I am denounced in the most embittered terms. This is my crime, and this is the reason I am hauled

over the coals—for daring to come out boldly and squarely against one of the most popular men, in the estimation of some of the San Francisco delegation; for daring to vote against a caucus nominee; for daring to do as my head and heart dictated. If that is a crime, they can make the most of it. My obligation to the caucus ceased the day previous, when the whole matter was postponed. But, sir, in my estimation, a caucus is a fraud, a slimy treacherous traitor, and a stain upon American politics. I abhor a caucus, I repudiate a caucus, as inimical to every well regulated government, and as a libel on the principles and platform of the young organization to which I belong. It is a star chamber in the broadest sense of the term. I never joined the Workingmen's organization to go into secret conclave at all. We do all our business open and aboveboard, in the free air, under the sacred dome of heaven. I did not know what a caucus was until I came to Sacramento. I learned what it was in this Capitol, and I find out that it is a nice contrivance for a few men to swing the party lash, and make deaf mutes out of honest and intelligent Workingmen. Of course, the poor Workingmen are not statesmen; they are not able talkers, but they are, I think, honest and sincere.

Now, sir, I claim it is my privilege to vote fairly and squarely, in accord and in harmony with the dictates of my own conscience, on all and every proposition, and the law strictly defines that right and privilege; therefore, I submit these resolutions for your consideration.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I did not intend to pay any attention to this airing of the dirty linen of this Convention. I believe, sir, that by the resolution there, I am accused of a breach of the high privilege of a member of this body. I deny the jurisdiction of this Convention over me and my associates in the matter of who shall associate with us and who shall not, and that is all there is of it. I will not pretend to discuss the question here as to the discipline of a party, or anything of that sort; but I will simply remind this Convention that we—myself and my associates here—are the judges of whether we will associate with men who break their word and betray their honor. I care nothing about these resolutions. It was never heard of, and it was never dreamed of, that the action of political assemblies, which were organized by Republicans, by Democrats, by Whigs, or what not in Congress, or in the State Legislature, or anywhere else, should be called in question, or that a Convention would undertake to determine who should associate with them, and who should not. Sir, it is monstrous, and I deny the authority of this Convention to determine that matter. What can you do with these men? Can you send them back into the club? Can you restore them to their standing there? Why, sir, we are the judges of that matter. You propose to go into an investigation of what a political club, or caucus, or whatever you call it, has done. Was ever such a thing heard of before? [To Mr. Dowling.] There is one place for you to go, sir, and that is back to your constituents in San Francisco, and do not come complaining and whining to your enemies.

[Applause.]

MR. DOWLING. I can go back to my constituents when I have made my pledges good.

MR. BARBOUR. You made pledges that you would answer to your constituents, and to no one else, and now you are whining and complaining here in this Convention.

MR. DOWLING. No; when I——

THE CHAIRMAN. The gentleman from San Francisco will take his seat.

MR. BARBOUR. That is all I wanted to say.

MR. HILBORN. I have a report from a Committee on Mileage and——

THE CHAIRMAN. It is not in order. The question is on the adoption of the resolution.

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

MR. HITCHCOCK. I move that it be indefinitely postponed.

MR. AYERS. I second the motion.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: As my name is in that list I want to say a word. I would rather that this resolution would not lie on the table or be indefinitely postponed. I would like to see the thing come right square up. I do not speak in defiance. I consider that that gentleman violated the rules of that club. They violated their pledge; they violated their platform; and both the gentlemen were in Charter Oak Hall when they unanimously adopted the Hibernian resolution which excluded them from voting for or nominating any man that was an officer of a Ward Club; and as I am credibly informed Mr. Kenny was Secretary of a Ward Club. He was ineligible for our votes, while Mr. Sharpstein was not. The gentleman sat in the club and indorsed the nomination of Mr. Sharpstein, or at least did not oppose it; and I claim that no man can go back on that and be a gentleman.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: It seems to me, sir, that nothing can more impede our progress in this Convention than anything which is calculated to engender ill feeling among the members. Now, sir, if these resolutions are taken up and voted on it will engender ill feeling. From this time on our work, instead of being considered carefully in the interest of the State, will be more or less tinged with the ill feeling which will be created by this resolution. It seems to me that no benefit can grow out of a vote on this resolution. It seems to me that it will be in the interest of this house that nothing should be done to stir up any further ill feeling, and, therefore, I hope that the motion of the gentleman from San Joaquin will prevail, and that this matter will be indefinitely postponed.

THE PRESIDENT. The question is on the motion of the gentleman from San Joaquin.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. President: As I seem to figure at the tail end of this farce, it is probably necessary that I should figure as one of the culprits pleading before the people of the State of California, and what I have to say is this: that in so far as I had anything personal against Mr. Vacquerel or Mr. Dowling, it is as far from me as the east is from the west; but the delegates of this Convention, elected and known as the Workingmen's delegates of the State of California, have an organization here known as the Constitutional Club. That club is attended by the delegates, largely, of the Workingmen of this Convention, and it is attended for the purpose of consultation, and for the purpose of organization, and for the purpose of ascertaining what our action will be upon a given question or point, and for the purpose of holding us level upon the principles upon which we were elected, sir, and for the purpose of maintaining them in the face of the great opposition or of the small opposition, and for the purpose of putting them forth and holding them up at any and all risks. These two gentlemen have been members of that club, and me, as a member of that club, thought that they had gone back on us in their action with reference to the nomination of Judge Sharpstein; and I, as one member of that club, want no further association with them there. So far as that club was concerned, sir, and so far as I was authorized to speak for the club and for the Workingmen's party of this State, I did vote to fire them out; and I will vote a thousand times in that direction if it is ever presented under similar circumstances. And if it is the will of this Convention that I shall be fired out for doing these things, now is as good a time to fire me as you will ever get. I will stand the fire if I am fired on that.

MR. HOLMES. Believing that the Convention has no desire to figure in this at all, I move the previous question.

MR. REYNOLDS. As my name is included in these——

THE PRESIDENT. The previous question has been called for.

MR. HOLMES. I give way.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. President: The charge has been made on this floor that the privileges of a member, or of two members, have been violated. Now, it is in the first instance, under the rules, the duty of the Chair to say whether there is a question of privilege involved in this charge or not; and I deem it to be the duty of this Convention, if the law has been violated, to maintain its dignity and honor and protect its members from the lash of any party. It is simply dodging the question to postpone this matter. If the privileges of these men have been violated, let us stand up like men and investigate it. These men claim that they have not violated these privileges. Let that question be tried. This is not the way for men to act. Why, the members of this Convention could be trampled upon every corner; they may be hooted at for the votes they may give in this Convention; you may find members hooted as they pass in the streets if you do not stand up and protect yourselves and your dignity, and protect the dignity of this Convention. It is true that there is a large body of men here who are opposed to this proceeding. Why? because the proceeding is threatened against members of a secret society; I do not say whether it is secret or public, but a society that holds its members under certain by-laws and rules peculiar to themselves. Again, we hear applause coming from the lobby. It seems to me there is a widespread sympathy between the gentlemen named and the lobby. There is a great sympathy between them. But I care not for the lobby; I care not for the opinions of those men who would drive us from our duty. No man can deny that it is the duty, if the President should decide that there was a question of privilege involved here, of this Convention, to investigate it; and if it is a simple matter of the right of one gentleman or set of gentlemen, to associate with another set, as claimed by the gentleman from San Francisco, Mr. Barbour, the Convention will so decide. But, as I understand, it does not involve any such proposition. These gentlemen, as I understand, voted, as they state, according to the dictates of their own consciences. Another set of men issued to them a notice, by authority of a certain club signed by the President of that club, demanding their attendance at a meeting to show cause to them and answer to them why they should not be expelled and punished for voting in a given way. Now, if the statute means anything, it means that an act of this kind shall not be permitted. We all understand the force of numbers. We know that forty or fifty men combined in this matter can exercise a great influence. They can exercise a great influence on this floor, and they propose to take a member out of this body, single him out, make him bend before this forty or fifty, and there give an account of his action in this Convention. If that is the way this Convention is to be run, if it is to be run by forty or fifty men, by whipping and lashing their members into the traces, we might as well go home now, for the people will not adopt the offspring of such a piece of slavery—will not adopt the offspring of slaves—for men are slaves who can be treated in this way. It is beneath the dignity and honor of this Convention to allow these members to be overhauled in this way. This action is in violation of the law of the State to-day. It is in violation of every principle of right. If any set of men in the world should be protected against influences of this kind, it is a body like this. I have heard these same gentlemen, on this floor, denounce men as corporation fuglers, as men belonging to the corporations or influenced by corporations. I do not care who did it; I am not talking about individuals, and I care nothing for these individuals I am speaking about now any more than I do for any member of this Convention. I have respected them, though they are not particular friends. I have no reason for advocating their cause. I know it was an unpopular move to make, but I have not come here to seek popularity; I have come here to do my duty. I say there is a principle involved here; one that we should not allow any man, or set of men, to trample upon; and I, for one, dare and will defend this principle at all times and at all hazards. Now, it is for the Chair to say whether there is a question of

privilege involved here under rule thirty-nine, of this Convention. Now, shall we, by a motion to postpone this matter, dodge our duty and allow a man, or a set of men, to attempt to influence members of this Convention as to how they shall vote?

It has been said, and I think it is a very small technicality, that the vote had already been taken, hence the action of this club could not influence the vote of the member. If a man knows he will be punished for an act, it certainly must have a great influence upon him one way or the other. We make laws to deter men from committing crime, and punish one for the purpose of deterring others from committing the same crime. It is generally supposed that that law has an influence to prevent the commission of an act. Then what is this notice given for? To make these men come before them and acknowledge their jurisdiction and then punish him if he does not.

MR. BARBOUR. Did not your client belong to that organization.

MR. REDDY. You have no right to call him my client.

MR. BARBOUR. Didn't you draw up these papers?

MR. REDDY. Yes. I did it because I thought his privilege had been violated, and I would do it for any gentleman who asked my assistance under similar circumstances.

MR. GRACE. I would like to know if you was ever in a Democratic caucus?

MR. REDDY. In the first place it is none your business, and in the second place I never was in a Democratic caucus, nor any other caucus, and I denounce a caucus, and the whole caucus business, whenever it attempts to control men who are sworn to do their duty. When men are not sworn let them do as they please. I know this is an unpopular move.

MR. WEST. Mr. President——

MR. REDDY. Now, if you will allow me to go on you will have all the chance you want to reply, and perhaps if I have a chance to reply to you, you will be sorry you availed yourself of the opportunity. Now, sir, they cite these gentlemen to appear.

MR. WEST. May I explain?

MR. REDDY. I presume that when you are called to the bar of the Convention you will have an opportunity. Now, it is claimed that the vote was already cast, and that therefore they did not attempt to influence that particular vote. The law is broader than that. The law treats it as a breach of privilege and a contempt of the Convention to influence any member, in any way, or upon any measure pending in this Convention. Then what was the purpose? It was to punish this man. Why? In order that a like offense would not be committed again; in order that the next time he would vote according to the wishes and dictates of that club. Because he did not do that they expelled him. Why? In order to retain their influence over the balance, just as the law punishes for an act. It desires to make an example of a party who commits a crime. So this club, in order to make an example, in order to deter others from doing the same thing, expels these men. If they keep on upon this principle we may not have a quorum. However, that is aside. Then this was done for the purpose of influencing the action of members. Was it not calling them to account for an act done on this floor? There can be no question about that, it seems to me; and if so they are clearly within the statute and should be dealt with according to the judgment of this Convention. Now, if a charge of this kind was preferred against a corporation, or against some one who was supposed to be in sympathy with the Non-partisan side; if they had been called to an account, would not the gentleman who are resisting this measure now, be only too glad to pounce upon them, and have them dealt with according to law. The very thing that they have denounced, putting men under improper influences, they seem to exercise themselves through a party organization. Now, I simply demand that the Chair, first, in accordance with the rule, will declare this a question of privilege, which I know the Chair will do. That being done I hope the Convention will investigate, and if there is guilt punish the guilty parties.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: Trusting to an opportunity to get the floor, I did not interrupt the gentleman from San Francisco, Mr. Dowling, to ask him what I now ask. While speaking to his question of privilege, or his resolutions, he did not inform us which, he denounced the caucus—repudiated the caucus. I ask him now, since when does he repudiate the caucus? Since when does he denounce the caucus? Was it since last Monday evening, when he participated in the nomination of Judge Sharpstein in the caucus? Was it only since he entered into a conspiracy to defy and defeat the will of a caucus in which he participated without raising his voice against it?

THE PRESIDENT. The gentleman is out of order with such remarks. It is a question with the conscience of the member.

MR. REYNOLDS. The President need not be so tender of the gentleman's conscience. I ask him if it was since——

MR. DOWLING. I will answer the gentleman. The caucus was a job ever since it commenced; it was a humbug. [Laughter.]

MR. REYNOLDS. That is the gentleman's opinion. I thank him for that answer, and if the caucus, if the club, as he says, has been a humbug, I ask him what sort of man is he who has been an active member of it from the beginning? What sort of man is he who has participated in almost every meeting of that humbug club, in its action down to the very nomination of the gentleman against whom he entered into the conspiracy to defeat? [Applause and laughter.] Yes, sir, since when did he discover the club was a fraud? I will answer. Sir, it is since the time when he entered into the conspiracy with a gentleman who acknowledged on this floor that when two men were candidates for the same office, he signed the recommendation of one and spent his money to elect the other. Yes, sir, it was since then that he discovered the caucus and the club to be a humbug and denounced it. They are fit associates. They ought to be proud of each other.

And now, to show what a shallow pretense all this privileged question business is, I ask the Secretary to read a few lines from the whereases to the pending resolutions.

THE SECRETARY read:

WHEREAS, On the twentieth day of December, eighteen hundred and seventy-eight, I was cited to appear before the Workingmen's Constitutional Club, assembled in room fifty-nine, State Capitol, Sacramento, to show cause why I should not be expelled from membership in said club, for having cast my vote as above stated; and whereas, at the time aforesaid, I was a member of said club in good standing; and whereas, I refused to appear before said club for the purpose of being questioned or punished for having cast my vote as above stated, the said club proceeded to expel me, and did expel me on said day from said club, and caused my name to be stricken from the roll of said club, as a punishment for having voted in this connection for said John J. Kenny.

MR. REYNOLDS. I denounce those recitals as untrue, as deliberate falsehoods, and the gentleman who offers this resolution knows it, and now I will prove it. For that purpose I will ask the Secretary to read the following preamble to the resolution expelling Dowling and Vacquerel, passed by the club.

THE SECRETARY read:

WHEREAS, On the sixteenth instant, this club, by its unanimous vote, agreed to nominate and support Hon. J. R. Sharpstein for delegate to fill the vacancy caused by the death of Hon. B. F. Kenny; and, whereas, P. T. Dowling did, on the sixteenth instant, conspire with the enemies of the W. P. C. to place in nomination a candidate in opposition to said candidate of this club, the said Dowling being himself present and participating without objection to said nomination; therefore, be it resolved, etc.

MR. REYNOLDS. Now, Mr. President, there is the preamble to the resolution of expulsion: the record of the action of the club. It gives the lie to the assertion that these gentlemen have been called to account for the votes they cast, but distinctly states that they were expelled from the club because, having participated in its action, they deliberately entered into a conspiracy to bring out another candidate in opposition. The gentlemen themselves know their preamble and resolutions to be false. There is not a gentleman on this floor but knows they are false. They are but a shallow pretense got up to make a case against the Workingmen's delegates in this Convention. This has been the aim of some gentlemen even from the beginning of the session until now, but they have met with disappointments at all points, as they will now. It is a mere sham and trick, inspired by the vain hope to create dissension among the Workingmen, but it will fail. This Convention should be in better business. It should be attending to the duties imposed on it by law, and not prying into matters over which it has no authority. But, sir, I challenge you all, if you think there is any political capital to be made out of it, pass this resolution; raise a committee of investigation; go into the examination; make the most of it,

"And damned be he who first cries hold, enough!"

MR. HOWARD. I move to lay the resolution on the table.

MR. WEST. Mr. President: I desire to say to the Convention, that inasmuch as grave charges have been made here against members of this Constitutional Convention, charges which are false in themselves, false in the beginning, and false in the ending, so far as it relates to any action of any member of this Convention, and my name having been falsely placed there—I care not whether Mr. Reddy wrote it or not—I ask this Convention to adopt the resolutions and have an investigation.

THE PRESIDENT. The question is on the motion to indefinitely postpone the resolution.

MR. REDDY. Mr. President: I object to the gentlemen voting who are charged in these resolutions. They have no right to vote. Under parliamentary rules they have no right to vote.

THE PRESIDENT. The gentleman's point of order is well taken. When a charge is made against a member he cannot vote upon it.

MR. REDDY. Mr. President: I ask that these members be requested to withdraw, or keep their seats.

[Cries of "Call the roll;" "Call the roll."]

MR. AYERS. I demand the ayes and noes.

The ayes and noes were demanded by Messrs. Freud, Howard, of Los Angeles, Keyes, and West, and the Secretary commenced calling the roll.

MR. BARBOUR. Mr. President: I claim my right to vote.

THE PRESIDENT. The member being charged in the resolution, cannot vote upon it. That is the universal parliamentary law.

MR. LARKIN. I would ask for the reading of the names.

THE PRESIDENT. Under universal parliamentary law, any member against whom a charge is made, cannot vote upon it.

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

MR. CROSS. I was not going to vote upon it, but if you make it a party issue, why not let the Non-partisans settle it?

MR. HARRISON. Mr. President——

THE PRESIDENT. No motion can be made. The roll is being called.

MR. HARRISON. My name is called there, and I want to explain the law.

THE PRESIDENT. No explanations can be made when the ayes and noes are being called.

MR. HARRISON. I hope I will be heard afterwards.

MR. BEERSTECHER. I object to the vote of Mr. Reddy. I do not believe a paid attorney can vote.

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

MR. STEDMAN. I second the appeal.

THE PRESIDENT. No appeal can be entertained now.

MR. BARBOUR. Then I ask permission to place on record a protest.

MR. REYNOLDS. Mr. President: I understand——

THE PRESIDENT. The gentleman will take his seat. He is out of order. Proceed with the roll call.

MR. KENNY (when his name was called). Mr. President: I desire to be excused from voting, as I am an interested party.

MR. SWEASEY (when his name was called). As I belong to the club, although my name is not on the proscribed list, I decline to vote.

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

AYES.

Andrews,	Heiskell,	Prouty,
Ayers,	Hitchcock,	Rhodes,
Barton,	Holmes,	Ringgold,
Belcher,	Howard, of Los Angeles,	Rolfe,
Blackmer,	Howard, of Mariposa,	Schomp,
Brown,	Hughey,	Shoemaker,
Caples,	Hunter,	Shurtleff,
Chapman,	Johnson,	Smith, of 4th District,
Charles,	Keyes,	Soule,
Doyle,	Larkin,	Terry,
Dudley, of Solano,	Mansfield,	Tinnin,
Dunlap,	McConnell,	Turner,
Eagon,	McCoy,	Tuttle,
Estee,	McNutt,	Walker, of Tuolumne,
Evey,	Miller,	Webster,
Finney,	Moreland,	Wilson, of Tehama,
Freud,	Nason,	Wilson, of 1st District—53
Garvey,	Ohleyer,	

NOES.

Burt,	Larue,	Reed,
Edgerton,	Lewis,	Schell,
Gregg,	McCallum,	Steele,
Hilborn,	McFarland,	Stevenson,
Inman,	Overton,	Thompson,
Jones,	Porter,	Van Voorhies,
Lampson,	Reddy,	Weller—21.

MR. EDGERTON. I move that the whole subject-matter be made the special order for the next fourth of July.

MR. REDDY. I suggest that the gentleman will probably be making a speech on that day, and cannot attend.

LEGISLATIVE DEPARTMENT.

MR. TERRY. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Legislative Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The committee had under consideration section thirty-nine. If there are no amendments the Secretary will read section forty.

AMENDMENTS TO THE UNITED STATES CONSTITUTION.

THE SECRETARY read:

SEC. 40. The Legislature shall not ratify any amendment to the Constitution of the United States which may be proposed by Congress, except such as shall have been proposed and published at least thirty days next preceding the general election for members of the Legislature ratifying such amendment.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: I move to strike out that section. This amendment as first proposed was, that no amendment to the Constitution of the United States should be ratified except by a popular vote. That, for very good reasons, was abandoned, and this section forty substituted in its place:

"The Legislature shall not ratify any amendment to the Constitution of the United States which may be proposed by Congress, except such as shall have been proposed and published at least thirty days next preceding the general election for members of the Legislature ratifying such amendment."

Now, I wish to call attention to the language of the Constitution of the United States upon this subject, in section one, article five. This provision is, that these amendments shall be ratified by the Legislatures in the different States, as may be provided by Congress. Therefore the State has nothing to do with the manner of ratifying the amendments to the Constitution of the United States, and I submit that it is a violation of that principle of the Constitution of the United States to say that the Legislature of the State shall not ratify an amendment to the Constitution of the United States, except in the manner provided in this section forty. It says that the Legislature shall not ratify any amendment, "except such as shall have been proposed and published at least thirty days next preceding the general election for members of the Legislature ratifying such amendment." Suppose they are not published then? Two thirds of each branch of Congress propose an amendment, and it is ratified by the Legislatures or Conventions of other States. No provision is made here for the publication of these amendments to the Constitution of the United States, and then if they never should be published, then they are never to be ratified, and that by a provision of the State Constitution. Section one, of article five, of the Constitution of the United States, says:

"The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

There is a proviso then following which has nothing to do with this question. Suppose the Legislature assembles and acts upon a proposed amendment to the Constitution of the United States—ratifies it—are we to have the question raised in the Courts whether that is a valid amendment, because the provision of our State Constitution said that the Legislature should not ratify until the proposed amendment had first been published at least thirty days next preceding the general election for members of the Legislature ratifying such amendment? I do not know, Mr. Chairman, why there is any necessity for any provision upon this subject. It seems to proceed upon the idea that some amendments to the Constitution of the United States have been ratified that ought not to have been, in some hasty or unconsidered manner. I am not aware that such action has been taken. If it has been, it is a question for the general government and not for the State.

But there is a special reason why I give some importance to this matter. In the last Presidential election the fact was developed that there is a provision in the Constitution of the United States so uncertain in its meaning as to be as dangerous and threatening in the different constructions which may be given to it, as the different constructions of that Constitution as to the right of secession. Such men as Morton upon the one side, and Edmunds, and other men like him in the same party, upon the other, entertained opposite opinions about the construction of the Constitution of the United States, as to whether the Vice-President could declare the result of a Presidential election, a question which agitated this country from center to circumference, and only by the wisdom and the patriotism of men coming together of both parties, was this country saved, perhaps, from another war. Notwithstanding that occurred in January, eighteen hundred and seventy-seven, or about that date, there has been no amendment yet provided in the Constitution to avoid that very dangerous question. I believe that all will agree with me that it is of the utmost consequence that that provision of the Constitution of the United States which makes it, to say the least, doubtful, whether the Congress or the Vice-President shall declare the vote, ought to be amended. If this amendment should be adopted, and it requires the vote of California to make the three fourths of the States, we could do nothing whatever upon the subject unless we would violate our own Constitution in voting upon that amendment. Now, sir, I see no necessity for that section, and I hope it will be stricken out. It is wrong in principle and wrong in policy, and might lead to disastrous results.

QUESTION OF PRIVILEGE.

MR. REDDY. Mr. Chairman: Several gentlemen have called upon me since my remarks here on the question of privilege, believing that the names set forth in the resolution sent up by the gentleman from San Francisco, Mr. Dowling, were written by me—that is to say, that I had put their names down. They seem to be under that impression. I wish to say now to the gentlemen whose names appear in that resolution, that I do not know anything about those names. I simply suggested the form of those resolutions, and I never saw a single name written. They were inserted in a blank space left for that purpose, and I state this that the gentlemen may not take it as an assertion upon my part that they were a party to anything. I had nothing whatever to do with these resolutions, beyond suggesting the form in which they should be put. My remarks were aimed at the principle involved.

MR. HARRISON. Mr. Chairman: My name is on that list, and I am very glad it is on the list.

MR. BARTON. Mr. Chairman: I accept the apology.

MR. REDDY. I hope the gentleman will understand me. There seems to be quite a breeze because I dared to exercise my privilege and speak upon this subject, and I have been surrounded on all sides. Now, I want it understood that anybody who does not like my remarks may make a note of it; that I am responsible for them at all times and in all places, either in the daylight or in the dark.

AMENDMENTS TO THE UNITED STATES CONSTITUTION.

MR. TERRY. Mr. Chairman: Perhaps the most important duty which the Legislature is ever called upon to perform is the ratification of an amendment to the Constitution of the United States, and it does occur to me that the persons who are called upon to discharge that duty should be elected with some reference to the question which is involved in it. Now, it is proposed here that the proposed amendments to the Constitution of the United States shall be passed upon, so far as the State of California is concerned, by a Legislature, the members of which have been elected after the amendment has been proposed, so that the people, in selecting their members of the Legislature, may do it with some reference to the opinions and views of the candidates upon the ratification or rejection of the amendment. If that thing had been done in the past, perhaps some of the amendments which are now a part of the Constitution would not have been ratified. The fifteenth amendment was never ratified according to the Constitution, but the question cannot rise, because it was proclaimed by the Secretary of State as having been carried by the requisite number of States; but we do know that there were certain States in which subsequent Legislatures elected by the people undertook to withdraw that ratification. So, that if that election had been held, or if a provision of that kind had been in the Constitution, in the States of New York, Oregon, and another—I do not remember the third—requiring that the ratification be by a Legislature, the members of which were elected after the amendment was proposed, it would perhaps never have been ratified. Now, I do not complain of the fifteenth amendment. The fathers of it are beginning to be a little afraid of their own bantling, and after a number of years even-handed justice has returned the poisoned glass to the lips of those who prepared it. Other amendments will come up. Amendments to the Constitution of the United States may be proposed, and the Legislature of this State, and the Legislatures of other States, enfranchising the Chinese, or affecting our interests equally. In a case of that kind, or in case of the proposal of any amendment which involves the interest of the people, I propose

that the members of the Legislature shall be voted for with reference to that question.

MR. McCALLUM. Does the enfranchisement of the Chinese require an amendment to the Constitution or the naturalization laws?

MR. TERRY. Well, it might require an amendment to the Constitution, or at least it could be done by an amendment.

MR. McCALLUM. Does it not depend upon the naturalization laws?

MR. TERRY. It does now, but it might be done by a provision in the Constitution. They might extend the provision to everybody in the country. But there are other questions which might arise. Under the naturalization laws, as they now stand, the Chinese may be prevented from voting, not being native citizens of the United States; but there may other questions come up, and it is proposed here in this section that upon any question involving a change in the organic law of the confederation or Union, that the people should speak through their ballot box: that they should elect the men who are to pass upon it after the amendment is proposed, in order that the will of the people may be expressed.

MR. McCALLUM. Suppose the present session of Congress should propose an amendment to the Constitution of the United States with reference to the counting of the electoral vote.

MR. TERRY. It would be published a long time before the members of the next California Legislature are elected, and therefore would not cut any figure.

MR. McCALLUM. Published how?

MR. TERRY. If it was printed in any newspaper in the land it would be published within the meaning of the section.

MR. ESTEE. That is the objection.

MR. TERRY. It does not say published by the authority of Congress, or published by the authority of the State, or published by any authority.

MR. ESTEE. What I wish to call the attention of the gentleman to is this: that the Courts have held that where a law prescribes publication it means publication according to law, and therefore, merely publication in a newspaper or in the proceedings of Congress would not be a publication.

MR. TERRY. Where the law prescribes a particular mode of publication, that is true, but where simple publication is required any publication will answer. This section says: "The Legislature shall not ratify any amendment to the Constitution of the United States which may be proposed by Congress, except such as shall have been proposed and published at least thirty days next preceding the general election for members of the Legislature, ratifying such amendment." It must have been known. The people must know that such an amendment is to be voted upon by the Legislature, at least thirty days before the general election, so that the people may understand that that is one of the duties which that Legislature to be elected will be called upon to perform. I can see no great hardship in it. I can see no purpose in being in a tremendous hurry about such an important matter. The Legislatures of the different States meet at different times. They meet biennally, some on the odd numbered years and some on the even numbered years, and they could not ratify an amendment in any one year. I do not believe that three fourths of the Legislatures of the different States meet in one year, so that there is no necessity for being in a hurry about it, and in a matter so important as this the people ought to have an opportunity to select men whose views upon that particular question would be known to the people before they were voted for.

MR. McCALLUM. Don't you think there is a necessity for a hurry in making that plain which is said now to be doubtful as to the counting of the electoral vote? Don't you think that ought to be done before the next Presidential election?

MR. TERRY. I think that can be done by an Act of Congress.

MR. McCALLUM. It is in the Constitution.

MR. TERRY. I think this Constitution sufficiently plain on that already; but if this present Congress should pass the law which the gentleman speaks of it will be published more than thirty days, and more than six months before the next general election in this State for members of the Legislature. I think it is an important provision. Perhaps, if the Legislature should disregard this provision of the Constitution, no question could be raised as to the validity of their action if it was proclaimed by the Secretary of State at Washington that an amendment had been ratified by three fourths of the States. I do not know of any means by which you could go behind that return and disprove the fact which it purported to certify.

MR. EDGERTON. I would like to ask a question. Is there any doubt but that section forty contemplates an official publication under the authority of law?

MR. TERRY. I do not understand it so.

MR. EDGERTON. I should suppose that there was no doubt about it. It would be held to be an official publication under authority of law. I was going to ask if he is to rely upon the publications that occur in the press that an amendment is proposed by two thirds of both houses, with the discussion that has there occurred, or if it was an amendment proposed by a Convention which was called for that purpose, whether it is not altogether probable that there would be such a discussion of it that it would be known to every elector in the country.

MR. TERRY. Certainly.

MR. EDGERTON. Then why the provision for thirty days' publication in the State. It seems to me as it stands it is altogether too indefinate to be of practical value.

MR. TERRY. The object is to have the people know just what the amendment is before they elect the men who are to cast their votes.

MR. EDGERTON. Suppose that the ratification of an amendment depended upon the vote of California alone, and then they turn to this provision which requires a thirty-day publication, but which does not say what kind of a publication, how, in what papers, where or when. It is left altogether indefinite. It seems to me that it ought to be clearly defined if it is to be put in the Constitution at all, or else omitted altogether. I do not see any necessity for it.

MR. TERRY. If it is printed in a newspaper it is known. If it is printed in the statutes, if it is printed in the proceedings of Congress, that is a publication. But if the gentleman wants to make it more clear—if he wants to suggest any amendment—I have no objection. It is clear enough to my mind now. I think the provision is an important one and should be retained in the Constitution. I think that any pub lication will answer the exigencies of that section.

MR. EDGERTON. Mr. Chairman: I think it would be a useless provision. I think if the people of this State got notice of an amendment, twenty-nine days or twenty-eight days prior to the election, that there would be ample notice to the Legislature.

MR. HOWARD. I move to amend by inserting, after the word "published," in line three, the words "as directed by the Governor."

MR. TERRY. I move to amend by striking out the words "and published."

MR. HOWARD. I accept that as an amendment. There is no doubt that in the absence of an Act of Congress, this fortieth section is valid and ought to be adopted.

MR. BLACKMER. I send up a written amendment to strike out those two words, "and published."

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I desire, in justice to the committee, to correct a mistake made by the gentleman from Alameda in regard to the original form in which this proposition was brought before this committee. I recollect myself, distinctly, that it was brought almost exactly in its present form, but the gentleman from Alameda understood it to mean that the ratification should be by the people on a popular vote: but we readily made him understand that he was mistaken in that interpretation of the proposition, and he did understand it, and he is now thinking of the original idea as he understood it when first brought before the committee. I do this, Mr. Chairman, in justice to the committee, for I am prepared to assert that, in my judgment, there was no member of that committee so stupid or ignorant as to have made such a proposition, because they must all have known that the Constitution of the United States provided that the ratification should be by the Legislature.

Now, Mr. Chairman, in regard to the principle involved in this contest. What is it? We all agree that under the provisions of the Constitution of the United States, the alteration, modification, or adoption of new sections to the Constitution must be proposed by Congress and ratified by the Legislatures. There is certainly no difference of opinion in regard to that. The real question at issue here is, are the people, in their primary capacity, to take primary action before the Legislature? Now, Mr. Chairman, if I understand the theory of the American system of government, it is based upon the fundamental principle that all sovereign power and authority is inherent in the people, and the formation of organic law is the highest, and the most solemn and important duty of that supreme power. Where is that supreme power? Is it your Legislature? Certainly not. The Legislature is but the creature of that supreme power—the people. The Legislature exercises certain specific and well defined powers, limited by the Constitution—the State Constitution, and the Constitution of the United States; but in the formation of an organic law of the nation, surely they are not the sovereign, paramount, original authority, because, as I remarked, that sovereign, paramount authority is inherent, not in the Legislature, but in the people: therefore I hold, Mr. Chairman, that this solemn act of the formation of fundamental law must be primarily acted upon by that original, paramount authority—the people. How shall we accomplish this result? We will say, for instance, that here is a Legislature in session, and an amendment to the Constitution of the United States is proposed while it is in session, and it is called upon to ratify, and is, in case that they carry it, then ratified. Now, I ask you, Mr. Chairman, and I submit it to the candor of all intelligent men, whether the original, paramount, sovereign authority of the people has ever been consulted. I say it has not. So far from having been consulted, the measure has been proposed subsequently to the time that the Legislature was elected. The sovereigns knew nothing of it at the time that this Legislature was elected. Now, how can they have acted? How can there have been any rightful action of the sovereign in this State; because, as I remarked, the Legislature is not the sovereign; it is but the servant of the people; the agent of the people, exercising certain well defined, limited, and circumscribed powers. This question, which is raised in regard to publication, it seems to me, with all due deference to the gentleman, is but a quibble; and inasmuch as the Chairman of the committee has proposed to strike out the words "and published," that certainly removes all objections, and it does seem to me that if gentlemen are prepared to stand up and defend that fundamental principle upon which all governments are founded in this country, to wit: that the sovereign, original, paramount, and supreme power is in the people, that they can have no earthly objection to this proposition of submitting the question to the sovereigns and then to those who are to carry out their will. No proposition could be plainer, because, if we take the converse of the proposition and assume that the Legislature, the creatures and servants of the people, elected without any reference to this proposed amendment, can exercise this highest, this most solemn, this most fundamental function of government, why, then, it seems to me that we are ignoring, setting aside, and repudiating that fundamental principle upon which all American governments are substantially founded.

THE CHAIRMAN. The question is on the adoption of the amendment to strike out the words "and published."

The amendment was adopted.

THE CHAIRMAN. The question recurs on the motion to strike out section forty.

The motion prevailed on a division by a vote of 47 ayes to 39 noes.

THE CHAIRMAN. The Secretary will read section forty-one.

CONTESTED ELECTIONS.

THE SECRETARY read:

SEC. 41. In case of a contested election in either branch of the Legislature, only the claimant decided entitled to the seat shall receive from the State per diem compensation, or mileage.

MR. HOWARD. Mr. Chairman: I move to strike out section forty-one. It is contrary to the general parliamentary usage. I have never known a contest in the United States House of Representatives where per diem and mileage were not allowed to a contesting member. It would often operate injuriously, for the reason that it might deprive a county or a constituency of the services of a man really elected and really entitled to his seat, because he might not be able at his own expense to prosecute the contest. At all events, it is safer to leave it to the Legislature to determine whether, and under what circumstances, he should be allowed mileage and per diem.

MR. BARTON. I second the motion.

MR. TERRY. Mr. Chairman: It seems to me that contests are rather encouraged by the fact that a man cannot lose anything anyhow. He comes here and stays to the full length of the session at the Capital, and he draws his per diem and mileage. Now, in all other litigation the losing party pays the cost, and sometimes the costs of the other party too. I do not see why a man should receive pay unless he brings forward such a case as insures his success.

MR. HOWARD. I will ask my friend if the contestant does not represent the people rather than himself? Is it not safer to leave it to the Legislature to say whether it is a frivolous contest or not?

MR. TERRY. Theoretically, the people are represented; practically, it is the man himself and not the people. I do not see why a man should be paid for making a false claim.

MR. SCHELL. Would it not be necessary that the question of mileage should be deferred until the very last end of the session, because it might occur that the contests would not be decided until the very last end of the session.

MR. TERRY. Where would be the hardship of that? Then if he was entitled to the mileage he would get it. Let them have it at the end of the session.

MR. BARBOUR. Mr. Chairman: I hope the motion of the gentleman from Los Angeles will prevail. It seems to me that this is getting down to rather small business; we have left many things to the Legislature. Of course, if there is no merit in the contest there should be no allowance. If there is merit in it, the allowance should be made, because the prosecution is ready in behalf of the people, and the people might be defeated of their actual will by reason of the candidate not being able to prosecute the contest at his own expense. Therefore I do not see the necessity of descending to particulars of that kind.

MR. TERRY. In a contest of any other kind a man pays his own expenses. In case of two men claiming to have been elected County Judge the people are just as much interested as they are in men claiming seats in the Legislature. Yet in all those cases the losing party gets nothing.

MR. SCHELL You propose to make a man wait until the end of the session. That is a very exceptionable case.

MR. TERRY. The law now provides that when a man's right to an office is contested, that he cannot get the salary until the case is decided. I can see no hardship in subjecting members of the Legislature to the same rule. After the matter is decided the man gets it in a lump.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: It seems to me this section can perform no good office. It is unquestionably true that men are sometimes thrown out of legislative bodies when they have been in fact elected, after serving a considerable time. This has been true in Congress as we are told on many occasions, when somebody had a seat there, and the question arose as to the right of another party to that seat. Now, no longer ago than at the first meeting of the present Congress one Representative from this State, who had the certificate, and it was decided by the Supreme Court of this State that he was entitled to it, was thrown out by the present majority in Congress.

MR. HOWARD. I never knew a contested election to be determined on any other than party grounds. The party having the majority holds on to it.

MR. TERRY. If he was in the minority, he ought to have sense enough not to go there.

MR. BELCHER. The gentleman from Los Angeles says he has never known a contested election case to be determined on any other than party grounds. Now, suppose a man is elected to Congress, and goes and serves two or three months, and then he is turned out for some reason or other, and then it is decided that he shall have neither mileage nor per diem? The same principle is involved here. A man comes up from the southern part of the State with the certificate of a member of the Legislature. Upon the face of it he is entitled to a seat in the Senate or Assembly of the State. Suppose the question is raised as to his right to the seat; suppose after he has served a month, or two months—nearly to the end of the session—it is determined by a majority of the house to which he is sent, for partisan purpose, as it may be, that he is not entitled to that seat, and that his antagonist is. What Congress does, this State may do. What Congress has been doing during the whole history of our Government the Legislature may do, if it never has done it. Now, I say when a man has served in the Legislature as the party having the certificate of election, he ought to be paid for the time that he serves. Why should not the Legislature give him the pay to which he is entitled for the time he actually performed the duties of a legislator? Yet, if this amendment is adopted, nobody can have any per diem or mileage until it is finally determined. The man going away, poor perhaps, with his certificate, is finally turned out for the motives I have suggested, and told to go home without a cent in his pocket, though he was, in fact, entitled to his seat. There is no harm in leaving it as it has been. It is not a large amount for the State to lose. I think if you decide otherwise, by putting in this amendment, you deter a man who is poor from coming here if there be a contest about it. He cannot afford to come here and spend one month, or two months, waiting the determination of the Legislature, because if it is determined against him he will have nothing to pay his expenses with. I think, therefore, that this section should be stricken out.

THE CHAIRMAN. The question is on the motion of the gentleman from Los Angeles, Mr. Howard, to strike out section forty-one.

The motion prevailed, on a division, by a vote of 61 ayes to 27 noes.

THE CHAIRMAN. The Secretary will read section forty-two.

TERMS OF OFFICERS.

THE SECRETARY read:

SEC. 42. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no officer shall be suspended or superseded thereby until the election and qualification of the several officers provided for in this Constitution.

MR. TERRY. That properly belongs to the Committee on Schedule. There is no objection to striking it out.

MR. MORELAND. I move to strike it out.

The motion prevailed.

CONTROL OF CORPORATIONS.

MR. MCCALLUM. Mr. Chairman: I desire to offer an additional section on the same subject that was covered by section twenty-eight. I ask leave to read it myself, and then I will send it up to the Secretary. Insert as follows:

"SEC. 28. The Legislature shall provide by law for the regulation and limitation of rates of the charges by all corporations for furnishing water or gas and for telegraphing; also, for freights and fares, except as otherwise provided in this Constitution; and where laws shall provide for the selection of any person or officer to regulate or limit any such charges, no such person or officer shall be selected by any corporation or by any officer or agent thereof, and no person shall be selected who is an officer or stockholder in any such corporation."

I wish to call attention to the position in which this question stands. After having amended the section, a majority of the Committee of the Whole struck it out. I will state to the gentlemen that I have prepared the amendment very carefully to cover all those great corporations which, by common usage, are known as monopolies—the gas companies, the water companies, and the telegraph companies; and I refer to other companies not provided for except as otherwise provided in the Constitution, which, of course, refers to the action of the Committee of the Whole on the article concerning railroads exclusively. That committee did not see proper to provide for the regulation either by the Commission or by any mandatory provision upon the Legislature to provide for the regulation of charges in any case whatever, except solely railroad companies. Some language is used there about railroad companies and other transportation companies, but as I see that the Chairman is now present, and I understand him to explain, and I believe it is the understanding of the Convention that although the general language is used, "other transportation companies," railroad companies are meant; as the gentleman illustrated, such companies as the White Star Line and the Red Line—any particular company running trains on the bed of a railroad company proper, in the sense in which we usually use that phrase. Therefore, the Committee on Corporations made no provision whatever with reference to the regulation of the charges of any corporation whatever, except railroad companies. Now, it is just as important, if this principle is right, that there should be a mandatory provision requiring the Legislature, by a Commission or otherwise, to provide for the limitation and regulation of the charges of other great monopolies. Now, as to all the other corporations, that may be proper in a separate amendment. I submit to the Convention that as we have applied the principle to one monopoly, consistency would seem to require that we should carry out the principle in all.

MR. JOHNSON. Mr. Chairman: I desire to offer a substitute. With the leave of the Convention I will read it:

"SEC. —. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph, gas, and water corporations, and the charges by corporations or individuals for storage, wharfage, and water, in which there is a public use; and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation."

MR. HOWARD. I second the amendment.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. Chairman: I am opposed to both the original section and the amendment. I believe the proper way to dispose of this whole thing is to place their regulation in the hands of the municipal authorities at the place where the works are located. It has always been the law of this State. Of course the Legislature has always had power to regulate the rates of gas and water, but it has been impracticable for the Legislature to exercise its power for this reason: it has been insisted that these laws should be uniform in their operation. They must be governed by general laws. Therefore when an effort was made to regulate Spring Valley or the gas company in San Francisco, the rates which were fixed in that general bill were so low that they frightened the members from the country, because the rates that were in those bills

were lower than gas or water could be furnished in any of the other cities throughout the State. The consequence is, that the members from the country would combine and do that which those large monopolies desired, namely, beat any general bill. Now, there never will be any general bill passed in this State to fix the rates of gas and water, because if it is fixed as it should be for San Francisco, gas and water cannot be furnished at those rates in any of the country cities or villages of the State. Therefore I believe that it is best to leave these matters to the several cities and villages to regulate the rates of gas and water.

MR. MCCALLUM. I will ask the gentleman if this does not require an Act of the Legislature? I agree with the gentleman that it should be left to the municipalities, but I inquire if it does not require an Act of the Legislature to get that through. My amendment does not interfere with the gentleman's views in the slightest degree.

MR. HILBORN. I think we had better put it into the Constitution that these municipalities shall have the power to regulate these things. Why not do it in that direct way?

THE SECRETARY read Mr. Johnson's amendment.

MR. HOWARD. Mr. Chairman: I think that amendment is well drawn, and I hope it will be adopted. It meets a want.

MR. ESTEE. Mr. Chairman: I wish to say a word on this proposition. It was understood by the Committee on Corporations that the Committee on Legislative Department had already handled this matter, and that section twenty-eight, as reported by them, would meet the issue. So far as I am concerned, I heartily indorse the amendment proposed by the gentleman from Sonoma, Mr. Johnson, because it leaves out the question as to freights and fares entirely. I do not think the amendment offered by the gentleman from Alameda is necessary. I hope that the amendment to the amendment will be adopted. I suppose it makes no difference who offers an amendment, so long as we get what we desire.

MR. MCCALLUM. The proposition of the gentleman from Sonoma includes individuals. The amendment I presented is simply with reference to corporations, and only those corporations which are named. I did not insert that, because after the vote here in which a similar proposition was voted down, I did not propose to ask another vote on a proposition in that shape. That was substantially the proposition which the committee voted down this morning.

MR. HOWARD. It applies to individuals only when there is a public use.

MR. MCCALLUM. The gentleman had those words inserted this morning, and after the Convention inserted those words, then they struck out the whole section. That is the history of it.

MR. HOWARD. If we voted wrong then is there any reason why we should do it again?

MR. MCCALLUM. I have no objection to striking out that clause. The only reason I put it in there is because the Chairman of the Committee on Corporations explained that they did not provide for any transportation companies whatever except railroad companies. Now, take the case of the Steam Navigation Company; there is no provision according to the explanation of the Chairman of the committee to reach the regulation of charges in that case.

MR. ESTEE. I do not recollect of ever saying that it does not reach any other than railroad companies. I did say that it reached these big transportation companies like the Star Line, and the White Line, etc., but I did not say that it did not reach others.

MR. MCCALLUM. Do you understand that these Railroad Commissioners would have the right to regulate the rates of any transportation company whatever except a railroad company?

MR. ESTEE. I am not speaking of the duties, I am speaking of the liabilities.

MR. HOWARD. It does give express power.

MR. ESTEE. I understand that the term railroad and other transportation companies is a generic term and means all of them.

MR. MCCALLUM. I admit that is a fair construction, but I do state that when the question arose it was stated by the Chairman of the committee, and by a number of other gentlemen, that the meaning of that was, that it had reference to other railroad companies, and that if it was not sufficiently clear the word railroad would be inserted there. I will ask now to amend my proposition by striking out that last clause in reference to transportation companies. Strike out "also for freights and fares except as otherwise provided in this Constitution."

MR. BARBOUR. I would like to ask the author of the amendment whether this provision being mandatory will not debar a municipality from regulating the rates of water and gas.

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

The amendment was adopted, on a division, by a vote of 62 ayes to 30 noes.

THE CHAIRMAN. The question recurs on the adoption of the amendment as amended.

Adopted.

NUMBER OF ASSEMBLYMEN.

MR. BLACKMER. Mr. Chairman: I desire to offer an additional section to the article.

THE SECRETARY read:

"After the year eighteen hundred and ninety, the Legislature may increase the number of Assemblymen to one hundred and twenty, provided two thirds of all the members elected to each house shall vote in favor of such increase."

MR. WYATT. I second the amendment.

MR. BLACKMER. Mr. Chairman: I believe it is the opinion of a majority of this Convention that at some time not far in the future, that the Assembly should be increased. We have provided in this article a number, which makes it mandatory, and there is no possible opportunity to change it, unless by an amendment to the Constitution. I believe that the Senate should be a conservative and small body of men, consequently I have not provided for any increase of the Senate; but I believe it would be wise, and that it is the sense of this committee, that after the year eighteen hundred and ninety, the Legislature should have the power to increase the number of Assemblymen to one hundred and twenty. I have not numbered it, leaving it for the Committee on Revision and Adjustment to put it in where they see fit, if the committee should vote in favor of this proposition. I hope it will be adopted.

MR. SMITH, of Fourth District. Mr. Chairman: I send up an additional section to article four, to be known as section twenty-nine.

THE SECRETARY read:

"The Legislature shall have power to increase the number of members of Assembly to one hundred, at the first session of the Legislature after the adoption of this Constitution, and the number of Senators and members of Assembly shall be apportioned among the several counties and districts to be established by law according to the inhabitants, to be ascertained by the number of the electors, multiplied by five, as registered on the Great Registers of the several counties on the first day of January, eighteen hundred and eighty, which shall be the apportionment and basis of representation until otherwise provided by law."

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I might say in regard to this matter that I am not particular as to the wording of the section, but as to the principle involved here. This inflexible rule established in the fifth section of this article does a great injustice to some of the interior counties. The county that I represent, having a population of about ten thousand, has no representative at all, neither has the County of Tulare, which is much larger. Now, if the population of this State should increase in proportion as it has, and we should have twenty thousand or thirty thousand population, we would still have no representative while this inflexible rule of forty Senators and eighty members of the Assembly prevails. Unless there is some kind of apportionment, we will have no representative. There is a great opposition to this measure coming from a majority of the members from the central portion of the State, and whether it is passed or not, I want to lift my voice in favor of those whom I represent. In nine cases out of ten, when there is anything coming up in this State in which the people of the State are interested, the distant portions of the State are not heard on account of the slimness of their representation. I leave it in the hands of the Convention to do what they please with it.

MR. BROWN. Mr. Chairman: I am not rising before you, sir, in this body, to exactly a question of privilege, but it does appear to me that although the gentleman has a right, if he thinks so, to say that his county is not represented, he has no right to say that Tulare is without representation. He is wrong. [Laughter.] Now, sir, we have not the numbers that the population, according to the vote of eighteen hundred and seventy-six, would give to Tulare. We have a right, taking that as a basis, to a larger representation, numerically. That is correct, but it is hoped, with what assistance Tulare may be able to bring to bear, that we may be able to remedy that by the assistance especially of the gentleman from Los Angeles, Mr. Ayers, and I think the gentleman from Kern will also assist in this matter.

MR. SMITH, of Fourth District. When I spoke of the gentleman's county I had reference to the Legislature and not to this body.

MR. BROWN. Tulare has never failed to be represented in the Legislature of this State. [Laughter.] I believe that in addition to that I am opposed to the gentleman's amendment, but I would like to hear it read.

THE SECRETARY read:

"The Legislature shall have power to increase the number of members of Assembly to one hundred, at the first session of the Legislature after the adoption of this Constitution, and the number of Senators and members of Assembly shall be apportioned among the several counties and districts to be established by law according to the number of inhabitants, to be ascertained by the number of the electors, multiplied by five, as registered on the Great Registers of the several counties on the first day of January, eighteen hundred and eighty, which shall be the apportionment and basis of representation until otherwise provided by law."

MR. BROWN. I believe, as we have all heard it now, I shall say nothing against it and make no further explanation.

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. Chairman: It seems to me that we ought not to adopt these amendments. There will be inequalities under any apportionment, and some of the counties cannot have representatives. If we go upon that principle we shall have to extend it, so that the number would be beyond all reason. I believe that the State of Massachusetts had the most popular deliberative body on the face of the earth. It consisted of seven hundred and thirty members. Now, the experience of that State has proven that the body was too large, and they are pretty slow there to deviate from the old rules. But Massachusetts found wisdom—she found that she had a more popular branch than necessary. She has cut down piece by piece, until to-day, with a million six hundred thousand inhabitants, where she had seven hundred and thirty members, she has now two hundred and forty. The Eastern States, generally, have cut down the old popular branch. It seems to me that this State is represented enough in both branches, and will be for the next twenty-five years. Why, in the State of New York a Senator represents a greater constituency than does a member of the lower house of Congress from this State. I think that there is no necessity for this provision.

MR. SMITH, of Fourth District. I will ask the gentleman if the population of that State is not more equally distributed than that of California?

MR. SHURTLEFF. Certainly it is; but then eighty members of the Assembly is a large enough number. The State of Texas, a larger State than this, has just the same, except that the Senate has ten less, and the popular branch ten more. It seems to me that this provision to make this increase is unwise, and would lead, by and by, to an increase of the number of members of the Legislature that would be no benefit whatever. I hope the Convention will adhere to the decision it made the other day, and let it stand just where it is in the old Constitution—forty Senators and eighty Assemblymen—and no power to increase it.

MR. WHITE. Mr. Chairman: I, too, hope that it will be left as it is. It is amply sufficient for all the purposes of representation, and this effort to raise it is only an effort to increase politicians in this State. I hope it will be allowed to remain as it is.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from San Diego, Mr. Blackmer.

The amendment was rejected.

MOTION TO RECONSIDER.

MR. AYERS. Mr. Chairman: I rise now for the purpose of taking up my motion to reconsider the amendment to section twenty-four of the article on legislative department, offered by Mr. Smith, of Santa Clara. I move to reconsider the vote by which the amendment offered by the gentleman from Santa Clara, Mr. Smith, was adopted, providing that "all laws of the State of California, and all official writing, and the executive, legislative, and judicial proceedings, shall be conducted, preserved, and published in no other than the English language."

THE CHAIRMAN. It is a very doubtful question whether the committee can entertain a motion to reconsider any of its votes. Under the general parliamentary law no such motion can be made in the Committee of the Whole.

MR. AYERS. Is that the decision of the Chair?

THE CHAIRMAN. The Chair is of the opinion that it cannot be entertained, and was about to state the reason why. One reason, I presume, for it is, that the action of the Committee of the Whole is not final. It reports back the original proposition referred to it with any amendments which may be offered by the committee, and when it comes into the house they may be amended again or rejected. We have two rules adopted by this house bearing upon this question. One is upon the subject of reconsideration, which requires a notice to be given, and then after lying over one day, a motion to reconsider. Another rule of the Convention is, that the rules of the Convention will be observed in Committee of the Whole so far as they are applicable. A similar rule exists in the House of Representatives of the Congress of the United States, and the uniform decision there has been that a motion to reconsider cannot be entertained in the Committee of the Whole; that it is not applicable; that the business of the Committee of the Whole may be obstructed and delayed indefinitely by such a motion. The Committee of the Whole may be ready to report back its action to the house in an hour, and if such a motion were entertained it might be tied up by a notice of a motion to reconsider, which cannot come up for twenty-four hours afterwards. Therefore, as there is no rule of this Convention contrary to the general parliamentary rule, the Chair decides that a motion to reconsider cannot be entertained in Committee of the Whole.

MR. AYERS. Mr. Chairman: Then I move that this committee rise, report progress, and ask leave to sit again. I make this motion for the reason that there is a proposition which has been referred to the Committee on Legislative Department which I wish to be reported back to the Committee of the Whole before it finishes the consideration of this article.

MR. TERRY. Mr. Chairman: I move that the committee rise and report this article back to the Convention, with the amendments adopted by this committee, with the recommendation that it be printed with the amendments, and placed upon the calendar.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have had under consideration the report of the Committee on Legislative Department, have completed their consideration of the same, and report it back to the Convention with the recommendation that the article, as amended, be printed and placed on the calendar.

MR. TERRY. I move that the report of the Committee of the Whole be printed and placed on the general file.

The motion prevailed.

REPORT—MILEAGE.

MR. HILBORN. Mr. President: I send up a report from the Committee on Mileage and Contingent Expenses.

THE SECRETARY read:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses have had under consideration Resolution No. 100—relative to the mileage of the newly elected members—and find that W. J. Howard is entitled to mileage for three hundred and twelve miles, and J. J. Kenny for one hundred and eighty-six miles; we, therefore, recommend the adoption of the following resolution:

Resolved, That the Controller be directed to draw his warrants, payable out of the appropriation for the expenses of this Convention, in favor of W. J. Howard for the sum of forty-six dollars and eighty cents, and in favor of J. J. Kenny for the sum of twenty-five dollars and twenty cents, the same being the amounts to which they are respectively entitled as mileage as members of this Convention.

Your committee have also had under consideration Resolution No. 101—relative to postage stamps for the Secretary—and herewith report the same back without recommendation.

HILBORN, Chairman.

MR. HILBORN. Mr. Chairman: I move the adoption of the resolution.

The resolution was adopted.

MR. HILBORN. I now move that the resolution in relation to appropriating five dollars for postage stamps, for the use of the Secretary, be adopted.

THE SECRETARY read:

Resolved, That the State Controller be and he is hereby ordered to issue warrants to the amount of five dollars in favor of the Secretary, for purchasing postage stamps, to be used in transmitting memorials relative to Chinese to the President of the United States, Senate, House of Representatives, Governors of the Pacific States and Territories, and to all the Governors of the several States of the United States, and for other correspondence of the Convention.

The resolution was adopted.

ADJOURNMENT.

MR. BELCHER. Mr. President: I move that this Convention do now adjourn until Thursday, December twenty-sixth, at two o'clock P. M.

MR. HOWARD. Mr. President: I move to adjourn.

THE CHAIRMAN. The first question is on the motion of the gentleman from Los Angeles, Mr. Howard, that the Convention adjourn.

The motion prevailed.

And at five o'clock and five minutes P. M. the Convention adjourned.

EIGHTY-EIGHTH DAY.

SACRAMENTO, Tuesday, December 24th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Harrison,	Nelson,
Ayers,	Harvey,	Neunaber,
Barbour,	Heiskell,	Ohleyer,
Barry,	Herrington,	Porter,
Barton,	Hilborn,	Prouty,
Beerstecher,	Hitchcock,	Reddy,
Belcher,	Holmes,	Reynolds,
Bell,	Howard, of Los Angeles,	Rhodes,
Blackmer,	Howard, of Mariposa,	Rolfe,
Brown,	Huestis,	Schell,
Burt,	Hughey,	Schomp,
Caples,	Hunter,	Shoemaker,
Charles,	Inman,	Shurtleff,
Condon,	Jones,	Smith, of 4th District,
Cross,	Kelley,	Smith, of San Francisco,
Davis,	Kenny,	Soule,
Dean,	Keyes,	Steele,
Dowling,	Kleine,	Stevenson,
Doyle,	Lampson,	Sweasey,
Dudley, of Solano,	Larkin,	Terry,
Dunlap,	Larue,	Tinnin,
Eagon,	Lewis,	Turner,
Edgerton,	Mansfield,	Tuttle,
Estee,	McCallum,	Vacquerel,
Evey,	McConnell,	Van Voorhies,
Farrell,	McCoy,	Walker, of Tuolumne,
Finney,	McFarland,	Webster,
Freud,	McNutt,	Weller,
Garvey,	Miller,	West,
Glascock,	Mills,	White,
Gorman,	Moffat,	Wilson, of Tehama,
Grace,	Moreland,	Wyatt,
Gregg,	Morse,	Mr. President.
Hale,	Nason,	

ABSENT.

Barnes,	Hall.	Ringgold,
Berry,	Herold,	Shafter,
Biggs,	Johnson,	Smith, of Santa Clara,
Boggs,	Joyce,	Stedman,
Boucher,	Laine,	Stuart,
Campbell,	Lavigne,	Swenson,
Casserly,	Lindow,	Swing,
Chapman,	Martin, of Alameda,	Thompson,
Cowden,	Martin, of Santa Cruz,	Townsend,
Crouch,	McComas,	Tully,
Dudley, of San Joaquin,	Murphy,	Van Dyke,
Estey,	Noel,	Walker, of Marin,
Fawcett,	O'Donnell,	Waters,
Filcher,	O'Sullivan,	Wellin,
Freeman,	Overton,	Wickes,
Graves,	Pulliam,	Wilson, of 1st District,
Hager,	Reed,	Winans.

LEAVE OF ABSENCE.

Leave of absence for two days was granted Messrs. Crouch, Hall, Herold, and Morse.

Leave of absence for five days was granted Mr. Beerstecher.

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

THE JOURNAL.

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

Carried.

REVENUE AND TAXATION.

MR. DUDLEY, of Solano. Mr. President: I desire to offer a propo-

sition, and ask that it be printed and referred to the Committee of the Whole.

THE SECRETARY read:

"SECTION 1. Taxes shall be levied as hereinafter provided. All taxes upon property shall be uniform within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

"SEC. 2. All property, the income from which is not taxed, excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States or to this State, or any municipality thereof, and property used exclusively for charitable purposes not exceeding —— thousand dollars, belonging to any one institution, shall be taxed in proportion to its value, to be ascertained as directed by law.

"SEC. 3. The Legislature shall provide by law for the assessment and collection of a tax upon incomes derived from investments in bonds, notes (whether secured by mortgage or not), or securities of any kind owned by individuals, and upon the gross incomes of all railroad, navigation, or banking corporations, bank and exchange agencies, and insurance companies, foreign or domestic, or any other corporation (other than municipal) or association whatever, formed for profit or doing business in this State; *provided*, that all notes, bonds, or securities of any kind, the income from which is taxed, and all property owned by and necessarily used by corporations or associations in producing incomes which are taxed, shall be exempt from an ad valorem tax."

MR. DUDLEY, of Solano. Mr. President: I move that it be printed and referred to the Committee of the Whole.

THE PRESIDENT. If there be no objection it is so ordered.

CHRISTMAS ADJOURNMENT.

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

THE SECRETARY read:

Resolved, That when the Convention adjourns this day, it be to meet on Thursday, December twenty-sixth, eighteen hundred and seventy-eight, at two o'clock P. M.

MR. MCCALLUM. I send up a substitute for that resolution.

THE SECRETARY read:

Resolved, That when this Convention shall adjourn to-day, it will adjourn to meet on Friday next, at two o'clock P. M.

MR. WHITE. I move to amend by making it nine o'clock.

MR. LARKIN. Mr. President: I think sufficient time, considering the amount of work we have before us, if we adjourn to-day over until Thursday. If we adjourn to-day, these members will go home this afternoon and will return by Thursday at two o'clock. The interests of this Convention demand that we shall be continuously at work in order to complete our work. I think that our duty to the people of this State compels us to remain in session every hour that we can. We have been adjourning for the benefit of the gentlemen from San Francisco, and I desire this adjournment simply for their benefit.

MR. BEERSTECHER. I hope these motions to adjourn will be voted down, and that we will adjourn until Thursday, until half-past nine o'clock. If the Convention is going to keep right at it, all right; I am going home.

MR. SCHELL. I hope no adjournment will be had, even over to-morrow. These gentlemen who are so industrious, and think we have such mountains of work to do and no time to do it in, ought to be permitted to stay here, and so far as I am concerned, I am willing to meet these identical gentlemen at work here to-morrow, and not adjourn over at all.

MR. KLEINE. Mr. President: If the holidays are more important to these gentlemen, let them go home and stay home.

THE PRESIDENT. The question is on the amendment offered by the gentleman from Alameda, Mr. McCallum.

The amendment was lost on a division vote of 36 ayes to 47 noes.

THE PRESIDENT. The question recurs on the adoption of the resolution offered by the gentleman from El Dorado, Mr. Larkin.

The resolution was adopted.

FUTURE AMENDMENTS.

MR. WHITE. Mr. President: I move that the Convention now resolve itself into a Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Future Amendments. This is a matter that we can finish this morning, and it will be out of the way. If we leave it we will lose a half day at it some other time. I hope the motion will prevail.

MR. LARKIN. Mr. President: I am opposed to taking up this proposition. I hope we will go on with the article on taxation.

MR. EDGERTON. Mr. President: It is immaterial to me personally. I shall support the motion of the gentleman from Santa Cruz, because two or three gentlemen are absent who desire very much to be here when the report of the Committee on Revenue and Taxation is considered. Mr. Shafter is absent, sick; Judge Hager was called to San Francisco yesterday on account of sickness in his family; Major Biggs was called home on business. Everybody knows he has been sick a long time. These gentlemen, and other gentlemen, asked me to urge upon this Convention the postponement of the consideration of the report of the Committee on Revenue and Taxation until the Convention meets after the holidays.

MR. BLACKMER. Mr. President: As Chairman of the Committee on Future Amendments, I do not object to the report being taken up at this time. I did not suppose it would come up so soon, but as the report is a short one, we may get through with it this morning, whereas we could not finish some of the reports that were sent in before it. I think the committee are likely to tear it all to pieces, but if the Convention think best to take up the report of that committee, I do not object to it.

MR. TERRY. Mr. President: A resolution has already been passed that the report of the Committee on Revenue and Taxation should follow immediately after the report of the Committee on Legislative Department.

THE PRESIDENT. The question is on the motion of the gentleman from Santa Cruz, Mr. White, that the Convention resolve itself into Committee of the Whole, for the purpose of considering the report of the Committee on Future Amendments.

MR. LARKIN. It requires a two-thirds vote.

THE PRESIDENT. Gentlemen, those in favor of the motion will rise and stand until the Secretary counts them.

The division resulted in 52 ayes and 23 noes.

THE PRESIDENT. No quorum voting. There is evidently a quorum in the Convention.

MR. LARKIN. I move that the Convention resolve itself into Committee of the Whole, for the purpose of considering the article on revenue and taxation.

THE PRESIDENT. The motion is not in order at present. We are taking a vote on the motion to go into a Committee of the Whole on the article on future amendments. Members are requested to vote on one side or the other.

The amendment then prevailed, on a division, by a vote of 56 ayes to 27 noes.

IN COMMITTEE OF THE WHOLE.

MR. WEST. Mr. President: I rise to a point of order on the vote just taken.

THE CHAIRMAN. The Convention has gone into a Committee of the Whole.

MR. EDGERTON. Has the Convention resolved itself into a Committee of the Whole?

THE CHAIRMAN. Yes, sir.

MR. LARKIN. Does the Chair decide that two thirds voted to go into Committee of the Whole?

THE CHAIRMAN. No two-third vote is required. The Secretary will read the article reported by the Committee on Future Amendments.

THE SECRETARY read:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon; and it shall be the duty of said Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as may be deemed expedient. Such amendment or amendments shall be published in full in each county in the State wherein a newspaper is published for at least three months next preceding the election at which they are to be submitted. Should more than one amendment be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that they can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the electors qualified to vote for members of the Legislature voting therefor, such amendment or amendments shall become a part of this Constitution.

THE CHAIRMAN. If there be no amendment to section one, the Secretary will read section two.

THE SECRETARY read:

SEC. 2. Whenever two thirds of the members elected to each branch of the Legislature shall think it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at said election, on the proposition for a Convention, shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. Said Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, which shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election at such place as the Legislature may direct. The Constitution that may be agreed upon by such Convention shall be submitted to the people at a special election, to be provided for by law, for their ratification or rejection, in such manner as the Convention may determine. The returns of such election, shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

MR. MCFARLAND. Mr. Chairman: I move that the committee rise and report back this article, with the recommendation that it be adopted, and that it be placed on the general file.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have had under consideration the report of the Committee on Future Amendments, report the article back and recommend its adoption, and that it be placed on the general file.

MR. BLACKMER. Mr. President: I move that the article be printed and placed on the general file.

The motion prevailed.

MR. SCHELL. Mr. President: It seems to me that this is rather an extraordinary proceeding in this matter. There are many of us who have not read this report. My recollection is, that it was not laid upon our tables until yesterday.

THE PRESIDENT. What does the gentleman make?

MR. LARKIN. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Revenue and Taxation.

MR. GREGG. I move we adjourn.

The motion was lost.

THE PRESIDENT. The question is on the motion of the gentleman from El Dorado, Mr. Larkin.

The motion prevailed.

The article is as follows:

REVENUE AND TAXATION.

ARTICLE —.

SECTION 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

SEC. 2. All property, including franchises, capital stock of corporations or joint stock associations, and solvent debts, deducting therefrom debts due to bona fide residents of this State, and excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States, or to this State, or any municipality thereof, and all property and the proceeds thereof which is used exclusively for charitable purposes, shall be taxed in proportion to its value, to be ascertained as directed by law.

SEC. 3. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality and similarly situated, shall be assessed at the same value.

SEC. 4. Every tract of land containing within its boundaries more than one government section shall be assessed, for the purposes of taxation, by sections or fractional sections; and where the section lines have not been established by authority of the United States, the Assessor and County Surveyor shall establish the section lines, in conformity with the government system of surveys, as nearly as practicable. Each section or fractional section shall be valued and assessed separately; and for the purpose of subdividing and assessing, the Assessor and Surveyor, and their assistants, may enter upon any land within their respective counties.

SEC. 5. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, respectively, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof.

SEC. 6. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

SEC. 7. No corporation, except for benevolent, religious, scientific, or educational purposes, shall be hereafter formed under the laws of this State unless the persons named as corporators shall, at or before filing the articles of incorporation, pay into the State treasury one hundred dollars for the first fifty thousand dollars or less of capital stock, and a further sum of twenty dollars for every additional ten thousand dollars of such stock; and no such corporation shall hereafter increase its capital stock without first paying into the State treasury twenty dollars for every ten thousand dollars of increase.

SEC. 8. No license tax shall be imposed by this State, or any municipality thereof, upon any trade, calling, occupation, or business, except the manufacture and sale of wine, spirituous and malt liquors, shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal control. But the Legislature may by law impose any license, or other tax, on persons or corporations owning or using franchises or corporate privileges.

SEC. 9. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars, for school purposes, on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

SEC. 10. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

SEC. 11. The Legislature shall provide by law for the payment of all taxes on real property by installments.

SEC. 12. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian, on the first Monday of March.

SEC. 13. Assessors and Collectors of State, county, city and county, town, or district taxes, shall be elected by the qualified electors of the county, city and county, town, or district in which the property taxed for State, county, city and county, town, or district purposes, is situated; *provided*, that vacancies may be filled by appointment, according to general laws.

SEC. 14. The State tax on property, exclusive of such tax as may be necessary to pay the existing State debt, shall not exceed forty cents on each one hundred dollars for any one year.

SEC. 15. A State Board of Equalization, consisting of two members from each Congressional District in this State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and seventy-nine, and every four years thereafter, whose duty it shall be to equalize the valuation of the taxable property in the State for purposes of State taxation. The Boards of Supervisors of the several counties in the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purposes of county taxation.

SEC. 16. The State Board of Equalization shall assess the value of all the property of all railroad corporations in this State. For the purpose of taxation, the value of all lands, workshops, depots, and other buildings belonging to or under the control of each railroad corporation, shall be apportioned by said Board to the counties, cities and counties, cities, townships, and districts in which such lands, workshops, depots, and other buildings are situate; and the aggregate value of all other property of such railroad corporation shall be apportioned by said Board to each county, city and county, city, town, or district in which its road shall be located, according to the ratio which the number of miles of such road completed in such county, city and county, city, town, or district shall bear to the whole length of such railroad.

SEC. 17. The value of the capital stock of a corporation shall be assessed in the county in which its principal place of business is located, and separately from all other property belonging thereto; and such stock shall be assessed at its market value when the assessment is made. The real and other personal property of such corporation shall be assessed in the several counties respectively in which the same is situate. The value of such stock, over and above the aggregate value of such real and other personal property, according to such assessment, shall be taxed in the county in which the principal place of business of such corporation is located; and the value of such real and other personal property shall be taxed in the several counties respectively in which the same is situate. The shares of stock belonging to the stockholders in such corporation shall be exempt from taxation; *provided*, that the provisions of this section shall not apply to railroad corporations.

SEC. 18. The Legislature shall pass all laws necessary to carry out the provisions of this article.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section one.

THE SECRETARY read:

SECTION 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

MR. LARKIN. I desire to offer an amendment as a substitute for the section.

THE SECRETARY read:

"SECTION 1. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law."

MR. REYNOLDS. Mr. Chairman: I move that the committee rise and report progress, and ask leave to sit again. I make that motion so as to move a call of the house. The question was put and resulted in a vote of 31 ayes and 38 noes.

THE CHAIRMAN. No quorum voting. There is evidently a quorum in the house.

MR. REYNOLDS. I desire to state——

THE CHAIRMAN. The motion is not debatable. Those in favor of the motion will rise and stand until they are counted. Members are requested to vote on one side or the other.

The division resulted in a vote of 35 ayes to 41 noes.

THE CHAIRMAN. In order to ascertain whether there is a quorum present, the Chair will direct the Secretary to call the roll, and members are directed to answer to their names as they are called.

THE SECRETARY called the roll, and the following members answered to their names:

Andrews,	Herrington,	Reddy,
Ayers,	Hilborn,	Reynolds,
Barry,	Holmes,	Rhodes,
Barton,	Howard, of Los Angeles,	Rolfe,
Belcher,	Howard, of Mariposa,	Schell,
Blackmer,	Huestis,	Schomp,
Brown,	Hughey,	Shurtleff,
Burt,	Hunter,	Smith, of 4th District,
Caples,	Jones,	Smith, of San Francisco,
Charles,	Kelley,	Soule,
Davis,	Kenny,	Steele,
Dean,	Keyes,	Stevenson,
Doyle,	Kleine,	Sweasey,
Dudley, of Solano,	Lampson,	Tinnin,
Dunlap,	Larkin,	Turner,
Eagon,	Larue,	Tuttle,
Edgerton,	Mansfield,	Vacquerel,
Estee,	McCallum,	Van Voorhies,
Evey,	McConnell,	Walker, of Tuolumne,
Finney,	McFarland,	Webster,
Freud,	McNutt,	Weller,
Glascock,	Miller,	West,
Gorman,	Moffat,	White,
Gregg,	Nason,	Wilson, of Tehama,
Hale,	Neunaber,	Wyatt.
Harvey,	Ohleyer,	Mr. President—80.
Heiskell,	Porter,	

THE CHAIRMAN. There is a quorum present.

MR. ESTEE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again. I make this motion, because I am sure that this house does not intend, to-day, to take up the question of taxation. We can take up some other report and proceed to business, and I hope it will be done.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen, the Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress therein, and ask leave to sit again.

MR. HERRINGTON. I desire to send up a minority report from the Committee on Education.

THE SECRETARY read:

MINORITY REPORT OF COMMITTEE ON EDUCATION.

To the President and Gentlemen of the Convention:

The undersigned, a minority of the Committee on Education, herewith presents his report, and asks that it be referred to Committee of the Whole, to be considered in connection with the report of the majority, as printed.

Section six of the majority report, in defining the system of public schools, provides for "such normal schools, high schools, evening schools, and technical schools" as the Legislature may prescribe, or as may be established by any municipality or school district of the State, in addition to primary and grammar schools, but excludes from the system the State Normal School.

The branch of the system called high schools, as now conducted, which this section perpetuates, is a continued source of public dissatisfaction. It permits instruction in all languages—ancient and modern—and prevents uniformity in the courses of instruction therein pursued. It is not probable that any two districts in the State will require the same kind of text-books.

The qualifications required to teach in this branch of the system may differ greatly in the several districts, while heavy special taxes will be required in the districts for the support of high salaries to classical educators for the benefit of a small proportion of the children of those districts, without any general beneficial results.

Objections equally valid may be urged against technical schools, and the multiplicity of normal schools which the majority report contemplates, while the exclusion of the "State Normal School" from the "system" is its practical abandonment and ultimate destruction.

I therefore propose the following as a modification of section six, as reported by the majority, and ask its adoption as a substitute:

SEC. 6. The public school system shall include primary and grammar schools, and such evening schools as may be established by authority of any municipality or school district of the State, and all instruction imparted therein shall be confined to the English language. All revenue derived from the State School Fund and State school tax shall be applied exclusively to the support of primary and grammar schools.

Respectfully submitted.

D. W. HERRINGTON,
Of Committee on Education.

December 28, 1878.

Laid on the table, and ordered printed.

MR. EDGERTON. Mr. President: I move the Convention resolve itself into a Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on the Right of Suffrage.

The motion prevailed.

The article is as follows:

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every native male citizen of the United States, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the election district in which he claims his vote ninety days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, that no idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector; *provided*, that the Legislature may by law remove in whole, or in part, the disabilities to exercise the elective franchise on account of sex.

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

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

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

SEC. 5. All elections by the people shall be by ballot.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section one.

THE SECRETARY read:

SECTION 1. Every male citizen of the United States, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the election district in which he claims his vote ninety days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, that no idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector; *provided*, that the Legislature may by law remove in whole, or in part, the disabilities to exercise the elective franchise on account of sex.

MR. BLACKMER. I send up an amendment to section one.

THE SECRETARY read:

"Strike out the word 'male,' in line one.

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: Owing to the unprecedented course that this committee has taken upon this subject, to take it up at this time, I am not prepared to discuss this question as I had hoped to discuss it, and if it were of any use I would certainly earnestly protest against this subject being taken up at this time, when there is barely a quorum here; when members, whom I know are anxious to discuss this question, are absent; when it will be impossible to get an expression of the sentiments of the committee upon this question which is to come before us. I know that it is looked upon by a great many in this Convention as a question that perhaps ought not to be raised here, but, sir, I beg leave to differ with all those gentlemen, and to assert that I consider it one of the most important questions that is to be discussed during the session of this Convention. I know that the time which I shall be allowed to give to it is limited, and that I cannot, without the preparation that I had intended to make to condense what I had to say, do the subject justice. But I shall endeavor to answer some of the objections that I believe are raised to striking out this word "male" in this report. In the first place, sir, we have but to go back but a short time to find woman occupying a position very much inferior to the one she occupies at present, although to-day she is politically in a position of degradation; but, sir, she has been taking higher and higher ground continually. But to come down at once to this question of the right of suffrage. At the close of the American Revolution there was even in this republic a property qualification in almost all of the States. But, sir, it was not long before the people who had been recognized as the people in the Constitution of the United States began to feel the oppression of that, and very soon there came to be a very strong influence brought to bear upon the authorities of the government to remove that disability. And what was the reason? Because there was something behind it. And then that property qualification was removed, eventually, I believe, in all the States, and then we had a government of the Anglo-Saxon race in this country. Well, immediately after that there began to grow into importance the great questions between free and slave labor in this country, and that went on until it carried this country to the very verge of destruction, and that question was finally settled, and it was found necessary, or deemed so, by a great majority of the people in the country, to give to that race that had been enslaved the ballot also for its protection, and then and since then we have had an aristocracy of sexes in this country, and we have been governed by this aristocracy of sex. Let us go back a moment and see how it is.

The people who have held these women in subjugation longest believed that they had no souls. That was the idea they entertained. That was the idea and is to-day the idea in the most populous government on the globe. It was told of a Jesuit missionary in China, that he was asked by one of the natives why he talked with the women. He told him that he wanted to save souls. "Why do you want to convert women? they have no souls," said the native. The same idea prevails with the man who said that "women were better than donkeys, but that they were not as good as males." This same idea has obtained in all of our civilization, and it taints our civilization as it did that. We have had here in this Convention gentlemen who, without any thought of anything wrong, if they wanted to find a figure of speech that was more contemptible than anything else, have been able to find nothing so well suited to their taste as "old women," or a "convention of old women." Sir, I never listen to such remarks but there arises before my view an old woman; old, it is true, and feeble in years, whose steps are fast approaching the entrance of that low green tent whose curtain never outward swings, but who is still as vigorous in mind as when in her younger years she was thought fit to be the instructor of youth, and who has borne her sons and daughters to positions of honor and trust. I wonder if such gentlemen have this in view when they sneeringly talk about old women, and I wonder if they remember that the mother who bore them is in her declining years, a member of this despised class? Sir, I do not believe that gentlemen say this with a full knowledge of its meaning, but it is the taint of the old civilization that still clings here in the new.

Now, sir, we are told that if this word "male" is stricken out of this place, and women are allowed to go to the ballot box, that they will go out of their sphere. Now, sir, I beg to know by whose authority has that sphere been determined. They have never yet been allowed to develop themselves without restraint, in the sphere that God and nature intended for them, and no class of people, whether they be men or women, in any community, under any government, can ever develop to their full capacity unless they are unrestricted in every direction. Why, sir, how do we know that the lark that sings at the very gate of heaven would do that if we had never seen him except he was imprisoned within the bars of his cage? Take off the restrictions that keep this class of people where they are, and then it will be time to determine what their sphere is.

But, Mr. Chairman, we are told that they are not asking for it; that there is no demand for this. Why, sir, the demand has been made in this country and in the old countries for more than thirty years. During the last session of Congress more than forty thousand men and women petitioned for this disability to be removed. It has been agitated, and discussed, and legislated upon in almost every State in the country. In our own State we have nearly three thousand men and women asking that we frame a Constitution here that shall not put any disability on them on account of sex. It makes no difference, sir, if it is right, if it is just, if there is only one woman who feels herself aggrieved by the political position in which she finds herself, it is but right and just that she have the privilege that she asks. Next, Mr. Chairman, we are told that it will unsex her. Well, sir, if the exercise of a political right, or a political function, under any government, will succeed in doing that which neither God nor nature can affect, it will then be time to argue

that they will be unsexed. I am ashamed of men who take that position. It is entirely begging the whole question.

But, sir, we are told, further than that, that if this disability should be removed, that only the lower and degraded class will go to the polls and vote, while the better and more respectable class of women will stay away. Now, sir, in the first place I deny that this is true, and there is plenty of evidence, not only in our country, but in the countries of the Old World, where women do vote upon the same property qualifications as do men; as they do in England, voting at all the municipal and parochial elections; and it is expected very confidently that the next session of Parliament will allow them to vote also for members of that body. But suppose it was true that only the lower and more degraded class of women would vote. Suppose that every inmate of every brothel in the State were to go and vote, and every respectable woman stay away, it makes no difference upon the principle upon which it is based. Women are not sole traders in this business, and I am pleading not for a universal suffrage, but for an impartial suffrage, that whatever restrictions are placed upon any class, shall be placed upon all alike; and it matters not how degraded or low a man may be it does not disqualify him unless he has been under the criminal law. If you do not disqualify men for voting because they are the associates and the partners in this business, I ask in the name of heaven why should you disqualify women? I am indeed very sorry that I am taken so completely by surprise in regard to the discussion of this question, and I do think that it is taking an unfair advantage of those who have been so anxious to discuss this question fully before this committee. It seems to me that it is not dealing justly with those whom I know are anxious to discuss this question. It is brought up here at a time when it cannot have any consideration at all. There are so many, many arguments that can be used in favor of this proposition. In the first place, the Constitution of the United States has determined what shall be the governing class in the country. They have defined the bounds of citizenship, and they have done it in an amendment to the Constitution, which says that all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. It is this class of people that are meant when the Constitution says: "All persons born and naturalized." Because man made laws have selected from that class and made a disqualification on account of sex, it does not follow that other citizens have not a right to a voice in the government. It cannot follow by any rule of justice, and I contend that whatever rights are given to one citizen, ought to be given, under the same rule, to every other citizen. If we are to have intelligence as a test for the exercise of this right of the elective franchise, let us have intelligence in the case of all citizens. The government has a right to regulate this franchise. It has a right to say that no citizen shall be allowed to exercise it unless they are of a certain age; it has a right to say that those who are not of sound mind shall not exercise it; it has a right to say that insane persons shall not exercise it; but, sir, it has no more right to say that people who are of sound mind, and of age, this whole class of citizens embraced within this definition in the Constitution of this country, shall have no voice in the concerns of this government. Mr. Chairman, I cannot do justice to this argument now. No man can do it. I cannot do it being taken by surprise here, and I wish to refrain from further discussion, hoping that the committee will see fit to postpone it to some future time when it can be discussed as it ought to be. I claim it is not in the interest of making a good Constitution to do work in this manner. I move that the committee rise, report progress, and ask leave to sit again.

MR. HOWARD, of Los Angeles. Mr. Chairman: I hope the motion will prevail. I do not know——

THE CHAIRMAN. The question is not debatable.

MR. HOWARD, of Los Angeles. I am in favor of giving the gals a chance now.

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

The motion was lost.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. Chairman: As Chairman of that committee I wish to state that I am not prepared to go into a regular discussion of this matter and to consider this report. The committee, sir, reported a portion of this first section more as a compromise than for any other purpose, and I am a little surprised, sir, now, that this committee should attempt to consider a question of so much importance to the people of this State as this is, with so slim a committee as we have here at present—hardly a quorum, sir. It is one of the most important questions that will come before this Convention for its action during its session. I would like to see a full Convention when this question is discussed. The committee were of different opinions in regard to certain questions in the report. As to the amendment offered by the gentleman from San Diego, Mr. Blackmer, I will say that with one exception the committee were unanimously opposed to that amendment. The other portion alluded to, by an amendment to an amendment, was a compromise with the committee, each member of the committee reserving a right to act upon it in the Convention as he saw fit. Now, I know that a number of the committee are not present. I know that a majority almost of this Convention is absent, and I do hope that a motion that the committee rise, report progress, and ask leave to sit again, will prevail. It seems to me that it ought to do so in order to do justice to a question of such magnitude as this. I renew the motion.

MR. SMITH, of Fourth District. I would suggest that the committee recommend that it be taken up on Thursday.

MR. EAGON. I do not think there is any great difficulty about that.

MR. ROLFE. Why not go on and discuss this question without taking any vote.

MR. EAGON. I suppose that gentlemen making arguments would like to make them before the Convention.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I think entirely too much importance is given to the action of the Committee of the Whole. I was a member of the Committee on Suffrage. I think entirely too much consequence is given to the action of the Committee of the Whole in view of the fact that all these questions will come before the Convention, and I have no idea that any gentleman will be deprived of discussing the question then if he shall not have a fair and full opportunity to discuss it in Committee of the Whole. My preference is to take these reports in their order and act upon them, whoever may be present, and if there is not a full discussion, or full vote, that can easily be remedied when we act in the Convention. I must say that I sympathize with the eloquent remarks of the gentleman who first spoke to us upon this question, but I cannot say that I think there is any probability that the amendment offered by the gentleman will prevail, and it will be unnecessary to occupy much time in discussing it, although the gentleman has a right to do so. I think we had better go ahead and discuss it, and if it is in order I wish to offer an amendment to the first section; that is, to add to the end of the section "by a vote of two thirds of the members of each house in favor of such change." This is to remove a disability on account of sex. In the Suffrage Committee a proposition was for some time considered whether we should ask the Convention to submit a separate proposition, to be voted on separately, on this question of suffrage. It was thought, for reasons which need not be stated here, that that would not be proper. All that was left for the committee to do was to submit a proposition of this kind. But under the proposition, as presented by the committee, a mere majority of the Legislature could change the Constitution of the State; that, I think, would not be proper in any case, and it would be regarded, perhaps, as very objectionable if we put it into the Constitution, but if a vote of two thirds of the members of each house shall be in favor of such change, I do not see any reason why we should not submit it in that form; that certainly never will occur until public sentiment shall demand it, and demand it by a decided majority. I am one of those who believe that the time will come when public sentiment will demand that justice.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: There is nothing more important to put into a Constitution than that which provides for the elective franchise. That goes, sir, to the very source of political power. Now, we have a general vague idea that all people have a right to vote; but political power is confined to about one quarter or one fifth of the population—a particular class designated by age, sex, and citizenship. Now, sir, if this question as to the elective franchise had come before this committee to-day in its regular order, if we naturally and according to our general file had reached it to-day, the day before Christmas, with scarcely a quorum here, I should have said this should take its natural chances and be discussed to-day. But what right, what justice, is there in passing over some four or five less important matters and taking up this? We have the report of the Committee on Education, the report of the Committee on Revenue and Taxation, and others, which are passed over.

THE CHAIRMAN. The gentleman will confine his remarks to the question before the committee.

MR. MCFARLAND. It is certainly unjust to take up this report now. I desire to discuss it myself, but I do not propose to do so when there is barely a quorum present. I doubt whether there is a quorum here now.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: I am in hopes that this matter will be passed over now for the present. I was surprised to come here this morning and find this question under consideration, when I venture to say that there is not a quorum present. I believe that this is an important question, and the manner in which this subject has been treated by this Convention, and by some people who are inclined to sneer at the right of women to the suffrage, is not creditable. I consider it taking mean advantage. I intend to speak upon this subject in this Convention, but I do not intend to speak to empty seats. I have some authorities that I wish to quote that are at home, and that I could not get here to-day; I have prepared some notes upon it that I have not got here. I believe that a woman who has to pay her taxes has as good a right to vote as a man. If we give negroes, and Chinamen, and everything else, a right to vote, and proclaim the universal brotherhood of man and fatherhood of God, why in the name of God don't you give them equal rights? The woman is just as intelligent——

MR. TINNIN. Are you going over to that doctrine of the universal brotherhood of man?

MR. GRACE. In regard to women, I am. I move that the committee rise, report progress, and ask leave to sit again.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Right of Suffrage, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. EDGERTON. Mr. President: I move that this Convention do now adjourn.

The motion prevailed, and at ten o'clock and fifty minutes A. M. the President declared the Convention adjourned until Thursday, December twenty-sixth, at two o'clock P. M., in accordance with the resolution previously adopted.

NINETIETH DAY.

SACRAMENTO, Thursday, December 26th, 1878.

The Convention met, pursuant to adjournment, at two o'clock P. M.

THE SECRETARY. In the absence of the President and President pro tem., I will call the Convention to order. Nominations for Chairman are in order.

MR. HUESTIS. Mr. Secretary: I nominate Mr. Larkin for temporary Chairman.

MR. LARKIN was chosen temporary Chairman.

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

PRESENT.

Andrews,	Hilborn,	Reddy,
Ayers,	Holmes,	Reynolds,
Barbour,	Howard, of Los Angeles,	Rhodes,
Barry,	Howard, of Mariposa,	Rolfe,
Barton,	Huestis,	Schell,
Biggs,	Hughey,	Schomp,
Blackmer,	Hunter,	Shafter,
Boucher,	Jones,	Shoemaker,
Brown,	Kelley,	Shurtleff,
Burt,	Keyes,	Smith, of 4th District,
Caples,	Kleine,	Soule,
Charles,	Lampson,	Steele,
Davis,	Larkin,	Stevenson,
Dean,	Larue,	Sweasey,
Dudley, of Solano,	Lavigne,	Turner,
Dunlap,	Mansfield,	Tuttle,
Eagon,	McConnell,	Vacquerel,
Edgerton,	McCoy,	Van Voorhies,
Evey,	McFarland,	Wellin,
Filcher,	Mills,	West,
Gorman,	Moffat.	White,
Gregg,	Ohleyer,	Wilson, of Tehama,
Hale,	Porter,	Winans.
Heiskell,	Pulliam,	

ABSENT.

Barnes,	Hager,	O'Donnell,
Beerstecher,	Hall,	O'Sullivan,
Belcher,	Harrison,	Overton,
Bell,	Harvey,	Prouty,
Berry,	Herold,	Reed,
Boggs,	Herrington,	Ringgold,
Campbell,	Hitchcock,	Smith, of Santa Clara,
Casserly,	Inman,	Smith, of San Francisco,
Chapman,	Johnson,	Stedman,
Condon,	Joyce,	Stuart,
Cowden,	Kenny,	Swenson,
Cross,	Laine,	Swing,
Crouch,	Lewis,	Terry,
Dowling,	Lindow,	Thompson,
Doyle,	Martin, of Alameda,	Tinnin,
Dudley, of San Joaquin,	Martin, of Santa Cruz,	Townsend,
Estee,	McCallum,	Tully,
Estey,	McComas,	Van Dyke,
Farrell,	McNutt,	Walker, of Marin,
Fawcett,	Miller,	Walker, of Tuolumne,
Finney,	Moreland,	Waters,
Freeman,	Morse,	Webster,
Freud,	Murphy,	Weller,
Garvey,	Nason,	Wickes,
Glascock,	Nelson,	Wilson, of 1st District,
Grace,	Neunaber,	Wyatt,
Graves,	Noel,	Mr. President.

LEAVE OF ABSENCE.

Leave of absence for one day was granted to Messrs. McCallum, Prouty, Hitchcock, and Harvey.

To Mr. Estee and Mr. Tinnin, on account of sickness.

To Dr. Walker, for three days.

Indefinite leave of absence to Mr. McNutt.

To Mr. Walker, of Marin, for two days.

NO QUORUM PRESENT.

MR. SHOEMAKER. Mr. President: I rise to ask if there is a quorum present.

MR. SCHELL. I raise the point of order that there is no quorum present.

THE CHAIR. The Secretary will determine.

THE SECRETARY. There are seventy members present and answering to their names.

THE CHAIR. There is no quorum present.

MR. BARBOUR. I would suggest that the absentees be called.

A call of the absentees showed seventy-one members present.

THE CHAIR. No quorum present yet.

ADJOURNMENT.

MR. BLACKMER. I move we do now adjourn.

MR. HUESTIS. I move the Convention take a recess until two o'clock and thirty-five minutes P. M.

MR. BLACKMER. I move to make it three o'clock.

MR. HUESTIS. I accept the amendment.

MR. SMITH, of Fourth District. I move to adjourn.

MR. SCHELL. I second the motion.

THE CHAIR. The question is on the motion to take a recess. The motion is carried, and the House will take a recess until three o'clock.

MR. SCHELL. I rise to a point of order. I understand that a motion to adjourn takes precedence.

[Confusion and noise.]

THE CHAIR. There was no second.

MR. SCHELL. Yes, I seconded the motion myself.

[Great confusion.]

THE CHAIR. The Convention will take a recess until three o'clock.

MR. SCHELL. I rise to a point of order. [Not recognized by the Chair.]

MR. HILBORN. [Amid great confusion.] I move that Mr. McFarland take the chair. There are only two motions in order—one is to adjourn and the other is for a call of the house. There is no such thing ever known as a recess under such circumstances. I move Mr. McFarland take the chair.

THE SECRETARY. Those in favor of that motion say aye.

Division was called for, and the motion declared lost by a vote of 23 ayes to 32 noes.

THE CHAIR. The house will take a recess until three o'clock.

REASSEMBLED.

The Convention reassembled at three o'clock P. M., Mr. Larkin in the chair.

The roll was called, and the following members answered to their names:

Andrews,	Hitchcock,	Pulliam,
Ayers,	Holmes,	Reddy,
Barry,	Howard, of Los Angeles,	Reynolds,
Barton,	Howard, of Mariposa,	Rhodes,
Biggs,	Huestis,	Rolfe,
Blackmer,	Hughey,	Schell,
Boucher,	Hunter,	Schomp,
Brown,	Kelley,	Shafter,
Burt,	Keyes,	Shoemaker,
Campbell,	Kleine,	Shurtleff,
Caples,	Lampson,	Smith, of 4th District,
Charles,	Larkin,	Soule,
Davis,	Larue,	Steele,
Dudley, of Solano,	Lavigne,	Stevenson,
Eagon,	Mansfield,	Sweasey,
Edgerton,	McComas,	Terry,
Evey,	McConnell,	Tuttle,
Filcher,	McCoy,	Vacquerel,
Gorman,	McFarland,	Van Dyke,
Grace,	Mills,	Wellin,
Gregg,	Moffat,	West,
Hale,	Moreland,	White,
Heiskell,	Ohleyer,	Wilson, of Tehama.
Hilborn,	Porter,	

THE CHAIR. There is no quorum present.

MR. HUESTIS. I move a call of the Convention.

ADJOURNMENT.

MR. GORMAN. I move we adjourn.

Carried: ayes, 39; noes, 21.

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

NINETY-FIRST DAY.

SACRAMENTO, Friday, December 27th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Finney,	McComas,
Ayers,	Freeman,	McConnell,
Barbour,	Gorman,	McCoy,
Barry,	Grace,	Mills,
Barton,	Graves,	Moffat,
Belcher,	Gregg,	Moreland,
Bell,	Hale,	Morse,
Biggs,	Heiskell,	Murphy,
Blackmer,	Hilborn,	Ohleyer,
Boucher,	Hitchcock,	Porter,
Brown,	Holmes,	Pulliam,
Burt,	Howard, of Los Angeles,	Reed,
Campbell,	Howard, of Mariposa,	Reynolds,
Charles,	Huestis,	Rhodes,
Condon,	Hughey,	Ringgold,
Cowden,	Hunter,	Rolfe,
Crouch,	Jones,	Schell,
Davis,	Joyce,	Schomp,
Dean,	Kelley,	Shafter,
Doyle,	Keyes,	Shoemaker,
Dudley, of Solano,	Kleine,	Shurtleff,
Dunlap,	Lampson,	Smith, of Santa Clara,
Edgerton,	Larkin,	Smith, of 4th District,
Evey,	Larue,	Smith, of San Francisco,
Farrell,	Lavigne,	Soule,
Filcher,	Mansfield,	Steele,

Stevenson,	Turner,	Wellin,
Sweasey,	Tuttle,	West,
Swing,	Van Dyke,	Wilson, of Tehama,
Terry,	Van Voorhies,	Winans,
Thompson,		Mr. President.

ABSENT.

Barnes,	Harvey,	O'Sullivan,
Beerstecher,	Herold,	Overton,
Berry,	Herrington,	Prouty,
Boggs,	Inman,	Reddy,
Caples,	Johnson,	Stedman,
Casserly,	Kenny,	Stuart,
Chapman,	Laine,	Swenson,
Cross,	Lewis,	Tinnin,
Dowling,	Lindow,	Townsend,
Dudley, of San Joaquin,	Martin, of Alameda,	Tully,
Eagon,	Martin, of Santa Cruz,	Vacquerel,
Estee,	McCallum,	Walker, of Marin,
Estey,	McFarland,	Walker, of Tuolumne,
Fawcett,	McNutt,	Waters,
Freud,	Miller,	Webster,
Garvey,	Nason,	Weller,
Glascock,	Nelson,	Wickes,
Hager,	Neunaber,	White,
Hall,	Noel,	Wilson, of 1st District,
Harrison,	O'Donnell,	Wyatt.

LEAVE OF ABSENCE.

Leave of absence was granted for two days to Messrs. Johnson, Hall, Dowling, Kenny, Harrison, and Nelson.

For one day to Messrs. Garvey, Nason, and McCallum.

For three days to Messrs. Prouty and Estee.

Indefinite leave to Messrs. Tinnin, McNutt, and Stevenson.

On motion of Mr. Brown, the reading of the Journal of the twenty-fourth and twenty-sixth instant was dispensed with, and the same approved.

RESOLUTION IN RELATION TO MR. O'DONNELL.

MR. BARBOUR. Mr. President: I ask leave to send up a resolution out of order.

No objection.

THE SECRETARY read the resolution, as follows:

WHEREAS, Charles C. O'Donnell, a member of this Convention, has recently been publicly charged with the commission of infamous crimes, which unfit him to sit as a member of this Convention, which charges purport to be based upon sworn testimony, taken in a Court of justice, in the regular course of judicial proceedings; therefore,

Resolved, That a committee of three be appointed by the President, whose duty it shall be to examine such charges, and the proof in support thereof, and report the facts to this Convention as soon as practicable; and such committee shall have power to send for persons and papers.

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

MR. BARBOUR. Mr. President: These matters have arisen from subjects pending in this Convention, and it seems to be proper that they should be investigated; and I ask the Secretary to read an extract from the San Francisco Chronicle, which I send up.

THE SECRETARY read as follows:

"Many members of the Constitutional Convention have expressed a keen sense of indignation that they should have been placed in association with the infamous O'Donnell, and it is not probable that they will permit of any delay in the imperative recourse for relief. From a like feeling prevailing among the leading and respectable Workingmen, the party is not in a disposition to bear the odium of his disgrace, and doubtless a motion for O'Donnell's expulsion will proceed promptly from the San Francisco delegation."

MR. DUDLEY, of Solano. I have no objections to the passage of the resolution, except that part providing for sending for persons and papers. There is no money to do that with. It is absurd to talk about sending for persons and papers when there is no money to do it with.

MR. GREGG. Mr. President: Personally, I have no objections to the resolution if Dr. O'Donnell was in his seat. For the reason that he is away, I move to lay the resolution on the table.

MR. VAN DYKE. Mr. President: I hope the motion will not prevail. This Convention has a deep interest in this matter.

The ayes and noes were demanded by Messrs. Larkin, Barbour, Lampson, Joyce, and Barton.

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

AYES.

Biggs,	Hale,	Shafter,
Boucher,	Howard, of Mariposa,	Steele,
Brown,	Mills,	Swing,
Cowden,	Ohleyer,	Thompson,
Dudley, of Solano,	Porter,	Tuttle,
Edgerton,	Pulliam,	West,
Finney,	Reed,	Wilson, of Tehama,
Gregg,	Rhodes,	Winans—24.

NOES.

Andrews,	Burt,	Dean,
Ayers,	Campbell,	Doyle,
Barbour,	Caples,	Dunlap,
Barry,	Charles,	Evey,
Barton,	Condon,	Farrell,
Bell,	Crouch,	Filcher,
Blackmer,	Davis,	Freeman,
Gorman,	Lampson,	Shoemaker,
Grace,	Larkin,	Shurtleff,
Heiskell,	Larue,	Smith, of Santa Clara,
Hilborn,	Lavigne,	Smith, of 4th District,
Hitchcock,	Mansfield,	Smith, of San Francisco,
Holmes,	McComas,	Soule,
Howard, of Los Angeles,	McConnell,	Stevenson,
Huestis,	McCoy,	Sweasey,
Hunter,	Moffat,	Terry,
Jones,	Moreland,	Turner,
Joyce,	Reynolds,	Van Dyke,
Kelley,	Rolfe,	Van Voorhies,
Keyes,	Schell,	Wellin,
Kleine,	Schomp,	Mr. President—63.

The resolution of Mr. Barbour was then adopted.

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to consider the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section one, and the amendments of the gentleman from El Dorado, are before the committee.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: It will be observed that the second section of the report of the Committee on Revenue and Taxation provides for a direct tax upon property, based upon the ad valorem principle. There is another kind of taxation that is not covered by section two. My impression is that it is better to strike out that section and adopt the provision of the old Constitution that "taxation shall be equal and uniform throughout this State." This has been interpreted by the Supreme Court over and over again, and the people understand it. I would suggest to the gentleman from El Dorado that he modify his motion in order that a motion may be made to strike out section one.

MR. LARKIN. I withdraw it.

MR. EDGERTON. With a view to offering the amendment I have suggested I now move that section one be stricken out.

MR. DUDLEY, of Solano. Mr. Chairman: It is proposed then to retain the present system entirely.

MR. EDGERTON. Not at all, sir. It is merely to declare in the Constitution the principle that no man can object to, the general principle that taxation, no matter upon what it is imposed, or what other principles it may involve, it shall rest upon this principle, that taxation shall be equal and uniform throughout this State; that is all, and we have not come to that yet.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I hope the section will not be stricken out. I am impressed with the idea that the intention of the committee was to tax all property, and tax it equally, and tax it but once, but I am opposed to the way it reads, and have prepared an amendment which provides that all taxation shall be uniform upon the same class of property of equal value within the limits of the authority levying the taxes, and shall be levied and collected under general laws; so it would be plain that all classes of property, which are of equal value, would be uniformly taxed, and that is one thing that the public mind has been reaching after—it is the one thing which has been so much desired. I am, therefore, opposed to the striking out of the section. I send up this amendment to be read.

Not read.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: As I understand it, this second section has connection not merely with section three, but also with section five. I find by reference to the fifth section, "except as to railroad and other quasi-public corporations, in case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner thereof, in the county in which the property affected thereby is situate," etc. Now, there is a different rule here in the fifth section for the property of corporations. Now, in regard to the matter of taxing railroad property, there has been great diversity of opinion. In some places it is taxed just so much on the old iron and wood, and that seems to be pretty much the rule we have adopted in this State. Now, the first section of the report evidently was intended to enable us to classify the different subjects of taxation. Now, as far as railroads are concerned, if you adopt the rule of uniformity that is here laid down, you would have really no taxation upon railroads, as I understand it, because you are taxing their property in the first instance as so much old iron, and certain tracts of land, and then deduct from the amount of that tax the amount of their indebtedness and bonds issued.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: As far as the taxation of railroads is concerned, the gentleman will find that section two expressly provides that "all property, including franchises, capital stock of corporations or joint stock associations, and solvent debts, deducting from such debts due to bona fide residents of this State, and excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States, or to this State, or any municipality thereof, and all property and the proceeds thereof used exclusively for charitable purposes, shall be taxed in proportion to its value, to be ascertained as directed by law." If the gentleman will also turn to section sixteen, he will find that every description of railroad property is taxed, and it was concluded by the committee

that railroad property in this State should be taxed on some plane analogous to that adopted in the States of Illinois and Missouri. Under their laws and Constitution the property of railroad corporations is assessed by the State Board of Equalization, and not by local Assessors at all. The proprietors of these properties have to submit a detailed statement of all the property belonging to the corporation in the State to the State Board. The property is then assessed in this way: in the first place, there is what is called railroad track, that embraces the right of way, structures, irons, depots, workshops, etc. All the property is listed under different heads. They take the aggregate cash value of the capital stock, and a fair cash value of the indebtedness and bonds, and add them together, and from that deduct the value of the taxable property, and tax the excess as capital stock. By reference to the second of Otto, it will be seen that the Supreme Court of the United States sustained that principle of taxation. The principle I am advocating in offering to strike out is the ad valorem principle, which puts the tax upon the subject itself.

MR. CAMPBELL. There can be no doubt that, under this first section, the stock would be taxed at its fair cash value.

MR. EDGERTON. I ask the gentleman if there is any doubt about section thirteen, article eleven, as it stands: "taxation shall be equal and uniform throughout this State?"

MR. CAMPBELL. It has not operated very equally as interpreted. That has been one of the great causes of complaint. It seems to me that the section, as it stands in the report, is perfectly plain and reasonable.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I hope the section will be stricken out. That section means nothing as it reads: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." That is so obscure that it certainly ought to be stricken out, and I submit that we should substitute for it something that is as plain and explicit as the language of the old Constitution. The language of the old Constitution is infinitely more explicit, and is susceptible to but one construction, while this section has no definite meaning. The old Constitution reads:

"Taxation shall be equal and uniform throughout this State. All property in this State shall be taxed in proportion to its value."

Now, that is clear. So far the section of the old Constitution is certainly unobjectionable. As to the amendment of the gentleman from Tulare, I have read that, and it proposes to strike out the word "subjects" and insert the words "property of equal value." That is simply an amendment which is no amendment at all. It would be no improvement on the section. It leaves it where it is, and the whole section ought to be stricken out, and something substituted that is susceptible to but one construction. I therefore hope the whole section will be stricken out. Then there will be time to substitute something in its place that means absolutely some one thing.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I am informed by persons who have lived in Pennsylvania that a cow or a horse is taxed at so much (forty cents, I believe), no matter what the value is. Taxation there is not based upon the ad valorem principle. They are taxed as subjects, and not upon the principle of value at all. In that State the government is sustained, in a large part, and the interest upon the public debt is paid, by a tax of three quarters of a cent upon the gross income of corporations, and they pay very little attention to these particular matters outside of that. And because this section is ambiguous and objectionable on account of its obscurity, I move to strike it out and substitute the provision of the present Constitution.

MR. DUDLEY, of Solano. Does the gentleman think that section one, taken in connection with section two, would allow that kind of taxation he speaks of?

MR. EDGERTON. I say that one class of property should not be taxed any more than any other class, and that is why I am in favor of striking out this section.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: It seems to me there is something in the point raised by the gentleman in relation to this section. I had come to the conclusion that it did not mean that my cow and his cow, if he has one, should be taxed alike, but that it meant that his cow and my cow should be taxed at an equal amount on the one hundred dollars worth. It would allow the Legislature, if they saw fit, to place a tax of three dollars on the one hundred dollars worth of land in California, if they wished to raise a large proportion on real estate, while they might, at the same time, allow an exemption of personal property under this wording. They might levy a tax of twenty-five cents on the one hundred dollars worth of cows, while on land they might vary the rate, but to rate it all equally according to its class. I thought that was the logical construction. I thought that was the working of the Pennsylvania and Missouri system, but I find I am mistaken. I am in favor of striking it out and incorporating a separate section, that taxation shall be equal and uniform throughout this State. We can then proceed to correct the cause of the present grievances.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I suppose the Chairman of the committee is correct in saying that all the members agreed on this question. I was supposed to have agreed to it myself. I recollect of referring to the old section, but there was something said about cases where school districts should assess, and road districts should assess, and townships should assess; hence this term that directly limits it to the authority levying the tax. But my own idea now is that the old section is preferable. We see men running after the Constitutions of other States, and because these things are found in other Constitutions seems to be reason sufficient, in the minds of some, for their adoption. Now, the words equality and uniformity do not mean the same thing. In Virginia we have this uniformity. Watches were taxed, say, one dollar and twenty-five cents each; cows were assessed at a given sum, and the same with regard to horses. They had uniformity, but not equality by any means. If all watches are assessed alike, that is uniformity, but not equality. One watch may be worth five hundred dollars, and another fifteen dollars, but they are assessed alike. There is no equality in such taxation: there is no equity. It is for that reason that the word "equal" is put in here—that all property shall be taxed in proportion to its value. That makes it perfectly plain and comprehensive. There is another good reason for retaining the section of the old Constitution, which is sufficient for me, and that is that we should retain the language of that instrument, unless there is some good reason for changing it. We should keep what we have until we get better. It strikes me that the language of the old Constitution is better and less equivocal than that of any that has been mentioned here. It starts off with a general unequivocal declaration that covers the whole subject, and that is, that "taxation shall be equal and uniform throughout this State." There could not be words any more explicit. "All property shall be taxed in proportion to its value, to be ascertained according to law," is put in here, but the other is better. What more explicit combination of words can be found? There is no difficulty about it. If there is any conflict between this first general declaration and the subsequent section, the subsequent section should be brought in harmony with the first. Let us lay down the general doctrine first, and make the provisions of the article conform to it. Now, the last part of the section we have left off, because that is where the whole difficulty was—in the local Assessors—from whose decisions there was no appeal. That part must be left out. I hope we shall strike out, and insert this much of the old Constitution, down to the words "Assessors and Collectors."

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: In examining that section, and comparing it with section eight, as reported by the committee, it struck me in this way: section eight authorizes a license tax for certain things: among other things, for instance, on the manufacture and sale of wines. Now, a man may have ten acres in vineyard, and make a thousand gallons of wine a year, and his business is of the same class as the man who has two or three hundred acres, and makes a great deal more wine. Now, if we impose a license tax upon the sale of wine, would it require the same amount of license—say one hundred dollars a year—would we require the small manufacturer to pay the same amount of license as the large manufacturer who makes one hundred thousand gallons a year? Now, if it is required to be uniform upon that same class of subjects, it would have to be in the same amount, it seems to me. If the man who makes one hundred thousand gallons only has to pay the same as the man who makes but one thousand, it would certainly not be right.

MR. EDGERTON. Mr. Chairman: I would like to modify my motion so as to strike out section one and substitute the following:

"SECTION 1. Taxation shall be equal and uniform throughout this State."

THE CHAIRMAN. The first amendment is that offered by the gentleman from Tulare, Mr. Brown, to strike out the word "subjects," and insert the words "property of equal value."

Lost.

MR. DUDLEY, of Solano. Mr. Chairman: I offer an amendment to the amendment. I desire to offer section one of the proposition I offered here several days ago. I desire to offer it, and I shall, at the proper time, move to strike out the other sections and substitute this proposition.

THE SECRETARY read:

"SECTION 1. Taxes shall be levied as hereinafter provided. All taxes upon property shall be uniform within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

MR. WEST. Mr. Chairman: I shall offer a substitute at the proper time, and I wish to have it read by the Secretary for information.

MR. VAN DYKE. I wish to suggest to Mr. Dudley to insert before the word "uniform" the words "equal and."

MR. DUDLEY. I have no objection to the amendment.

MR. WEST. I desire to have this substitute read for the information of the committee.

THE SECRETARY read:

"SECTION 1. Taxation shall be equal and uniform throughout the State. All private property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law."

THE CHAIRMAN. The question is on the amendment of the gentleman from Solano, Mr. Dudley.

SPEECH OF MR. SWING.

MR. SWING. Mr. Chairman: I hope there will be no restrictions at all placed upon the Legislature in regard to taxation. I hold, whatever have may been said about the Legislature not regulating corporations, that the Legislature will not fail to devise a system of taxation. Taxation is a matter which the people feel very quickly, and when an Act is passed imposing grievous taxes, one not uniform, nor equal, nor just, the people very soon see and feel it, and look out for a fit man to send to the Legislature to regulate the matter. Now, it is all very nice to say that taxation shall be equal and uniform, as is said by this provision in the old Constitution, but we can't make taxation equal and uniform simply by saying it shall be so, simply saying so does not make it so, and one reason why they have not been equal and uniform has been because of that very provision in the old Constitution. Now, we know

from experience that a vast amount of property has escaped taxation in the past, under and by reason of that very provision. I believe, by a fair estimate, that sixty per cent. of the real estate of the State is now under mortgage, and by that very provision that taxation shall be equal and uniform, sixty per cent. of the mortgages have never paid a cent in taxes. A few years ago the Legislature passed an Act requiring that mortgages should be taxed, and we all know that this law has been declared unconstitutional, which acts as a restriction upon the Legislature. Now, I believe it is better not to put any restrictions whatever upon the Legislature, but leave them free to act in this matter. Leave them the right to enact just such laws as they may think are required. I believe it will be better to leave the Legislature unrestricted in the matter, than to put in these high sounding terms which only serve to hamper them.

MR. EDGERTON. According to your theory the Constitution should be silent.

MR. SWING. I believe it should be silent. Some gentlemen seem to think that unless they put this in the Constitution the Legislature will have no power to tax mortgages. We know that is not the case. The Legislature has absolute power, except where that power is restricted by the Constitution. We know it is the theory of our government that this matter of taxation should lie with the people themselves as far as possible. We do not know whether the system we are devising is going to work well or not. If it is left to the Legislature, the representatives of the people can at any time change the system of taxation whenever the circumstances demand a change. I believe it is better not to say anything, but to leave the power of taxation entirely unrestricted. We all know that if it had not been for this provision in the old Constitution, taxation would have been much more nearly equal and uniform than it has been under that provision.

MR. EDGERTON. Is the gentleman not aware that the Legislature has even exempted certain property from taxation?

MR. SWING. Yes, sir; they did so, and when they found it did not work well they passed other laws taxing mortgages, and they were declared unconstitutional, under these very fine and high-sounding terms. Therefore I say it is better to leave them unrestricted, and when they find that men are paying no taxes, they will have a right to change the law so that these persons cannot escape their share of taxes. I prefer to leave this matter to the Legislature.

MR. DUDLEY, of Solano. Mr. Chairman: This subject at this time is in rather a peculiar shape, and there seems to be a lack of disposition to discuss it. There seems to be no definite idea as to the effect of striking out the section as reported by the committee and inserting the section of the old Constitution. I have heretofore occupied but little of the time of this Convention, and I desire now to occupy a short time in discussing this subject. I did not intend to speak at this stage of the discussion, but circumstances impel me to say what I have to say now, and I shall ask the indulgence of the committee in order that I may be permitted to complete what I shall have to say, even if it should extend beyond the allotted fifteen minutes. Considering the great diversity of opinion among the people, and among members of this Convention, concerning the question under consideration, it is unfortunate that the Committee on Revenue and Taxation did not succeed in harmonizing their views and in agreeing to a unanimous report; but whatever differences of opinion there may be as to systems or methods of taxation, it will be generally conceded that the subject is a difficult one. It is this question that has disturbed the public mind more, perhaps, than any other upon which we shall be called to deliberate. The uneasiness felt with regard to the present system, more than anything else, in my opinion, caused the people to call this Convention. It may seem very easy for one who has given the subject little consideration, to formulate an article to be engrafted into the Constitution that shall form the groundwork of a system of taxation that shall work harmoniously, dealing out equal and exact justice to all taxpayers; but once an investigation is undertaken, difficulties arise, new elements, essential to a correct solution of the question, which have never before been thought of, must be considered. The more thoroughly it is considered, the more complex it appears. No system of taxation has ever yet been devised against which serious objections could not be urged. The subject has received the consideration of the best minds for centuries, and yet no uniformity of conviction has been reached, except as to one general principle, which is, "that the burdens of taxation should be equally borne," that each should be called upon to contribute his just proportion toward the support of the government. There is probably no difference of opinion here on that point. The question here upon which there is such a diversity of opinion is not what ought to be done, but how shall it be done? How shall taxation be equitably distributed? How shall each individual or interest be made to bear his or its just proportion of tax? Shall anything be exempt? If so, what?

The effects of taxation are far reaching. We may unjustly relieve, or we may unjustly burden, classes and interests. To relieve one interest is to unjustly burden all others. The expenses of the government must be paid. What one does not pay another must. Unequal taxation is confiscation. Property taxed is decreased in value as compared with property not taxed, and to exempt any class of property from taxation is to add to its value at the expense of all property taxed. There are certain maxims laid down by Adam Smith, which have been so generally acceded to since his time that Mr. Mill tells us they have become classic. The first of these maxims is this—without pretending to quote the exact language: "That each individual should contribute to the support of the government in proportion to his ability; *i. e.*, in proportion to the amount of revenue derived by such individual under the protection of the law. This maxim is undoubtedly correct. It is true that, under our American system of State taxation, taxes are levied upon property, not upon incomes; yet, as a rule, all taxes are paid from incomes. The law does not inquire what incomes have been derived from property, but presupposes that all have used their property to equal advantage, and that the ability and consequent duty to pay tax is measured by the amount of property owned or possessed. It is not necessary here to stop to consider whether this presumption is a correct one or not. It is the basis upon which taxes are levied in most of the States of the Union; it has been the basis of taxation in this State in the past, and, I presume, will continue to be in the future. I have seen no disposition here to change. I would like to see a change made. I am in favor of substituting a tax upon incomes derived from certain sources, in lieu of a tax upon the property from which such incomes are derived.

I introduced a proposition to that effect, numbered five hundred and twenty-eight, to which I desire to call the attention of the members of the Convention. But such a proposition seems to find but little favor here, and the system that we shall adopt will probably be based upon property; and acknowledging the correctness of the maxim before mentioned—and I presume no one will dispute it—we are to assume that the ability to pay tax is measured by the property in possession, and provide for levying taxes accordingly. To do this equitably, all private property, whether belonging to individuals or corporations, should be taxed equally, *i. e.*, in proportion to its value. Value is the element taxed. There should be no exemptions. Every kind and class of property should find its value subject to taxation.

There is another maxim laid down by Adam Smith, which is, that: "The time of payment, the manner of payment, and the amount of payment ought to be clear and plain to the contributor and to all others." It is certainly important that the system of taxation that we shall adopt shall conform to this maxim. Very few persons who contribute nothing to the support of the government will vote with that discrimination necessary to the stability of republican institutions. The man who pays no tax has little regard for the public expenditures; he will not have that interest in and will not use his influence and exertions to the same extent to secure economical and good government that the citizen will who pays tax. The residence in the State of a class of wealthy citizens who annually pocket a large part of the net proceeds of the community's labor, and who are entirely exempt from the payment of all direct taxes, will always beget dissatisfaction and uneasiness on the part of those who are compelled to pay tax. Every individual should be required to pay tax in proportion to the value of his property; every one should not only know when he pays, but just how much he pays, and that, too, at the time of payment. No system should be here adopted that will recognize the right of any one to shift his burden of tax on to another.

For a few years past, under the rulings of our Courts, credits have been relieved from taxation, and that under the very article of the Constitution which it is here sought to engraft in the new Constitution. Notwithstanding that for nearly twenty years prior to that decision assessments were made, and there was a general acquiescence in that system of taxation, there was no general cry of oppression under that system. The dissatisfaction was confined to the moneyed interests of San Francisco, which sought to reverse that system and secure exemption for certain classes of property. They were successful, and since that time these credits have been exempted. But why should they be exempt? Are they not valuable? Are they not liable to attachment and sale in satisfaction of debt or judgment? Do they not bring a revenue to the owner? Can you not as easily determine the value of a note as you can the value of a horse or a cow? Are they not subject to all the laws, rules, and usages that govern and control other classes of personal property? Why then should they be exempt? We may not agree on a system of taxation that will be exactly just to all classes; we do not expect to reach perfection; but we ought to come as near justice and equality as possible. If each individual is to be required to pay tax in proportion to his ability, certainly the owners of capital invested in notes or interest-bearing bonds are possessed of ability, and ought in justice to be compelled to pay their fair share of tax. We have no means of knowing exactly how much there is of this class of property in existence at the present time; but I find by the Controller's report that the year following the decision of the Supreme Court in the mortgage tax cases—which exempted credits from taxation—that the assessment roll of the State fell off over a hundred millions of dollars, notwithstanding very considerable efforts were made by Assessors to make up the deficit occasioned by the exemption of credits, by assessing growing crops, and in some parts of the State, by increasing the valuation of land. In my opinion one hundred and fifty millions, or one fifth of the assessable values of the State, is probably not an overestimate of the amount of that class of property which, at the present time, altogether escapes taxation. If this class of property was added to the assessment roll, to raise the same amount of revenue now received would require a tax rate of one and six tenths per cent. instead of two per cent. as now, which is about the average rate in the State. The effect of assessing and taxing this class of property, and the consequent decrease of the tax rate, is to decrease the tax burden of those least able to pay tax, and to increase the burden of those best able to pay.

Take the case of two individuals, a mechanic entirely dependent upon his labor for a living, and a capitalist who has a surplus capital of one hundred thousand dollars invested in interest-bearing obligations. The mechanic is the owner of a house and lot where he resides, valued at one thousand five hundred dollars. The capitalist is the owner of a house and lot valued at fifteen thousand dollars. At the present rate of tax—two per cent.—the mechanic will have to pay thirty dollars, and the capitalist three hundred dollars; but if evidences of indebtedness were taxed the tax rate would be reduced to one and six tenths per cent., and the mechanic would have to pay twenty-four dollars only, and the capitalist would have to pay one thousand eight hundred and forty dollars. If every individual were strictly honest, and would render to some official, when required by law to do so, a correct statement of all

incomes derived by him, or her, from all sources, and we could equitably adjust and collect a tax upon such incomes, it would be generally admitted to be the best system of taxation that could be devised, but the investigation of economists, and experience of people who have tried it, have developed the fact that when this system is applied to all classes of people, and all classes of business, there are insurmountable obstacles in the way of its practical administration, because of the almost universal disposition of mankind to shirk taxation, and the willingness on the part of many to tamper with their consciences by rendering false statements concerning their incomes, and because of the ease with which incomes may be covered up. The conclusion has been reached by many that while an income tax is theoretically the most just, it is practically the most unjust system that could be adopted.

But why is it the most just system theoretically? Plainly because a man's income marks more correctly and more justly than any other index, his ability and duty to pay tax. But property, being more easily found, and not so easily covered up as income, we say that the property possessed or owned, instead of incomes, shall be the index of a man's ability and duty to pay. The per cent. is levied upon the value of the property in lieu of a tax upon the income derived from it. If we were going to adopt this theoretically just system of taxing incomes, not even the most ardent advocate on this floor of exempting credits from taxation would contend for a moment that incomes derived from investments in notes, bonds, or other securities, should be exempt from tax. Precisely why a piece of property should be exempt from taxation when the tax is levied upon its value, and not be exempt when the same tax is levied upon the income derived from it, I confess is beyond my comprehension. In either case the tax is paid from the same source, and in either case the effect upon the owner is the same; that is, his income is reduced by the amount of tax paid, and if there is any good reason why an exemption should be made in one case and not in the other, it has not been assigned in my hearing in the course of this debate.

Immediately, if you talk of taxing credits, somebody cries out double taxation. Now, this double taxation is a sort of scarecrow, or ghost, that has been conjured up by the bankers, money lenders, and shylocks of the nation, for the purpose of frightening nervous and innocent people. It has taken possession of, and haunts, the brains of people; it stalks through the country and through our business centers; and whenever any one suggests that owners of evidences of indebtedness from which large and princely incomes are derived, ought in justice to contribute, directly, something to the support of the government, this hobgoblin immediately rises up and cries out double taxation.

Now, sir, I am not at all nervous about this matter, nor at all afraid of this cry. I do not forget that taxes are a part of the cost of doing business in any community, and no small part of that cost, neither, in some places. I am aware that our merchants would sell goods cheaper if they were exempt from paying taxes. I am also aware that in the course of business they reimburse themselves for all taxes paid, at the expense of their customers. I am aware, too, that rents would be cheaper if all dwelling houses were exempt from taxes. I am aware, also, that landlords always reimburse themselves, at the expense of their tenants, for all taxes paid. I am aware that securities will be cheaper; that is, they will draw a less rate of interest, if they are exempt from taxation, than they will if they are taxed. I am also aware that the owners of this class of property will always reimburse themselves, at the expense of their customers, for all taxes paid, so far as possible. But would you exempt the merchant and the landlord from taxation, because, in the course of business, such tax is refunded to them by their customers? I think not. Then why exempt the money lender for that reason? The goods of the merchant and the houses of the landlord must find their value subject to tax. Why should not the note and the bond find their value subject to the same burden? We want a system of taxation that will require every one, whatever his business may be, and whatever shape his capital may assume, to pay directly his just share of the expenses of the State.

Let us look at this matter of double taxation a little further. Let us suppose there are five individuals in a community. A has a farm valued at ten thousand dollars; B has one valued at eight thousand dollars; C has one valued at six thousand dollars; D has notes valued at five thousand dollars; and E has notes valued at three thousand dollars. It becomes necessary in this community to raise a revenue of three hundred and twenty dollars. If the visible tangible property, as gentlemen are pleased to call it, only is assessed, the assessment roll will show twenty-four thousand dollars, the property of A, B, and C, who, to raise the required revenue, will have to pay a tax of one and one third per cent., and A will pay one hundred and thirty-three and one third dollars, or one third more than he would if the credits belonging to D and E were assessed. So of all the rest. But if the credits are assessed, the roll will show thirty-two thousand dollars, and the tax rate will be only one per cent., instead of one and one third per cent. as before, and A will pay one hundred dollars; B, eighty dollars; C, sixty dollars; D, fifty dollars; and E, thirty dollars. Now, it will be remembered that these credits belonging to D and E are the first and best claim to one third of the property of this community. They are claims that under certain circumstances will set the others houseless and homeless in the street; claims, too, which bring into the pockets of their owners annually one third of the net proceeds of the community's labor; and the only wrong done in this case by taxing these credits is, that while D and E have the first and best claim to one third of the visible tangible property, and are annually pocketing its proceeds, and ought to pay one third of the taxes, and would if the tax was upon incomes, they are only required to pay one fourth. Certainly this comes nearer justice than to exempt them entirely. Where is the fallacy in this? You may add to this community as many as you like holding property in different quantities, and as many as you please holding securities, and in any proportion that you please, until you have a case such as you actually find in any community. In doing so, you will add to the intricacy of the problem, but it is susceptible of mathematical demonstration that to assess credits will more equally distribute the burdens of State than to exempt them. That assessment is nearest correct that comes nearest justice, whether it represents the property once, twice, or three times.

Let us look further into this subject. Let us suppose a colony of a dozen or twenty families settling in a new country. They buy land, build homes, and cultivate the soil, all except one, who, disinclined to engage in any of the active pursuits that involve manual labor, concludes to loan his capital to his neighbors and live from the interest received. These people are men and women of intelligence and culture, and know the advantages, and I might say, the necessity of education, and as soon as they have provided themselves with shelter, begin to discuss the matter of furnishing school facilities for their children. The first thing in this line is to build a school-house, and they meet together and consult with regard to the means for carrying out that purpose, and very naturally conclude that the best way is to determine the kind of a house, and the cost, and then each subscribe to a fund in proportion to their means. The subscription paper is started, and all pledge themselves, except the man who has loaned his money. Let us suppose that this man, when he is asked to sign, should say: "Gentlemen, it is true I have a family growing up that ought to be educated, and I am anxious to have a school, and need one as bad as any of you, and I hope you will go on and build a house, and employ a teacher as soon as possible, but you cannot expect me to give anything. You know I have nothing. I have loaned all my money to you, and if I should give anything it would be a double contribution. All those who have borrowed my capital have contributed, and you ought not to expect anything from me." What would be thought of the meanness of such a man? Why, sir, he would steal pennies from a blind beggar; and if the gentleman from Sacramento should be called upon to characterize such a man, he would pour out his entire store of withering sarcasm upon that individual's head and fail to do the subject justice.

But the case is not even supposable. No American citizen ever reached that degree of meanness. No, sir, that man would recognize his duty to his children and to the community of which he was a member, and give his share towards the construction of a school house. He would do more. When the house was built he would go so far as to pay the tuition of his own children.

But this colony increases. There come into it selfish men, who are willing to reap the benefit of this school for their children, but are too penurious to voluntarily give, towards its support, their just proportion of the expense. The colony is called together again, and the members resolve—that is, enact a law that these contributions which have heretofore been but free will offerings, shall be considered a tax for the purpose of maintaining a school, and shall be collected by compulsory process, if need be. According to the logic on the other side, this would change the case entirely, and this man who had loaned his money would be exempt from paying anything, because he would have nothing but evidences of indebtedness, and to tax them would be double taxation. Of course it is double taxation, because honorable gentlemen affirm that it is. But precisely why he ought to pay, while the contribution is voluntary, and be exempt when the same contribution is made compulsory, it might be difficult even for some of the learned gentlemen on the other side to explain. We do not assess property for the purpose of ascertaining how much property there is in the State, but for the purpose of ascertaining who shall pay, and how much; for the purpose of ascertaining the liability of the citizen to pay tax, such liability being in proportion to the property owned; and that assessment is nearest correct that most justly determines that liability. We do not tax property, but owners of property. Property is passive and indifferent, and any inequalities in taxation will work injustice not to property, but to owners of property. If it were possible to get a full cash value of all the visible, tangible property, and if it were possible to get a full and complete list of all debts incurred for a valuable consideration, and deduct the debts from the value of the property, and collect the tax on the credits from the holders thereof, and tax owners of property for what they actually own, it would undoubtedly be—next to an income tax—the most equitable mode of taxation that could be devised. But the difficulties surrounding this method are more insurmountable, if possible, than those that stand in the way of an income tax. It is utterly impracticable. The system has been tried in New York and New Jersey. Upon this point I desire to read from the report of the New York Commissioners appointed in eighteen hundred and seventy-one. They say:

"And yet, at the same time, it is difficult to see how a system which proposes to tax all personal property uniformly can be made to work with any degree of success, unless the right or privilege to offset or diminish valuation by indebtedness is strictly and explicitly forbidden, inasmuch as it is this very right or privilege which furnishes the opportunity whereby personal property can most successfully evade taxation. Nothing is more easy than to create debts for the purpose of diminishing valuation, which no investigation on the part of the Assessors will suffice to prove fictitious, and yet of such a character that individuals of easy conscience will find no difficulty to making oath to their validity. * * * One of the most common and successful methods now resorted to is the taking of an unfair, but apparently strictly legal, advantage of the law exempting the securities of the United States from taxation. Thus, for example, an individual desiring to evade taxation on capital invested in general mercantile or speculative business, first purchases United States bonds, we may suppose to the amount of one hundred thousand dollars. He then borrows on his promissory note, using the bonds as collateral, one hundred thousand dollars, or some smaller sum, and invests the money so obtained in the business in question. When the day of assessment comes around, a return is made, under oath, if need be, of one hundred thousand dollars business capital: one hundred thousand dollars just debts and liabilities; no personal

property subject to taxation. If inquiry is made further respecting the United States bonds purchased, the answer is made legitimately, that in respect to these the State authorities have no jurisdiction. Since the commencement of the present year, moreover, a case involving this principle of exemption has been brought before the Supreme Court of New York (general term, January third, eighteen hundred and seventy-one), by the Tax Commissioners of the City of New York, and a decision given in favor of the legality; thus illustrating how difficult it is, holding on to a system of universal taxation, to once exempt any description of tangible, incorporeal property from assessment, without at the same time opening a door to innumerable opportunities for fraud and evasion."

Sanford E. Church, a member of the New York Constitutional Convention, uses this language: "In the country and in the towns and cities in the interior of the State, the rule is almost universal for persons to get up an indebtedness of some kind or other so that their property may escape taxation. Some persons will give notes to their children; others will exchange notes with their neighbors, and others will enter into obligations for the purpose of creating a liability, just about the time the Assessors come round."

Hon. Thomas G. Alvord, in the Constitutional Convention of New York, says: "It would be well to particularize some of these attempts to get rid of taxation. Among other things, sir, we have official bonds given by different officers holding places of trust at the hands of the people, either locally or as a State. Such officers find no difficulty, in the positions which they occupy, in not only getting a number sufficient for their purpose, but in absolutely having persons ask the privilege of getting on these official bonds; and these persons, by a sort of conscience which I do not understand, when the Assessor shall come around, in their minds consider this a liability which they may possibly be under the necessity of meeting in dollars and cents, and thus calming their consciences in regard to the matter—swearing off their personal liabilities to taxation. * * * I know a case in my own county where an individual, unquestionably one of the wealthiest men in the county, and that wealth largely consisting of personal property in bonds and mortgages, having a large family of children, who had grown up to years of discretion and who had become workers in the world, who kept his day-book in this way: As he received money from A, B, and C upon mortgages, he first credited to the parties who had executed the mortgage, and then he gave credit on the book to the individual son or daughter, from time to time, for the money received from that mortgage; but never, in any one instance, does he make the assignment that the law contemplated for the purpose of passing the mortgage; and never, in any single instance, does he pay over to his children the identical moneys thus received. But when the tax gatherer comes round he has no personal property."

MR. EDGERTON. Mr. Chairman: I would like to ask the gentleman if it is not true that this Commission, the report of which he is reading, were entirely opposed to taxing indebtedness in any manner or form whatever, solvent debts or mortgages, and if that particular passage he is reading in regard to changing the forms of property, is not given as one of the modes resorted to, in order to evade taxation. I understand that to be the position taken by the Commissioners. They were entirely opposed to the taxing of debts in any form whatever, solvent notes or otherwise.

MR. DUDLEY. Mr. Chairman: The gentleman is correct; I understand that Mr. Wells was contending for the exemption of this class of property. I understand, further, that he is in favor of the exemption of all personal property. If the gentleman will read the report, he will find that to be the position of the Commissioners.

MR. EDGERTON. I think the gentleman is in error. I do not think the Commission was theoretically opposed to taxing personal property.

MR. DUDLEY. It is a matter of indifference whether the Commissioners were theoretically opposed to taxing all personal property or not; the fact remains that they did recommend that all personal property be exempt from taxation, on the ground that so much of it could be covered up or hidden away from the Assessor that a uniform or equal assessment of personal property was impracticable. They, therefore, recommended that, in lieu of a personal property tax, there be levied an arbitrary house tax, or tax upon the rental value of houses; that is, they assumed that a man's mode of living indicated, as a rule, his ability to pay taxes, and they proposed to levy a certain arbitrary tax upon the house and its surroundings, which was to be in proportion to the rental value of the house. I simply read from this work to show where it will lead to if we open the door to exemptions of any kind—that it will lead to frauds of the worst kind. Upon this subject I read the report of the Massachusetts Commissioners:

"If the deductions be allowed from one kind of property they can discover no satisfactory reasons why they should not be equally allowed from another. If the man holding his farm, and earning by labor a support for his family, be not allowed to lighten his taxes by deducting his debts from his taxable estate, why allow such deductions to the wealthy holder of notes, mortgages, and bonds? The difficulties necessarily encountered in carrying out the principle on which the present laws are in this behalf based, form, in the judgment of the Commissioners, a weighty argument against the principle itself. It is found, upon experiment, to be attended with so many and serious evils as to forbid its impartial application. The effort to alleviate these evils by restricting its application to the holders only of personal estate, is an admission of the unsoundness or impracticable nature of the principle, and will necessarily impose an increased and disproportionate burden of taxation on the agricultural and landed interests of the State. Personal property in New Jersey, as in all prosperous communities, consists largely of rights and credits—termed in the law, incorporeal things. They are evidenced and secured by notes, bonds, mortgages, book accounts, certificates of stock, and other contracts, express or implied. They constitute a most important and considerable part of the wealth of the State. They are, to their holders, property of the most productive and available kind. More than all others they occasion the litigation that occupies our Courts and brings into play the expensive machinery and agencies of the law. Why should the holders of this species of property enjoy immunities or be entitled to deductions not allowed to the holders of lands?"

As a member of the Committee on Revenue and Taxation, I dissent from section two, which allows for the deducting of debts owing from debts due. I am opposed to it, because it is only the wealthy man, as a general rule, that has debts due him. While the poorer classes, or those in limited circumstances, are, as a rule, owing more or less, yet very few of them have anything owing to them. They are not, under this section, permitted to deduct debts owing from the value of their visible, tangible property; the deduction is only to be made from the value of the debts owing to the taxpayer. It is plain to be seen that this system is only a relief to those who have capital loaned, and no relief at all to those who most need it—those who are indebted but have nothing owing to them from which they can deduct the value of their indebtedness. The system is therefore unjust, and I am opposed to it.

Section five provides for the deduction of the mortgage from the value of the real estate. Now, there is one reason why I am opposed to that, because it is discriminating against unsecured indebtedness and in favor of secured indebtedness. If I give a note secured by mortgage, for a certain amount of money, I am permitted to deduct the debt from the assessed value of my property. But if I am good, if I am considered a man of honesty and integrity, and my neighbor is disposed to take my note without security, I have no rebate or relief whatever. It is making a distinction that ought not to be made.

I now come to the proposition which I introduced the other day. I am not particular as to the form. I introduced a plan similar to this in the early part of the session, for the purpose of calling the attention of the members to the proposition of adopting some other system than one based entirely upon property valuations, because I believe that system to be wrong. Rather than confine taxation entirely to a tax upon visible, tangible property, I would prefer to have the Constitution silent with regard to taxation, and trust the whole subject to the wisdom and honesty of future Legislatures. I desire that we shall adopt some measure in this Constitution looking toward getting a revenue from some other source than from a direct and exclusive tax upon property. I believe it is safe to say that half the property in this State, at the present time, evades and shirks the tax gatherer, and contributes nothing toward the support of government. I desire to engraft some provision in the Constitution looking toward the remedying of this; something that will compel this capital to contribute its just proportion toward the expenses of government. I do not make any pretentions to legal knowledge, or claim any ability in formulating ideas into sentences that will bear the criticisms of the Courts.

I present it in this form more for the purpose of calling attention to the idea. Yet my opinion is that under this proposition a system of taxation might be elaborated that would be far more just than the present one. I will read the sections which I have introduced:

"SECTION 1. Taxes shall be levied as hereinafter provided. All taxes upon property shall be uniform within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

"SEC. 2. All property, the income of which is not taxed, excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States or to this State, or any municipality thereof, and property used exclusively for charitable purposes, not exceeding —— thousand dollars belonging to any one institution, shall be taxed in proportion to its value, to be ascertained as directed by law.

"SEC. 5. The Legislature shall provide by law for the assessment and collection of a tax upon incomes derived from investments in bonds, notes (whether secured by mortgage or not), or securities of any kind, owned by individuals, and upon the gross incomes of all railroad, navigation, or banking corporations, bank and exchange agencies, and insurance companies, foreign or domestic, or any other corporation (other than municipal), or association whatever, formed for profit or doing business in this State; *provided*, that all notes, bonds, or securities of any kind, the income from which is taxed, and all property owned by and necessarily used by corporations or associations in producing incomes which are taxed, shall be exempt from an ad valorem tax."

It is difficult to tell exactly what per cent. of income is paid by the average taxpayer to the State in taxes. From the best estimate I can make—and other gentlemen can estimate it as well as I can—I find that the average taxpayer pays not less than six and one half per cent. of gross income. But I believe that estimate is low. A gentleman said to me the other day, who owned property south of San Francisco, that the tax upon it amounted to about twenty per cent. of the rental. He said he sold the property, as no man could live and pay such a percentage of his income. Now, if there is any reason why other interests should not bear their share of the burdens of taxation, in proportion to their value, I confess I am unable to see it.

I have taken the trouble to examine the report of the Insurance Commissioners, and find that the California Fire Insurance Company has a gross income of sixty-six per cent. of its capital stock, and a net income of thirty-three per cent. It paid in taxes nine hundred and ninety-eight dollars and fifty-five cents, or less than half of one per cent., and thirteen times less than the average taxpayer. On its net income it paid taxes on less than one per cent., or fourteen times less than the average taxpayer.

The California Farmers' Mutual Fire Insurance Company has a capital of two hundred thousand dollars, and a gross income of one hundred

and thirty-one thousand one hundred and thirty-seven dollars and ninety-nine cents, or sixty-five per cent of its capital stock. Taxes paid, six hundred and sixty dollars and sixty-seven cents.

The Commercial Insurance Company has a capital of two hundred thousand dollars, and a gross income of one hundred and eighty-three thousand two hundred and seventy-nine dollars and eighteen cents, or ninety per cent. of its capital, and a net income of twenty-six per cent., or fifty-three thousand seven hundred and forty-eight dollars and sixty-seven cents. Amount of tax not given.

The Fireman's Fund Insurance Company has a capital of three hundred thousand dollars; gross income, five hundred and fifty-two thousand seven hundred and eleven dollars and ninety-six cents, or one hundred and eighty-four per cent. of the capital; net income, one hundred thousand nine hundred and twenty dollars, or thirty-three per cent. Taxes paid, nine thousand two hundred and forty-two dollars and eleven cents; per cent. of gross income paid in taxes, sixteen thousandths; per cent. of net income, nine hundredths.

The Home Mutual Company has a capital of three hundred thousand dollars, with a gross income of three hundred and seventy-two thousand three hundred and twenty dollars, or one hundred and twenty-six per cent.; net income, one hundred and twenty-four thousand two hundred and twenty-five dollars, or thirty-four per cent. They pay in taxes, one thousand seven hundred and eighty-nine dollars and twenty-three cents, or about one half of one per cent.

The Fireman's Fund Insurance Company is the only one of our home companies that pays anything like a fair tax. With the exception of this company there is great uniformity in the ratio of tax paid to gross income, the per cent. being about one half of one per cent. The average, taking all the home companies together, is about seven mills, while the average per cent. of gross income paid by the average taxpayer is not less than six or seven per cent. I do not find, by the Insurance Commissioner's report, that the foreign companies doing business here pay any tax at all, and yet they are doing more business than our home companies, their receipts reaching millions of dollars annually.

As a further proof of the fact that corporations pay less taxes in proportion to ability than the average taxpayer, I call attention to the Central Pacific Railroad Company. This company has been so much talked about here that I should prefer to say nothing about it; but it is the principal railroad interest of the State, and is a case in point. I do not know that their receipts are positively known, either gross or net, but a statement has been going the rounds of the newspapers that the gross earnings for the current year would reach seventeen million dollars, about fifty per cent. of which, according to other statements, is net earnings. The President of that corporation, in a paper laid upon our desks, boasts of having paid five hundred thousand dollars in taxes. If that corporation had paid as large a per cent. of its income, either gross or net, in taxes, as the average taxpayer is compelled to pay, instead of boasting of having paid five hundred thousand dollars, might have boasted of having paid more than one million dollars. It is claimed that this railroad interest is great, and of great importance to the State, and ought not to be burdened too heavily.

But however great or important the railroad interests of the State may be—and I believe I realize their importance—they are not more important or greater than the interests of an equal amount of capital invested in lands and improvements, and in personal property used thereon, lying along the lines of those railroads, nor are the railroads of any more importance to the people who have made those investments than those people are to the railroads. The advantages are mutual, and there is no good reason why the burdens of State should not be mutually and equally borne; and if the present system of taxation does not equalize those burdens, it is the part of wisdom for us to provide a way for the trial of some other system.

Now, sir, this proposition of mine proposes that "the Legislature shall provide by law for the assessment and collection of a tax upon income, derived from investment in bonds, notes (whether secured by mortgage or not), or securities of any kind, owned by individuals, and upon the gross incomes of all railroad, navigation, or banking corporations, bank and exchange agencies, and insurance companies, foreign and domestic, or any other corporation (other than municipal), or association whatever, formed for profit or doing business in this State; *provided*, that all notes, bonds, or securities of any kind, the income from which is taxed, and all property owned by and necessarily used by corporations or associations in producing incomes which are taxed, shall be exempt from an ad valorem tax."

Now, sir, I am aware that evidence of indebtedness, whenever you seek to list it, will hide away. It is often in the possession of men of easy consciences, who will, whenever it is possible, cheat and evade the Assessor, but the report of the committee proposes to tax that class of property, and if it can be found for the purpose of taxing it on its value, it can be found for the purpose of taxing its earnings in the way of incomes. We will get as much one way as the other. It is a tax which will be taken directly from the owners of the property. When you come to apply that principle to corporations, and take the income of the corporations, there is no very serious difficulty in the way of ascertaining their incomes. They keep books, and their incomes may be ascertained, and there is no difficulty. The tax will be paid by the corporation, and will distribute itself among the shareholders. It will prevent double taxation, which gentlemen pretend to stand in so much fear of. The property will be taxed once, and only once. The incomes of the insurance companies, foreign as well as home, can be ascertained. They are ascertained by the Commissioner, and if there is power in the State to compel them to render correct accounts to the Commissioner of their receipts, there is power to compel them to pay in proportion to their receipts, and there is no possibility of getting any tax from them unless by taxing their incomes, for they possess very little property. I am under the impression that the mines should be taxed in the same manner, but I do not care to dwell upon that branch of the subject, but merely wish to bring all these matters to the attention of the Convention.

I have not talked for the purpose of displaying my forensic powers, but solely for the purpose of impressing upon the members of the Convention the importance of resorting to some other system of taxation than the old one. There are subjects of taxation upon which I have not touched, and which the Convention will be unwise if they do not consider—whisky and tobacco. These are luxuries of very doubtful utility, and if they should be taxed to the extent of discouraging their use, or if they should be taxed out of existence, there would probably be no great harm done. I believe a system of taxation in the way of a heavy license on whisky and tobacco might be made to bring in a vast amount of revenue, either by the use of the Moffat bell-punch system or some other mode—I have no particular system now in my mind. I appeal to the agriculturists in this hall, and the small property owners, to hesitate long and consider well before they shall adopt any measure which shall seem to perpetuate upon us the present system of taxation. While I know it is urged by gentlemen here that the present system is just and equitable, yet, sir, I believe there is no system of taxation we can possibly resort to that would be subject to greater inequalities, or do more wrong than the present system.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I was in hopes that some member of the committee would have defended this report. Neither the Chairman nor the members of the committee have indicated anything clear or definite as to what they intend to do. As far as this question is concerned——

MR. EDGERTON. The gentleman could not have paid very much attention to the proceedings, because there is a motion pending to strike out section one and insert something else.

MR. LARKIN. I understood you had an amendment, and that the gentleman moved a substitute to your amendment. I am opposed to this report, because there is nothing definite or tangible in it, and it will be construed in all sorts of ways. We want a system that will be construed alike by every Judge in the State of California. There may be one or two sections that we can adopt, but we should first adopt a general system of taxation, that will be equal and uniform. I hope we will adopt the language of the old Constitution, and then proceed to the second and fifth sections. I am in favor of the Boggs proposition for taxing property. It comes at once to the question that all property shall be taxed, and that no double taxation shall be allowed, and that growing crops shall be exempt.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I understand the question before the committee to be upon the amendment offered by the gentleman from Solano. Now, I think the principle contained in that amendment a very dangerous one, and it ought not to be adopted. It provides for an ad valorem tax upon property, and in addition to that an income tax. Now, it seems to me there is a very great inconsistency here in the gentleman's proposition and speech. I understand him to say he is opposed to a property tax, levied on the ad valorem principle, but section two certainly provides for that mode of taxation, and no other.

MR. DUDLEY. I did not say I was opposed to it.

MR. EDGERTON. I do not know of any other mode indicated in this plan, unless it is the plan of an income tax. I think the amendment ought to be voted down. The amendment which I offer will be much safer as a starter. It is the declaration of a principle, that taxation shall be equal and uniform throughout this State.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I think this debate, as far as it has gone, has pretty clearly demonstrated the necessity for striking out this first section entirely, and leaving no substitute for it. All the trouble we have had in this State in regard to taxation has arisen out of the construction of these words, "equal and uniform taxation," in the old Constitution, by the Supreme Court. There is another plan that might be adopted in this State, which would be the means of producing large revenues to the State, which, perhaps, could never have been adopted under the construction placed by our Supreme Court upon the words "equal and uniform." I mean a tax levied upon the estates of deceased persons. I believe we should have such a tax in this State. There is no tax which we could impose which would be so willingly paid, and one which would not work a hardship upon any one. I would not levy the tax upon small estates. I would provide that every man should have enough for the support of his family and the education of his children. I think a graduated tax should be imposed. Suppose a man dies worth twenty thousand dollars, you impose a tax of one eighth of one per cent. upon his estate. You go on raising the tax, until when a man dies worth ten millions you have a tax of say ten or fifteen per cent. upon his estate. You do no wrong or injustice to any one upon earth. If he has children, millions remain for them after the tax is paid. If he desires to leave his riches to strangers, there is no injustice done in imposing such a tax. It is, to a certain extent, a matter of natural right. We find in some countries and in some States of the Union these drafts, made by law, upon the estates of deceased persons. In some instances a man may will away every acre of his land, and give all his property to perfect strangers. In other places the laws of primogeniture prevail. This matter of the disposition of estates is one of mere statutory regulation. Now, I conceive of no better way of raising revenue, one which will do less damage to the individual, as when a man dies a part of the large property which he has earned, and which has been protected by the State, a part of it shall be taken by the State. Now, that system would be somewhat inconsistent if these words "equal and uniform" are allowed to remain.

MR. EDGERTON. It would be competent to levy such a tax now. If the gentleman will consult the statutes he will find that it has been done over and over again.

MR. CAMPBELL. I say these words might be construed to conflict with the system. If it was to be equal and uniform—equal on the round amount, there would have to be the same tax on an estate amounting to ten thousand dollars as on an estate of one thousand.

MR. EDGERTON. The words "equal and uniform" have been in the Constitution since eighteen hundred and forty-nine, and these succession taxes have been sustained by the Courts.

MR. CAMPBELL. There has never been any graduated taxation. There would be some question about it.

MR. EDGERTON. The Supreme Court has always held that no property can be exempted from taxation.

MR. CAMPBELL. That is what I understand. They have so decided, and therefore you could not exempt property to a reasonable amount for the support of the family. Now I desire, for that reason, to omit those words from the Constitution. They may so hamper the Legislature that they could not adopt such a graduated succession tax. It is a just and impartial tax. If we had such a tax in this State at the present time the entire expenses of the State could have been paid from the estates of deceased persons up to the present time from this source alone. Four or five men have died during the past year whose estates, under such a tax, would have paid the entire current expenses of the State Government during that period. Therefore, I do not wish to tie the hands of the Legislature by retaining those words. We shall tax a class of property that now so largely escapes taxation, and in other respects leave the Legislature free as to the mode they may adopt of raising revenue.

MR. EDGERTON. I would like to ask the gentleman what he means by equal and uniform taxation?

MR. CAMPBELL. They may have entirely different meanings. Equal taxation may mean an equal tax upon amounts of property; it may mean that property shall be taxed absolutely to the same extent, according to its actual value; it may mean that personal and real property shall be taxed at precisely the same rate; it may mean that cultivated and uncultivated land shall be taxed at precisely the same rate—that the value of an entire tract of land may be taken *in solido*; that it shall be taxed just the same as small tracts devoted to other uses. I cannot say what construction may be given to it. I would say that they mean this, that all property valuations shall be taxed at an equal rate. Then, in connection with the other section, that all property, with certain specific exceptions, might be taxed; certainly there could be no exceptions except specifically named.

MR. EDGERTON. I think the gentleman is entirely mistaken when he states that, either in the Legislature or out of it, in the Supreme Court or out of it, any difficulty has arisen from that clause. Now, sir, it was actually stated by the Supreme Court that the Legislature has power to exempt property. In the twenty-second California it was expressly held that the Legislature had that power, also in the thirty-fourth California. In the case of the People vs. the Hibernia Bank, the question was on the taxation of solvent debts, and there the Court held that solvent debts were not subject to taxation, because it would be, in effect, double taxation. There the question turned upon this clause: "All property shall be taxed in proportion to its value, to be ascertained as directed by law," and not upon the clause the gentleman is discussing.

MR. SMITH, of Santa Clara. Mr. Chairman: I move the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress therein, and ask leave to sit again.

The hour for recess having arrived, the Convention will take a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and quorum present.

LEAVE OF ABSENCE.

MR. EDGERTON. Mr. President: I ask indefinite leave of absence for General Miller, on account of sickness in his family.

Granted.

MR. EDGERTON. Mr. President: When the Convention took a recess, we were discussing the article on revenue and taxation. I have been requested to consent to the taking up of the article on right of suffrage this afternoon. In view of the importance of this question, and the very thin house to-day, I move that the Convention resolve itself into Committee of the Whole for the purpose of considering the article on the right of suffrage.

MR. GRACE. Mr. President: I am in hopes this motion will not prevail. I do not know that there is anything of more importance than this question of suffrage. I propose to discuss this question, and I want it discussed by a full house.

MR. SMITH, of Kern. Mr. President: I hope this motion will prevail. This subject of taxation is one of very great moment, and should not be slighted.

MR. GRACE. Mr. O'Sullivan, one of the oldest advocates of woman suffrage, is away. [Laughter.]

MR. WINANS. Mr. President: It appears to me that the main purpose of this motion is to defer the consideration of this important subject until such time as there can be a full attendance of members. I do not conceive that there will be anything gained by discussing this most important subject to-day. If the matter is passed now, it will have to come up again in Convention, and if the decision arrived at shall not meet the views of the majority, it will be reversed in Convention. A large number of gentlemen are away, necessarily absent. This absence is not the result of caprice on their part, but they have simply gone home to attend to private business. When gentlemen came here they came under the impression that the session would last one hundred days and no longer, and they made their business arrangements accordingly. Many gentlemen have important interests of their own, which they have sacrificed to the public service. Having found that the Convention will not be able to close its labors within the limits prescribed, they now find themselves so circumstanced as to be compelled to go home and arrange their business for another fifty days. I hope this motion will prevail.

MR. WEST. Mr. President: There are other men whose interests ought to be taken into consideration. It is that class who cannot return home on Saturday, and who are looking anxiously forward to the time of final adjournment, and every delay of this kind makes that day more distant. It is due to this class that the Convention proceed as fast as possible with its labors, complete its labors, and submit the result to the people. I hope we shall take up these reports in their regular order. If there is a quorum present it is competent to consider any subject.

MR. EDGERTON. The Sergeant-at-Arms informs me that there is no quorum present. I suggest that the roll be called.

MR. LARKIN. Mr. President: I am opposed to any change in the order of business. We have as many of these lawyers present probably as we shall have at any time from this on. There are men who have been more hours on the road from here to San Francisco than they have on this floor. Now, these men will continue that course. We can proceed with this work now. It is the most important question before this Convention, and I insist upon proceeding with the discussion until it is disposed of.

MR. FILCHER. Mr. President: If gentlemen are so deeply interested in this subject, certainly they would have made an effort to be here. I move to amend the motion by inserting the words "revenue and taxation," instead of "suffrage."

THE CHAIR. The motion is not amendable.

MR. GRACE. I move to lay the motion on the table.

No second.

The motion to take up the report of the Committee on Right of Suffrage was lost.

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the Convention do now resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section one and amendments are before the committee.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: The gentleman from Sacramento, Mr. Edgerton, this morning made certain assertions in regard to the decision of the Supreme Court, in regard to what were known as the mortgage tax cases. My impression was at the time that he was wrong, and I have since looked at the decisions. I refer to the case of the Savings and Loan Society against Austin, in forty-sixth California. The part of the decision I have referred to will be found on page four hundred and fifty-seven, which shows that the question of equal and uniform taxation was raised by counsel, and was determined by the Court. I will first read from the argument of counsel, page four hundred and fifty-seven, to show that the question was raised by counsel:

"The Constitution, which prescribes that all property shall be taxed according to its value, prohibits just as much the taxing of property for twice its value as it does the taxing it for half or a third of its value. Besides, the tax is unequal, and not uniform, for you tax the solvent debt twice—once in the hands of the debtor, and once in the hands of the creditor—while all the other things, such as lands, horses, cattle, etc., you only tax once. Can a law be constitutional in California which enacts that a certain property, viz.: solvent debts, shall pay two taxes a year, but that all the other property shall pay only one tax?"

So much for the argument of counsel. Now I wish to refer to the opinion of Justice Crockett, who gave the prevailing opinion of the Court, which was concurred in by a majority of the Court. He says:

"The real point to be decided is, whether the *same property* has been twice assessed for the same tax; for it is obvious that if the subject-matter of the tax is the same, it cannot be twice assessed for the same tax, and it is immaterial in such a case by whom the title is held. If, for example, the statute should provide that all lands should be assessed on the first of March in each year to the then owners of them, and that if any land thus assessed should be conveyed during the fiscal year it should be again assessed to the new owner, no one would doubt that under our Constitution the second tax would be void, as violating the principle of equality and uniformity prescribed by that instrument. (People vs. Kohl, 40 Cal. 127.) And yet, in such a case, if the first tax had been paid by the former owner before the conveyance, so that it was no longer a lien upon the land, it might be said that it was no concern of the purchaser that his vendor had been once taxed, nor of the latter that his vendee had been again taxed on the same land. But in such cases the true point for inquiry is, has the same property been twice assessed for the same tax? And in solving this question, the fact whether the property belonged to one person or another is a false quantity. The tax being upon the property itself, the inquiry is, whether it has been *twice* taxed, and in solving the point, the question of ownership is immaterial."

It is unnecessary to read further. The Court goes on at considerable length. That opinion was concurred in by Judge Wallace, except as to some particulars, which I believe refer to the State Board of Equalization. Judge Belcher discusses the question as to whether it is double taxation or not. Under that decision there was an end to mortgage taxes. So I think the gentleman will find he is entirely wrong in his views, that the Court did not consider that question in making that decision.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I am surprised that a lawyer so distinguished, and justly distinguished, as my friend from Alameda, should make such an assertion in relation to the mortgage tax case, when it was expressly overruled in the case of the People vs. The Hibernia Bank; and I think the gentleman himself, when he comes to study the question, will take a different view.

MR. CAMPBELL. That principle was never overruled.

MR. EDGERTON. Yes, sir. it was in the case of the People vs. The Hibernia Bank, and the whole thing turned upon this point, whether or not solvent debts were within the definition of the word "property," as used in the Constitution. That is the point, and you can appeal to one of the ex-Judges on this floor. If the gentleman will read the Hibernia Bank case, he will find it turns entirely upon the construction of the word property, as used in this part of section thirteen, that property shall be taxed in proportion to its value to be ascertained according to law. They say that solvent debts depend on so many contingencies that it is hard to ascertain whether they are property within the meaning of the Constitution, and that clause is a limitation upon the power of the Legislature to tax anything but property. They say no Assessor can ascertain the value of solvent debts. If the gentleman will look at these cases in the fifty-first California——

MR. CAMPBELL. That does not, as I understand it, overrule the principle that it must be equal and uniform taxation, and that to tax them would be to tax the property twice.

MR. EDGERTON. If it is not overruled, then there has never been a case overruled in this State.

MR. SWING. The People vs. Eddy.

MR. EDGERTON. The Legislature of eighteen hundred and sixty-nine passed an Act, the object of which was to avoid double taxation, and exempting all property from double taxation, and the case of The People vs. Eddy grew out of that statute, the Supreme Court holding that it was not constitutional, and that the debts were subject to taxation.

MR. SWING. The result of that decision is as stated, that the Legislature had no power under the Constitution to exempt any property from taxation, and the fifty-first California does not overrule that decision, and I do not see why the principle does not stand that solvent debts are property.

MR. EDGERTON. That whole line of decisions has been overruled.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I am afraid that discussions of this character will lead us away from the real point before the Convention. I do not see what reference the discussion has to the amendments pending here. The proposition is to strike out the whole of the first section, which reads that taxation shall be uniform upon the same class of subjects. It is proposed to insert in lieu of that, that taxation shall be equal and uniform throughout this State. The question that has come before the Courts heretofore, has simply been as to the violation of this principle of equality and uniformity. I am opposed to the leaving out of the words "taxation shall be equal and uniform." If those words are not put in the Constitution, the Legislature may tax one class of property four times as much as another. I am opposed to the amendment offered by the gentleman from Solano, Mr. Dudley, because it is more diffuse than the other, and would result in far greater expense. I trust the gentleman from Sacramento will add to his amendment the other words of the old Constitution, that "all property shall be taxed in proportion to its value." The language of the old Constitution, in this respect, is plain and explicit, and cannot be misunderstood. Under Mr. Dudley's amendment there would have to be a large number of Assessors. We do not want three or four different assessments of the same property. Let us have one Assessor, and let the property be assessed for all purposes at once. I hope we shall adopt this provision of the old Constitution, then there will be no difficulty. It is the right principle to engraft in the organic law, that taxation shall be equal and uniform, and that all property shall be taxed according to its value, to be ascertained according to law.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: The report of this committee is so much better than I had expected, that I am in favor of treating it with all due consideration. As to the pending amendment, to strike out the first clause and insert the language of the old Constitution, I think it ought to be adopted. Not that I think there is any very great practical force in these words, because it all depends on the administration of the thing. It all depends upon how you assess. But they are words proper to be in the Constitution, and have been rendered proper by the decisions of the Supreme Court. I am glad to see some things in this report. I am glad to see that my friend from Sacramento has come round in favor of Commissions. I thought he would get straight before the session was over. But this Commission is a little too large. Two Commissioners from each Congressional District would make rather too large a Board of Equalization. I think a Board consisting of four would be large enough. Three would be better than four. My friend from El Dorado, Mr. Larkin, says he is opposed to taxing credits. I regretted very much to hear him say so, because if you are going to tax all property, the moment you start out on that proposition to tax all property you fail of the end, if you don't tax credits, because they are property, and so classed by eminent writers on political economy, and I shall refer to a very able writer on that subject. I shall ask the Secretary to read an extract from the "Science of Wealth."

THE SECRETARY read from the desk the following:

"It has sometimes been maintained that credits ought not to be taxed, but all assessments be made upon values, or property, personal and real. Taxes, it has been argued, ought not to be laid upon persons, but upon that out of which they can alone be paid, viz., property.

"But credits are taxed as well as values. A holds a farm worth ten thousand dollars, mortgaged to B for five thousand dollars. A pays taxes upon the whole valuation, and B upon five thousand dollars, as money at interest. A, it is said, is doubly taxed. This is a practical question, that has puzzled legislators in every age and country. Let us therefore carefully examine it.

"Suppose A and B, aforesaid, form an entire community, and that the whole tax of one hundred and fifty dollars is imposed on property. The whole valuation will then be ten thousand dollars (A's farm), and the rate one and one half per cent., which A pays, and B goes untaxed. We will now change the principle and have both property and credits taxed. The valuation will then be: A's farm, ten thousand dollars, and B's money at interest, five thousand dollars—total, fifteen thousand dollars: and, with the same amount to be assessed (one hundred and fifty dollars), the rate will be one per cent., of which A pays one hundred and B fifty dollars. So, then, we discover that A is not doubly taxed, as assumed, but at the worst pays only twenty-five dollars—or one third—more than his share. Such must, in principle, be the result of this kind of taxation, taking a whole community together. All the amount taxed upon credits is so much relief to taxation upon property. This seems to be clear, and the justice of the thing is established by the fact that A bought his farm knowing that it would be subject to a full taxation, and bought it cheaper, as we have shown in another place, on that account. B, on the other hand, accepted his mortgage on the same ground, knowing it would be subject to tax on the common valuation. Is either party, then, wronged?

"But perhaps another reason may be given why A should pay taxes upon the whole value of his farm, viz.: That, having the usufruct of the whole, he is entitled to all the profits on the farm. 'But he don't own the whole of the farm.' True, that is his misfortune; if he did he would obtain a larger amount of net profits, but his obligation to pay tax on the whole is not impaired, because he has the use of a part of B's capital. As the owner of the farm, A has a chance for all the profits that can be made from the whole, while, by the taxation of B on the mortgage, the former saves a part of what he would otherwise pay in taxes. One pays taxes for the profits of business, the other for the income on his capital.

"In this case we find another very clear illustration of the correctness of the income tax policy. If there were no other tax than upon income, the matter would stand thus:

A's income from his farm, say	$900
He deducts the interest he pays B	300
A pays tax on his net income of	$600
B's income is taxed upon	300
Total income to be taxed	$900

"Amount to be raised, one hundred and fifty dollars. Of this, A will pay one hundred dollars, and B fifty; and there would be no question as to the justice of the system by which both were thus taxed. If A's income should be more or less than nine hundred dollars, he would pay more or less, and B must pay less or more accordingly.

"In the absence of the income tax principle, what can be more equitable and just than the practice of taxing both mortgagor and mortgagee? If the former were allowed to deduct from his inventory the amount he owed the latter, it would often happen that, the mortgagee not living in the same town or State, so much property would escape taxation altogether. This, in some communities, especially our Western States, would be a great evil. That much hardship may often result from taxing credits as well as property, is undoubtedly true; but that only affords additional evidence that the income tax principle is the only correct one. Next to this would be the levying of all taxes upon property exclusively, and if adopted at the very commencement of a social organization, as at the landing at Plymouth in sixteen hundred and twenty, it would secure a just taxation, because all property would be created, held, and transferred under the well known condition."

Now, I am in favor of the provisions of this report to tax moneys loaned on mortgage, and deduct the amount from the value of the real estate, and assess the residue to the owner of the real estate. It is said that this is double taxation. I do not understand that the Supreme Court has so decided in any case. If it has, the decision is against all the writers on political economy. The authority which I have just read is considered good. Amasa Walker is now dead. He will be remembered as having delivered a very able address in San Francisco some years ago. Now, I think it would be perfectly proper to tax both parties. They both have a certain interest in the property, and both receive governmental protection, and both should contribute to the support of the government which affords them protection. I am in favor, to some extent, of the proposition of the gentleman from Solano, for an income tax. I introduced a proposition of that sort at a very early day myself. The matter of mortgages perhaps might as well be left to stand as it is in the report, because there is no trouble in finding the mortgage, but it is difficult to find the other credits. For that reason, it appears to me, an income tax is eminently useful. And I shall be in favor of extending the income tax (that was my proposition) to United States bonds. And I think we have a perfect right to do so, because, although the Act of Congress exempts bonds themselves, it does not exempt the interest,

and therefore we have a right to levy an income tax—a moderate income tax—upon the interest which comes from the bonds to the holder. This provision of the Act of Congress exempts nearly one sixth of all the property of the United States from taxation, and it seems to me a very great injustice to all the balance of the taxpayers in the country. I have already shown what Mr. Walker says in regard to an income tax. I do not intend to pursue this subject, however, at this time. But I lay it down as a legal proposition that we have a right to lay an income tax upon the interest derived from government bonds, and I shall prepare myself with ample authorities on this point.

MR. HUESTIS. Mr. Chairman: I ask if it would be in order to discuss that branch of the proposition relating to solvent debts, at this time?

MR. EDGERTON. I would suggest to the gentleman that that question will be reached for consideration in a very short time; it is the next question after this section is disposed of. Perhaps we had better dispose of this first.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Solano, Mr. Dudley.

The amendment was lost.

MR. WEST. Mr. Chairman: I wish to offer the amendment of which I gave notice awhile ago.

THE SECRETARY read:

"SEC. 1. Taxation shall be equal and uniform throughout the State. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word 'property,' as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things capable of private ownership, real, personal, and mixed."

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: We have had considerable discussion as to the correctness of the decisions of the Supreme Court of the State of California. I apprehend that the whole matter rests upon what the meaning of the Constitution is when it makes use of the word "property." I do not wish to discuss it at length, but I introduce it as a definition of the word "property," and thereby to test the sense of the Convention in relation to taxing credits. The amendment declares that moneys, and everything capable of private ownership, everything subject to transfer, everything that has value, shall be taxed. I believe it is the correct system, and I offer it in order to test the sense of the Convention upon the propriety of taxing incomes and credits.

MR. EDGERTON. I do not see why the gentleman desires to mix up the definition of the word "property" with the declaration of a broad principle. I hope that it will be voted down, and when we get to the next section, it will be pertinent to consider it. There is ample time to consider this question of the definition of property, but this is not the place for it.

THE CHAIRMAN. The question is on the amendment of the gentleman from Los Angeles, Mr. West.

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento, Mr. Edgerton.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: As far as I am concerned, I am not fully satisfied as to how I should vote upon the pending amendment, because I do not think we have a thorough understanding as yet as to how much power should be given to the Legislature, and how much should be retained from the Legislature. Now, I have studied this subject considerably, and for some time, and the more I have studied the matter the more I find complications connected with the subject of taxation, and the more I am convinced that it cannot be now settled definitely by the Constitution, but that as far as possible it should be left to the Legislature.

Now, before I came here, in speaking upon this question, there were several propositions, on account of decisions of the Supreme Court, to which attention had been drawn. One of these was in relation to the taxation of mortgages, and connected with that subject there was a general idea prevailing that a large amount of property in this State that could be taxed was not taxed, owing to the decisions of the Supreme Court. Now, it is undoubtedly the case that there is a large amount of property in this State now exempt from taxation, by reason of the decisions referred to, and the people thought that perhaps this Convention could remedy this matter. But there is also an additional amount of property in this State that cannot be reached, and there is no system that can be devised, or ever has been fixed by any State in the Union, for one time or for all time, as far as authority before us and the experience of the country is concerned, or that of any other country, by which this class of property can all be reached. We find by the elaborate report of Mr. Wells, that in New York there has been great difficulty upon this subject. There they have unequal taxation, and there are various plans suggested in this report to the Legislature. We find that in the State of Pennsylvania there is still another plan. We find in the State of California still another plan, and in all the States there are various plans for taxation, all trying to fix on a uniform system of taxation; and, although one of these plans may do in one State—may be the best that can be established for that particular State it would be utterly unsuited for another. Now, the system established in the State of Pennsylvania is perhaps the best that can be devised for that State. It is a system founded upon the taxation of corporations, because there are a great many corporations in that State; for instance, railroad corporations; and because there are a great many local corporations all over the State, and by taxing the corporations there is a division of taxation among all the people in the State. Now, if that system should be established in this State it would be a very diffuse system, because we have not corporations throughout the State. There are some counties which have none at all, and consequently a great many people and communities would be exempt from taxation; and while it would be well to tax corporations enough, to a great extent, still it would not cover the whole subject.

Now, this State has changed. After awhile it may be well to establish the system which they have in Pennsylvania. But suppose this Convention should attempt to fix a system of taxation, does it not appear at once that after awhile the system now fixed would be inoperative and of no effect in many respects? Therefore, I say that this subject should be left to the Legislature, as far as it is possible to do so. And yet I am not in favor of taking away all restrictions from the Legislature. There is one subject connected with taxation that it seems to me that this Convention should look into, that we should do something for, and that is as to assessments—a system for the assessment and collection of taxes. Now, for instance, the Supreme Court has interfered by its decisions with the powers of the Boards of Equalization, and it has been established as a principle that the Board of Equalization cannot raise or lower assessments; in certain cases, according to the decisions, it cannot at least; that for the purpose of equalization, as I understand it, there can be no raising of taxation. But there are cases, and the conclusion is that Boards of Equalization could not raise—they might lower, but they could not raise assessments. It is sufficient to say that the powers of the Board of Equalization are insufficient, and it is for this Convention to look into the matter, and to give to these Boards full power to review all assessments. Now, if we could get some clause that will provide that the Legislature shall have full power over all assessments, that there shall be no discrimination as to persons, it would be well.

As for myself, I am not satisfied to vote upon this question with what little attention this Convention has been able to give to the matter. I would not have said a word, but it seemed to me that it was going by default. I had intended to bring authorities here, in order that we might be able to discuss this matter more intelligently. I only rise now because it seems to me that the matter is going by default; and right here, before we take a single step, there ought to be some general clause in order to give the Legislature full and complete power in the matter of taxation.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I do not propose to detain this committee long in the discussion of a plan for the assessing and collecting of taxes. That is not the question that is before the committee at the present time. The only question now is to define the principle of taxation; that is all there is in the consideration of this first section. If the committee undertakes to define the principles of this question, it should do it correctly. It may not be necessary, at all, but if it is done, it should be done correctly. I am opposed to the section as reported by the committee, and opposed to the section as it stood in the old Constitution. The words "equal" and "equal taxation" are a delusion and a snare. As has been said, there is no such thing as equal taxation. There is no such principle as equal taxation. There never was intended to be such a principle. We know no taxpayer in this State who pays taxes, but who feels that he is unjustly discriminated against, and is bearing an unequal burden in the payment of these taxes. It is a physical impossibility to have equal taxation, but uniform taxation can be established. The principle of uniform taxation can be reached—uniform upon the same classes. It is for that reason that in all the modern Constitutions the word "equal" is left out, and the word "uniform" is retained; but the committee, after having used the word "uniform," propose now to add the word "equal," and leave it as it was in the old Constitution, and thus remand us back to the old troublesome system. There never was a time when a citizen could not go before the Court and say that his tax was unequal. Now, as I understand it, there are but two correct principles of taxation—one is uniformity, and the other is the character of the tax itself. An ad valorem tax is probably the best and most correct tax that can be put upon property. The committee should have inserted in their report, after giving a definition of taxation, after the word "taxation," "ad valorem on all property subject to be taxed." I notice in the Constitution of Georgia, adopted about a year ago, that in addition to uniformity of taxation, there is a clause providing for an ad valorem tax. If the motion to strike out and substitute the old provision shall not prevail, I shall offer an amendment, to add, that the tax shall be "ad valorem on all property proposed to be taxed." That, it seems to me, is a sufficient declaration of the principle of taxation.

MR. CROUCH. I offer an amendment.

THE SECRETARY read:

"SECTION 1. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law."

MR. EDGERTON. That is the old Constitution.

THE CHAIRMAN. The question is on the amendment to the amendment offered by the gentleman from Napa, Mr. Crouch.

MR. EDGERTON. I accept the amendment.

THE CHAIRMAN. Then the question recurs on the amendment offered by the gentleman from Sacramento, Mr. Edgerton.

MR. HITCHCOCK. I offer an amendment.

THE SECRETARY read:

"SECTION 1. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law. Everything material, visible, or transferable, that has a value, shall be considered property, for the purpose of taxation."

MR. EDGERTON. I arise to a point of order. There is no necessity

for the amendment. If there is anything material or visible that has a value, is it not property.

REMARKS OF MR. HITCHCOCK.

MR. HITCHCOCK. Under the old Constitution certain things were exempted from taxation, such as mortgages, because it was decided that they were not property in the meaning of the Constitution. As I understand the word property, I think it means everything that has a value. I think every species of property that is owned by individuals should bear its just proportion of the expenses of government. As I understand this form of government, the people and property should support it. I believe every man should pay taxes on his head, because we are all equal before the law.

MR. ROLFE. Would you tax a man's head according to its value, also?

MR. HITCHCOCK. No, sir. I believe that all property should assist in supporting government. The idea that mortgages and notes, which require more protection at the hands of government than any other class of property, should pay no tax, is wrong. The man who owns lands don't go into Court. It is these promissory notes and mortgages that make so much litigation, and which pay nothing in the support of the law. I think every species of property should be compelled to bear its just proportion of the burden of government. I do not think anything ought to be exempted. It is urged that growing crops ought to be exempted. I cannot see any good reason for it. If it has any value, and you can ascertain its value, I cannot see any reason why it should not be taxed.

MR. HOWARD. Have you got any crop until you cut it?

MR. HITCHCOCK. No, sir; I say where you can ascertain its value, that crop is a part of the real estate, and not personal property.

MR. EDGERTON. It is subject to execution and attachment.

MR. HITCHCOCK. It is a part of the real estate, and adds value to the real estate; in either case, land with a crop on it is worth more money than a piece of land without a crop. I think property should be assessed at its value. That is the question here, at its value. If a piece of land, with a crop on it, is worth more money than a piece of land without a crop on it, I think it should be so assessed. Every species of property should be assessed at its actual value, and pay taxes to the State accordingly. Suppose I give a mortgage on my house, and the house burns up, and the man holds me for the debt; the property is gone, but he holds the mortgage, and goes into Court, and if I have anything he will make me pay it, and he will get a judgment and hold it over my head until it is satisfied. Therefore, I say he should pay on his mortgage while I pay on my property. I sell a man a horse, and take his note; the horse dies, but still I have the note, and can make him pay me. I am protected in my property by the law, and I should contribute to the exact extent of my debt. Therefore, I say, everything that has a value should be taxed.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I differ with the gentleman from San Joaquin. The reason why is this: that growing crops are not property in the true sense of the term. That growing crops are prospective incomes. If we are going to tax incomes, then we should pay taxes as others do; but you are not taxing incomes; at least you have not heretofore. We have been taxing property, and if we adopt that principle of taxation, and do not tax incomes, then we should not make an exception of the farmer, and tax his income while exempting the income of other pursuits. Now, the Assessor goes on the farm and assesses the land for what it is worth. He assesses the house, and barn, and tools, and all there is upon it, and then, according to this proposed principle of assessing growing crops, he assesses the farmer's income too. That would be all right if other incomes were assessed; but I do protest to selecting out the farmer, and imposing upon him an additional burden of taxation which is not imposed upon others. If we are going to discriminate in favor of any interests in this State, I would rather it would be in favor of the farmer than any other interest, for the reason that his business success, his prosperity, is the prosperity of the whole State. The business in which he is engaged is one upon which all other business interests rest. Now, Mr. Chairman, while I claim no exemptions in his favor, I do most earnestly protest against any discrimination against him. And that is exactly what the taxation of growing crops means. It is taxing property, and then taxing the farmer's income. It is unjust. It is an unjust discrimination.

THE CHAIRMAN. The question is on the amendment of Mr. Hitchcock.

Lost.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Sacramento, Mr. Edgerton.

SPEECH OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: The first two sections of the report of the committee deal with two separate subjects—subjects which are separate in the report, and which ought to be separate in their consideration here. Early in the day the Chairman of the committee proposed to strike out the first section, and insert in its place the old Constitution, that taxation shall be equal and uniform throughout this State. It seems to me that those words ought to be inserted there. And if his amendment had been permitted to stand, I should have voted for it; for, sir, I know that one of the objects of a general principle of taxation should be equal and uniform taxation throughout the State. And if we have failed to realize equality and uniformity in taxation, or if we shall in future fail to realize it, still it is something which, like perfection, should be striven after. But now the gentleman has accepted, as a part of his amendment, the subject-matter which is treated in section two of the report, that all property shall be taxed in proportion to its value, to be ascertained as directed by law. I hope this amendment will now be voted down; first, because it introduces now into this section a subject which the Convention has not been considering, but a subject-matter which is to be determined in the second section. Upon the first proposition, that taxation should be equal and uniform throughout the State, we have attempted to agree. That ought to be the first question that should come before the Convention for its consideration. But that amendment embraces more than this proposition. It embraces a proposition upon which I do not think this Convention is likely to agree. If that is adopted, credits cannot be taxed, under the decision of the Supreme Court of the State. I hope the amendment in its present form will be voted down, and if it is, I shall then ask to propose an amendment in the words offered by the gentleman from Sacramento, that "taxation shall be equal and uniform throughout the State."

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I am sorry the gentleman accepted the amendment. I am sorry for the reasons suggested by the gentleman from Sacramento, Mr. Freeman. The subjects are not the same. The first proposition contained is simply the broad declaration that taxation shall be equal and uniform throughout the State. It is a distinct and separate proposition. It stands alone. The next subject treated of is declaratory of the class of property that shall be subject to taxation. I was in hopes that the committee would deal with these subjects separately. I will state why. To the second section, which deals with the question of property, and the definition of the word, a proposition has been made and considered. It is not my own, sir; it was one that was presented by a gentleman who is out of the city to-day. That deals with the question of property, and contains the substance of the amendment offered by the gentleman from Napa, Mr. Crouch, with the qualification. That qualification deals with the question of indebtedness, evidences of debt, growing crops, property of the United States, property belonging to this State, and property exempt from taxation by the laws of the United States. It amounts to the definition of what property shall be subject to taxation. It seems to me these subjects should be treated of in separate sections. It seems to me the Chairman has very properly treated these subjects as separate matters. We are all agreed that taxation shall be uniform, but we are not all agreed as to what property shall be taxed, and that question is not receiving the attention which its importance demands; by the report it was made a special and distinct section. In the old Constitution the whole subject is dealt with in one section. It seems to me better, therefore, in the interest of simplicity, to keep the matter separate. I hope, therefore, that this matter will all be voted down.

MR. EDGERTON. Mr. Chairman: I desire to say, as far as the report of the committee is concerned, that there was barely a majority of the committee in favor of any particular proposition, with two or three exceptions. Now, I have always been in favor of adhering to the existing Constitution as far as possible, and upon this matter of taxation, in my opinion, the system existing in this State to-day, under the decision of the Supreme Court in the Hibernia Bank cases, is an eminently wise, and just, and judicious system. Now, the existing section was taken from the old Constitution of Texas—the Constitution of eighteen hundred and forty-five—which Constitution has been imported down through various States, since. It is all in one section. I had supposed that the Convention desired to have this all in one section. However, it is immaterial to me.

MR. HALE. It is evident that the Convention cannot deal with it properly in that way.

MR. EDGERTON. It was my impression that it was better to deal with it as one section, and that is the reason why I accepted the amendment. In reply to the gentleman from Los Angeles, Mr. Howard, I do not think that his authority—Mr. Walker—is very good authority upon the subject of taxation. I will be able to give him two or three authorities to one on that proposition.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I hope the section will be allowed to stand just as it is. Some allusions have been made here to the last part of a section because it includes growing crops and other property. Well, the same objection holds good as to that part of the section that taxation shall be equal and uniform, and then exempting property from taxation. If you exempt half the property, it is not equal and uniform. If growing crops are exempted from taxation it destroys the doctrine of equality. Equal and uniform taxation will include all property. The last half of the section points out the way property is to be taxed. We want a system of taxation that throws the burden on all property alike and taxes no property twice. It seems to be necessary to except growing crops from the operation of the assessment. It seems to be necessary to do it. I do not like to have growing crops taxed specifically. They belong as a part of the real estate, and ought to be considered as a part of the value of the land in all cases. They ought not to be assessed separately, for they are not separate property. They belong as a part of the land, and should be so assessed.

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento, Mr. Edgerton.

Division being called for, the committee divided, and the vote stood: ayes, 33; noes, 40.

THE CHAIRMAN. No quorum voting. There is evidently a quorum present, and I will put the question again.

The committee divided again, and the amendment was lost: ayes, 27; noes, 51.

MR. BARTON. I offer a substitute.

THE SECRETARY read:

"Taxation shall be equal throughout the State; all property shall be taxed according to its real value, and the word 'property' is hereby

declared to include all moneys, bonds, mortgages, credits, stocks, dues, and franchises, everything having a private ownership, real, personal, and mixed, taxing all lands of equal capacity equally, taxing improvements separately, exempting therefrom growing crops, property belonging to the United States or to this State; and the Legislature shall fix a day for the listing of all property within this State, and shall authorize the levying and collecting of all taxes by a general law."

MR. FREEMAN. I offer an amendment to the amendment.

THE SECRETARY read:

"Strike out the whole thereof, and insert the words 'taxation shall be equal and uniform throughout the State.'"

THE CHAIRMAN. The question is on the adoption of the amendment to the substitute.

Adopted.

THE CHAIRMAN. The question is on the amendment as amended.

MR. EAGON. I offer an amendment.

THE SECRETARY read:

"Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law, and all mortgages and other evidences of indebtedness, secured by a lien on real estate, shall be considered as property for the purpose of taxation."

Lost.

THE CHAIRMAN. The question is on the original amendment as amended by the amendment of the gentleman from Sacramento, Mr. Freeman.

The committee divided, and the amendment as amended was adopted: ayes, 59; noes, 21.

THE CHAIRMAN. No further amendments are in order.

MR. BARTON. What disposition was made of my substitute?

THE CHAIRMAN. The committee adopted an amendment to the substitute. The Secretary will read section two.

MR. BARTON. I desire to inquire if the amendment just passed is an amendment to my substitute?

THE CHAIRMAN. Yes, sir; an amendment to your substitute, and the committee adopted it.

THE SECRETARY read section two.

SEC. 2. All property, including franchises, capital stock of corporations or joint stock associations, and solvent debts, deducting therefrom debts due to bona fide residents of the State, and excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States, or to this State, or any municipality thereof, and all property and the proceeds thereof which is used exclusively.

MR. HALE. I offer a substitute for section two. It is not mine. It is one known to many members as the Boggs proposition. I present it at his request, and would like to have it printed in the Journal.

THE SECRETARY read:

"SEC. 2. All property within this State, including franchises, and the capital stock of corporations, shall be taxed in proportion to its value; *provided, always*, that no tax shall be imposed on growing crops, debts, evidences of debt, private property exempt from taxation by the laws of the United States, property belonging to the United States, or to this State, or any municipality thereof. No deduction shall be made from the assessed value of property on account of any debt or debts owing by the owner or owners of such property, but such debtor or debtors shall, upon payment of such indebtedness, be entitled to retain therefrom a sum, with interest thereon at the same rate borne by such indebtedness, to be computed from the time or times of the tax payments which shall equal the amount of taxes which may have been paid by such debtor or debtors, during the existence of said indebtedness, upon property of like amount in value of said indebtedness; *provided, further*, that if any such indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy for that year may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year."

MR. HUESTIS. I offer the following as a substitute for the proposition of Judge Hale.

THE SECRETARY read:

"All property in this State, including franchises, capital stock of corporations or joint stock associations, and solvent debts, excepting growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States, or to this State, or any county, city and county, city, or municipality thereof, and including all property, real and personal, belonging to and devoted to public use in all public school districts and departments in this State, shall be taxed in proportion to its cash value, to be ascertained as directed by law. A mortgage, deed of trust, contract, or other obligation, by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroads and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof in the county, or city and county, in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security respectively, and may be paid by either party, or his successor, to such security; if paid by the owner of the security or his successor, the tax so levied upon the property affected thereby shall become a part of the debt so secured. If the owner of the property or his successor shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof. And in respect to all other solvent debts, there shall be no reduction made, as herein provided, from the full cash value of all property of the debtor or debtors owing the same, on account of such debt or debts; but he or they shall, on payment thereof, be entitled to retain therefrom a sum, with interest thereon at the same rate borne by said indebtedness, to be computed from the time or times of the tax payments, which shall equal the amount of taxes which may have been paid by such debtor or debtors during the existence of such indebtedness, upon property of like amount in value of said indebtedness; *provided*, if any indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy, for that year, may likewese be retained by him or them, and shall be computed according to the tax levy for the preceding year.

SPEECH OF MR. HUESTIS.

MR. HUESTIS. Mr. Chairman: Whether secured or not, solvent debts should be taxed, because they are property in law and in fact. This is abundantly proven by the fact that they may be sold and transferred, and the purchaser becomes the absolute owner, and is entitled to collect and retain the amount due on them. He must also by statute sue in his own name, and this, too, whether the demand is on a note or an account, or even an unliquidated claim for damages. At his death all solvent, and for that matter all debts of whatever kind or nature, pass to his executor or administrator, and, after payment of debts, go to his heirs or devisees. In bankruptcy proceedings, they pass to the assignee; and they may also be levied upon and sold on execution; and they are also made the subject of larceny. It will thus be seen, Mr. President, that money secured by mortgage and solvent debts are rationally enough considered and treated as property in every sense of the word by the statutory law of this State. Strange as it does seem, the only purpose for which they are not considered property is that of taxation. Is this just, or even politic? I think not. And when we take into consideration another fact, which is, that money secured by mortgage (and other liens) and solvent debts, are entitled to and receive the same protection that surrounds other kinds of property, I cannot for the life of me discover how, either in reason or justice, it can be held that these species of property should be exempt from bearing their proportional part of the burden of supporting the government by which they are protected; and that, too, Mr. Chairman, in the plain palpable violation of that provision of our present Constitution, which declares that "taxation shall be equal and uniform."

It is plain, it seems to me, that solvent debts, whether secured or not, are, within the meaning of both the statutory and organic law of the State, and also in the very nature of things, property, and that being property, and as such protected by the law, should be taxed as other property is taxed. And why are they not so taxed? The answer is: Because the Supreme Court has so construed the language of the Constitution as to decide that solvent debts are not property, within the meaning of that instrument. If the language of the Constitution had been so plain and unequivocal as to leave no chance for such a construction, all solvent debts would be taxable to-day. And I submit, Mr. Chairman, that it is the imperative duty of this Convention to frame a Constitution of that kind; one which it will not be possible to misconstrue on this point; a Constitution that declares, in unmistakable terms, that solvent debts, whether secured by mortgage or not, are property, and shall be taxed. But it is argued by some that taxing solvent debts is double taxation. I answer, that while the taxation of solvent debts, as heretofore managed, may have resulted in double taxation in some cases, yet that is not a necessary or inevitable result; in other words, I believe it to be possible to tax solvent debts in such a manner that it will not result in double taxation.

Mr. Chairman, I hold it to be a correct principle that taxation should be so laid that each and every citizen shall bear such part of the public burdens necessary for the maintenance of government, as is proportionate to his property protected by the State. For the purposes of taxation I do not regard growing crops as property distinct from the land, and am opposed to taxing the same. With this qualification, and the exemption authorized by State and National laws, I am decidedly in favor of the equal taxation of all property. This renders necessary such a revision of our revenue laws as will secure an impartial assessment of the value of all property, to the end that large estates as well as small shall be compelled to bear their full and fair proportion of the public expenses. It also renders necessary the taxation of money secured by mortgage, or other liens, and the taxation of all solvent debts. This species of property is tangible in law, and calls for protection which the State insures, at whatever cost, and therefore it is but just and reasonable that it should be equally taxed with other property.

These, Mr. Chairman, briefly stated, are the views and principles involved in this question of taxation, by which I was actuated, before I was elected to a seat in this honorable body; and these are the views and principles which I to-day entertain and advocate for adoption by this Convention. Let these principles be engrafted in the organic law, and invest the legislative branch of the government with the power to provide such legislation as may be necessary to avoid double taxation, and to provide such methods of equalization, and the establishment of such equitable rules and regulations governing assessments, and the classification of property, as experience may prove to be necessary and expedient, and we will have done a much needed act of justice to the people of this commonwealth. Now, sir, one of the principal points involved in the consideration of the report of the Committee on Revenue and Taxation, reduced to the form of a question, is: Should solvent debts, including money secured by mortgage, and other liens, be taxed; and to whom should this species of property be taxed? As already intimated, I unhesitatingly answer that this species of property should be taxed, and in effect to the creditor, or mortgagee, as the case may be. To prove this let us examine the question somewhat critically. It is an axiom in government, that every species of private property should be taxed. And as money is property, in the ordinary acceptation, it fol-

lows that the tax should lay hold of this primarily. But, says the mortgagee, there is a stipulation in the mortgage to the effect that the mortgagor shall pay the taxes on the money so secured. Now, Mr. Chairman, this doubtless would satisfy the State, but, sir, is it just? Is it equitable? In the case just mentioned, I contend that the mortgagee has not borne his just proportion of the burden of taxation; he has merely extracted from the unfortunate borrower more interest. In no civilized State should such a monstrous wrong be permitted to exist under the sanction of law; for, sir, it must inevitably lead to consequences of the most serious character. Mr. Chairman, while I am a firm believer in the rights of capital, and would lay no obstruction in the way of its accumulation and its full and free development by all honorable and legitimate means, yet, sir, I am also a sympathizer with those whose necessities have made them borrowers, and I am impressed with the criminal folly evinced by some speakers and writers upon the subject now under consideration, whose prominent, and I may say sole endeavors, have seemingly been put forth with the view of conciliating capital only. There is no good and valid reason why the money of the wealthy usurer should not be taxed primarily, in support of the government which insures him in the protection of his ill-gotten gains. Every other species of property is liable to this inflexible rule, and why solvent debts and money secured by mortgage or other liens should be exempt, I contend has never been clearly demonstrated.

But, Mr. Chairman, one of the most fruitful sources in assisting and forwarding the sophistry of the mortgagee, is the tax on land. Taking what to him is a seeming advantage of this position, he says, "if the land is taxed the mortgage should not be, for it is evidently double taxation." This is his fallacy, and at one bound he leaps to an erroneous conclusion. He assumes double taxation, and with a self-consciousness, which he never forgets, says, "the mortgage should be exempt." Well, sir, for the sake of argument, admitting it to be so, which I deny, who, I ask, should bear the tax? Has not that land been secured to him, the mortgagee, by an instrument in writing, the tenor of which debars all others from trespassing on his rights, to which the Courts yield a specific, complete, and unquestioning deference? And in the event of a failure upon the part of the mortgagor to fulfill his obligation, proceed to foreclose and sell, the expenses of the foreclosure and sale coming out of the mortgaged estate. And for all this protection the mortgagee pays not one cent in taxes.

To confirm this (the creditors' views), the Supreme Court has been invoked, and its decision, in conformity with the Constitution of the State, has been against the taxing of lands and mortgages in this double sense, adroitly ignoring the main issue, which is, "Should solvent debts, including those secured by mortgage, be taxed?" The fallacy becomes instantly apparent when the issues are separated. The question not being as presented for the consideration of the Court, namely, "The taxation of lands and mortgages," but "Should money secured by mortgage not bear its proportion as wealth or property in relation to the taxes?" I concede, sir, that with the question as presented, the Court could not do otherwise; but this decision, far from being an injury, is a staff to lean upon, and a light in the darkness which surrounds the solution of the question now at issue. For in all this, we see no release from paying taxes by the mortgagee; but, upon the contrary, it becomes apparent that he should be taxed directly. The land has not changed its intrinsic character by becoming a collateral security to the mortgagee, as the land is taxed at present to its full cash value, according to the schedule of the Assessor, without deducting the incumbrance for which it becomes security. If, therefore, the land, for State purposes, does not increase or diminish in value, and the incumbrance resting solely with the mortgagor, it clearly follows that the mortgage is an independent issue above and beyond the land, drawing a specific profit to the mortgagee, and as a logical result, should be taxed directly to him. The postulate then is reduced to this form: "Tax mortgages directly to the mortgagee, and cast upon him the burden of taxes thereon."

Mr. Chairman, this question of the taxation of mortgages and solvent debts has again been made the subject of a recent diatribe in a late issue of the Record-Union, a newspaper of undoubted respectability and influence, published in this city; and that paper, to assist it, has called in the services of Professor Sturtevant, a good old Knickerbocker, I believe, but who, doubtless, has an eye to the accumulation of money by the acretion of untaxed mortgages:

"TAXATION OF MORTGAGES.

"Several resolutions have been introduced providing for the taxation of mortgages. These are all propositions looking to the establishment of double taxation, and they should be killed in committee. A provision to the effect that all property shall be taxed does not involve the assumption that any property should be taxed more than once, yet nothing can be clearer than that if mortgages are taxed one piece of property must pay double taxes. The case has been clearly put by Professor Sturtevant in his recent treaties on 'Economics.' He supposes the case of a loan of one hundred thousand dollars in gold, and proceeds: 'The question is certainly a fair one, how the transaction should affect the two parties in respect to their liability to taxation. By the laws of some of the States the Tax Assessor disregards the transaction entirely; he estimates the property of the debtor just as if the debt did not exist, and the property of the creditor as though the gold was still in his hands. It is only necessary thus to state the case to convince any candid mind of the unreasonableness of the law. That item of one hundred thousand dollars is doubled in the assessment, and twice taxed. A State that makes out its tax lists on that principle estimates the property of the people of the State at an amount immensely greater than it is in truth. Such an assessment is a delusion, and a tax levied upon it is a public oppression. It would be easy to show that, if taxes are assessed on this principle, the same property is not only liable, as in the case above given, to be reckoned twice over, but to be repeated any number of times. It is wonderful that any legislator should fail to notice the bald injustice of such a system of taxation.

"The real cause of controversy in this subject is as to who shall pay the tax—the debtor or the creditor. The debtor is anxious to escape the burden. The creditor insists that he ought not to be made to pay for what another is enjoying the use of. The opinion of economists has usually been that it is impossible to prevent the debtor from paying the tax, since the creditor will make it a condition of the loan. Professor Sturtevant, while holding that the creditor ought to pay the tax, since the ultimate disposition of the property rests in him, has the following suggestions: 'If the person in whose name any taxable property stands is required to make an exhibit of his property, he will, of course, for his own protection, make known any indebtedness which can be offset to it. Let him also be required to give the creditor's name and residence. Let the neglect of the creditor to pay the tax work a forfeiture of his claim against the debtor; in which case, the debtor being released from his obligation to pay the debt, shall become liable for the tax. The effect of such a law would doubtless be, that in the original contract for the loan the debtor would agree to pay the tax, as a part of the consideration for the use of the money. In such a case the property of the borrower would be estimated without reference to the debt, and the creditor would be unknown in the assessment, and would simply receive a lower rate of interest on account of his exemption from taxation. This arrangement, so perfectly equitable, between the parties, would secure to the State precisely the amount of revenue to which it was entitled.' We recommend these ideas to the attention of the Convention, and especially to those delegates who think that property can be taxed in more than one place without the perpetration of injustice. The most curious circumstance in this connection is that the men who demand the taxation of mortgages are also the men who oppose the taxation of growing crops."

It will be seen, Mr. Chairman, that the principal argument here presented is the old, frayed, feeble, and battered one, namely: the fear of double taxation. Is it not a little marvelous, sir, that this fear has only haunted the defenders of the innocent and defenseless creditor, while the mortgagor and his friends are never overcome by the same scruples? The one hundred thousand dollars mentioned in the article I have read has only to be invested in a loan on real estate and secured by mortgage, to exempt its holder from the onus of the Assessor and Tax Collector. Is not that the logical sequence of his proposition? To what other conclusion can we arrive? It is clearly apparent in the learned Professor's mind that the one hundred thousand dollars should be taxed, yet his mental strabismus never permits him to see any other party to exempt than the poor defenseless creditor.

But, sir, a little further on, in the article to which I have referred, its author says: "The creditor insists that he ought not to be made to pay for what another is enjoying the use of." Now, I submit to the enlightened judgment of the representatives of the people, whom I now have the honor of addressing, that this is only another phase of the artful sophistry used in shielding the creditor from bearing his just measure of the public burdens. Why, gentlemen, do we not all well know that the creditor class has been clad in a coat of mail, as impenetrable as the hide of a crocodile, and any measure having in view the equalization of taxes has been frowned down, and enveloped in a nebulous obscurity by the sycophantic servility of those who ought to defend the principles of equal taxation.

The proposition I have just quoted, to wit: "The creditor insists that he ought not to be made to pay for what another is enjoying the use of." is, as applied, altogether illogical, since, as here invoked, it can be made equally applicable to any other transaction in business, and with as equal a regard for correct reasoning as in the present case. For, when in any case property is purchased on credit, it can be said, with equal justice, that the purchaser enjoys the property of another; and, as a consequence, if the reasoning of the proposition just cited is good, the seller should be exempt from taxation. Mr. Chairman, the mere statement of the proposition prostrates itself, and its fallacy grows thinner the more it is watered.

But, Mr. Chairman, it is a common and prominent objection frequently urged against the foregoing plan of distributing the burdens of taxation, that as a resultant, the revenues of the government necessary for its support, and which must of necessity be derived from taxation on property, will be measurably if not fatally impaired; that they will be so impaired, on account, as it is said, of granting to the debtor classes a credit or rebate of the sum of their debts from the total value of their mortgaged properties and charging the sum of such rebate over to the creditor or mortgage classes, for the purposes of taxation; that in effect this works as against the government a surrender of its lien on property as a security for the prompt payment of the taxes levied thereon, and accepts, in exchange, only the personal responsibility therefor of the creditor classes, who, by reason of non-residence or other causes, may be beyond reach of the Tax Collector, or even if within reach, may be practically irresponsible. And it is also urged by some that in this way it would most likely happen that only the excess in value of the aggregate property within the State over and above the aggregate sum of all indebtedness due from all the taxpayers in the State, would be subjected to the burdens of taxation, instead of all private property within the State, and that in this way taxation would become unequal, and, for that reason, manifestly unjust.

Now, Mr. Chairman, in answering these objections, which I claim are not well taken, it may safely be admitted that the results predicted would likely follow, if, indeed, the plan I suggest for the adoption of this Convention really involves the release of any portion of the private property within the State from its just proportion of the common burdens of taxation. And it may be further conceded, that all property, as well as the owners thereof, are justly held liable and responsible to the government for the taxes which are properly collectible for the

maintenance of the government, for the very good and sufficient reason, sir, that the protection and maintenance of the rights of all property, both public and private, within the State, are among the most responsible and onerous duties of the government, for the support of which taxes are levied and collected. And if it be further queried, How all property can be held chargeable for taxes assessed upon it, and at the same time the State collect from the creditor classes their just proportion of taxes due from them, on account of their interests by way of mortgage and other liens on the property held by the debtor classes, to secure the payment of debts due from the latter to the former? I answer that this result may be accomplished in this wise: While all private property and the respective owners thereof (which include all mortgaged properties, and both the debtor and creditor classes), are to be respectively held liable and responsible for the just payment of all taxes levied and assessed on all property; and, as the government must needs have primary recourse to the taxed property for the prompt payment of the taxes, it will therefore result that the debtor class will primarily be compelled to pay all taxes chargeable on the properties held by them, notwithstanding such properties may be covered by mortgage or other liens belonging to the creditor classes, who are justly chargeable with such proportion of the taxes so chargeable to, and we will suppose actually collected, from the debtor classes, corresponding with the relative values of such credits and the properties on which their payment is secured. Yet, the plan I advocate contemplates that the payments of taxes so made by the debtor class, which is in reality made for the creditor classes, and on account of their interest in the property covered by the mortgage and other liens held by them, shall, by an inflexible law, to be imbedded in the State Constitution itself, be treated and held by all Courts as an absolute payment, *pro tanto*, of the debts secured on the property on account of which the tax payment is so made. In this way the tax burden is with absolute certainty thrown back on the creditor classes, where, as I think, it has been demonstrated, it rightfully belongs, and the debtor classes are effectually relieved of its burden.

Mr. Chairman, it will be observed that by section five of the report of the Committee on Revenue and Taxation, it has been attempted to present in detail a plan for the consummation of the results above set forth; and while the section, considered structurally, may be open to just criticism on the score of incertitude and inadequacy, yet these defects, if they exist, may be readily remedied by appropriate amendment, and the section be rendered apt and sufficient for the designated purpose.

Mr. Chairman, I now come to the consideration of the mode in which the burdens of taxation on solvent debts, other than those secured by mortgage and other liens on property, should be distributed to the proper parties who should be made to bear them. And here, Mr. Chairman, it must be distinctly borne in mind, that every reason that has been, or that can be, urged in favor of taxing debts secured by mortgage to the mortgagees, and of relieving the mortgagor of this burden on his incumbered property to the extent of the actual value of the credit so secured on his property, applies, with equal force, in favor of making the creditor class chargeable, and of relieving the debtor class of the burdens of taxation in respect to all solvent debts not secured by mortgage. To my mind it is clear that in effect the same rule of liability and exemption may rightfully be applied to both classes of debts. If solvent, the debt is equally a burden to the debtor class, whether it is or is not secured by mortgage; and it is equally valuable as property, and equally within the recognition and protection of the law, and with equal right should be made the subject of a tax burden to the creditor class. And with all due respect for an honest difference of opinion, this proposition seems too clear to require further elaboration.

Now, Mr. Chairman, having submitted the proposition that solvent debts, whether secured or not, should be made the subject of a tax burden to the creditor class, it remains therefore only to delineate, or point out, a feasible plan for securing this result. And, sir, in treating this particular class of debts for the purposes of taxation, it must be constantly borne in mind that the fact of solvency of the debt is the all important factor; that is to say, there must be the concurrence in fact, first, of the legal obligation on the part of the debtor to pay, and the right of the creditor to receive the sum of money represented by such debts; and second, the assurance in fact of the faithful discharge of the obligation by the debtor, and the realization in due time of the reciprocal right of the creditor to receive the payment. With such concurrence of fact the debt is solvent, and as I have shown, should be taxed to the creditor, and the debtor should be correspondingly relieved of the burden of taxation, but not otherwise.

Now, in the very nature of things, since the assurance of payment cannot be practically guaranteed (as in the case of debts secured by mortgage or other liens), there can be but one way of rendering practically certain the fact of solvency of such unsecured debt, and that is by its payment as an accomplished fact. By payment only then can the fact of solvency of the unsecured debt paid be conclusively established, so as to create correlatively the obligation of the creditor to pay the tax on the debt, during the period of its existence, and the right of the debtor to be relieved correspondingly of the burden of such taxation.

But, Mr. Chairman, as I have already shown, as I think conclusively, while treating of debts secured by mortgage, that it is necessary to hold all properties and their owners primarily liable to the government for the taxes chargeable to such properties, it logically follows here, as there, that the integrity of the public revenues for the support of the government, equally requires that all property belonging to the debtor, the existence of his unsecured but solvent debt, which is involved in and represented *pro tanto* therein, notwithstanding, must be made primarily chargeable in his hands, and collected from him. In other words, Mr. Chairman, the debtor must promptly and faithfully pay all taxes chargeable on all his property, precisely the same as if he were absolutely free of the debt; and yet, in fulfilling this obligation, he (the debtor) has, in fact, as we have already seen, really paid to the government the taxes which, in part (if the debt be solvent), is rightfully chargeable to his creditors. But, because this be so, is the debtor remediless? I answer, no! The remedy is both absolutely certain and adequate for his relief, and is entirely feasible in any and every case that can be suggested. Let it be borne in mind what the needed remedy really is, to wit: to require and secure from the creditor, the payment to the government (or rather the repayment to the debtor) of the sums of money which the debtor has been compelled, from the necessity of the case, to pay for the creditor, and, on his account, to the government, in the shape of taxes on his (the debtor's) property, in which, however, the creditor had, in effect, an interest during the period of the existence of the unsecured debt (the solvency of which has been conclusively demonstrated by the fact of its payment to the extent of the sum of the debt so actually paid). Now, in every such case, the law, which I suggest should be made at once permanent and certain, by being engrafted in the Constitution, should be so framed as to guarantee to such debtor, at the time of making such payment, a credit thereon, as of the date or dates of his tax payments, and in a sum equal to the sum of such tax payments, on such proportion of his property so taxed, equal in value to the sum of his unsecured solvent debt. And thus the debtor will, by reason of such credit, be effectually reimbursed for all payments he has been compelled to make for the creditor, and by the same act the creditor will have been made at once to assume and fulfill his obligation to pay the taxes on his solvent credits. I think it safe to say that by this plan the government will be secured in the prompt and faithful payment of the taxes on property necessary for its support, and the debtor and creditor classes will have been respectively compelled only to pay the just proportion due from each of them of the sum of the taxes paid—that is to say, the debtor will have, in effect, only paid taxes on his property less the sum of his solvent debts, and the creditor will, in effect, have paid the taxes due on his solvent credits, during the whole period of its existence as such.

Now, Mr. Chairman, as practical conclusions of the argument which I have presented, and which seems to me to be capable of practical use in framing that part of the Constitution dealing with the subject of taxation, I submit: that solvent debts, including those secured by mortgage, should be assessed to the respective owners and holders thereof: that the making of contracts on the part of one person to pay the taxes assessed to another should be prohibited by law; and that the lender be also prohibited from raising the rate of interest on account of the tax on the mortgage or other solvent debt. Devolve in the manner I have delineated the duty of paying the taxes on debts secured by mortgage and other liens on property upon the owners and holders thereof, and at the same time relieve the debtor class or mortgagors of the burden, to the extent of the just value of such secured debts. Invest the Legislature with power to provide by law, from time to time, as experience may show to be necessary, to prevent the lender from taking an unjust advantage of the necessities of the borrower on account of such taxation.

With these provisions embraced in the law governing the subject of taxation, in my humble judgment, the way would then be opened to the taxing of all property once and no property twice, and in making the proper parties pay the taxes.

In conclusion, Mr. Chairman, in the amendment which I have submitted, and which has been read at the Clerk's desk, I have endeavored to embody and reflect the principles which I have advocated in my remarks addressed to the committee, and believing them practical and expressive of sound governmental science, I ask a favorable consideration for them by the committee.

MR. EDGERTON. If I understand the amendment, it is a sort of an anomalous provision, carrying the provisions of several sections, covering mortgages, solvent debts, etc. Of course, if this is adopted, section five will be no longer needed.

MR. HUESTIS. It does, in effect, cover what is embraced in sections two and five, and, as a matter of course, section five will no longer exist.

MR. EDGERTON. I think now it is better to keep these sections separate and distinct. It would complicate matters to adopt such an extremely long amendment as this, involving so much matter. We would undoubtedly run against a great many snags before we got through. I would not want to take that amendment without a good deal of examination.

MR. SHOEMAKER. I move the committee rise.

Lost; ayes 17.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: I would like to have the Clerk read over the amendment again.

THE SECRETARY read:

"SEC. 2. All property in this State, including franchises, capital stock of corporations or joint stock associations, and solvent debts, excepting growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States or to this State, or any county, city and county, city, or municipality thereof, and including all property real and personal belonging to and devoted to public use in all public school districts and departments in the State, shall be taxed in proportion to its cash value, to be ascertained as directed by law. A mortgage, deed of trust, contract, or other obligation by which a debt is recovered, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except as to railroads and other quasi-public corporations; in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof in the county, or city and county, in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security respectively, and may be paid by either party, or his successor,

to such security; if paid by the owner of security or his successor, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property or his successor shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof. And in respect to all other solvent debts there shall be no reduction made, as herein provided, from the full cash value of all property of the debtor or debtors owing the same, on account of such debt or debts; but he or they shall, on the payment thereof, be entitled to retain therefrom a sum with interest thereon at the same rate borne by said indebtedness, to be computed from the time or times of the tax payments, which shall equal the amount of taxes which may have been paid by such debtor or debtors during the existence of such indebtedness upon property of like amount in value of said indebtedness; *provided*, if any indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy for the year may likewise be retained by him, and shall be computed according to the tax levy for the preceding year."

MR. BELCHER. I see no particular objections to the form in which it is brought in, though the Chairman says the committee thought it would be better to divide the two sections. As I heard it read, it seems to me not improper to embrace the matter in one section. Now, there is no doubt but there has been and is a widespread dissatisfaction upon this subject of taxation, and it is probably the most important question that is to be passed upon by this Convention, in the view of the people of this State. For many years the Legislature has acted upon the subject, sometimes making solvent debts taxable, and sometimes not; sometimes declaring that all property should be assessed, and sometimes exempting some property from taxation. These questions were taken before the Supreme Court, and there were various conflicting decisions; and, up to a recent period, the decisions were to the effect that solvent debts were property, and subject to taxation. In the case referred to in the fortieth California, it was decided by the Court that debts and credits are property, and subject to taxation. Since that it has been decided, in the case reported in the fifty-first California, that debts are not property, in the sense of the Constitution, and therefore not subject to taxation. Debts are property in the ordinary sense; there can be no doubt about that. A man holds a mortgage, secured by valuable property, for ten thousand dollars. We would ordinarily say he is worth ten thousand dollars, because he can get that for it. That is the value of the mortgage. Now, it does seem to me, sir, that it is right to tax the man who owns the debt. The trouble has not been so much, is not so much, that you are taxing debts, but it is that you are taxing the man for more than he is worth. Go around the State, and you will find men in debt, and you are assessing them all for more than they are worth. That is not right. The true theory should be that men should pay taxes on what they are worth, and no more. But go out among the farms and you will find the farmer farming one hundred and sixty acres of land, with a mortgage on it, and he, up to the time of this decision of the Supreme Court, was not only paying taxes upon the land, but when he gives a mortgage he is obliged to pay taxes on that, too. If the mortgage was worth half the land, he must pay taxes on three times what it is worth—twice upon the value of the land, and then upon the mortgage. Now, that is all wrong. It was burdensome. The Supreme Court came to his relief, and said he need not pay on the mortgage; and now you go out and find a farmer with a piece of land worth ten thousand dollars, mortgaged for five thousand dollars, paying taxes on the full amount, when he is only worth five thousand. He is assessed upon twice as much as he is worth. Now, there is something wrong about that system; hence this widespread dissatisfaction. Now, I do not believe, because a man has a farm worth ten thousand dollars, and mortgaged for five thousand, that there is fifteen thousand dollars' worth of property. There is only ten thousand dollars' worth of property. The mortgagor and the mortgagee have, between them, and both should contribute equally towards the support of the government. That is all there is of it. They are equally interested, and should both pay. At present the farmer must pay the taxes.

Now, I say, as gentlemen have said here before, that it is not right that the farmer, who has property really worth but five thousand dollars, should be required to pay taxes on fifteen thousand. The committee say the property itself must be taxed. All property must be taxed if it is visible. There must be some means of raising revenue, and you must assess the property. Having assessed the property at ten thousand dollars, the farm stands good for it; the owner of it may pay, or the man who holds the mortgage may pay; somebody must pay the taxes upon the farm, but when the taxes are paid the burden should be divided between the lender and the borrower—the owner of the money should pay his part, and the owner of the property should pay his part. I believe in this report in that respect. I believe it is an effort to overcome a wrong. The question arises farther, whether you can carry out the same system with regard to other solvent debts. Now, there has been a statute in this State that solvent debts might be offset against credits, where there was no mortgage; that is when the Assessor comes to a man he is permitted to offset the debts owing by him against those owing to him. The committee propose to carry that idea out here to that extent. But the latter part of this amendment proposes to carry it still farther, and provides that in all cases when a man pays taxes he shall be assessed upon all that is due him—upon his credits. Then, when he has paid, he ought to be permitted to deduct the amount he owes his creditors, so that his creditors will be taxed upon the same basis. This is right in theory. The man who loans money should pay taxes upon it. That is the correct theory. There will, probably, be a difficulty about putting any theory into practice—a great many difficulties. Some kinds of property is exposed; the Assessor can find it when he comes around; other property can be concealed, hidden out of sight. Property can be hidden, and it is often done. When a man is honest, and the Assessor comes and asks him what he is worth, he tells him honestly. Unfortunately there are many who are not so honest, and who do not hesitate to make false statements as to their property, though they are under oath. Now, you can never make taxation equal and uniform in fact, but you must work towards it in theory, and make it as nearly so as possible—the theory must be right. We must make the theory right, and work up to it as far as may be. I think the theory is right when you say that everything shall be taxed that can be found. Debts are property, horses and cattle are property, and land is property. Land is assessed for what it is worth. If there is a mortgage on it, let the tax be divided between the owners in fact; do not make the apparent owner pay all the taxes, but make both pay according to the interest they have.

I see some objections to a part of this section. All property is to be assessed. Here is a corporation, say a woolen mill. We have a woolen mill up here. It has a large body of stock—made up goods—on hand. All property must be assessed, and that must be assessed at its value. Now, if I own ten thousand dollars worth of stock in that corporation the Assessor must assess my stock at its value. The capital stock must be assessed to me—my share of it.

MR. EDGERTON. Has not the Supreme Court said that that was not legal?

MR. BELCHER. You could not do it before. But now you say that all property shall be assessed, including the capital stock of corporations. Now all the property of a corporation must be taxed. You tax a railroad with its track running over the State. You tax their improvements; tax the land; tax the cars, machines; tax everything that is visible. Then you must assess, according to this, its capital stock, that certain persons own. I do not believe it is right to assess both. After all, it is the property you want to get at. I don't know but it would be fair with a certain class of mining corporations which have no property. This may be a hit at them, where their stock is worth money, and they have no property. To that I have no objection. But I object to double taxation in any form. Assess everybody once; assess all property once: and once only. I believe a man should be assessed for what he is worth, and no more. Every man should bear his just portion of the burdens of government. When that is done there can be no just cause of complaint. The people are unjustly burdened, and we are sent here to equalize these burdens. We must make the burden to bear upon all alike. Let us make every man pay upon what he is worth. Let us make the burden as near uniform as possible.

MR. HOWARD, of Los Angeles. I move the committee rise.

Carried.

IN CONVENTION.

THE CHAIRMAN. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

RESOLUTION.

MR. EDGERTON. I move the adoption of the following resolution:

Resolved, That the Secretary be and he is hereby instructed to have the amendments offered by Judge Hale and Mr. Huestis, to section two of the report of the Committee on Revenue and Taxation, printed in the Journal, and placed upon the desks of members to-morrow morning.

THE PRESIDENT. If there is no objection it will be so ordered.

ADJOURNMENT.

MR. HEISKELL. I move the Convention do now adjourn.

Carried.

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

NINETY-SECOND DAY.

SACRAMENTO, Saturday, December 28th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Edgerton,	Joyce,
Barbour,	Evey,	Kelley,
Barry,	Farrell,	Keyes,
Barton,	Filcher,	Kleine,
Belcher,	Finney,	Lampson,
Bell,	Freeman,	Larkin,
Biggs,	Garvey,	Larue,
Blackmer,	Gorman,	Lavigne,
Boggs,	Grace,	Lindow,
Boucher,	Graves,	Mansfield,
Brown,	Gregg,	Martin, of Santa Cruz,
Burt,	Hale,	McComas,
Campbell,	Harvey,	McConnell,
Caples,	Heiskell,	McCoy,
Charles,	Hilborn,	McFarland,
Condon,	Hitchcock,	Mills,
Cowden,	Holmes,	Moffat,
Cross,	Howard, of Los Angeles,	Moreland,
Crouch,	Howard, of Mariposa,	Nelson,
Davis,	Huestis,	Neunaber,
Dean,	Hughey,	Ohleyer,
Doyle,	Hunter,	Porter,
Dudley, of Solano,	Inman,	Pulliam,
Eagon,	Jones,	Reddy,

Reed,	Smith, of 4th District,	Turner,
Reynolds,	Smith, of San Francisco,	Tuttle,
Rhodes,	Soule,	Vacquerel,
Ringgold,	Steele,	Van Voorhies,
Rolfe,	Stevenson,	Walker, of Tuolumne,
Schell,	Stuart,	Wellin,
Schomp,	Sweasey,	West,
Shafter,	Swing,	White,
Shoemaker,	Terry,	Wilson, of Tehama,
Shurtleff,	Thompson,	Mr. President.
Smith, of Santa Clara,		

ABSENT.

Ayers,	Herold,	Overton,
Barnes,	Herrington,	Prouty,
Beerstecher,	Johnson,	Stedman,
Berry,	Kenny,	Swenson.
Casserly,	Laine,	Tinnin,
Chapman,	Lewis,	Townsend,
Dowling,	Martin, of Alameda,	Tully,
Dudley, of San Joaquin,	McCallum,	Van Dyke,
Dunlap,	McNutt,	Walker, of Marin,
Estee,	Miller,	Waters,
Estey,	Morse,	Webster,
Fawcett,	Murphy,	Weller,
Freud,	Nason,	Wickes,
Glascock,	Noel,	Wilson, of 1st District,
Hager,	O'Donnell,	Winans,
Hall,	O'Sullivan,	Wyatt.
Harrison,		

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Winans, Dunlap, Ayers, and Townsend.

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

Leave of absence for five days was granted Mr. Waters.

Indefinite leave of absence was granted Mr. Glascock.

THE JOURNAL.

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

Carried.

EMPLOYMENT OF CHINESE.

MR. SMITH, of San Francisco. Mr. President: I send up a resolution.

THE SECRETARY read:

WHEREAS, Senator Grover has introduced a bill in the Senate of the United States for the express purpose of preventing any Chinese or Mongolian from drawing out of the treasury of the United States, either directly or indirectly, any of the people's money, in accordance with the express wishes of the people of the Pacific Coast; and whereas, the people of the State of California do unanimously indorse the above named bill as introduced by Senator Grover; therefore, be it

Resolved by the People of the State of California, through their representatives in Constitutional Convention assembled, That it is contrary to the wishes of the people of this State that any Chinaman or Mongolian should, either directly or indirectly, receive for labor any of the people's money. *Second*—That it is contrary to the wishes of the people that any of the people's money should be paid for any manufactured articles or goods in which any Chinaman or Mongolian is employed in the manufacture of, either directly or indirectly. *Third*—That the Board of Directors, Commissioners, and all other officers in this State, who have contracts to work on behalf of the State, should insert in their advertisements for proposals, and in their specifications, a provision setting forth that no proposal will be received or considered for any Chinese or Mongolian labor, or for any manufactured article in which any Chinese or Mongolian labor is either directly or indirectly employed in the production of. *Fourth*—That the Secretary of this Convention is hereby instructed to send a copy of these resolutions to all the constitutional officers of this State, and to all Boards of Directors and Commissioners that have charge of institutions of the State that are supported by the people's money.

MR. STUART. I move that it be laid on the table.

THE PRESIDENT. The gentleman from San Francisco is on the floor.

MR. SMITH, of San Francisco. Sir, some of the officials, before their election, went so far as to say that the Chinese immigration must be stopped, even if they had to destroy the steamers that brought them here. I hope the Legislature will pass a law that will apply to the whole State, forbidding the employment of Chinese on public work, so that some officials cannot make the excuse that they do now. We should say to these servants of the people: "When advertising for proposals, insert a provision that no Chinaman shall be directly or indirectly employed." What chance have the people to get rid of these Chinamen when those who are bound to serve the people do all in their power, notwithstanding their pledges, to help them here? I find that contracts have been awarded to furnish cloth to the State Prison to men who employed Chinese labor. In San Francisco they have employed Chinese in defiance of law. It is time this was stopped, and that these servants should obey the will of the people. I hope the resolutions will be adopted.

MR. STUART. I move that the resolutions be laid on the table.

The question was put, and resulted in a vote of 38 ayes to 37 noes.

THE PRESIDENT. No quorum voting. There is evidently a quorum in the house. Gentlemen will please vote one way or the other.

The question was again put and the motion lost, on a division, by a vote of 42 ayes to 45 noes.

MR. HOWARD, of Los Angeles. Mr. President: I move to refer the resolutions to the Committee on Chinese.

The motion prevailed.

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section two, and the amendments thereto, are before the committee.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I understand that the amendment offered by the gentleman from Humboldt, Mr. Huestis, is before the committee. Since the adjournment I have examined it more carefully. It is open to several serious objections. In the first place, it provides that solvent debts shall be taxed in proportion to their cash value, to be ascertained as directed by law. And in the last clause of the amendment, following that—I ought to premise by saying that it adopts section five of the report of the committee, which provides that in case of a mortgage, or lien upon property, that the interest of the mortgage, or the value of the lien, shall be treated as an interest in the property affected by it; that the property affected by the mortgage or lien shall be assessed and taxed to the value of the property, less the value of the security. The value of the security shall be assessed and taxed to the owner, though either party may pay the tax. If the mortgagee pays it, it is to be added to the debt, and the property is to be held as security. If the mortgagor pays it, he is to have, to the extent of the amount paid, a discharge of the obligation of the debt for which it is a security. Now, this section, after providing that solvent debts shall be taxed according to their cash value, provides: "And in respect to all other solvent debts, there shall be no reduction made, as herein provided, from the full cash value of all property of the debtor or debtors owing the same, on account of such debt or debts; but he or they shall, on payment thereof, be entitled to retain therefrom a sum, with interest thereon at the same rate borne by said indebtedness, to be computed from the time or times of the tax payments, which shall equal the amount of taxes which may have been paid by such debtor or debtors during the existence of such indebtedness, upon property of like amount in value of said indebtedness; *provided*, if any indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy, for that year, may likewise be retained by him or them, and shall be computed according to the tax levy for the preceding year."

That provision, as I understand it, is the same as offered by the gentleman from Placer, Mr. Hale—the amendment of Mr. Boggs, of Lake County. The objection I make to this part of the proposal of the gentleman from Humboldt is that in the first place the debt shall be assessed and taxed to the owner of the debt, so that the owner of the debt has to pay the tax to the government; and in addition to that it provides that the debtor shall pay the tax on his property, and he shall so be entitled to an offset for the amount that he pays upon the property equal to the amount of his debt. That is substantially double taxation. Further it provides—there is a little confusion growing out of the arrangement of the first part of the section. In the first place there is an enumeration of property, which shall be subject to taxation, then follows the exceptions, and then comes another enumeration. That is to say, "all property in this State, including franchises, capital stock of corporations, or joint stock associations, and solvent debts, excepting growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States or to this State, or any county, city and county, city, or municipality thereof, and including all property, real and personal, belonging to and devoted to public use, and all public school districts and departments in this State." Now, I suppose of course it was the intention of the author of the proposition to express this idea: that all property devoted to public use, that is for school purposes, should be exempt. Is that the idea? But it might include the property of a railroad, a quasi-public corporation. It seems to me that this amendment is no improvement. It is nothing but an omnibus section embracing sections two and five of the report of the committee, and the amendment of the gentleman from Lake, Mr. Boggs, is open to the objection which I make to it, on account of the double burden upon the owner of the debt. I think that the amendment should be voted down, and that we should consider these propositions separately.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. President: Many members of the Convention, it seems to me, are in favor of taxing solvent debts and mortgages, upon the theory that it is property escaping taxation. If I understand the theory of taxation, it is to take property wherever it is found, and the question of who owns it or who should pay the tax should be a matter of indifference to the State. If a piece of land worth twenty thousand dollars is taxed and the State receives the money, then it becomes a matter of private business who pays the tax. It makes no difference whether the man who owns it pays the tax, if he chooses to make a contract with the mortgagee to that effect. Now, this system, this idea that men are taxed, I think, is a mistake. It is property that is taxed. If you do not find an owner for it, you tax it to an unknown owner. If it is personal property, you proceed *in rem.* and sell the property for the taxes. But the idea is, all the time, that the property pays the tax; it makes no difference whether it belongs to John Jones or to John Smith. When it comes to taxing property that is mortgaged, a man may pay the tax, and when he comes to settle with his creditors, it may be by a bargain between them that that shall be deducted from the debt; but that has nothing to do with a system of taxation, as I understand it. I think it is a mistaken theory, as soon as you show that it is a matter of individual personal taxation, which it is not.

Now the statement made by Judge Belcher is true if you take the matter in the abstract, but it is not the purpose of the State to hunt up persons. It may go through twenty hands, and still the State simply looks to the property for the taxes. Who shall pay them? Why, the

man who owns the property, if he desires to preserve it. It makes no difference to the people, to the State, or the county. The county sells the property, because it is the property that is liable for the taxes. Every time that we lose sight of property and proceed upon individuals we open the door for fraud. Suppose you adopt this plan, what have you done? You have simply interferred with private business. You say that a man must pay it, and yet all you have done in the world is to leave the subject to men's honor. That is, the man pays it in the first instance, and you can take it back or leave it alone, if you desire it. It is utterly impossible to tax mortgage securities without making a limitation upon interest. If you tax mortgage security and tax the man, then you must limit the rate of interest before you can escape double taxation, because the loaner always has control and will not loan his money without interest sufficient to pay him, and without receiving the compensation that he can receive in any other market for his gold. The result is that the borrower must pay an interest sufficient to pay the taxes, and you only make your system of taxation more difficult without any good result. I think that we should proceed to tax all property as you do to-day. The Assessor comes and asks you if you have any property, and it is property that is supposed to be taxed. And now, because there happens to be a hue and cry, men must turn round and say that it is not property that should be taxed, but men alone must be taxed. It becomes a question of mixing up the collection of taxes. I am not in favor of the section as reported by the committee, for the reasons I have stated, that I think property simply—real, tangible property—should be subject to taxation. If the Convention will excuse me, I will again allude to the horse. If A owns a horse and B owns nothing, and A sells the horse to B for three hundred dollars and takes his note, there is no property created. If B sells the horse to C for three hundred dollars and takes his note for him, there is no property created; but under this system there would be six hundred dollars of solvent debts to be taxed, and yet no property created. There is only the same amount of property, and that is the horse.

MR. CROSS. Haven't you created a value?

MR. GREGG. You have created a chance of receiving something in the future; just as you may have a crop next year, or your wife may have a baby next year. There is another objection to the report of the committee. "All property, including franchises, capital stock of corporations," etc. Now, the capital stock of corporations in some form, certainly, should be taxed, or franchises should be taxed. I am satisfied that corporations owning franchises of great profit should be taxed. The Spring Valley franchise should be taxed. But when you tax the capital stock of corporations you turn the greater portion of the tax into the treasury of the City and County of San Francisco, because nearly all of the capital stock is owned there. Franchises include capital stock, and if you tax one you should not tax the other. Then, again, when you tax the franchise and capital stock of corporations you are endangering the mining interests of the State. Mr. McCoy lives in a mining locality. He is perfectly willing that the Assessors should come to his mine, and taking into consideration the profits of it, assess it at its value. That mine has a tangible value. It is assessed at twenty, or thirty, or forty, or one hundred and fifty thousand dollars, because it has proven itself of that value. If it is declining in value that is always considered by Assessors. Men understand it in giving in their property, and consider their value in accordance with their circumstances. But if you tax it as a corporation, the capital stock, the mine, and property that is situated in that county, escapes the tax. If you tax the franchise then there is no means of estimating its value. You have got to proceed all the time as if the property had an actual value. The franchises of gas companies, water companies, etc., should be taxed in proportion to their value, but when we include everything under the head of franchises, it is too broad and too general, and it is interfering with the mining interest of the State. Now, I am opposed to the amendment offered by the gentleman from Humboldt, Mr. Huestis. It provides, for instance, for the taxation of the mortgage, and it provides that if the mortgagee pay it it increases his credit to the amount of the tax paid. I believe that this question should be left as much as possible with the Legislature. Every limitation we have within the Constitution is subject to a construction by the Courts, and must necessarily be so, because it is supposed that the Constitution means what it says.

The amendment of Mr. Hale is simply a hocus pocus; that is all. It means nothing. It is simply words without sense, so far as the Constitution is concerned. What is the use of saying that a man should have a credit when the tax is paid. It is a simple contract between men, and this hocus pocus business should not be left to stand. It means nothing to say that when I do a piece of business with the gentleman on my right, and then pay taxes, in the future that I shall be entitled to a credit on the debt. Why, if I desired that when I made the bargain I could say so.

THE CHAIRMAN. The gentleman's fifteen minutes has expired.

MR. GREGG. I did not expect to speak fifteen minutes, and I have but little more to say. I will admit that the cry is that the rich are growing richer, and poor poorer, and that there is a demand for a change in the system of taxation, but whatever the cry is we should proceed philosophically and calmly in such matters as this. Now, many men tell me that the people desire that solvent debts and mortgaged securities should be taxed; that may be; they may know the result before they see it, but I cannot tell. I know that in conversation with a large number of men in the locality from which I come, they agree substantially with me. The complaint is now, in the section from which I come, more among men of small property, that money is too difficult to get. A man must make ditches; that requires money. When he goes to borrow money he discovers that, even now, it is difficult for him to get it. He has to pay large interest, almost more than he can bear. He wants it in small amount, money loaners charge him a higher rate of interest, because they do not like the trouble of putting it out in small amounts. When we put a tax upon solvent debts and mortgaged securities you simply increase his burden. The minute that you levy your tax you have increased the burden of the borrower. And who is your borrower? The poor man, who wishes to make an improvement or put in his crops. These men say, it makes no difference to us, we have to pay it anyway. If we escape it by hocus pocus, we pay it directly to the men who loan us the money. It was but a very few days ago, when I was at home, that I talked with business men, and farmers, men who knew what they were talking about, and it is the universal sentiment of men who have examined this question that you are only making your system of taxation more difficult. Tax the property where you find it. Let the mortgagor and mortgagee make their own contracts. This amendment says that growing crops shall not be taxed. I claim that as soon as a man plows his land there is an improvement there that has value. As quick as he sows his land, there is an improvement there that is value. I believe that is a part of the land, and should be taxed, not as a growing crop subject to taxation, but simply as an improvement, and nothing more. If you say that growing crops shall not be taxed, there is not an Assessor in the State of California but what will go and make a deduction. For instance, a man has a piece of land worth ten dollars an acre, upon which a crop is growing which will bring him in the future thirty dollars or forty dollars an acre; the Assessor comes and sees it and says: "That is worth twenty dollars an acre." "True," says the owner, "but the Constitution says that growing crops shall not be taxed." And then the Assessor takes the value from it, and leaves it assessed just like the outside land. Then we have, in my section of the country, acres of alfalfa—one man has about four thousand acres—that will grow several crops of pasture, and is capable of sustaining thousands of cattle—that is a growing crop. The Assessor comes and says it shall be taxed according to its value.

MR. LARUE. Is it not assessed higher because it——

MR. GREGG. The land immediately adjoining will produce alfalfa, but does not have any growing upon it. Why not say that the growing crops should be considered as an improvement, and when they come in that form should be subject to taxation? I consider growing crops an absolute improvement, because you must improve your land. Every ditch you make is an improvement; you build a house or barn, and it is an improvement, and I hold that growing crops should be considered as improvements, only for the purposes of taxation.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I do not propose to take up the time of this Convention, but when I see a man get up here and make statements, when I know he is better informed, I propose to note a few of his remarks. In the first place, if I had a boy that was twelve years old, that did not know that a mortgage was not good unless it was recorded, I would spank him and send him back to school again. I do not presume that my friend intended any disrespect to the intelligence of this Convention; but for a gentleman, a member of the bar, of fine legal attainments, to get up here and make such statements, is ridiculous and preposterous. Every gentleman here knows that a mortgage has to be recorded before it is good.

MR. ROLFE. You are mistaken, Mr. Biggs.

MR. BIGGS. Hasn't it got to be recorded in the county?

MR. EDGERTON. No.

MR. BIGGS. They want these mortgages to go scot free from taxation. There is the whole thing in a nutshell. They make a hue and cry about land. It is not land they want to tax. I ask any man here, did you ever know a piece of personal property taxed to an unknown owner? If you did, you might go and tax all the sheep that run in the mountains. You might travel around and find the same band of stock in different places, and assess it to unknown owners. The gentleman claims to be opposed to taxing growing crops, but is in favor of having them taxed as improvements, which is the very same thing. He is not consistent there. You have your note secured by mortgage; it is bearing interest; it is productive; it produces a certain interest; yet you do not tax that. Here is my friend, Colonel Reed, he don't know whether he will get one bushel to the acre, or twenty bushels, or thirty bushels. He cannot tell anything about the harvest. Three years ago, when growing crops were assessed, the Assessor came along and assessed my crop. He found grain in store and assessed that. The gentleman states that in some counties they assess the land just the same, whether there is alfalfa growing upon it or not. I tell you if that is the case the Assessor is not doing his duty. It is a well known and established fact, that alfalfa is worth from fifty dollars to one hundred dollars per acre. There is very little good alfalfa land in this State. I want to see these mortgages taxed, and every evidence of indebtedness taxed, and let a man pay on just what he is worth, and no more. But gentlemen say that the people are opposed to taxing mortgages. I say that it was one of the first planks in the platform in the northern part of the State.

MR. STUART. Does the farmer pay a tax on gathered crops?

MR. BIGGS. Yes, sir. I pay on every bushel that I hold over. Yes, sir; and I have got my barley two years on hand.

MR. STUART. Suppose you sell the wheat?

MR. BIGGS. I pay taxes on my grain, on my hogs, on my beehives, and everything; and you money loaners go with your hundreds of thousands of dollars in bonds, and do not pay one simple cent of taxes to support the government. You will tax the little lambs almost before they can bleat. I hope this Convention will tax mortgages and solvent debts, and I want to see gentlemen placed upon the record. I want to see my friend Larkin on the record; and let the State know whether the Convention is in favor of taxing mortgages or not. Be consistent, gentlemen. All I ask is this: let me pay in proportion to my neighbor. I have a little alfalfa, and that land is assessed twice as high as the land I sow in wheat; and if there is a farmer here that has a good piece of alfalfa land and it is not assessed three times as high, I am very much

fooled. Land is all graded by the Assessor, first, second, and third quality. Tax your growing crops as part and parcel of the realty just the same as any improvement, but for God's sake don't go and tax them separate. Members say that if you tax the mortgage, the borrowers will have to pay a higher rate of interest. We will attend to that. I want a man who takes a mortgage to pay his pro rata share of taxes.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. Chairman: I desire to say a few words upon this question, and I will state, sir, that if it were not for the proposition now before this body, none of us would be occupying seats upon this floor. This was the only question that was advocated in the calling of this Convention, and it seems to me that the will of the people in this regard should be respected by the members of this Convention. Now, in the argument, it seems to me that the gentlemen have overlooked a very large class of the community; that there are only two classes—that is, the borrower and the lender. I contend that there is another class that requires the consideration of this Convention, equally with those classes, if not still more so, and that is the well-to-do farmer, the man who is neither a borrower nor a lender; one, sir, who is adding to the prosperity and the material wealth of the State. These men should be taken into consideration, as well as those who are borrowing money every day. Now, let me take occasion here to say that there is not so large a portion of the community that are borrowing money as gentlemen upon this floor would have us believe. There is not so great a number loaning money as gentlemen upon this floor would have us believe. However, let that be the case. We are not here for the purpose of legislating or acting in this Convention for any particular class of this community. We are here for the purpose of doing the greatest good to the greatest number. Now, sir, if a man has to borrow money, is it right that my friend Hitchcock, or Mr. Boggs, or Mr. McConnell, who are not borrowing money, should pay taxes to make up the taxes that would be necessary to allow him to borrow money cheap? No man could come before the people of this State and ask them to place in their Constitution anything that would allow men to borrow cheap money to the detriment of those who are not borrowing money. We have to make up so much taxes every year, and every man should pay taxes on what he owns. This thing of taxing mortgages is what the people of this State require. It is nothing but right and just. There will, in any law that we may pass, be a little injustice to some individuals. There will be a little double taxation in any way that we may manage it. In taxing mortgages and evidences of indebtedness, I am free to admit that there will be a little double taxation; but it is impossible to escape this, and if taxed, we would get more property tax, and would get it on a basis that is more just; and while taxation should be uniform and equal, it should be just. There is nothing wrong in taxing mortgages. It is the very best way we can get at it. It cuts the rate of taxation down. Now, this idea of exempting from real estate the mortgage, will raise the rate of taxation. That is what has been the trouble. It is because property has not been taxed equal and uniform, and because all the property has not been taxed. We want to get a larger assessment roll. We want to do it honestly and honorably. The larger the assessment roll, the lower the rate of taxation. So far as this borrowing class is concerned, let me state this: they say that when a poor man goes to borrow money, that they will exact the tax upon the mortgage. That is not the case. If the man chooses to allow them to do so, they might do it; but money, like every other commodity, is governed by the law of supply and demand. If money is plenty, interest will be low, and if it is scarce, interest will be high, and that is all you can make out of this; because, if a man has money on hand he is not going to keep it on hand and pay taxes on it. That is all a cry got up by the money lender, and nobody else. Money will come to this State from other sources, if those who have it here now will not loan it, because there is no better place in the world for the investment of money. It would come here by millions, if every dollar that we have to-day was taken out. There is capital now anxious for investment at a lower rate of interest than we have at present. But we are not legislating for the borrower or the lender. If we would legislate for the borrower, why not for the lender? The fact is, this borrowing class is not half so large as gentlemen would have us believe.

I say that we are here only upon this proposition. We must get up something in this Constitution that will suit the people on this matter, or we will not have the Constitution adopted. I am satisfied that the old Constitution is good enough in all things except this. There was no cry for anything else but this. I say, do this, and one or two other things in regard to this matter, and we will have done all that we were sent here to do. We must protect the people of the State of California against those who would injure her interests; who would escape taxation and shift it upon others. We should have done it long ago. It does not require any great amount of statesmanship to see these things. It is a simple plain business proposition that any man can see and understand. It does not require us to go back and take up old musty books and experiments that have been tried in this land and the other. It is only a plain simple proposition that we have to act upon in a business sense, and that every business man in the community will understand. It is, while you make taxes equal, uniform, and just, and while you make it light upon one class, you bring down the burden upon the other class. Does this require any amount of statesmanship or experience? It is a matter that the common people understand and have sent us here to do, and to do nothing else, in my opinion. All this talk about Chinese, about corporations, about everything else, were secondary considerations with the people of this State. It was to bring taxation equal and uniform that we were sent here, and for no other purpose. When we have done this, we can well adopt the balance of the old Constitution, and go home to our constituents with the assurance that our work will be approved; but if we do anything else, we can be assured that our work will be rejected. I wish to see every species of property taxed uniformly, equally, and justly.

REMARKS OF MR. OHLEYER.

MR. OHLEYER. Mr. Chairman: It is with extreme diffidence that I rise to say a word on this question. It may well be considered presumtuous on my part, to venture to enlighteen this Convention on the subject under consideration, in the face of so much learning, wisdom, and experience as we find represented on this floor. I have listened with deep interest to the debate on revenue and taxation, and regard this the most important question that can come before this body. I trust, therefore, that it will receive that careful consideration that its importance demands.

I hope this Convention will adopt no system of exemption except public property, and property belonging to the United States. The danger is, when once we open the door to exemptions there will be no end to it. It will tend to the creation of fictitious indebtedness until the burdens of taxation would fall almost entirely on the poorer classes, whose property could not be hid away from the Assessor's scrutiny. Take, for example, the merchant. It is seldom that he does business on his own capital. But we will suppose he has five thousand dollars of his own money; he will lay in a stock worth ten thousand dollars, for a time owing for half his goods. The Assessor comes along, and takes a look at the stock of goods. As some of the goods have been sold they find it difficult to arrive at the true value for taxable purposes, and the Assessor, not knowing or understanding the subject, will finally compromise with the merchant, and call it six thousand dollars, which to him seems a fair figure. Having decided this point, the merchant produces evidence of indebtedness to the amount of five thousand dollars, and has it subtracted from his total assessment. And thus we find him doing business on a capital of ten thousand dollars, and paying tax on but one thousand dollars, and apparently no great wrong done by the merchant.

I hold it right and proper that every man should pay tribute to the government on the business he does. If a merchant can make more money on a capital of ten thousand dollars than he can on five thousand, he should pay taxes on the ten thousand. And so with the farmer, if he can do twice as well on a ten thousand dollar farm than he can on one of five thousand, he should pay on this larger amount. Under the system proposed by the committee and by their amendments, he might be carrying on a ten, fifteen, or twenty thousand dollar farm, and yet only pay taxes on five thousand dollars, the amount originally invested by him. As he is protected in the whole of it, he should also pay taxes on the whole of it. Not to do so is an encouragement to go yet deeper in debt until ruin shall finally overtake him. Nor will it do to say he should not pay because you propose to make the lender pay. I, too, would make the lender pay his tax simply because it is *his* business. He prefers to loan his capital, receives the protection of the State, and should pay his pro rata towards the support of his government. In this view (that is not double taxation), I am supported by General Howard and other speakers who have preceded me, who have cited ample authority to sustain this position. The principle of deductions or credits is a dangerous, and to my mind, an impractical one. There would be no end to the frauds committed. The best system ever invented by man has been circumvented by the dishonest. It seems to me this system is a bid for dishonesty. Good men are often found to act as though they thought it shrewd to evade the scrutiny of the Assessor, and thereby defraud the State out of their just proportion of their taxes.

In Oregon this system prevails, to what extent I am unable to say. But in the very last annual message of the Governor of that State, the system is condemned. And the reasons given, if I am correctly informed, was the continued evasion and reduction of the Assessor's roll, and the encouragement to the people to run in debt, either fictitiously or otherwise.

Mr. Chairman, for these reasons, briefly given, I cannot support these propositions. And when the proper times comes, if no one else does, I will move to strike out of section two all that pertains to the rebate or credit system in assessments, to the end that all may pay and none escape, and thus create a larger assessment and consequent lower rates of taxes. Thus the poor, honest, and prudent will be encouraged in their course, while the proposed system will lead to temptation, profligacy, and recklessness.

It has been stated, and I have no doubt of the fact, that were all property taxed, it would increase the State's tax roll one hundred per cent. In that case it would decrease the rate of taxation fifty per cent. Hence all parties would show a greater willingness to pay their proportion. There would be much less cause for the masses to evade the Assessor. It would substitute an entirely practicable, safe, and simple method of raising the necessary revenue, in place of a cumbersome, complicated, and unsatisfactory method.

A word in regard to the taxing of growing crops, and I am done. Were all property and things of value taxed, the farmer would have little cause to complain if he had to pay tax on his growing crop, for the rate would be so low as to be but little felt. But I hold such a tax would be wrong and unjust, and a discrimination against the agriculturist. He would pay revenue on something he himself had not yet received. Such a course is certainly unnecessary, as whatever the farmer makes more than a living he always reinvests, when it becomes tangible property and subject to be assessed. The State can well afford to wait a year for revenue from this source.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: My friend, Mr. Biggs, from Butte, is very anxious to know how I shall stand on this question. I am very willing to inform him that I believe in the assessment of every dollar's worth of property in this State—every dollar's worth—and no more;

that every foot of land, every horse, every cow, every dollar in money, should be assessed upon the Assessor's roll, and that the party in possession should give in the list of the property, and should pay the tax. And I would provide that where other men hold accounts against that man, that he should have rebate for their interest in that property. I propose to assess the property, leaving notes and mortgages as simple evidences that these parties have an interest, and then when they settle the debts let the man who owns the property have a rebate to the amount of the tax. It is as clear a proposition as the noonday sun. Take an enterprising man who has partly enough money to build a house; he builds a house and goes in debt for part of it. Under the system of taxing mortgages, notes, and solvent debts, you compel that man to pay double taxation. This provision offered by Mr. Boggs avoids that. It provides that the party in possession of the property should give it in, and that whenever a mortgage, or note, or book account is settled, that the party assessed shall have a right to the amount of taxes that he has paid on that note, account, or mortgage. Is there anything there that is not just? Is there anything there but what is equal and uniform? No plainer proposition was ever presented to any Legislature or Convention in this State. This committee here has adopted in part the same proposition. The same proposition has been before every Legislature for the last fifteen years in one shape or another. But in this proposition of Mr. Boggs we propose to carry it out. There certainly should be exemption in this case as well as in mortgages; but it is simply a question between the men.

MR. BIGGS. Why are you so opposed to deeds of trust and mortgages being specified—that they shall be taxed? Why go around and come in the back door? Why are you so violently opposed to the words "mortgages and deeds of trust?"

MR. LARKIN. They are not property.

MR. BIGGS. We propose to make them property.

MR. LARKIN. They are only evidences that a man has an interest in certain property.

MR. OHLEYER. Are you not in favor of taxing all the property?

MR. LARKIN. I say a man should pay taxes on just what he is worth. If a merchant starts trade in a city, and has but a thousand dollars, and borrows another thousand dollars, and borrows on a note another thousand dollars, and another thousand dollars worth of goods he gets trusted for, that man does not own all this property; he owns it less these three amounts, and in these three amounts these other men are his partners. Admit that a man should pay on all that he has; let him give in the whole property at the time of the assessment, and pay the tax, but when he comes to settle with the other parties he should have a rebate to the amount of the tax on what he owes.

MR. EAGON. Suppose you have real estate to the amount of ten thousand dollars, and you come to me and borrow five thousand dollars to carry on some arrangement outside, and I loaned it to you and take a mortgage upon your property. Does that make the value of your property any less? Should you not pay taxes upon the value of that property? Would you deduct that five thousand?

MR. LARKIN. I do not propose to deduct anything. I propose to assess that property. But when I pay you that money I have a right to take out the amount of tax I have paid on it.

MR. EAGON. I think not.

MR. LARKIN. I am in favor of taxing all the property. If I have real estate to the amount of ten thousand dollars and borrow five thousand dollars of you I then have fifteen thousand on which I should pay the tax. I should then have a rebate of the amount of tax I paid on your five thousand dollars.

MR. EAGON. That only complicates it.

MR. LARKIN. It don't complicate it at all. Otherwise you could go scott free. But these gentlemen say you cannot force these men to pay this rebate. That is child's talk. You cannot force men to be honest, but still we have statutes to keep men from stealing. The principle is right in this proposition, the theory of it is right, and if carried out by proper legislation it will work equal taxation in the State. So far as the proposition of the gentleman from Humboldt, Mr. Huestis, is concerned, he has combined three propositions—the proposition of Mr. Boggs, the proposition of the committee here in section five, and some new matter of his own.

MR. HUESTIS. If the gentleman will permit me I will state that the difference between the amendment of Mr. Boggs or Judge Hale, and my amendment is, that in one case the principle of the taxation of money secured by mortgage and solvent debts is established, and in the other it is not established, but it is claimed by the friends of the other that it works out the same result.

MR. LARKIN. It will accomplish the same result. But there is no provision excepting railroad companies. Let us provide for the assessment of every man for just what he is worth and no more; and when he pays his debts let him compel the party that he pays that debt to, to return to him the amount of taxes he has paid during the time he owed the debt. If that is not just, what is just taxation? I did not intend to detain the committee half so long.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: It appears to me that there is no one sentiment more universal in the whole State than the sentiment that mortgages and solvent debts should be taxed in some just way. I am in favor, therefore, of taxing them. But the manner in which they should be taxed is a thing that should be discussed. I like Mr. Boggs' proposition. The idea that there should be a rebate, it occurs to me is a good idea. The idea that solvent debts should not be taxed amounts to this: An Assessor comes to a farm. Say he finds a farm worth twenty thousand dollars—the land. Well it is worth twenty thousand dollars. He puts it down. The farmer shows him everything he has on the farm—and I do insist that the farmers are more candid, as a class, than any other in showing up their property. They show them everything they have. They hold nothing back. The Assessors go around and examine everything; they examine the whole of the furniture, and leave nothing untaxed. They go to the wife and ask her to show them the chickens, and turkeys, and ducks, and they go down. Everything on the farm goes down, and it is all summed up. Well, that farmer would naturally say, if he was in one of the other States: "I am in debt; I have a mortgage on this place of ten thousand dollars; I am not worth ten thousand dollars, and I can show it to you." But the Assessor in our State says: "I cannot take any notice of all that; I must put down thirty thousand dollars, that you are in possession of here." And he puts it down, and the man has to pay it. Now, he goes to another man, and asks what he is worth, and he swears that he is worth, say fifty thousand dollars. He takes his oath, no matter whether it is good or not. But, in that case, ought he not to put down that he was worth two hundred thousand dollars, because he has taxed the farmer four times what he is worth, and why not tax him four times what he is worth.

Now this is a thing that cannot be endured. I say that this question of taxation is what has brought this Convention together in a great measure. That and the Chinese trouble have been two great motive powers that have brought this Convention together, and I say we will have to plan out some way in which we can get equal taxation. We must get some way that the man in the country will not pay three times his just taxes. Every single law within the Code bears down to-day upon the farmers. This taxation business bears upon them terribly. The way in which land is held bears upon them, prevents the settlement of the State, and requires some alteration. I appeal to gentlemen here to do their utmost to relieve the State from these things which are retarding its growth and progress. It is this taxation question and the way in which land is held in this State that is driving the people of the State into the cities. They come in and they have no possible means of support. The interior is depopulated, and the city is growing up. You are astonished to see in San Francisco an immense crowd of starving people. The reason is, that all the laws that we make are tending to drive men away from the cultivation of the soil. In every other country they make laws to try and assist in the cultivation of the soil, to take men out there, and they make exceptions in their favor, but here it is exactly the opposite.

The gentleman from Kern, Mr. Gregg, talks about taxing growing crops. Why, sir, that was the law, and what was the result of it? The Supervisors refused to direct the Assessors to do it, and the universal feeling was such in the State that they never assessed them. There is something so unjust, and so contrary to the will of the people in it, that it is impossible to enforce it. I tell you, sir, when a man goes on a farm, and does not know whether the crop is going to come to anything or not, he looks upon the man who would tell him that he must pay a tax on his prospect for a crop, as an enemy, and as a man who is actually trying to rob him. The consequence is, you cannot enforce such a law. There is no use of putting it into the Constitution. You cannot enforce it. It is one of those things that is so obnoxious to the feelings of the whole people that they will not see it carried out. I trust that there will be no hesitation in trying to fix this tax matter in some way that it will bear equally upon all classes. Now, even in these republics in South America, they make the greatest efforts to get people on the soil. They give them two or three hundred dollars—loan it on their lands—and leave it so many years without taxation. Although we call them half savages and benighted people, compared with us, yet we are, to-day, in California, doing whatever we can to crush down the farmers and the cultivators of the soil. Look at Santa Clara; San José has one third of its population within its limits. Look at San Francisco, filling up every day with people, not on account of the demand for population, for if that was the case we would not find them starving there. But it is because we pay no attention at all to those laws that should be enacted that would encourage people, and induce them, and almost force them, out on the soil to cultivate it. I trust that there will be no hesitation about this matter of taxing mortgages, and taxing solvent debts, and doing it in such a manner as will avoid injustice, and that it will work fairly to all classes.

REMARKS OF MR. STEELE.

MR. STEELE. Mr. Chairman: We have now reached one of the most important questions that can come before this Convention. In fact, it was the question that induced the calling of this Convention. The Grangers throughout the State were in favor of the taxation of mortgages, and after the decision of the Supreme Court that mortgages could not be taxed, the people of the State felt outraged; they felt that there was a property interest in mortgages, and that they ought to be taxed. Why, sir, the great majority of the people of this State who hold farms to-day are deeply in debt, and they are paying the taxes, not only upon the property that they own, but upon their debts. It is inequality of taxation that has caused such a complaint throughout the State, and we must arrange the matter here, in our Constitution, to avoid that, or our Constitution will not be adopted. The question of taxation is a very intricate question, and if we attempt to go into details here we will make a mistake, but if we confine ourselves to fundamental principles, the Legislature will be able to arrange the details. We ought to define what property is, for the purpose of taxation, and I believe that property should embrace everything that is of value in this State—land, personal property, bonds, mortgages, solvent debts, franchises, and every conceivable thing of value, and taxed in the hands of the man that holds it. I cannot believe with my friend, Mr. Gregg, that it makes no difference. The people of the State have an interest in the prosperity of the State, and if a portion of the people are borne down with taxation, and crushed into the earth, and another part are exempt from taxation, then the prosperity of the State is crippled, and the very foundation of industry destroyed. There is the trouble. We want to tax the property in the hands of the individuals that own it, and then

we are doing justice, and nobody is injured. Now, let us look at this matter of taxing mortgages. Why should they not be taxed? If it is not property it is productive capital, and the most productive capital in the State, and, if the interest is not paid, it takes the real estate for its satisfaction. And, sir, the interest has to come, no matter whether the farmer raises a crop or not; no matter whether it rains or is a dry season; and if it is not paid the farmer sacrifices his property, which is security for the debt. What reason is there that the man who owns this mortgage, and who is receiving this interest, should not be taxed upon it? Some say tax the mortgage and let the mortgagor pay it too. If the mortgagor pays the interest, is not his liability to pay taxes diminished? It is diminished very much because he pays an exorbitant rate of interest. Why, they say, you cannot make the mortgage pay the taxes. Let the people elect honest men to enforce the laws and we will have justice yet. I will admit that if we tax mortgages it will necessitate a usury law. I do not doubt that; but let us have it. Let us go right after this thing. Why, if there is not something done, these moneyed men, who have dictated to this State the system of revenue and taxation, will have the entire State in their hands, and by so doing they will kill the "goose that lays the golden egg." They will find that it is to their interest to allow this money to be taxed. They will be very glad to get it back into the hands of men who can use it. It is coming to that. If the farmers have got to pay the rate of interest and taxation that they are paying now, it will be but a short time before the land of the State will be in the hands of these men, and they will be glad to get it back and take a fair amount of interest. The reason is that the investment is a secure one. They know that their money is secure and that they will get their interest regularly. If they would take a less amount of interest, and take security on the land, the difficulty would be obviated, and we would have peace and prosperity all over the State. What we want is to have all the property of this State pay taxes. There is now probably not over two thirds of the property of this State listed to pay taxes. I presume that there are over two hundred millions in this State that does not pay a cent of taxes, and has not for the last ten or fifteen years. If we do our duty we will call upon the Legislature to enact an honest law, and then it will rest with the people to elect honest and efficient men to enforce that law. If we must have a usury law, let us have it. Do not let us falter or hesitate. Let us lay down correct principles and we shall certainly reach correct results in time; but we can never expect to reach proper results unless we lay the foundation for them in this Constitution. There is the place to begin the reform, and if we are honest and act honestly we shall have done our part, and the people will do theirs.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: If we expect to make a perfect system of taxation by any efforts that we may put forth here, we might as well adjourn to-day and go home, because it is not among the possibilities, in my judgment. But it is certainly within the reach of this body to come much nearer to it than we have heretofore. Now, sir, I believe that the true theory of taxation is, that the assessment should be put upon all persons and property according to their ability to pay the tax. Property represents an ability to pay its proportion for the support of the government, and so do persons so far as their ability to acquire property is concerned. Now, sir, the taxes are assessed upon individuals by reason of their connection together as society. Taxes are made a necessity because of this very society, and taxes bring with them not only protection, but they bring privileges besides. A person is not only protected in his life and in his property by reason of these taxes, but he is also accorded certain privileges in connection with his life in that society that he could not have if it were not for the taxes. Now, then, a man should not only pay for the protection that the taxes give him, but he should also pay for the privileges that are his by reason of them, in excess of the protection. Now, how shall we produce this result? How shall we make people pay for the protection and the privileges in addition to the protection? The first thing, it seems to me, to do, is to determine what can afford to pay taxes. In my judgment there are three things upon which taxes can justly be levied. The first is property, the next is credits, and the third is labor; because all these bring an ability to pay. Property certainly represents an ability to pay the tax. Credits are in themselves an ability to pay the tax, because they can be bought, they can be sold, they are of value, they are protected by the laws. And so it is with labor. Labor can be bought and sold, and it represents an ability to pay the tax, and this would come under the head of income, because the labor produces an income.

Now, then, as regards property, I think every kind of property should bear its share of the burden of taxation, except that which is public property of the United States, or public property belonging to the State. That, of course, would be useless to tax, because it is simply taking the money out of one pocket and putting it into the other. But every kind of property ought to bear its fair proportion of the burdens of taxation. We must arrive at property by taking the real property and the personal property and putting its proportion of the taxes upon that. Then, if we only tax that, and leave out of the question the credits and the ability of men, we put an unjust proportion of the burden upon the property and those who hold it, and we leave a great portion of that ability to pay, without putting any burden upon it at all. Now, sir, we should tax the credit to the man who holds it. If I have in bank, when the Assessor comes around on the first of March, three thousand dollars, I must pay the tax upon it, and that tax is for the money during the year for which the tax is levied. But if before the Assessor comes around, perhaps the day before, I have loaned it to a man and taken his note for it, and it is secured by a mortgage upon real estate, then, under the present law, I do not pay taxes upon it. Why? Because I have, the day before the Assessor came, taken that money out of the bank, and taken a note for it on which I am to receive interest. Why should I be exempt from paying my portion of the tax? I have the same ability as I had before. I am protected by the government in the possession of this three thousand dollars, the same as I was before. There is no justice in exempting that three thousand dollars because I have taken it from the bank and taken a note for it. It represents my ability to pay that tax. And so it is, too, with labor.

I will go a little further. We must tax the property and the credit, or else a large portion of the money will escape its share of the burden. Now, how is it with labor. Here is a man who has the ability to earn a large salary. He has, perhaps, taken the earnings of years and put it into his head, as we have examples here on this floor. They think more, perhaps, of taking the money that they have earned and educating the brain with it, and they may be able to earn four, five, ten, or twenty thousand dollars a year. That is an ability to pay for the protection that they have while they are acquiring it, and not only the protection, but the privileges. But, they say if you tax this you tax a man double, because he may take his money and invest it, and it is subject to taxation. But I claim not. If a man is taxed upon an income, it must be put upon his income retrospectively. You must tax the income that the man has received during the year previous to the one in which the assessment has been levied, and that money, if invested, will be subject to taxation the next year, but not the year by which it is taxed as income. Now, as to this question of ability, I think most of us would be willing to take the ability that a man has to earn ten thousand dollars a year by his brain work, and be willing to bear the burden of the taxation that comes with it. He has the ability to pay, and the protection of the government in the acquiring of the income and in the spending of it. And even if the man spends it as fast as he gets it, he has, beside the protection of the government, the privileges which the taxes bring, the education of his family, the use of the streets, and all the other privileges which he enjoyed by reason of the assessment of these taxes. And why should he not pay for it? If, after he pays the income tax, he invests his money, it is subject to taxation, but not at the same time that it is taxed as an income. Now, in order to arrive at a fair assessment of the taxes, if we tax credits, all property should be taxed at a fair cash value. It will not do to tax it at less than its fair cash value and then tax the credit at its full value, because that is unequal. We have no right to tax a credit to its full amount and then tax the property for less than the fair cash value. And so, in order to do that, all property shall be taxed for its fair cash value.

But it is claimed that credits are not really property. And here was the case cited by the gentleman from Kern, Mr. Gregg, where one man owned a horse worth three hundred dollars and sold him to another man and took his note for him, and that man sold him to another man and took his note for him, until there were six men who had bought the horse. The gentleman says no new property was created, and held that the man who had simply given his note, or who had received a note, should not pay taxes on it. Now let us suppose that that horse was all the property and these six men were all the men there were to pay taxes in the community. Each man had the ability to pay the note, or the men who sold the horse never would have taken his note. If the horse must pay all the tax, then one man must do it and the other five of them who have the ability to pay the value of the horse escape taxation entirely. But what should we do if the horse should die? The State would be bankrupt or else you must tax the ability to pay. It is absurd. We must not only look for the property, but we must look for the ability to pay the tax which pays for the protection and privileges.

And now, sir, in regard to growing crops. There is not a man in the State but what has a prospective income. Do you tax him upon that? A growing crop is nothing more than a prospective income. It may grow, it may mature, it may be gathered; but on the other hand, the blasts of heaven may come down upon it and blot it out in a single night; and not only the crop itself, but the labor, the sweat, and the toil of the men who have put it in have gone. The hopes that were raised are blasted and the ability of the man to pay the tax on it has gone. It is only a prospective income and we have no right to tax it.

One other word in regard to capital. They say if we put a tax on credits, one of two things will follow: either the man who lends the money will compel the borrower to pay the tax, or else, if that is not accomplished, money or capital will leave the State, and it cannot be borrowed. Well, now, if it could depend perhaps entirely upon the individuals in this State who have money to loan, that condition of affairs might occur. The capital might be withdrawn until they could bring the people to the necessity of paying what they saw fit to ask for it. But, fortunately, capital is like all other commodities; it follows the law of supply and demand. It seeks the best market always; and if there are not people in this State who are willing to loan money at a fair rate of interest, there is plenty of capital elsewhere that will find out that condition of things and come here for investment. That is nothing but a bugbear. I tell you that the property is good for the capital that is loaned upon it, and capital will come here, and distance is no bar to the travel of capital. It goes wherever the telegraph goes, and it goes in an instant.

Now, sir, there is just one other word I wish to say in regard to the plan introduced by Judge Hale. If I understand it correctly, it not only compels the person who has the property in his possession upon which a mortgage rests to pay the tax upon the full value of the property, but if he has borrowed money, he must also pay the additional tax upon the borrowed money. If I own a farm worth ten thousand dollars and the Assessor finds me in possession of it, I am taxed for that farm ten thousand dollars. If I have borrowed five thousand dollars and the Assessor comes to me and finds that I have borrowed five thousand dollars—perhaps I have not had time to put it into improvements upon my farm—he finds it in my possession and I am taxed on the additional five thousand dollars; so that instead of having to pay taxes on the ten thousand dollars, I have to pay on the fifteen thousand dollars.

I have no redress; I have no rebate. I have no relief until I am able to pay that money back again. Now, that is no relief to men when they need it. Men need this relief when they are borne down by the burden of debt. When they are ready to pay the indebtedness, when fortune has smiled upon them and they have succeeded in gathering together the means with which to relieve themselves of this burden, then they do not so much need this rebate. They need it when it pinches upon them.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: It seems to me that no other matter which we have considered will have so much weight as to whether this Constitution is adopted or not, as a wise article in regard to taxation. Now, sir, having been a member of the Committee on Revenue and Taxation, I have been very careful in examining the various propositions in committee. One gentleman has stated that as long as the State got the revenue, it made no difference who paid it. That is, that all the State has to do is to get its revenue out of the property in the State. Now, it seems to me that this is not all there is in this proposition. It is not enough that the taxes shall be collected from the property of the State. We must go farther, and say who shall pay them, and there is where the difficulty comes in. Unless the State is just in dealing with its citizens, we cannot expect that the citizens will be just in dealing with each other; and it seems to me that the true proposition, in determining as to whom the tax shall be collected from, is this: That each man shall pay taxes upon what he is worth. Now, this question of the taxation of mortgages has become an interesting one, not only to the borrower and lender, but to the men who neither borrow nor lend. The natural sense of justice which exists in every man's mind, and which controls the way in which he thinks and acts, has had some weight in this matter. The men who neither borrow nor lend stand up and say that the law should be just as between borrower and lender. Now, sir, I know a man who loans two hundred and forty thousand dollars, and receives quarterly a high rate of interest—a rate of interest that has broken many a man who attempted to pay it—and, sir, he pays taxes on three thousand five hundred dollars, being the assessed value of the house in which he lives. And yet his income, in the way of interest, is nearly forty thousand dollars a year. Now, sir, the people of this State look at such examples as that, and they say that a law which results in a man's being taxed on three thousand five hundred dollars who has a regular income on two hundred and forty thousand dollars, is an unjust law. This must be remedied, and it must be remedied in the simplest way. We must make not only a law in regard to taxation which is just, but we must also make a law which shall be practicable. A law which is just, and which cannot be carried out, would be a very poor law indeed. It seems to me that the propositions of Mr. Boggs and Mr. Huestis have at least one element that is a strong element, and that is that they are practicable. They collect the taxes directly from the property. They make the property, where it is found, pay the taxes, but at the same time they adjust the relations of debtor and creditor in such a way that while the debtor directly pays the tax the creditor indirectly pays his share of it.

Now, sir, the proposition introduced by the Committee on Revenue and Taxation, in section five of their report, and which is incorporated into the amendment offered by the gentleman from Humboldt, Mr. Huestis, has one strong feature in its favor which is not in the proposition of Mr. Boggs, and that is this: Supposing that my friend here, Mr. McCoy, has a farm worth forty thousand dollars, upon which Mr. Larue has a mortgage of thirty thousand dollars, the mortgage due in three years. Now, sir, there is a little injustice in proposing that Mr. McCoy shall pay the tax on Mr. Larue's thirty thousand dollars, and wait three years to get the benefit of it. The proposition comes down to this, that Mr. Larue has an interest in that property to the amount of thirty thousand dollars on the day that it is assessed, and yet you say that Mr. McCoy shall pay the tax on Mr. Larue's thirty thousand dollars, and wait three years to get it back. Now, sir, this portion of Mr. Huestis' proposition is better even than Mr. Hale's. In the same respect is section five of the committee better than Mr. Hale's, for the reason that the tax is assessed directly against the mortgagee, and he shall pay the tax he ought to pay.

MR. HALE. Is not the matter between the debtor and the creditor made exactly even and right?

MR. CROSS. If he has got one thousand dollars and wants to put it out at interest, he has got the right to do it; but if he has not got the one thousand dollars, then what? Why, he has got to advance it at the rate of interest which he is paying on the mortgage.

Now, I pass to another proposition in the amendments. I refer to the matter of taxation of the capital stock of corporations. I was not here until this morning, but I have inquired of gentlemen who have been present, and they tell me that this matter has not been touched upon. Now, with regard to the taxation of the capital stock of corporations two propositions are involved. This section, as presented by the committee, and the amendments offered by Judge Hale, for Mr. Boggs, and also by Mr. Heustis, say, in effect, that the capital stock of joint stock corporations shall be taxed. That, taken in connection with the first section, amounts to this: that it shall be taxed at what it is worth. This matter of capital stock, to my mind, presents itself merely as an evidence of ownership in property. If I own ten shares in any corporation, I care not what, I have to stand my tax upon the property which that corporation owns. That is, taxing it once. Again, when the capital stock is taxed, that same property is taxed again. Then, sir, I must pay a double taxation. Suppose my friend here, Mr. Reed, is engaged in farming a place which involves a large outlay of money. He, to-day, has to pay a tax upon land which is worth four hundred thousand dollars. Suppose that he and Mr. Caples, and Mr. McFarland, and Mr. Kelley, and others, should incorporate that property and proceed with the same class of business, carrying on his agricultural pursuits. Now, the property is worth four hundred thousand dollars; then the capital stock of the corporation will be worth four hundred thousand dollars. No new property has been created, but the company will have to pay the tax on four hundred thousand dollars of property, and the stockholders will have to pay a tax upon the four hundred thousand dollars of capital stock, while the amount of property taxed is only worth four hundred thousand dollars. I am opposed to double taxation, because I believe that double taxation is unjust. It is double taxation to tax the property and then tax a certificate of stock which represents that property. What does that certificate show? It shows what share I have in the property, and that is all it shows. It is just the same as if I had a deed to a rancho. If I have a deed for a rancho, would any man say that I have to pay on the ranch, and then on the deed? Tax the property, tax the tangible thing, tax the thing that has the value, but the capital stock has no value of itself. Why? Because the corporation to-morrow may sell the rancho, and then what is the stock worth? It is worth nothing, because the thing it represented is no longer the property of those holding the capital stock. Now, sir, the capital stock has no value in itself, only as it represents something else. I would suggest that it might be proper to have it read "capital stock of corporations, or joint stock corporations, owning, controlling, leasing, or occupying property out of this State." That, sir, will cover, it seems to me, all the property of which we desire to tax the capital stock, and the reason why I would be in favor of taxing that class of capital stock would be this: Take, for instance, the Comstock mines; a large proportion of the stock is owned in this State, and that class of property has to be protected here. Our State is liable to be put to the expense of proceedings in Courts for the purpose of protecting that property, and, it seems to me, that the State should derive some revenue from it; and if an opportunity offers, I shall offer an amendment to this section, or to this amendment, if it should be adopted, that the capital stock of corporations owning property out of this State should be taxed.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: Members have occupied a great deal of time, amounting to five or ten thousand dollars in cost, in the statement of an opinion in which we all concur—that we ought to provide for a good system of taxation.

Considering that point as determined, we may properly turn our attention to the precise question before us. The report of the Committee upon Finance and Taxation proposes to tax the capital stock, the franchises, and all the visible property and assets of corporations. The amendments of Mr. Boggs and Mr. Huestis each propose to do the same thing. These amendments each further propose to tax solvent debts, when unsecured, bringing them into the same category as debts secured by mortgage, as to set-off of debts due from against credits due to the person assessed. There is a slight difference between the two as to the time of adjustment of taxes paid, as between debtor and creditor, but the result as to the government is the same. Both these amendments, however, keep up the idea of double taxation. A sells to B a chattel for a given sum, and takes his note for the amount. A is taxed for the note, and B for the chattel. This, of course, is double taxation. It is said this result can be obviated by allowing one sum to be deducted from the other, or by some forced adjustment between the parties as to the tax. That the general principle, that a man should be taxed for only what he has, would bring these cases within the category existing as to mortgages, admits of no doubt. But the want of practicability in this scheme deterred the committee, as it has others hitherto, from its adoption. The opportunity for imposition, oppression, and constant dispute which would arise under such a plan, have been regarded as too formidable to be unnecessarily encountered.

The second section proposes that all property, including within that term franchises, and the capital stock, and all tangible property of corporations, and joint stock associations, shall be taxed. I quite concur in what has been said by Mr. Cross, that it is quite correct to tax franchises, the right to do business, and the visible property only, as these constitute all there is of value belonging to the corporation.

There are some of these eastern Constitutions that in terms tax corporate property by four or five names, every one of which includes everything they have got. The great injustice of taxing a franchise, and all the property of the corporation to it, and at the same time taxing their equivalent, the capital stock in the hands of the stockholder, seems never to have occurred to the framers of such Constitutions. But a discussion of this provision will more properly arise after these amendments are disposed of.

In the fifth section the ruling language in which is my own, and was drawn for the purpose of complying with the wishes of members of the committee, I have expressed the principle as to taxation of mortgages, I hope satisfactorily. I think it necessary, however, to warn gentleman that the borrower of money will be in no way benefited by this provision. Perhaps if the proposal of Judge Steele was to be adopted, the enactment of an usury law, supplemented by a provision compelling the holder of money to lend it at the legal rate, the borrower might be much relieved. But nothing short of this promises any advantage to him. The only possible advantages I can see in this provision, are justice in the allowance of the set-off taxing the whole value of the mortgaged property in the county in which it is situated, and creating in the mortgagee an interest in the rate of taxation and in good government. As this provision contemplates a fixed rate of interest, having no fluctuations dependent upon high or low taxes, it behooves the mortgagee to interest himself to keep down taxation. Now, so long as his security is absolute, he is a simple spectator without any interest to interfere in public economics.

MR. DUDLEY, of Solano. Would not the rate of taxes affect the rate of interest?

MR. SHAFTER. Undoubtedly; for the anticipated tax will neces-

sarily enter into the rate of interest. As I have already said, the main benefit to be derived will be to the whole community by stimulating both parties to the mortgage, to a vigilant discharge of their duties as citizens. It is perhaps not beyond hope that this increased interest may sometimes procure us a Legislature having some slight fitness to pass upon this knotty question of taxation. This provision in the fifth section increases the chances in this direction.

Any attempt to prevent the lender from recouping the tax which he may have to pay, will simply drive money out of the country. Perhaps it would have been better for us if money had been kept out, and we had not borrowed so much. I assent to the statement that the mortgagees are going to own this State under the present system. I think as things are now that we are in the hands of the money changers, or soon will be, unless some other scheme is devised before long.

The material trouble we have had is our utter inability to secure equality in assessment. There has been no central authority having the power of equalization. The Spaniards who were in the first Constitutional Convention, jealous of the Americans, insisted upon confiding the power of assessment to County Assessors without any control or supervision. The result has been a most perfect inequality. The whole intent expressed in the initiatory clause of our Constitution, that all property shall be taxed in proportion to its value, by the action of the Assessor is entirely defeated.

Taking these various provisions together, the proposals of the committee (saving double taxation) meet with my approval, and, as I see in the amendments proposed only change for the worse, I trust they will be defeated, and the report in these respects confirmed.

The creation of the Board of Equalization will relieve us from the scandalous condition now existing. Lands in some counties assessed at from twenty-five cents to one dollar per acre, and sold at from three to ten dollars per acre, while in other counties improved lands are assessed so high as to reduce the net income to less than six per cent. per annum, and in some cases the result is simple destruction of all value in the property. My taxes are sixteen to twenty per cent. upon the gross revenue, and that is equivalent to confiscation. This state of things creates with me the strongest motive to sell out.

There is a proposition spoken of here to provide for an income tax. The evils resulting from this variety of tax are too well known I trust to leave such a proposal any chance of adoption. Perjuries, now unfortunately not rare, would become the rule and not the exception.

THE CHAIRMAN. The gentleman's fifteen minutes have expired. [Cries of "leave," "leave."]

MR. SHAFTER. I am obliged to the gentlemen. The provision in these amendments, as to the time of offset of a tax paid by the debtor upon his debt, and the method of ascertaining the amount in case of payment after assessment and by levy, are so uncertain as to leave the provision seriously objectionable. In the proposal of Mr. Huestis there is an attempt to consolidate at least the matter of several sections into one. I think this destroys perspicuity, and that it is much better to leave distinct matters in separate sections, notwithstanding that they belong to the same general subject.

If the compilers of the Scriptures were authorized to separate the text into chapters and verse, where no such arrangement originally existed, for the sake of perspicuity I trust we may do it here.

I hope we may adopt the second and fifth sections, with the exception of what relates to franchises and stock corporations.

I am obliged to the Convention for its courtesy.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: It is utterly impossible for me to discuss, as I desire, a proposition in Mr. Boggs' amendment, simply because I have not the voice to do so, and must therefore content myself with making a very brief suggestion. It has been suggested by the gentleman from Marin, Mr. Shafter, that the scheme of the Boggs amendment is open to the same subjection which he says lies to the Huestis amendment, namely, that it provides for double taxation, although he does not speak confidently upon that point. I wish to say that as to the manner of the taxation of the capital stock, if this proposition shall, in its general provisions, be accepted, the committee can correct it in that respect if they deem it faulty. The only proposition I wish to address myself to is the distinguishing feature of this amendment, and that which distinguishes it from the report of the committee and the Huestis amendment; and that is the mode in which it deals with the question of debts and credits. The proposition, as I understand it, and it seems to me that it does not admit of two interpretations, is this: that debts and credits shall not, for the purpose of taxation, be taken into account by the Assessor; but that in view of the fact, which is recognized as such in the article, that the debt—or to speak more correctly, the credit to the creditor—is nevertheless an interest in the property of the debtor, and on which the debtor pays taxes, and he ought in justice, as between himself and the debtor, pay a tax upon so much of the property of the debtor as is represented by the credit. I am not certain that I make myself clear, but the intention of the article is this: that every creditor has an interest in the property of his debtor to the extent of his solvent credit. Because, if it be not solvent, or in other words, if the debtor has not the property out of which to pay the debt, it is not solvent, and the proof of the solvency is established by the fact of payment. No question can arise, because the fact of payment establishes the fact of its solvency. Now, then, the debt being paid, thus establishing the fact that it was a solvent debt to the creditor, a debt solvent as against the debtor, then comes the question: What shall be done as between the two in respect to the taxes paid upon the property which was represented by the debt before its payment? This article deals with it from this standpoint: that upon payment being made, thus establishing the solvency of the debt, that the creditor shall rebate, or the debtor shall have a credit upon the payment of all the taxes which he has paid, and interest upon the taxes he has paid, at the same rate which the debt bore, which is paid. Now, the assumption is that this makes the matter exactly equal and fair between debtor and creditor. The government must look to property for the payment of its taxes. All of this discussion, proceeding upon the assumption that the government may look to the creditor to pay taxes, is pure absurdity. It is utterly impracticable. Government must look to property that is visible and tangible and out of which the taxes can be obtained. All the experienced writers upon the subject agree substantially upon this proposition. And, therefore, when you undertake to divide up between the debtor and the creditor as in respect to mortgages, and say that you will make the mortgagee pay the taxes upon the value of the mortgage, and if you then tax the mortgagor or the owner of the property, all the excess of the value of the property over and above the debt, and release him as to the balance, then you have got nothing but the personal responsibility of the mortgagee. He may be in New York; he may be in London; he may be in Paris, and you will find it impossible to collect the revenue upon that basis. If you attempt that, you will only be getting taxes upon the difference between the indebtedness of the county and the value of the property. Now, then, in view of the fact that the government must look to the tangible property in the county for its revenue, you must adopt a system by which you can realize a tax upon its full value. It is said, and said truly too, that a solvent credit to a creditor is properly within the protection of the law, and is as beneficial to him as any other property, and upon every consideration of justice and equity, should bear its burden. Nobody can question the truth of this. But it is likewise represented in the value of the property upon the faith and credit of which it has been loaned. That is all there is to it. Now, it makes no difference whether solvent debts are secured by mortgage or not secured by mortgage. We know as a matter of fact that a large percentage of the commercial transactions in San Francisco are not so secured. Merchants in the country owe bills in San Francisco. Money loaned there to carry on manufactories and other business, is not secured generally by mortgage. It is only in the farming business where debts are secured by mortgage to any great extent. No man can give a reason why a solvent debt, not secured by a mortgage, should be any more exempt from taxation than where it is secured. The same rule which will apply to one will apply to both. It takes no more money to pay an unsecured debt than it does to pay one secured.

This scheme treats of debts from the simple standpoint of their solvency. The fact of solvency can alone be established by the fact of payment, and when the payment is made, then there is a complete and equitable distribution, because the creditor is compelled to make a rebate equal to the amount of taxes paid and the interest upon the taxes at the same rate that the debt has borne. It is equal and just. It is as simple as the proposition can be, and I say that it does not involve double taxation by any possibility. It simply eliminates from the taxation roll the gross credits of the State. Mr. Chairman, I believe it is a simple, a correct, and a satisfactory solution. I believe that it would work practically in the community; that it establishes the relation between the debtor and the creditor, and their duty to the government. The debtor has the property, and if he fails to pay the tax, you have recourse to the property by protest in the nature of an execution. There is no escape from that. That is the interest of the government. Then, as between himself and his creditor, this rule disposes of the matter, and makes each part bear its proper burden. If I am a farmer worth ten thousand dollars, and my friend, Mr. Edgerton, loans me five thousand dollars, which I may use in making improvements, for nobody borrows money to put in the bank. A man is a fool that would borrow money to hoard it. When I borrow the money I do not keep it; I put in improvements; and, therefore, all the money I have is represented by the property which I have. Now, the government must look to me for the taxes on that ten thousand dollar farm; but when I come to pay Mr. Edgerton, who has all the time had an interest in my ten thousand dollar farm equal to five thousand dollars, he must pay me back the taxes I have paid upon this five thousand dollars, and interest at the same rate which it has borne. Neither of us have been compelled to pay more than that which we were equitably bound to pay, and the government has secured the taxes upon the whole property. I say that this solution is absolute: it reaches every case of debt in the State; it covers all cases; it is practical; and it is a solution of this question which I believe will be satisfactory to the people. I trust it may be adopted. With respect to the question of the taxation of the capital stock and franchises, if we agree upon this main proposition, we can remedy it in its details when we come to that part, after we have passed upon the main proposition. I do maintain that this proposition is simple; that it is correct; that it will work satisfactorily; and is a solution of the question.

MR. BARRY. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have directed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

INCOME TAX.

MR. BARTON. I ask permission to introduce a resolution.

THE SECRETARY read:

Resolved, That the President of this Convention be directed to appoint a committee, to be known as the Committee on Income Tax, and it shall be the duty of said committee to prepare and report to this body, within five days after their appointment, a plan for the levying and collection of an income tax, said committee to consist of five members.

THE CHAIRMAN. The hour having arrived, the Convention will take the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

RESOLUTION.

MR. BARTON. Mr. President: I wish to call up the resolution I offered before recess, and move its adoption.

THE SECRETARY read the resolution:

Resolved, That the President of this Convention be directed to appoint a committee, to be known as the Committee on Income Tax; and it shall be the duty of said committee to prepare and report to this body, within five days after their appointment, a plan for the levying and collecting of an income tax, said committee to consist of five members.

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

MR. EDGERTON. I move the gentleman name the committee. I think it is a very singular time to offer such a resolution as this. I hope the resolution will not be adopted. I move to lay it on the table.

Carried.

REVENUE AND TAXATION.

MR. EDGERTON. I move the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the article on revenue and taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section two and amendments are before the committee.

SPEECH OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: The matter before the committee is the amendment of the gentleman from Humboldt, Mr. Huestis, and the amendment of the gentleman from Placer, Judge Hale. While I find a great deal that is not satisfactory to me in the amendment to the amendment, there is one proposition in it that appears so extraordinary to me that I must be excused for bringing it before the attention of the committee. I will read the amendment:

"All property in this State, including franchises, capital stock of corporations, or joint stock associations, and solvent debts, excepting growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States, or to this State, or any county, city and county, city, or municipality thereof, and including all property, real and personal, belonging to and devoted to public use in all public school districts and departments in this State, shall be taxed in proportion to its cash value, to be ascertained as directed by law. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroads and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof in the county, or city and county, in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, respectively, and may be paid by either party, or his successor, to such security; if paid by the owner of the security, or his successor, the tax so levied upon the property affected thereby shall become a part of the debt so secured. If the owner of the property, or his successor, shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof. And in respect to all other solvent debts, there shall be no reduction made, as herein provided, from the full cash value of all property of the debtor or debtors owing the same, on account of such debt or debts; but he or they shall, on payment thereof, be entitled to retain therefrom a sum, with interest thereon at the same rate borne by said indebtedness, to be computed from the time or times of the tax payments, which shall equal the amount of taxes which may have been paid by such debtor or debtors during the existence of such indebtedness, upon property of like amount in value of said indebtedness; *provided*, if any indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy, for that year, may likewise be retained by him or them, and shall be computed according to the tax levy for the preceding year."

Now, sir, if that language means anything it means simply that if the debtor gets to the office of the Tax Collector first, and pays this assessment on this mortgage, he saddles it upon the creditor. But if the creditor, being more fleet of foot, should get there first, and pay it, he saddles it upon the debtor. Now, sir, I confess I am at a loss to understand the object in view. But it does seem to me he must have had in mind——

MR. HUESTIS. The object was to protect the revenue of the State by providing that in case the debtor refused to pay the tax on the property the creditor could do so, and then have recourse upon the debtor for the amount.

MR. CAPLES. If the gentleman made any mental reservations, I am not responsible for it. As far as security to the State is concerned, the property itself is there and is security for all you assess against it, and you need have no fears about the security, because the property is always there, and you can enforce the demand by taking the whole property. I defy any gentleman to give it any other construction than the one which I have put upon it. You cannot torture or twist the language so as to make anything else out of it. It is so evidently a joke that I feel at liberty to assume that the gentleman so intended it.

There are several distinct systems or theories of taxation proposed. It is proposed to have a system of credits and demerits. The proposition embodied in the amendment of the gentleman from Placer, embraces, in my judgment, perhaps the best solution of this question of any that have been conceived. This amendment, however, embraces some matters foreign to the subject, which should be left out. And I understand Judge Hale to say that he will move at the proper time, to strike out that matter concerning corporations—taxing the capital stock of corporations—for there is merit in this new idea which ought to be presented to this committee alone by itself, so that it could stand upon its own merits, and be judged without being hampered by other matters. Therefore, I hope that he will move to strike out that extraneous matter. Then we may be brought to a vote upon this new proposition called the Boggs proposition, which is simply this. And I will undertake to say that no system of taxation has been proposed that was so simple, and yet so well calculated to secure the ends of justice, secure the taxation of all property, and yet tax no man twice. It has been urged by gentlemen who have not taken the trouble to inform themselves in regard to the nature of this proposition, that it would defraud the State of revenue, as though it was proposed to allow this rebate against the State. Now, I must beg these gentlemen to read the section, and they will find there is no rebate proposed as against the State. On the contrary, all the property a man has, personal, real, and what not, shall be taxed without rebate at all, as far as the taxing power is concerned, as far as the State is concerned. He must pay it all. But he is allowed a rebate as against the creditor. Now, there can be no confusion. The Assessor has nothing whatever to do with the matter. He simply assesses what is in sight. All the property he can find, of whatever character, he must assess. And this matter of rebate is left between the debtor and the creditor. The State has nothing to do with it, further than to guarantee the right of rebate to the debtor.

I say that of all the systems of taxation that have been proposed this is the simplest of any, and the most illiterate man may comprehend it at a glance. There are other systems proposed, and I propose to notice casually some of their merits. The other has, perhaps, more strength than any other. It says that all property, and all credits, bonds, and evidences of debt shall be taxed. Of course this would preclude the idea of rebate, and it would be in fact double taxation, because if you assess all property without allowing any rebate, and then assess the creditor separately on his bonds, or mortgage, or his notes, you simply assess him twice. You allow no rebate; it is out of the question. If the proposition be adopted to assess all property and all evidences of indebtedness, we must leave out the other proposition, and allow no rebate as against the creditor. It is argued for this proposition that it will increase the aggregate of taxation of the property in the State, and it would undoubtedly do so to the extent of three or four hundred millions of dollars; and that the increase in the aggregate would reduce the rate. To that extent it would be a relief; but, sir, we must not forget that justice and right between man and man ought to be the leading consideration in framing an organic law. Let us see how this would operate. The rate is reduced, say from forty to thirty per cent., by increasing the amount of taxable property, and he who is not a debtor would be benefited to the extent of this reduction. But how is it with the debtor? How is it with the unfortunate debtor, who is entitled to more sympathy than any other class, for the reason that they are engaged in those industries which help to develop the resources of the State under very great difficulties—that is, they lack capital. They must borrow it, and under this system they would pay on all the property in sight, notwithstanding that they own but a fraction of it. It may be that a farmer has fifteen thousand dollars capital. That is all he is worth; that is all he has. His place is mortgaged for ten thousand dollars. Here is a man in reality worth but five thousand dollars, yet he is compelled to pay taxes on fifteen thousand dollars. The people of this State demand that this Convention shall relieve that class of men from this unjust burden. No other thing was so well understood, as that the man with limited means should have the burden removed from his shoulders; that he should be compelled to pay only on what he is worth, not upon what he has not got; pay for his own part of the property, and that his creditor should be compelled to pay on that part of the property that he holds as security for the payment of a loan. That is so right, and honorable, and just, that no man ought to dispute it.

But gentlemen say if you tax the mortgage you simply impose upon the debtor the obligation to pay on all his property the whole aggregate amount, and then he will have to pay again on the mortgage, and that the owner of the mortgage will demand a stipulation of this kind. That is the most potent argument in favor of the Boggs proposition. That cuts off every species of double taxation, and imposes a tax upon every man for what he has, and not for what he has not got. If you go through the whole list of schemes, you will find in every instance that there are some principles which will bear unjustly upon this man, or upon that class. But this proposition introduced by Judge Hager is free from charges of that kind, as far as I have been able to reason upon the subject. As far as I have heard the views of the gentleman, I have failed to find, in a single instance, where a single valid objection can be made, or where the proposition is not reasonable or just. The argument against it is made by those who have not taken the trouble to inform themselves, that it would complicate assessments. Now, that is a very great mistake. On the other hand, if you should undertake to assess evidences of indebtedness, then indeed would you be confronted with difficulties higher, in fact, if not utterly insurmountable. Because I defy any intelligent man to devise a law whereby it can be done. He might do it to a limited extent, but it has never been done within thirty per cent., nor within fifty per cent., according to the reports of the New York Commissioner. It has been almost an entire failure, and we can all see why it is a failure. The Assessor comes along and says: "What have you coming to you; money loaned?" "No, sir; no money loaned." Very well, sometimes he is sworn and sometimes not. I will undertake to say that in a majority of cases it makes little difference whether he is sworn or not. The truth is that whatever system is

adopted we must avoid, above all things, offering a bonus for trickery, fraud, and perjury; and any rebate as against the State, would, I undertake to say, take away from the State her revenues. The assessable property of the State amounts to six hundred million dollars. It would fall away, under a general system of rebate, to a very small part of that sum, and the State would be without revenue. Therefore I assume that this proposition will not be seriously considered. In fact, it is simply and entirely unworthy of any consideration, and has very few defenders upon this floor. The real contest here is between the Boggs proposition and the other to assess all property and all evidences of indebtedness. That is where the real contest lies. One system reduces the rate of taxation and benefits him who is not in debt. But the point to be reached is, is it just. Is it just to the debtor. The true theory of taxation is to impose upon every man an obligation—an absolute obligation—to pay and contribute to the support of the government, in proportion to what he is worth, in proportion to what he is able to pay. Now, sir, it appears to me that there can be no question that the proposition proposed by Judge Hager, if this other matter be taken out, is the best and most just system that can be adopted, and at the proper time, after the disposal of this other amendment, I shall move to strike out this other matter. Then the committee will be in a condition to express an opinion upon the merits of the proposition.

SPEECH OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I recognize, notwithstanding that every succeeding report has been designated by members as the most important yet before the Convention, that the question of taxation, now being discussed by the people of California in their Constitutional Convention, is, perhaps, of more importance and greater in its bearings than any of the great reforms now demanded to be remedied. And, sir, it is to some extent a new question. While other States have been making advancement, while new issues have been arising in the politics of the country, as in the matter of the regulation of corporations, etc., we find, sir, that none of them have made any material advancement upon the question of taxation. A perfectly uniform and equal system of taxation has not yet been attained by any of the States. It is remarked by a late writer in the International Review, written since this Convention assembled, that reform in taxation, as yet, cuts no figure in American Constitutions. But it is a fact of importance, that due deliberation is evident, and I am glad to see this solicitude on the part of this Convention. In consequence of the great inequality, and the heavy proportion of the burden borne by the poor, by the manufacturing and producing classes, the grievance is deep and widespread, and all eyes at this hour are turned toward this Convention, anticipating some remedy. And the more we consider this great question the more we are forced to concede that we know little about it. The idea with a great many is, that by simply taxing all securities we will satisfy the people. We know that such is not absolutely an equal system of taxation, and so long as there is a feasible proposition which aims nearer than such system seems to do, it should command at least a thorough investigation. Such a proposition I conceive to be that which is offered by my colleague, Judge Hale, originated by the gentleman from Lake, Mr. Boggs, wherein it is declared, or the foundation is laid for a system, declaring what shall be taxed; or, in other words, everything that possesses value. It provides for the payment of taxes upon all property, but it also provides that those least able may escape from the payment of taxes upon that which, in reality, they do not own.

Under our present system, every industrial interest which ought to be fostered and protected is burdened out of existence. The farming interest has been spoken of here. The farmer is, from necessity, compelled to expose everything he has in his possession, and it is all taxed. Nothing escapes; nothing can be hidden. The merchant and trader have no means of escape. The manufacturer, though compelled to borrow money at high rates, is also compelled to pay taxes on every dollar in his possession. And while this is a fact, that this class, above all others, which we should foster and aid and protect, under a wise system, yet, sir, vast concentrations of capital—water companies and insurance companies, banking corporations, railroad and steamboat companies—have escaped taxation in a large degree. Under our system it is so plain that the money lender absolutely escapes taxation, and grows fat on the proceeds of his wealth, while those to whom he lends are frequently taxed twice. And I shall oppose the idea of taxing all the property, and also the securities. I will remind those who do, of this proposition. We have had a large experience in California in that system; in fact, we have had most all kinds of systems here, and it occurred to me, while the gentleman from Alameda and the Chairman of the committee were debating over the decisions of the Supreme Court, that you could prove almost anything by the decisions of the Supreme Court of this State. We had a system at one time when mortgages were taxed. Under that system I will ask, was not this the fact: a man going to another for the purpose of borrowing money was confronted by the fact that he would be compelled to pay the tax on this mortgage, and of course he must demand a little higher interest, which of necessity was conceded. Hence the party borrowing the money, though paying taxes on the property, at the same time had to pay taxes, in the shape of a higher rate of interest, on the mortgage; and hence, sir, while the system involves absolutely double taxation, the double taxation falls upon the poorest man, and the one least able to pay. Therefore, it is time we had a system by which the poor man will be able to pay on what he owns, and no more.

Now, sir, we have a proposition here which is worthy of careful consideration. I don't say it is perfect; but I will state to the gentlemen who attack it, that while it may be defective in some respects, nevertheless it is within the capacity of this Convention to remedy such defects as may exist in this section. I do not believe it was proposed to offer a complete system in one single section. But it is founded on equality and justice, and after we adopt the principle we can follow it up and make it effective, and arrange the details. The idea laid down here is that all property, all wealth in the State of California, of whatever character, shall be taxed—everything that has value, shall be taxed according to its value. By this means we will bring the assessment roll up to something near what it ought to be. It is estimated that about sixteen twentieths of the property of California escapes taxation, and, sir, to provide a way by which this property can be brought to bear its proper burden of taxation, and if we can do that, the mere pittance of the cost of this Convention will be more than paid for in three months, under such a system. By adding to the assessment roll that which now escapes, we necessarily reduce the rate of taxation, and of course this will result in great benefits to the people, and will be fully appreciated. It is our bounden duty to bring this property on to the assessment roll. Now, if some of it is incumbered, in that event the incumbrance might be held by parties outside of the State, and by deducting the amount of incumbrance, we would lose so much tax on that property. Take a railroad company. Most of their debts are owing to foreigners. Therefore, let us assess every bit of property at its precise value.

MR. BLACKMER. Tax everything that can be exchanged.

MR. FILCHER. I say the paper has no value; it represents something tangible somewhere else—either in land, or other possessions. There are certain tangible values—money, real estate, personal property, etc—existing. If we can find all this property we will add greatly to the assessment roll. But where a man is so unfortunate as to have ten thousand dollars worth of property incumbered to the extent of nine thousand dollars, I say it is not just; he has to pay interest on that, and he must work his way out. I say that one thousand dollars should be his just tax, and no more; therefore, it is provided in this that he shall have a rebate to that extent. It holds the property wherever found, for the tax, no matter who owns it, or in whose possession it is. I would make the property pay the tax; if you do not you are liable to lose it. But, though the party holding it may not own it in fact, on account of the incumbrance, yet he pays the tax and is entitled to a rebate to the amount of the incumbrance, and he therefore pays taxes on exactly what he is worth—such a system is defined in this section. If I pay taxes on five thousand dollars worth of property which is incumbered, though I pay the tax this year, and perhaps the year following, yet, when such time may come round that I shall pay off my indebtedness, then I go to my creditor and get both interest and principal back upon the taxes I have paid for him. He is the man that is worth the money, and why should he not, at least indirectly, be made to pay the tax? That is the system here. That is the idea. I, in the meantime, pay exactly what I am worth, and he is paying on what he is worth. The system is not direct, but we have to do the best we can. It is conceded that you cannot do it directly. The ingenuity of the members here will not do it. The intelligence of the world for the last two hundred years, though striving after this result, has never produced a system that is direct. I do not believe that we can frame, with all our wisdom, a system that will work perfect equality, but we are justified in driving at that end, and coming as near to perfection as possible. I say that while this system may be good in many respects, it is good as far as it goes, and I think it becomes our duty—we are not prepared to vote on it now—to consider it and satisfy ourselves whether there is any other system advocated here which will be better.

There is another very important proposition. There are institutions on this coast, foreign institutions, insurance companies, etc., who are doing business on a capital of almost millions, many thousands at least, and when the Assessor goes there he finds in their possession a few hundred dollars worth of property, and there is not a thing he can find to assess of all their wealth, while, at the same time, their hundreds of thousands invested draws from the people of the State a large interest. I do not know how we will reach them, and yet, if they can be reached, I say we should do it. The system of taxing everything will reach them largely, because their money will be found at the banks to some extent. I have no labored argument to make, I am simply in favor of this proposition. Perhaps it is not, within itself, a perfect system, but let us give it our calm and earnest consideration, and if we discover where it is defective, let us proceed to remedy it.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I do not propose to occupy much time in the discussion of this question. I feel my inability to understand the subject. It is with extreme hesitation, even, that I venture to cast my vote. I have not heard all the discussion since the question of taxation first came up; but there are certain ideas that occur to me. I have certain opinions as to what is best in the abstract; and I have a sort of a knowledge, too, as to the opinions of others.

This subject of taxation is one in which we should not only be governed by our own judgment as to what we consider best, but also as to what is most satisfactory to the people. Now, there may be several systems proposed, one of which you may think is best, but which I might think bad, and a majority of the people might be better satisfied with some other system. Therefore, I think it is my duty to favor, as far as I can conscientiously, that which will be more satisfactory to the people of the State on the subject of taxation, because it is the people who have to pay, and above all things else taxation should be as near as possible satisfactory to the people. This subject is one that was discussed as much as any other during the canvass preceding the election, as well as subsequent to the election. I heard other questions discussed, but none to such an extent as this. Now, it was conceded that our system under the old Constitution was very defective—did not work equality. The old Constitution, with the construction of the Supreme Court, whether the people were right or wrong, worked what they considered to be inequality. They demanded that all property should

be assessed. I have heard them say that a man who loans one hundred thousand dollars, and lives on the interest, should pay taxes on that one hundred thousand dollars, and that it should be assessed as a debt. It is not necessary for me to express my views individually as to whether it is right or wrong, or whether it is advisable, or politic, or impolitic, good or bad. I am satisfied that a majority of the people of this State demand that everything that has a value shall be taxed. On the other hand it is urged by one or two gentlemen here that only tangible property should be assessed. I might personally be in favor of that principle. But let us do one of two things. Let us say that no property except that which is actually visible, shall be taxed, or else let us tax everything that represents value. Tax a man's debts and dues, and credits, and income, and capital; tax notes, bonds, mortgages—tax them all, and allow no deduction whatever, or else tax none of them.

Now, this scheme proposed by the gentleman from Placer, I say, as far as that is concerned, if it is adopted by this Convention, annulling all the reforms for which this Convention was called, it is useless. There is nothing in this scheme that could not have been passed by the Legislature under the old Constitution, and this Convention was called mainly for the purpose of remedying the evils existing under the present Constitution in regard to taxation. Our Constitution requires that all property shall be taxed uniformly and equally. Our Supreme Court has decided that notes, bonds—evidences of indebtedness—are not property. This scheme does not propose to remedy this defect. It does not propose to tax these evidences of indebtedness. It does not claim to, or else the last two gentlemen who advocated it are wrong. I say it is double taxation to tax these things, but I am not prepared to say that it is wrong. There are strong reasons in its favor. But this scheme does not propose to tax debts. It only changes it, and interferes with people's private transactions, so that if a man owes one thousand dollars and pays ten per cent. per annum, why, when he comes to pay up the note, at the end of two or three years, he can deduct the amount of the taxes on that for the whole time. If I owe John Smith one thousand dollars, and the tax on that is at the rate of twenty-five dollars a year, then I may, at the end of the year, pay him that one thousand dollars, after having deducted the twenty-five dollars from the amount of the note for the taxes which I paid. I would like to know if there is anything in the present Constitution prohibiting the Legislature from passing a law allowing him to do that? I think not. That is a matter entirely within the control of the Legislature.

Now, the advocates of this measure of taxing debts argue like this: that property and men should be taxed in accordance with the protection they receive from the Government. The protection a man receives is in accordance with what he owns—what he has. Therefore I might not be worth a single dollar; but I come here and settle down, and find somebody who will sell me a farm on credit, worth, say five thousand dollars. I take the farm and use it. It is worth five thousand dollars. The Government protects me in the possession of that five thousand dollars' worth. I have the use of it. If any trespasser enters there, I can appeal to the law to eject him, as in any other respect my right in respect to that farm can be protected by appealing to the law. Therefore, according to the theory which these gentlemen who are in favor of taxing everything advance, that farm should be assessed without deducting anything. Now, the reasoning is good, because the Government protects me to the extent of the value of that farm. On the other hand, the gentlemen say I have five thousand dollars borrowed from my neighbor. I pay taxes on the money, while he is taxed on the note, and they say that is double taxation. I say it is double taxation, but is it wrong? My creditor pays taxes on the five thousand dollars, because the Government protects him in the possession of it, and if any person should steal it, the Government would arrest the thief, convict him, and send him to State Prison; and he receives five thousand dollars' worth of protection. And if I refuse to pay him the debt, he can appeal to the law and compel me to pay him, and, therefore, in that respect he is protected by the law. Therefore, the advocates of that system of taxation say that only in that way can it be made equal. Whatever my private views may be, I know that the people demand that everything shall be taxed, not only tangible property, but evidences of indebtedness. Now, if we do it, let us tax everything. Let us have no delusions. Gentlemen say that they shall not be taxed directly, but that the debtor shall have a right to deduct the amount of the debt from the value of his property. That is only a delusion; it is no reform. It only says one person shall pay taxes instead of another. The Legislature can say that now. It does not say now that the taxes shall be paid by the borrower or owner of the property, because sometimes it is a very difficult thing for even the Courts to decide who is the owner of the property. They say it is sufficient to hold a man liable to pay the taxes, simply because he has possession and control of it. Now, I am not in favor of interfering in any way between the debtor and creditor. Let them attend to their own affairs. Some men will be wealthier than others. Brains has ruled the world over, and some men will get rich and some will remain poor. I say let us enact a clause directly, declaring that all property shall be taxed in proportion to its value. Then let us go on and define what property shall consist of. Let us say it shall consist of everything tangible or intangible, debts, capital, and everything of value capable of private ownership. Let us define the word "property." Then leave everything else to the Legislature to collect the tax, and let them say who shall have charge of it. If the Legislature in their wisdom had thought it advisable to pass a law like any of these propositions here—like this one, for instance—why, under the present Constitution they had full power to do so. They may say the debtor may pay the tax upon his debts and then deduct the amount from his creditors, or any other arrangement of the kind they might see fit. But why should we make it a constitutional provision? It is entirely experimental, and if we find we have made a mistake, as we are liable to, then you cannot correct it except by calling another Convention. Whereas, if we declare the broad principle, and leave the minutia to the Legislature, to pass laws regulating it from time to time, then, if the scheme does not work well, the very next session of the Legislature it can be modified. The great evil has been in the past that the Legislature has been hampered too much.

Time having been called the gentleman took his seat.

SPEECH OF MR. REDDY.

MR. REDDY. Mr. Chairman: This article, this section, says taxation shall be uniform. The people of this State have been complaining for years because they were not uniform. We have heard what the farmers had to say. They have stated their wrongs. I don't think the people sent us here for the purpose of making a Constitution for the farmers alone, or for any class of persons or property in the State. Now, the farmer complains about many inequalities—that he is treated unjustly. What would he say if he was first taxed for the privilege of engaging in farming, taxed for following the occupation of farming, and then taxed on the value of his farm, and of his personal property, and then, if he happened to incorporate, taxed on his capital stock? Let us see how many times miners are taxed, and see how the farmers would like to be taxed that way. In fact, if the State is going to be taxed four or five times over I am perfectly willing, but I am not willing to have the miners taxed four or five times, and allow the farmers to escape with one tax. There is a provision in the legislative article that each corporation shall be assessed so many dollars upon each share of their stock, or on each one thousand shares, which amounts to a considerable sum. In many cases the money paid to the State would be a great deal larger than the amount of money required to incorporate the enterprise in view, for many times it takes one thousand, or two thousand, or may be twenty thousand dollars to determine whether there is any prospect or not, and if half that sum has to be paid into the State treasury, the enterprise will fall to the ground. That is a tax upon the right to mine in this State. I had always understood it to be the policy of this State to encourage mining, but that seems to be a direct blow at the industry. It is said, however, that it is simply to prevent wildcat mining. Then what is the result? The general enterprise must be destroyed, if there can be no prospecting done. Every mining enterprise that proves a failure, I suppose, may be termed "wildcat," for in every case it requires work and money to determine whether there is a mine or not. But in order to prevent a few wildcat speculations you are willing to destroy the entire industry of legitimate mining. Now, that is the first tax the miners have to bear, and it amounts to a very heavy assessment.

The next is, to assess all property owned by a corporation in the county where the property is. The man works in Winter getting out ore to be worked in Summer, and when the Assessor comes around he taxes ore on the dump. Now, the farmer says that growing crops should not be taxed. The miner takes out ore during the Winter and places it upon the dump, expecting to realize upon it during the Summer season. But that is again taxed. Then, if he does not get through with this ore in time, the Tax Collector will come around again and collect another tax upon the bullion, under this system. Now, we will leave the county. I think he has been taxed sufficiently. I think the farmer would be satisfied with that tax. I think he would conclude that he was pretty thoroughly taxed. Now, go to the City of San Francisco, and there he will be taxed on the corporate stock of his company—another tax. How is that tax to be ascertained? By the value of his mining property held by the company in another county. Is that the end of it? Now, there is where the trouble comes in. You tax the property at its full value, and then tax the corporate stock, which is the mere representative of that property. Now, he is taxed again upon his corporate franchise. What is that corporate franchise? It involves the sole right to some concern. He is taxed three times. Now, are gentlemen really serious in attempting to load the mining industry of this State by such onerous taxes as these? There are certainly three taxes. The franchise has no value in itself; it represents the possessions of the company. It is considered but as a representative of value. Then the capital stock, which is only a representative of value. Then the property itself can be taxed again in the county. There are three distinct taxes based upon one and the same property. It needs no further argument to show that this blow at the mining industry is entirely unnecessary. I do not know anything about this question which has been pending here for some time, between the miners and the farmers along these streams. I do not know whether or not it has any influence here. It certainly should not have any influence with the farmers, for it is not to their interest to strike a vital blow at the great mining industry of the State. They cannot afford to destroy the mines. Certainly, such a course as has been pursued here is not suggested by reason. If taxes are to be uniform, this action is certainly not the result of reason. It is not a just conclusion to arrive at, no matter how you look at it.

There are three distinct taxes. It is sheer nonsense. It is destructive of the great interests of this State. If gentlemen mean to be fair—and we are bound to presume that they intend to be so—then this proposition is indefensible upon any ground of common sense or reason, for it is not fair to anybody. That it is not good policy seems too plain for argument. It is not good policy for any class of persons in this State to attempt to destroy as valuable an industry as this seems to be. And if it is unfair and impolitic, I do not see why it is to be done, because it is nonsense to say that it is done to prevent fraud. It will not affect wildcats, except as to this first assessment, and that will be avoided. That assessment will fall only upon bona fide transactions. The wildcats have nothing to tax, nothing that you can collect on. There is a misapprehension in regard to wildcats. A wildcat is one that is incorporated for the purpose of selling stock, when there is no property of which that stock is the representative. I appeal to the sense of fairness and justice of this Convention to defeat these measures in the article reported by the committee. I ask you to look at the policy of the thing. If it

be desirable to have this Constitution adopted it will be necessary to strike this out, for, in addition to the people who are opposed to this Constitution, you will array every miner in this State against it, because the miners cannot vote for an instrument which is aimed at their destruction. They are not simple-minded enough to indorse a measure which will cut their own throats. And when the proper time comes, if these amendments are voted down, and the opportunity presents itself, the proper amendment will be offered.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I would like to say one word in explanation to Mr. Reddy. I don't know of any antagonism between the farmers and the miners. The interests of the farmer are just the same to the State as the interests of the miner. They are two great interests upon which the prosperity of the State rests, and I am certain there is no farmer in this Convention or out of it, who wishes to do anything to cut at the interest of mining, or prevent the working of the mining claims of the State. I have paid no attention to the section which relates to miners and that interest, because I hoped such gentlemen as Mr. Reddy and others, who are well acquainted with the subject, would get up and speak and show us what would be fair. The reason I rose was to assure the gentleman, that as far as I know, there is no antagonism between the farmers and the miners. They both well know that it is necessary to be fairly taxed, and that the prosperity of both farmer and miner depends upon our doing so. And his allusion to what he thought was making the farmers feel hard towards the miners, I think is a mistake. I don't think there will be any measures adopted that will injure the miners. Never such a thought came into my mind. They are only anxious to be taxed equally and fairly, like every other occupation in the State. I say there is the same reason for showing leniency towards the miner that there is towards the farmer, because the miners' prosperity is the farmers' prosperity, and the prosperity of these two great interests means the prosperity of every other interest in the State.

REMARKS OF MR. STUART.

MR. STUART. Mr. Chairman: I do not know what they are discussing here. I believe it is the taxation article. I don't know of any gentleman either who understands what they are discussing. When I was elected here, I was elected under a promise to tax mortgages. We were all elected on that platform from my county. We were all placed before the nominating convention and catechised about it. I think the only thing we need is the old Constitution, and a provision in it that mortgages must be taxed. Then let the Legislature make its laws governing the details. As far as the farming interest is concerned, I am one of the farmers and a vine-grower. We are taxed largely. We first pay one hundred dollars to the government for a license. We pay so much on every gallon of brandy made. We pay taxes on the product every year, if we keep it over more than one year. Then we pay taxes on the property, and upon the soil. Now, I would like some gentleman to offer an amendment to the old Constitution taxing mortgages. That is all we want.

MR. ROLFE. Would you not tax all solvent debts?

MR. STUART. Certainly; tax all solvent debts. The merchant is taxed on what he has on his shelves. He gives his estimate of the value. He knows about what his stock is. The farmer is taxed on everything that is seen. As well described by Mr. White, the Assessor takes carpets and all. We don't open a silver box when we answer the questions. Now, I would just add one line to the old Constitution, and then adopt it. One line, I believe, would contain all we want to add to the old Constitution. I am satisfied that I pay as much tax as any man on this floor who is engaged in the cultivation of the soil, hence I speak knowingly when I say that the farmers do not demand the complete destruction of the old Constitution. I make these remarks in order that we may get down to work and amend this article by the change of a line or two.

SPEECH OF MR. BARTON.

MR. BARTON. Mr. Chairman: The question seems to be pretty well exhausted. I listened yesterday with a very great degree of pleasure, to the very able address delivered by Judge Belcher. I think there was more in his language than in that of any other gentleman I have heard. As has been remarked, this subject is perhaps one of greater importance than any other which will have to be handled and discussed by this Convention. The proposition of my colleague from Humboldt, in my humble judgment, not only meets the desires of the gentleman from Sonoma, Mr. Stuart, but it goes farther and shows the way clearly how the difficulty can be adjusted between the borrower and the lender. In regard to this subject of taxing mortgages, it is one of the utmost importance to the people of this State. We find to-day the whole business system of the State demoralized. For instance, two gentlemen came from the State of Iowa—which is a case in point—came into this State with fifty thousand dollars each. One of them, being of rather a thrifty turn of mind, says to his friend: "I have fifty thousand dollars, and I see my coin will bring one and a half and two per cent. per month, therefore I propose to loan my money out to these gentlemen who are engaged in agriculture, and take a mortgage, and I can then retire to my home and sleep in perfect security, and know that not only my interest but my principal is secure and safe." He proceeds accordingly. The other visits the country and says to his friend: "I am not much of a Shylock, and I prefer to engage in active, energetic business; I will engage in the manufacturing business." When the Assessor comes around, he has no trouble in assessing the man, for his property is all visible, and he assesses it to the full extent. Well, the other individual who holds his mortgages drawing interest, pays not a dollar tax to the county or State. That is the condition the State is in to-day, especially the lumber interest in the county which I in part represent. Every mill in that county, without exception, is to-day locked up, and not a wheel is being turned. Why is this? Because of the untold millions that men have locked up in real estate under mortgage, where they escape taxation. Now the people demand this reform at our hands. I do not believe any honorable man will refuse to listen to that demand. We have heard gentlemen talk about public clamor, but this demand comes up in such a shape that we cannot disregard it. It is one of the clamors that you must listen to. In regard to the personal plans laid before us, I do not understand them. They are either too deep for my comprehension, or so mystified that I cannot grapple with them. I do believe that the system now before this body is an intelligent and feasible one. I had hoped that there would be a committee appointed for the purpose of drafting a plan for an income tax, in connection with the report of this committee. I still believe that the only way out of this difficulty is the creation of a new committee to investigate and act upon the subject. The plan presented by Mr. Huestis is clear in the extreme to my mind; much more so than anything that has been presented before this body, and I hope it may be adopted.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I don't expect to take up the time of this Convention. It has been ably discussed, and at some length. Taking the different arguments, and the different speeches, and the different views expressed upon this subject, and it would seem that we had almost enough of it. I have heard something said with regard to double taxation, and that it is looked for by the people. Now, I am not going to argue the propriety of double taxation at all. In a constitutional provision, providing for raising revenues for the State, the great object is to get that which is just to the State and to the people, and it is not the part of a Constitutional Convention to go out of the way in order to regulate matters between individuals. That may be done by act of the Legislature, or otherwise. The subject of rebate has been brought up. It looks very plausible and quite feasible. But in the midst of all this matter, it is necessary that we should recollect the manner in which the members look upon this subject, when they were almost as well informed upon it as now, before the people of the State, who, by reason of their oppressions, have taken the matter into serious consideration. There is hardly any portion of the country but what knows men who, owing to the inequalities in this respect, that were worth ten thousand, or hundreds of thousands, who escape taxation. Now, I am satisfied and convinced that many members of this body came here pledged to tax mortgages and solvent debts. They advocated it before the people. I am impressed with the opinion that this doctrine should be carried out by constitutional enactment. Now, I am fully convinced that it is wrong to make any man pay more than he should, on account of the decisions that have been rendered in regard to notes and mortgages not being taxable. By reason of this exemption some men pay more than their proper amount. This has been one of the great causes for calling this Convention. We should be careful and not disappoint the people. We should carry out these principles.

MR. HOWARD, of Los Angeles. It seems to me that this house is too thin to come to a vote to-night, and I move the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. SHOEMAKER. I move to adjourn.

Carried. And at three o'clock and fifty minutes P. M. the Convention stood adjourned until Monday.

NINETY-FOURTH DAY.

SACRAMENTO, Monday, December 30th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Dean,	Hilborn,
Ayers,	Dowling,	Hitchcock,
Barbour,	Doyle,	Holmes,
Barry,	Dudley, of San Joaquin,	Howard, of Los Angeles,
Barton,	Dudley, of Solano,	Howard, of Mariposa,
Belcher,	Dunlap,	Huestis,
Bell,	Eagon,	Hughey,
Biggs,	Edgerton,	Hunter,
Blackmer,	Estey,	Inman,
Boggs,	Filcher,	Jones,
Boucher,	Finney,	Joyce,
Brown,	Freeman,	Kelley,
Burt,	Garvey,	Kenny,
Caples,	Gorman,	Keyes,
Casserly,	Grace,	Kleine,
Chapman,	Graves,	Lampson,
Charles,	Gregg,	Larkin,
Condon,	Hale,	Larue,
Cowden,	Hall.	Lavigne,
Cross,	Harvey,	Lindow,
Crouch,	Heiskell,	Mansfield,

Martin, of Santa Cruz,	Reed,	Thompson,
McCallum,	Reynolds,	Tinnin,
McComas,	Rhodes,	Townsend,
McConnell,	Ringgold,	Tully,
McCoy,	Rolfe,	Turner,
McFarland,	Schomp,	Tuttle,
Moffat,	Shoemaker,	Van Voorhies,
Moreland,	Shurtleff,	Walker, of Tuolumne,
Nason,	Smith, of Santa Clara,	Weller,
Nelson,	Smith, of 4th District,	Wellin,
Neunaber,	Smith, of San Francisco,	West,
O'Donnell,	Soule,	Wickes,
Ohleyer,	Steele,	White,
Porter,	Stevenson,	Wilson, of Tehama,
Prouty,	Stuart,	Wilson, of 1st District,
Pulliam,	Swing,	Wyatt,
Reddy,	Terry,	Mr. President.

ABSENT.

Barnes,	Herold,	Overton,
Beerstecher,	Herrington,	Schell,
Berry,	Johnson,	Shafter,
Campbell,	Laine,	Stedman,
Davis,	Lewis,	Sweasey,
Estee,	Martin, of Alameda,	Swenson,
Evey,	McNutt,	Vacquerel,
Farrell,	Miller,	Van Dyke,
Fawcett,	Mills,	Walker, of Marin,
Freud,	Morse,	Waters,
Glascock,	Murphy,	Webster,
Hager,	Noel,	Winans.
Harrison,	O'Sullivan,	

LEAVE OF ABSENCE.

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

Two days' leave of absence was granted Messrs. Davis and Farrell.

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

Leave of absence was granted Mr. Stedman until January sixth, eighteen hundred and seventy-nine.

THE JOURNAL.

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

Carried.

PAY OF ATTACHES.

MR. CROSS. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That scrip be issued to Henry Jones, William Galt, Joseph Von Prague, Hiram Clock, Michael Barnes, and Frank Laine, for their regular per diem for the four days of the Thanksgiving vacation.

Referred to the Committee on Mileage and Contingent Expenses.

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section two of the report of the committee, and the amendments thereto, are before the committee.

REMARKS OF MR. RHODES.

MR. RHODES. Mr. Chairman: I do not propose to discuss this question at length, but with the indulgence of the committee I desire to comment upon section two of the report of the Committee on Revenue and Taxation. At the outset I desire to say that I cordially indorse that system of assessment and taxation, which contemplates a tax upon the net value of the taxpayer's property; or, in other words, I propose to allow the taxpayer to deduct from the assessed value of his property the entire amount of his indebtedness to bona fide residents of the State. I believe, that while no system can be devised which is absolutely and positively correct, and which will bear equally upon all, this system approaches nearer a correct system than any other that has been suggested. Under this system the taxpayer pays only on what he is actually worth. The second section of the report I believe recognizes that principle, and to that extent I shall heartily support the section as reported by the committee; but there is one other feature in that section which I cannot indorse, and when an amendment is in order, if an amendment of that kind is not offered by some other member of the committee, I shall offer an amendment with the view of eliminating that portion which relates to the assessing or taxing of the capital stock of corporations. I believe that that is seeking to tax not only the substance, but the shadow of the substance. The property of a corporation is its money, and its credits, and its personal property, and when all its property is taxed, the duty of the Assessor should end there, and he should not proceed to assess the capital stock of a corporation, which is simply a name. You might as well assess a building during the daytime, and at the same time assess the shadow of that building. The object is to reach certain corporations who have offices in this State, who are doing business here, and yet whose property in whole or in part is beyond the boundaries of the State. If that is the intent of that section, I think that it is in the nature of a penalty imposed upon the members of the corporations who are endeavoring to do business in this State, and I think there is a more direct and more equitable way of reaching it. It discriminates against that class of men who are doing business here as against our own citizens, and to be consistent with ourselves we should discountenance any proposition which looks to a discrimination, either between our own citizens, whether they have property here or not, and those who have property here. I therefore oppose that feature in section two. With that exception I am prepared to sustain that section. I believe it approaches nearer to what is demanded by the people of the State than anything else proposed.

In regard to the amendments, the result would be the same. I think that the mode prescribed of reaching the same result would be more circuitous, and that it would not work practically. It would not work without a good deal of friction, and in fact in less than twelve months would be thoroughly and heartily condemned by the taxpayers of the State. It is entirely too uncertain in its operations, and involved in too many intricacies. It might work well in some few instances, where the taxpayer was indebted to one or two individuals, but it is no part of the duty of the Assessor to keep accounts between men, and when it comes to the case of business men, whose debts are multitudinous and in various accounts, I apprehend that it would fail entirely to work. I believe that the result would be that it would be heartily condemned in less than twelve months from the time it came into operation. For that reason I am opposed to the amendment, and in favor of section two of that report, only amended so as to eliminate from that report the proposition to tax the capital stock of corporations.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I did not intend to say a word upon this subject, but there seems to be so much apparent misunderstanding, not to say bad feeling abroad in the Convention—and by that I mean divided upon the mortgage question, and not in a political sense—that I feel obliged to offer a word or two. The gentleman who preceded me says he is opposed to the amendment before the committee, because it is involved in intricacies. I am opposed to it for the same reason, that it involves too much arithmetic. I am likewise opposed to the first amendment, for the same reason. I am opposed to the report of the committee for the same reason—sections two, five, and eleven—they involve too much calculation and arithmetic, matters that ought to be confined to the revenue bill to be enacted by the Legislature. There is no doubt but what the most of us were elected with the understanding that the desire of our constituents was that mortgages should be taxed. Indeed, it was so expressed in some of the platforms, but by that I do not understand that the people meant that a man should be taxed for all the property that he possessed, and then taxed again if he happened to owe something on that property. That is the proposition. If the term "taxing mortgages" means such a proposition as that, it seems to me that there can be no doubt that it is double taxation in its worst sense and in its worst form. It is certain to operate against the debtor class, and in favor of the creditor. Now, I apprehend that the true doctrine, which will not be disputed by any one, is that the State seeks to tax once, and only once, all the property in the State, and to tax no fictitious evidences of indebtedness. To do that, I apprehend it is not necessary to tax mortgages, and it is not necessary to go into the intricate system reported by the Committee on Revenue and Taxation, or even that proposed by the amendment now under consideration. Instead of that scheme I would endeavor to adopt something like this: the declaration is that "all property shall be taxed, except"—and then let the exceptions follow. First, that belonging to the United States; second, that belonging to the State; third, if so decided, growing crops, or anything else decided to be an exception. I would then simply declare, in three lines, "no deduction shall be made from any assessment on account of debts of the person assessed." I would then declare that the tax assessed to and paid by any debtor shall be, at the time of such assessment or payment, an offset to the debt to an amount in proportion to the whole amount so assessed to him. There is an end to the whole matter. Upon those three declarations I apprehend it would not be difficult for the Legislature to build a revenue law that would be as perfect as anything human can be.

Now let us look at the results under such a scheme as that. There are three methods now under the present system, by which property escapes taxation. One is in swearing down solvent debts; another is in swearing up deductions to be made on account of what a person owes; and the third is in hiding money; in saying, "I have got nothing;" in putting it away somewhere, so as to ease the conscience, and say, "I have not got any money." There are three ways in which the bulk of the property escapes taxation. Now, I claim that this proposition will eliminate the first two methods entirely. In the first place, there will be no deduction. All the property a man has will be taxed, and there will be no deduction. In the second place, there will be nothing taken into account for what is owing to him. He will be simply assessed for what he owns; and then if he owes anybody, the tax upon that debt, when he comes to pay it, shall be an offset against that debt for just such proportion as the debt bears to the whole amount of property assessed to him. The result is easy to ascertain. The tax receipt itself is an official evidence of it, because it is just as good as the receipt of the person himself. It is impossible for litigation to grow out of it. The gentleman from Marin stated that it would make plenty of work for lawyers if the amendment was adopted, but it does not seem to me possible that any litigation could grow out of this system, any more than the settlement of notes with accruing interest. A single decision to point out the law on that question would set at rest all other cases of that kind.

As to the assessment and taxation of the franchises and capital stock of incorporated companies, there is no doubt but a better scheme ought to be devised than any now existing for that purpose; but I do not understand what gentlemen mean when they say—and I find it in the report of the committee and both of the amendments—that all property, including the franchises and capital stock of corporations, shall be taxed. It seems to me that they must mean double taxation. It seems to me

that it must mean that the franchises of corporations must be taxed, and that the capital stock of the corporation must be taxed. I am not in favor of such a proposition as that. I do not think it is right to tax a corporation more than any person. If they are taxed once that is sufficient. I am in favor of taxing the capital stock of all companies incorporated and doing business in this State, in the principal office of the corporation, in place of any kind of property that they may own. It seems to me that is the best way to get at the value of the property. It comprehends everything. It comprehends all the property, the good will, and everything. It is all expressed in the market value of its capital stock. I am in favor of taxing all domestic corporations in that way. Foreign corporations we cannot, and must go for their property as we do for other property. Hence, I do not see that we ought to include the word "franchises," unless we say that this shall not be construed to mean double taxation. Then I do not know but that it would be well enough; but I do not see any need of it.

I would like to answer one objection to this scheme of prohibiting any deductions from the assessment and of making the debtor pay the tax in the first place, and that the tax be a receipt to him in full for so much of his debt. A gentleman spoke to me of the case of a merchant doing business in the interior and owing money in San Francisco, for instance. How shall that be arranged? The Assessor comes round and taxes the stock of goods he has in his store, and he owes money to different persons in San Francisco, and how shall we arrange this matter? It is the simplest thing in the world. On the day on which the merchant at Auburn is assessed for the stock of goods in his store, on that day he writes up his ledger and charges to the account of his creditor in San Francisco such proportion of the tax assessed to him, as the debt that he owes him has to the whole amount of property assessed by him. It is that day a lien against the debt. It is on that day made a receipt against that debt, and there is no arithmetic necessary scarcely. And I will say that this is a thing which occurs every hour of the day in every bank in the State. A debtor there owes the bank. He fails to pay the tax. The bank ascertains that to be the case, pays the tax, and immediately charges up to that debtor the tax paid on that mortgaged property. And so on. A single instance illustrates the whole business. I have yet failed to notice a single illustration where there is any inequality in the working of the rule, or where it would be liable to work any injustice. Yes, there is one, and that is the case of a merchant at Auburn, for instance, who has nothing at all except money to pay freight, and his credit in San Francisco on which he gets goods and puts them in his store in the interior. The Assessor comes round the next day and he does not assess him at the cash value of the goods, but he puts it below. Even if the freight is added it is assessed less than the invoice value of the goods. That is said to be the general rule of assessment in the interior, at least it was so stated to me by an ex-Assessor. Supposing that to be the case, then I would say that he would collect of his creditor more tax than he has paid himself. But then there could not be a very great difference. If such did happen to be the case it would be so small that it would amount to nothing, and is one of those imperfections of all human things that cannot possibly be avoided.

MR. OHLEYER. Do you argue that it would be right to exempt that man from taxation although he did business on ten thousand dollars, or five thousand dollars?

MR. REYNOLDS. I exempt him from nothing. I tax the goods. The goods are taxed in the store, the whole of them, and if he owes for the whole of them the whole tax is set off. The man has got nothing. He has nothing to tax; then why tax him?

MR. OHLEYER. It seems to me that he ought to pay something for the protection of his goods, and for the privilege of doing business in that community.

MR. REYNOLDS. That is the very mistake that gentlemen make here. When they undertake to tax evidences of indebtedness and tax protection that have no value in themselves. The mistake is made when you depart from the fact that the State is entitled to a tax upon property alone and nothing else.

THE CHAIRMAN. The gentleman's time has expired under the rule.

[Cries of "Leave" and "No."]

MR. CROSS. I move that the gentleman have leave to proceed.

MR. REYNOLDS. I do not desire any further time. I will just say one thing, that it seems to be a matter of no concern to the State whatever who owes, provided all the property in the State is once taxed. That is sufficient, and if we can arrive at a scheme of that kind without involving ourselves in intricacies, even though it is a departure from the ordinary method we have been pursuing, I do not see why it should not be adopted.

REMARKS OF MR. STUART.

MR. STUART. Mr. Chairman: I do not think that I will change any one's ideas by speaking, but I am opposed to all rebate of taxes. I am opposed to all double taxation. I think that the only thing we require to perfect our work is to place a few lines in the old Constitution defining what property is. Mortgages and solvent debts are property. When you commence a system of deductions you open the door to fraud. All experiments of that kind in other States have shown it to be so, and I do not know that I can express it better than to have the Secretary read a paragraph from the report of the Tax Commissioners of New York; it is on page sixty-two.

THE SECRETARY read:

"And yet, at the same time, it is difficult to see how a system which proposes to tax all personal property uniformly can be made to work with any degree of success, unless the right, or privilege to affect or diminish valuation by indebtedness, is strictly and explicitly forbidden, inasmuch as it is this very right or privilege which furnishes the opportunity whereby personal property can most successfully evade taxation. Nothing is more easy than to create debts for the purpose of diminishing valuation, which no investigation on the part of Assessors will suffice to prove fictitious, and yet of such a character that individuals of easy conscience will find no difficulty in making oath to their validity. In the debate which took place on this subject in the Constitutional Convention of eighteen hundred and sixty-seven and eighteen hundred and sixty-eight, numerous examples were given by delegates of expedients of this character which had fallen under their observation, and the Chairman of the Finance Committee declared: 'that in the county and the towns and cities in the interior of the State the rule is almost universal for persons to get up an indebtedness of some kind or other, so that their property may escape taxation.' One of the most common and successful methods now resorted to is the taking of an unfair but apparently strictly legal advantage of the law exempting the securities of the United States from taxation. Thus, for example, an individual desiring to evade taxation on capital invested in general mercantile, or speculative business, first purchases United States bonds, we may suppose, to the amount of one hundred thousand dollars; he then borrows on his promissory note, using the bonds as collateral, one hundred thousand dollars, or some smaller sum, and invests the money so obtained in the business in question. When the day of assessment comes round, a return is made under oath, if need be, one hundred thousand dollars, business capital; one hundred thousand dollars, just debts and liabilities; no personal property subject to taxation. If inquiry is made further respecting the United States bonds purchased, the answer is made legitimately, that in respect to these the State authorities have no jurisdiction. Since the commencement of the present year, moreover, a case involving this very principle of exemption, has been brought before the Supreme Court of New York (general term, January third, eighteen hundred and seventy-one), by the Tax Commissioners of the City of New York, and a decision given in favor of its legality, thus illustrating how difficult it is, holding on to a system of universal taxation, to once exempt any description of intangible, incorporeal property from assessment, without at the same time opening a door to innumerable opportunities for fraud and evasion. And it should be further borne in mind, that this door has been most effectually opened, both by National and State authorities, and that it is now entirely beyond the power of any individual State to close it."

MR. STUART. I have nothing further to say. I think we are ready for a vote.

MR. BIGGS. I believe that only relates to the personal property.

MR. STUART. No deduction whatever.

REMARKS OF MR. KEYES.

MR. KEYES. Mr. Chairman: I am opposed to the amendment offered by the gentleman from Humboldt, Mr. Huestis, and for these reasons: It looks to me as if opening the door for this rebate or deduction would do away with all our taxes, and in a little while there would be nothing paid. If you allow the individual to deduct his liabilities, I do not see why you would not have to do the same with the corporations, as they all ought to be treated alike. If you allow the deduction in the case of an individual, why not allow it in the case of a corporation? If you allow it in the case of a corporation, it would be exempt entirely from taxation. To my mind, the only thing to do is to tax all the property we can find. I believe in taxing mortgages; I believe there is property in a mortgage. I do not know any reason why a man should not pay a tax on his farm. He is equally protected in it as if he had no mortgage on his farm. He borrows five hundred dollars, or one thousand dollars, or any other sum upon his farm. It does not put that money out of existence. He pays the tax on the farm, and the other man pays the tax on the mortgage. I cannot see any double taxation in that. They both have an interest in the country; they both have means here. One has lands and the other money. He simply exchanges the money for the mortgage. The money is all there, and I think they are both subject to taxation.

MR. TOWNSEND. I should call it double taxation. For instance: two men own a farm worth one hundred thousand dollars, each having an interest of fifty thousand dollars in it. One sells to the other his interest in the farm, and takes a mortgage for fifty thousand dollars on the whole farm. There is not a dollar exchange, but they have created a debt of fifty thousand dollars, which, under your system, would be an increase of property to the amount of fifty thousand dollars without a dollar created in any way at all.

MR. KEYES. Could you not get fifty thousand dollars for your mortgage?

MR. TOWNSEND. No. It is only paper.

MR. KEYES. You might call it a double taxation, but I cannot see it in that light. I see a commercial value which you have created.

MR. TOWNSEND. Have you increased the property?

MR. KEYES. Certainly you have. You have created a commercial value.

MR. HEISKELL. Why do you buy a mortgage?

MR. TOWNSEND. There is nothing exchanged except the mortgage. There is nothing tangible created, but, in fact, there is fifty thousand dollars more to be assessed, according to his theory. It is to be assessed when, in fact, it does not exist.

MR. HEISKELL. Something exists.

MR. TULLY. The mortgage is worth fifty thousand dollars.

REMARKS OF MR. EVEY.

MR. EVEY. Mr. Chairman: I do not expect to enlighten this Convention upon this subject much, but I wish to say a few words. This question of taxation seems to be a mooted question, and seems to be hard for the Convention to understand. It has always been considered a very difficult question, one of the most difficult in all the range of political economy. So long as government exists so long will taxes

have to be collected for the support of that government. The object should be to collect just a sufficient amount of money from the people to support an economical and efficient government. Anything above that amount would be robbing the people. Now this amount of taxes should be levied so as to operate equally upon all the people of the State, in proportion to what they possess. That is to say, every man ought to pay taxes for what he is worth and no more. I believe this we all agree to. The manner in which to obtain this end seems to be the difficult question. Now I am opposed to assessing the debts and then making an offset. I believe the proposition of Mr. Boggs, as presented by Judge Hale, of Placer, would attain that end better than any other proposition I have heard proposed yet in this Convention, and it seems to me as if it was easy of execution. Under that proposition it seems to me that every person in this State would pay his equal proportion of the taxes, and there is no other way that I can see that we can arrive at it. I shall sustain that proposition and give my vote for it.

REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. Chairman: I do not wish to be understood that I am not in favor of taxing mortgages and trust deeds and evidences of indebtedness. I am in favor of it, but I believe that the deductions should be made. I think to assess both the property and the mortgage upon it would be unquestionably double taxation, consequently I am opposed to that. But I am in favor, where these are a matter of record, that they should be assessed, and that the person owning the property should pay the tax, and that that should be a receipt against his debt. His Sheriff's receipt should be a credit upon the debt. That would obviate all the difficulty. If the debt was never paid he certainly could not be any the loser. The property would have paid the tax, so that they could not trump up any case to escape it.

MR. REYNOLDS. I would like to ask one question—if that plan will not operate in making a distinction between debts of record and other debts, between mortgages and evidences of indebtedness not secured by mortgage?

MR. TOWNSEND. A solvent note is an evidence of indebtedness.

MR. REYNOLDS. But if there is no evidence it is very easy for a man to say he did not own one.

MR. TOWNSEND. The commercial business of any country is upon the basis of security. All indebtedness is secured in some way, and is in notes, mortgages, or trust deeds, and is a matter of record. To carry it further than that would be to complicate the system so that it would be entirely impracticable.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: It is evident that all property should be taxed, and it seems from the expressions of the members of this Convention that the intention is to tax all property. There has been a difference of opinion as to what constitutes property. A certain kind of paper called mortgages has been decided by the Supreme Court of our State not to be property. Now, we know there was a time when such were regarded as property, and taxed accordingly. The great question comes up, should all men pay in proportion to what they are protected in? For instance: if two men have a band of sheep; one has two thousand, and the other has one thousand. This man who has one thousand pays one third of the expense in taking care of that three thousand. The same in cattle; and it should be the same in every description of property. Say, for instance, a man has a mortgage on a certain amount of property. There may be three thousand dollars' worth of property, and the mortgage covers one thousand dollars' worth. Here is the man that has the land. The land is under his supervision; he has it still, and he is protected in it by law; and the man who holds the mortgage to the amount of one thousand dollars is protected in it by law. The law sustains him in that; it is worth that amount to him; that belongs to him; and the laws of the land, which require him to pay taxes, protect him fully and effectually in that mortgage and what it demands; it is a worth of so much, and he is protected in it. As to going outside of the assessment to show how this worth originated, it is out of the bounds of a constitutional clause. But has he that much worth that he is protected in? We all know he has. Then let the property, whatever it be, be assessed to the man who has it when you find it. When you find a man who has three thousand dollars' worth of property under his supervision, and he is protected in it by the laws of the State, let him pay his taxes on that; and the other man, who has his one thousand dollars' worth of actual property—for it is worth that to him; it is good for that amount, and the laws of the country protect him in it—let him equally, justly, squarely, and fairly, pay upon the worth of that. We must come down to this main principle, that every man shall pay in proportion to the amount of value in his possession. Then we have got the main principle which the people of this State have demanded. I know that by talking upon the matter, and arguing, and using words, we come to believe a good deal like the ancient philosophers, who believed that there is no truth in anything: but if a man has in his possession anything from which he can realize so much, it is worth that to him; and if he is protected in it by the laws of the land, he should pay his taxes accordingly.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: This thing of taxing solvent debts will not do. I have read it, and I believe it, that the debts of this land are about five times greater than the amount of property in it; and if we tax solvent debts, and deduct them from the property, it will come about one fifth from giving any taxes from any source. When we realize that the debts are so much greater than the actual property, we see at once that it is utterly impossible to get any taxes whatever, if we deduct solvent debts. Now, there is over one tenth of the business of the land—Mr. Edgerton says ninety-two per cent.—that is carried on by credits. Almost all of the business goes through clearing houses. Everything is a system of credits. Even money is a system of keeping accounts; that is all. Property alone is subject to taxation, and the right to transact business is not property. A credit is simply an adjunct to the right to transact business.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I understand there are now before this committee two amendments, one offered by the gentleman from Placer, Mr. Hale, for Mr. Boggs, and the other offered by the gentleman from Humboldt, Mr. Huestis. I am opposed to both of those amendments. Now, sir, it has been stated that this Convention was called for the express purpose of reaching this question of revenue and taxation. I have heard more reasons assigned for the calling of this Convention than the college students give for the downfall of Rome.

I believe that the people never intended to call this Convention at all. It was only called through skillful manipulation of a party in the printing of the tickets. One party paid no particular attention to the subject in the printing of their tickets, while the other almost universally had printed upon their tickets "For a Convention." Men in voting the tickets paid no attention to that part of it, so long as it contained the names of the candidates they desired to vote for. Even then it only carried by about four hundred votes. No doubt there was something said among the people upon the subject of taxation, but I understand that the great evil to be remedied, and the object to be attained, was to get rid of that provision about the election of the Assessors and Collectors, so that we might have a State Board of Equalization. There were two other questions discussed to some extent: whether growing crops should be taxed, and whether debts should be taxed. I am opposed to growing crops being taxed. Crops are a part of the land, and after you have assessed the land you might as well assess the trees, the vines, or anything that is on it, as to assess growing crops. They make the value of the land and are a part of it. The next question is, whether solvent debts shall be taxed. I would like to call the attention of the gentlemen to my left here who are farmers to a provision of the amendment offered by the gentleman from Placer, Judge Hale. Now, these farmers say that they want these solvent debts taxed, because it will add to the taxable property of the State, and thereby reduce the general rate of taxation; but I would like to call their attention to the fact that the amendment offered by the gentleman from Placer does not add a single dollar to the taxable property of the State. The amendment merely provides that when a person owning land which is mortgaged, shall pay the tax upon that land, he may deduct it from the debt owing on the mortgage. That does not add a cent to the taxable property of the State. The fact of the business is, that amendment is not germane to the subject of taxation at all, because it only attempts to regulate the private contracts between the mortgagor and the mortgagee. That you cannot do. It is beyond your jurisdiction. If the lender has to pay the tax he will put it into the interest. That is as plain as sunlight. Therefore, the amendment cannot relieve the borrowing class any, because they will have to pay the amount of the mortgage tax in increased interest.

The only question left is whether debts should be taxed. Now, gentlemen try to make a distinction between debts secured by mortgage and debts not secured. There is no distinction, except, perhaps, the one may be the more readily found. My objection to an attempt to tax debts is, that you cannot make the system uniform, nor approximate uniformity. One of the best evidences is that it shall apply to all classes of persons owning the property referred to. You cannot do that exactly, but in other classes of property you can approximate it. It would be unjust if one man's property be taxed and another man's escapes. It would perhaps be unjust to exempt the whole class of property; but still that would be remedied by the general business of the community, and the property would take its value according to its taxation. But if one man pays taxes on his land, and another does not, that is unjust all around: it gives one man an advantage over another. If you tax one man's mortgage, and do not tax another's, it is unfair. Now, when you come to tax debts you arrive at that condition of things inevitably. It is utterly and entirely impossible to approximate uniformity or justice in the taxation of debts. Here are two men, each having ten thousand dollars owing to them, possessing about the same degree of solvency. One man, being particularly conscientious, gives in the whole ten thousand dollars. The other, not being troubled that way, finds objection to the solvency of his debtor, and makes up his mind to give in to the Assessor, four thousand dollars. There one man escapes the taxes upon six thousand dollars, which the other man pays. You cannot avoid it. You will lose that rule of uniformity which ought to be applied. You may say that so far as mortgages are concerned, they are of record, and can be found; but it would be unjust to tax money secured by mortgage, and not tax money secured by good security.

MR. TOWNSEND. Can't you assess a note, which is a security?

MR. MCFARLAND. No. In the first place you have got to find it.

MR. TOWNSEND. If you mean that men perjure themselves, that is a different thing.

MR. MCFARLAND. I do assume it. It is a well known fact to every gentleman on this floor that when the Federal Government imposed an income tax, men working for wages, and clerks in offices, paid more income tax than their employers, because it was well known what the men received. But in the case of the others there was no means of ascertaining it except upon their own statement. The richest men paid the smallest amount in proportion to their income.

MR. TOWNSEND. There is a law to punish it. Suppose you and I start out in life with fifty thousand dollars each—it is not likely, but suppose we should. I invest my money in land, I build houses, and barns, set out orchards, and help improve the country. You loan your money upon a mortgage, or note, and you receive your interest. Do you propose that you shall escape taxation entirely and I shall pay the taxes?

MR. MCFARLAND. Yes, for this reason; that it is impracticable to undertake to assess it with any degree of justice or uniformity whatever. And I say that it is utterly impossible to do it in the case of debts. It will never be done, and when you undertake to require men to put in all the debts that are owing to them, and make them swear what is solvent and what is not, they will not do it.

MR. TOWNSEND. Are they not a matter of record?

MR. MCFARLAND. Not one tenth part of the debts are secured so that you can see them on the record. You can make the tax on mortgages uniform, because there is record evidence of it; but it would be unjust to tax mortgages, and not tax money on other securities. In the first place, that rule would operate as a hardship upon the poorer class of citizens. If I am a poor man, having a little house and lot, and it is necessary for me to borrow two or three thousand dollars, I have got to give a mortgage, or I cannot borrow it. It is on record, and I have got to pay the tax of the man who loaned me the money. If Michael Reese was alive to-day, he could do it on his note, and there would be no possible way of discovering the fact that he had borrowed that money. He would get rid of the increased taxation, while the poor man, who is trying to get a homestead, and who has to give a mortgage, cannot escape it. It would be most unjust to compel a man who can only borrow money upon mortgage, to pay a tax, and allow men of personal wealth, who can borrow ten or twenty thousand dollars at any time on their own note, to escape taxation. There is no justice in saying that you will tax debts secured by a mortgage, and not tax debts secured by personal security, and the whole question comes back to whether or not you will tax debts. As I said before, the main objection is that you cannot make it uniform. But in the second place, who will it benefit? Why, it is the clearest proposition in the world, that it will not benefit the borrower. Now, both of these amendments go entirely upon the theory of compelling the lender to pay part of the tax. I cannot understand the amendment of the gentleman from Humboldt, and I have read it one, two, or three times. So far as mortgages are concerned, his proposition is, that the land should be assessed at its full value to the owner, and that he shall deduct from his debt the amount of the taxes. Now, that does not at all add to the taxable property of the State, and it does not make the lender pay it, because it is as clear as crystal that the borrower pays the tax in increased interest. And what does that amount to in the way of a principle of taxation? It simply undertakes to make the lender pay the tax, which you cannot do. When you take both these propositions together, they do not add anything to the taxable property of the State. They do not allow the farmer to get off with any less taxes. You cannot deduct it from the debt, because that is a part of the contract, and you cannot impair the obligations of a contract. Now, the only way to add to the taxable property of the State at all, is to tax the debt, whether secured by mortgage or not, and make no deduction. If a man owns a farm worth ten thousand dollars, and borrows five thousand dollars on a mortgage, tax him for ten thousand dollars on the farm, and tax the mortgage for five thousand dollars, and then you have added something, or, rather, you have five thousand dollars of moonshine property. Then you have got to tax every man in the same way, and you will perhaps add to the taxable property in the State. Where it comes from God only knows. I do not understand that if half the people of the State should give their note to the other half, you will have any more property. And yet that is the theory. Somebody says, for instance, that I have got a mortgage, and asks, is not that mortgage worth ten thousand dollars? Why is it? Because it is secured by the land. What is your land worth, then? It is worth nothing. If I own a piece of land which I have secured by giving a mortgage for ten thousand dollars, I certainly do not add ten thousand dollars to the property of the State. If the mortgage, which covers the full value of the land, is worth ten thousand dollars, the land is not worth anything.

MR. TOWNSEND. Does not the man own the land that has the mortgage?

MR. MCFARLAND. No, sir; he does not own the land at all. The title of the land is in the man that gives the mortgage.

MR. LARUE. Suppose the money is used somewhere else?

MR. MCFARLAND. Wherever the money goes you find it in property. I don't know where your ten thousand dollars goes. Wherever it goes you get it.

MR. TOWNSEND. You say that you do not create anything?

MR. MCFARLAND. No; you don't create ten thousand dollars more property.

THE CHAIRMAN. The gentleman's time has expired under the rule.

[Cries of "Leave!" "Leave!"]

MR. MCFARLAND. I believe that all the trouble comes from the fact that in every community some gentlemen, by fortunate circumstances, happen to get hold of some money and everybody in the community wants it. All the business of this country is done upon credit. There is not a gentleman on this floor who is worth five thousand dollars to-day who has not been in debt. It is a very nice thing to say, "Pay as you go!" It is good as to the luxuries of life, but it is not good in regard to the business of life. There is scarcely a man who does not borrow money. There is scarcely a farmer that has enough money to pay for his farm when he commences. He sees a chance to buy a farm worth five thousand dollars, which he considers cheap. What does he do? Why, he goes to one of these money lenders and he lends him the money at the current rate of interest. The man says he can make more out of the money than the current rate of interest. Now, the money lender is really a public benefactor. The man goes on, and in the course of five or ten years he has got a farm. It is for the interest of the whole community that money should be obtainable as low as possible. "Money makes the mare go," and it makes the prosperity of the country. It builds up your little homes that you talk about, and yet you want to load it down with all the burdens you can put upon it, and think it is helping somebody. Who is it helping? If you want to help the borrower and the man who is trying to get a home for himself, you certainly do not help him. He has got to pay whatever interest the money is worth. He cannot get out of it. If the man from whom he borrows the money has to pay the tax upon it, he has got to pay the tax in interest. You help nobody in the world, and you simply undertake to cripple and fetter that which is the very life of business in any country.

Now, sir, if the rule could be enforced; if it was practicable at all; if you could find out how much solvent debts were owing to every man; if you could approximate it in the least, there might be some reason for attempting it; but knowing that this rule would give unscrupulous men an advantage over their neighbors, and looking at the fact that it does nobody any good, I am opposed to it. I have listened to the other gentlemen who have addressed the committee, with a great deal of attention, but I have not been convinced that this system of taxing these promises to pay will be a good one. I believe that the true policy is to tax tangible property. I believe that one of the best of prayers is "Lead us not into temptation," and I believe that any system like this, that goes into the private affairs of men, tempts men to corruption and perjury.

MR. TOWNSEND. You believe then that money lenders are more liable to perjure themselves for the purpose of escaping taxation than men who own other property?

MR. MCFARLAND. No, sir; but men who own other property have not the opportunity.

MR. TOWNSEND. Other men have the same chance to perjure themselves on personal property.

MR. MCFARLAND. I admit that personal property of many kinds should not be taxed on account of the difficulty of making it uniform. I know that you cannot tax all the personal property. Farmers do not always give in all their cattle, although they are generally honest; but now and then you will find a farmer that will not give in all he has. I say this system is impossible. It is such an easy matter for a man to say "John Doe owes me a thousand dollars; he may perhaps be able to pay me, but I hardly think I ought to give that in, because he may not do it. I do not know whether he will or not." If you undertake to prosecute that man for perjury you cannot convict him. There never was more than half a dozen men in the world convicted of perjury.

REMARKS OF MR. MORELAND.

MR. MORELAND. Mr. Chairman: I have listened patiently to the debate of the past two days on the subject of taxation. I am sorry, sir, that I cannot say that I have listened with profit. I have endeavored to gather from the many diverse ideas and arguments that have been presented for our consideration, some material out of which a theory might be evolved and a solution reached of this vexed but important question. I have carefully read section two of the committee's report, but to my mind it is such a meaningless jumble, such a wishy washy nothing, such an aggregation of words full of sound and fury signifying nothing, that I would be loath indeed to support it. I have also given due consideration to the pending amendments, but I consider them so new in theory, so far outside of ordinary constitutional enactments, so involved in construction, and so difficult of application that I would have to be hard pressed indeed before I could give them my support. I want something to meet the requirements of the times, something short, crisp, and clear cut, something which, when incorporated in a Constitution, will have some binding efficacy. Something that no man can misunderstand and no Supreme Court can misconstrue. Now, sir, let us get back to first principles. Why are we here? Why are we to-day endeavoring to perfect a scheme of taxation? Why was this Convention called, and why are we honored with seats in this Convention? Let us hear the conclusion of the whole matter. Because the Supreme Court of this State has decided that bonds and notes and mortgages are not property, and therefore not subject to taxation under our present Constitution. That is the great, the moving reason, the people of this State had in mind when they ordered this Convention. Now, sir, knowing these facts, what ought to be the course of fair minded men? Why, simply to remedy the wrong committed on the people of this State by the Supreme Court and go home. But, sir, instead of doing that what are we now doing? Here we are wading through a long tedious article on the subject of taxation, embracing seventeen sections, containing long, tedious, involved, meaningless, and ungrammatical sentences that will give rise to endless litigation, and about one hundred decisions of the Supreme Court as absurd as the last one it delivered on that subject. My venerable colleague from Sonoma struck the keynote of the whole matter last Saturday, when he suggested that we had better stop talking and fix the Constitution by defining what property is. Now, sir, I have a substitute that I propose to offer when an opportunity occurs. It is in accordance with my views, it meets the views of many gentlemen on this floor, and more than all it meets the decision of the Supreme Court squarely. Here it is:

"SEC. 2. All property in this State shall be taxed in proportion to its value, to be ascertained as provided by law. For the purposes of taxation, bonds, notes, mortgages, evidences of indebtedness, solvent debts, franchises, and everything of value capable of transfer or ownership, shall be considered property. Growing crops, property belonging to the United States, to this State, or any political subdivision thereof, shall be exempt from taxation."

As I have already said, the Supreme Court has already decided that mortgages, solvent debts, choses in action, and the enumerated items are not property. Now, sir, it does not become me, as a good citizen, and a law abiding man, to impugn the motives of the Judges of the Supreme Court. I do not do so. But I have the right to say, and I will say, that in the definition of the word "property," they have been very inconsistent, to say the least. In eighteen hundred and sixty-six they decided that bonds were property, and therefore subject to taxation. In eighteen hundred and seventy-six they decided that notes and mortgages were

not property, and therefore not subject to taxation. I contend, sir, that their first decision was the correct one.

MR. HOWARD. I will read from a recent decision of the Supreme Court of the United States, in the case of State Tax on Foreign-held Bonds, 15th Wallace, page 320:

"To call debts property of the debtors, is simply to misuse terms. All the property there can be, in the nature of things, in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications; but no number of authorities, and no forms of expression, could add anything to its obvious truth, which is recognized upon its simple statement."

In other words, the Court decided that bonds issued by a railroad company, are property, and are properly assessed to the owners.

MR. EDGERTON. Was not the case thus: that they attempted to tax the interest stipulated in bonds held by non-residents of Pennsylvania, and it was decided that the State of Pennsylvania could not tax it?

MR. HOWARD. That was the main question; but they also considered another, and the Supreme Court held that they were property, and properly assessed to the owner.

MR. EDGERTON. They did consider another question which was not before the Court, and the gentleman knows that was no decision at all.

MR. HOWARD. My friend cannot befog that decision.

MR. EDGERTON. Nor you either.

MR. HOWARD. I am not in a befogging state.

MR. EDGERTON. You are always in a fog.

MR. HOWARD. I always find you there, if I am.

MR. MORELAND. I hope this side show will come to an end, and that I will be allowed to proceed with my remarks.

THE CHAIRMAN. The gentleman must not give up the floor, then.

MR. MORELAND. I contend that they are property. For all purposes, except taxation, they are looked upon and held to be property. They are subject to attachment and garnishment, as other property. When a man dies possessed of bonds, notes, or mortgages, they are administered upon as other property. They are subject to larceny, just as other property is. They may be bought, sold, and transferred, as other property. The men who own them receive the protection of the law, just as other men do. They are property. I hold in my hand a work entitled "Introduction to Political Economy," by Perry, published last year, and I will read a sentence or two from it:

"It is very clear, in the first place, that all taxes have to be paid out of the gains of exchanges. Indeed, there is no other possible source out of which they can be paid. Taxes are collected in money; and the only way, gifts and plunder aside, both of which are out of the question, by which any man gets money to pay his taxes with, is through exchange of some sort or other. Everybody must pay his taxes out of income; the sources of income are only three, namely: wages, profits, and rents, and each of them is a result of exchanges. Even the retired merchant, who lives on the interest of his money, and pays his taxes out of interest, must at least loan out his money to get the interest—which is an exchange. Laborers pay their taxes out of earnings, capitalists theirs out of profits, real estate holders theirs out of rents—all of them consequently out of exchanges."

* * * "Besides, as all taxes must come from the gains of exchanges, it would seem reasonable that each man's taxes should be in exact proportion to the sum of his gains by exchanges. I do not think that there can be any other just rule of taxation. It is sometimes said that each man should be taxed according to his property; but when we come to analyze this remark, it amounts to what has just now been said. What is property? The old Roman law said, and said rightly: Property is anything which can be bought and sold. The very substance of property is the power and right to render services in exchange; the test of property is a sale; that which will bring nothing when exposed for sale, either never was, or at least is not now, property; the right of the government to tax anybody, consequently, depends on the question whether he has something to sell, or has actually sold something; and the amount of the tax would seem to be determined by the amount of the sales, just as the ability to pay the tax certainly hinges on the fact and the amount of the sales."

Now, sir, gentlemen may say that my proposed amendment, if adopted, will produce double taxation. I admit, in a certain degree and to a certain extent, it will; but the same person will not be twice taxed on the same property, which is the true test of double taxation. But, sir, it will materially lessen the burdens of double taxation, and it will lessen it on the debtor class of the community. We have now the very worst form of double taxation. The owners of visible, tangible property now pay all the taxes, no matter how much it may be incumbered. They pay for themselves, and they pay for their creditors. Consequently the amount of assessable property is small, and the rate of taxation is high; so, sir, if we can bring into the list of taxable property some two hundred and fifty thousand dollars' worth heretofore untaxed, the amount will be large and the rate low. And, sir, this bugbear of double taxation that has been raised does not come so much from those who are now doubly taxed as from those who are not taxed at all. What right have they to complain if we only ask and require them to pay on the property they possess? I look upon the systems proposed as full of interminable difficulties. If we go to dabbling in offsets, and rebates, and credits, and divisions, we shall complicate our system of taxation so that it will be worth just nothing.

I hope, sir, that the pending amendments and the original section will be rejected, and a section similar to the one I propose to introduce will be adopted.

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

MR. KELLEY. Mr. Chairman: I have been listening for the last ten years to these fine-spun theories about double taxation, and I find out that the fact of it is simply this: that the poor man pays the taxes, while the rich man and corporations go free. I am opposed to the reductions proposed by this Convention. I am satisfied that it will only open the floodgates of fraud, and not remedy the case a bit.

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

The amendment was rejected.

MR. MORELAND. Mr. Chairman: I now send up my amendment.

THE SECRETARY read:

"SEC. 2. All property in this State shall be taxed in proportion to its value, to be ascertained as provided by law. For the purposes of taxation, bonds, notes, mortgages, evidences of indebtedness, solvent debts, franchises, and everything of value capable of transfer or ownership, shall be considered property. Growing crops, property belonging to the United States, to this State, or any political subdivision thereof, shall be exempt from taxation."

REMARKS OF MR. WELLER.

MR. WELLER. Mr. Chairman: Taking into consideration the subject of taxation, as it has existed heretofore in this State, and the subject of taxation as it has existed all over the United States, and throughout the world, there is no equal taxation. There is no taxation that a person can reduce down to a fine point and call it just to all. Governments are instituted for the benefit of the governed, and it is the governed that are interested in the matter; not only the property owners and the individuals that have an interest in the property, but all persons that are among the governed should bear their proportion of the burdens of the government under which they live. Our present system of taxation in the State of California has thrown the burden of the government of this State upon one class of persons alone. It is the business class, the people who have employed the labor, that have taken the risks of all the business that has been done in this State, that have borne the burden of the government—that class of individuals have paid the taxes. The other class that have been employed by that class of people, and the other class that they have borrowed from, have enjoyed the benefits of the government, the benefits of the Courts, and all the benefits that the other class have, and at the same time, they have borne no proportion of its burdens. Now, take this matter into consideration; take it into consideration so far as deductions are concerned; that if you take all the property in the State perhaps it would not pay its debts. Through the extravagance of our people, and through their great desire for gain, a great many of them have overreached themselves perhaps, and have involved themselves to a certain extent, and the State in general. All business men and corporations are involved to such an extent that if the property were put up for sale to-day, perhaps it would not pay its indebtedness. But upon that indebtedness that has been incurred it is not proposed by the owners of the franchises, nor the property owners, that the property is going to be given up for that purpose. Now, the capitalist is interested, and has the benefit of the government of this State just as much as the business man is that employs the capital, and that class of people that take all the risks of business, and that class of people that employ labor, develop the country, and bring out its resources and make it productive for capitalists to come here, and men that have got money to come among us—certainly that ought not to be the class that the whole burden should be placed upon; they should have some sympathy. It should not be a clear gain to the individual that loans his money, so far as the burden of the government is concerned, because business must pay for the margins that they make or else they must make an inroad upon what they have, and it would be no more than right that capitalists should be compelled to pay something, out of their margin, also, for the support of the government. At the same time, under the present circumstances, they take no risks at all upon their capital, while the business men have been making inroads upon their actual property in bearing the burdens of the government, and enriching that class of people who have no burdens to bear—they have been gaining all the time. There are no dry years with them; they do not meet with any losses; they gain all the time, every day in the year. But those that are in business are obliged to take risks and incur the contingencies of the seasons and the contingencies of business, pay for the labor that they employ, and bear the burden of the government too.

Now, Mr. Chairman, in regard to the matter of equal taxation. There is not wisdom enough, I believe, in this Convention, to arrive at it. From the reports that I have read from various Commissions that have been appointed by different Legislatures throughout the United States, I find that none of them have arrived at that golden rule of equal taxation. It is a question yet and a matter of discussion with them. We can discuss this matter for a month, and yet arrive at no better conclusion perhaps than they have. Now, we may say here, I have a mortgage on my farm. I borrow money to the amount of five thousand dollars and place upon the real estate a mortgage. I give the mortgage for the purpose of giving the person good security. It is called the best. I get my money on better terms from the fact that I give the real estate. It cannot go away. I get more leniency from him by giving him that security. The consequence is that that is considered the best security, and I get my money at a better rate. Now, it does not follow that that five thousand dollars that I give this security for is incorporated in that piece of land. I may take the money and go to Washington Territory and speculate, or buy public land there. I may take it and invest it in other business. The theory that the gentleman here at my left offered is that this money is incorporated in the property upon which the mortgage rests, and he says it is double taxation. It is double taxation now, because the debtor pays on the debts and pays on his property. He

pays it all at the present time. These individuals that have these mortgages do not pay anything, although it is the best of property. If it was not the best they would not invest their money in that way. They would risk it in business the same as other men do. No; they consider that it is more secure and safer for them, and if they can loan their money on good security and receive the interest, they would rather enjoy life that way and not take the risks of business. The consequence is that they choose to employ their money in that way, and another man chooses to employ his in the cultivation of the soil, or any other business that he chooses to embark in. Now, for the last fifteen years we have been taxing the real estate. We tax all the property, regardless of indebtedness; regardless of this other property, which is the best kind of property, and which is in the hands of that large class of people in this State who are making their living and making their fortunes by loaning money to this class of business men. They are enhancing their wealth constantly, while the other class, under the contingencies and vicissitudes of business, taking the risks, some of them win and some lose. At the same time they are the real benefactors of the country. The great benefactors of the country are those individuals who develop its resources and carry on its business. They are the individuals that open up and develop enterprises, and make it an object for capital to come to the country; and they make it an object for immigrants to come here.

Now, the question is here, if we take the proposition introduced by the gentleman from Sonoma, we are now making the business men of the country bear the full burden of the government; taxing them to the full extent of their wealth, and also their indebtedness. We are giving the lender the advantage. His property consists of promissory notes secured by mortgage, which are worth their full value. The business man is taxed to the full value of his property in cash, and also his indebtedness. He pays on both. The consequence is that he pays more than the individual who has the solvent debts in his hands; and that is giving the individual that holds these solvent debts a better opportunity than if the indebtedness was deducted, from the fact that it increases the amount of assessment and the amount of the assessed property, in the same ratio that it would decrease the rate of taxation. The rate of taxation would be less upon his margin of his rate of interest than it would be if the matter of the solvent debt was deducted from the property and then paid upon the property alone and the debtor was allowed to pay upon the debt. It would make a greater tax upon the capital. We are willing to give capital that much advantage of the business men, and take this proposition. The argument that is used by our political economist is this: that if we tax a negotiable note that bears a certain rate of interest that that individual cannot get his amount of interest that the law allows him, from the fact that the taxes will take away a certain portion of that rate; and if the taxes are two per cent. and he was getting eight or ten, why his rate of interest would be reduced that two per cent., and he would only get six or eight; and if a usury law existed it would be taking away that much of his interest which he would be allowed according to the usury law. Now, then, if the amount of property is increased, and the indebtedness paid on and the obligation also paid on, why then the margin or percentage would be less upon the obligation, and it would be in his favor; and it would result in this, that he would be taxed for his privilege of living under the government, at a less rate even than the individuals who are carrying on the business of the country and taking the risks of business.

It is certainly a fact, that in one county in this State, last year, which was a disastrous year, there was over five hundred thousand dollars of taxes raised from the farming community and the business men of that county, and their margins did not amount to that five hundred thousand dollars. They paid more into the treasury of that county than they made out of their farming and business. Here was the bankers and money lenders who held the mortgages and notes of these farmers and business men, who drew their interest and paid no tax. It all came in and they were enriched, and the others were impoverished beyond their ability to pay, allowing them even the same chance that the capitalist has. The burden of our government at the present time is and has been very oppressive, and to allow this matter to pass over and throw the burden where it is at the present time, is wrong; it is oppressing the class of people that, as a general thing, there has not been much mercy shown to; but it is doing this, Mr. Chairman, whether they get any sympathy or not, it will result in this in the end, that it will kill the goose that laid the golden egg. The very interest that keeps up the country, the very interest that develops its resources, the very interests that employ all the labor, that employ the capital, that develop its enterprises, will be crushed and crippled to that extent that its prosperity will be gone.

REMARKS OF MR. STEELE.

MR. STEELE. Mr. President: I believe that the amendment of the gentleman from Sonoma, Mr. Moreland, and also the amendment offered by the gentleman from Placer, Mr. Hale, for Mr. Boggs, are now before the Committee of the Whole. Well, sir, I am in favor of direct taxation. I believe in direct methods, and for that reason I am in favor of the amendment introduced by the gentleman from Sonoma. I believe that all property in the State should be taxed, and taxed directly in the hands of the parties that own it. The advantage of direct taxation is, that it brings the taxpayer in direct connection with the government and gives him an interest in the government. Men prize that for which they pay, and if a man pays taxes for the support of the government, it ought to give him such an interest in the government as that he would strive to look after the affairs of government, and see that they were justly administered. That is the object of direct taxation. It connects every person directly with the government, and makes him personally responsible for the government. The method of collecting taxes directly ought to be more simple than collecting them indirectly. Gentlemen tell us that you cannot reach solvent debts, and all this sort of thing. Now, sir, if it is true that it is impossible for us to make the parties pay taxes who own property, who are really the rich parties, and who are the parties able to pay taxes—if they are to escape and we cannot compel them to pay their proportion of taxes—then it is time to surrender the government into the hands of Kearney, or somebody that can collect the taxes. I believe that we can, through proper tax laws, and through their proper execution, reach a majority of the property in this State, and I believe that we ought to do it. And in order to do it, we ought to initiate this principle in the Constitution and make it mandatory upon the Legislature to enact such laws that they will list all this property, and then clothe the Assessors with authority to list it in the hands of the men who own it. Having done that, I think that this enigma of taxation will, in a great degree, have been solved.

Some gentlemen say that we ought to tax growing crops. Now, sir, the difficulty with that is that growing crops possess no definite or determinate value. You cannot tell anything about it. It depends upon other contingencies. It depends upon the weather. I do not believe in taxing labor directly, but taxing the products of labor. When labor has resulted in something tangible, tax it; but not before. That is the difficulty with taxing a growing crop. You cannot reach it; you cannot estimate it. But the other kinds of property enumerated in this section suggested and presented by the gentleman from Sonoma, you can reach and tax through a proper adjustment of the tax law.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. Chairman: I hope the amendment of the gentleman from Sonoma will pass. I do not wish to make a speech, but I simply wish to say that I am opposed to making any deductions, or rebate, as it is termed. I am opposed to converting the State into a bookkeeper, to go around and settle up all the business of the citizens of the State. I think that the State should tax things—should tax property—and if the word property is not sufficiently comprehensive to include mortgages, bonds, promissory notes, and evidences of indebtedness, I am in favor of enlarging the definition so as to include them. I am utterly at a loss to understand how my friend, Judge McFarland, of Sacramento, reaches his conclusions. How any man can stand with a promissory note in his hand, say for ten thousand dollars, which is perfectly good, and tell me that he has no property, passes my comprehension. If the gentleman should lose his note, or it should be stolen from him, I apprehend that he would arrest some person perhaps, charging him with stealing a certain promissory note, and perhaps send him to the penitentiary. I am utterly at a loss to see how any gentleman of a sound mind can say that a mortgage upon a piece of property is not property. If the gentleman has a mortgage, say for ten thousand dollars, he can take that mortgage down to the bank and get ten thousand dollars for it. I cannot see why that is not property. I know that there are persons in the county where I live that are worth a great deal of money. I know gentlemen there who loan money, from one to two hundred thousand dollars—my colleagues here know the same—who do not pay taxes on over one thousand. That is the truth. There is no getting around it. There is no justice in any system of laws which makes these distinctions. Some gentlemen advocate that we should make deductions on corporations and not on persons. I am in favor of treating all alike. I believe that the State should go around and assess the property as they find it, and leave the condition of indebtedness for the people to settle themselves.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I hope this amendment will be voted down, and for the reason that has been stated a hundred times on this floor: that it proposes to tax fictitious values. It recites, "for the purposes of taxation, bonds, notes, mortgages, evidences of indebtedness, solvent debts, franchises, and everything of value, capable of transfer or ownership, shall be considered property." Now, Mr. Chairman, a great many things have value that are not property. It is the thing of value for me to own, or to have the handwriting of the gentleman from Sacramento, acknowledging that he owes me money. It is a thing of value to me; but it is not a thing of value to the State that the gentleman from Sacramento owes me, or that A owes B. The good will of a trading firm, while it is a thing of value that a person may have, it is not property that the State has any concern about. The principle should be established and adhered to, that the State desires to collect taxes upon the land, and goods, and money, belonging to its citizens. It does seem very wonderful to me that the debtor class who favor this proposition to tax all these things, are the very ones who are bound to pay taxes a second time. There is no such thing as avoiding the fact that when you have taxed a man upon all his property, subject to no deduction, and then put another tax upon the debt that he happens to owe, that he is going to pay double taxation.

MR. HITCHCOCK. You say a thing of value. What do you mean by a thing of value?

MR. REYNOLDS. That is the language of the amendment offered by the gentleman from Sonoma, and that is just exactly what is obscure about it. I was attempting to describe that what might be a thing of value to me, might not be a thing of value to the State. It is a thing of value to me to have a man's signature acknowledging that he owes me money, but it is no concern of the State that he owes me money. It is the concern of the State that it has assessed that money in his hands, and it ought to be assessed but once. It is unjust that it, having been assessed to him, they should assess it to me. It is a fact that this taxation of mortgages is bound to press hard upon the debtor class. And why? Because when men make contracts to loan money, it will be at a certain rate of interest free of taxation, and if it is understood at the time that the lender will have to pay two per cent. taxes, the rate of interest fixed will be two per cent. higher, and there is no avoiding it. And when you have taxed the debtor for all the property he has got, and

then tax what he owes, you are as sure to make him pay the additional tax on the debt as you are to put the machinery of law into operation. And that is why I say that this amendment should be voted down, and that we should adopt that simple principle. Its simplicity commends it. To tax all the property, the land, the goods, and the money of the State in the hands of the person wherever found, once, and only once, and there stop. Let the machinery of the law stop there and not go into the conditions of debtor and creditor that exist in the community. It is no concern of the State who owes who. I am in favor of taxing the mortgages in this way: that if A owes B—if A has a farm and is owing money to B—that all his property and money should be taxed to him, and when he comes to settle with B, that the taxes should be an offset to that amount. It is a matter of not the slightest consequence whether it is secured or unsecured; but if you go into this principle of taxing debts, and do not allow a reduction, you are making a distinction. I do not propose to make any reduction at all—no reduction on account of debts owing to the person assessed.

The rebate I propose is to have the tax paid by the debtor offset on the debt when he pays it. We have got all the property already. The property has already been assessed in the hands of the debtor. According to this principle, Mr. Chairman, of taxing everything of value, why, the more mortgages a poor man has upon his homestead the better he would be off; and after he had succeeded in borrowing all the money anybody would loan him, why, he ought to fill his pockets with mortgages and go around and give them to his friends. The more mortgages he would have the better he would be off; and he ought to build a vault and fill it with mortgages. For this and other reasons I hope this will be voted down, so that we can adopt a simpler proposition. First tax all property, except that belonging to the United States, to this State, and so on. Then when the Assessor approaches the citizen to ascertain what property is assessable in his hands, he first finds out all the real estate and all the personal property, and then all the money he has, and there stops. No deduction shall be allowed to him on account of any debts that he may owe. And every person the same way. But if that citizen does owe anything, when he comes to pay that money, interest, or principal, the tax that has been assessed to him, or paid by him, shall at that time be set off, and the tax receipt shall be just as good as the creditor's receipt exactly. I have reduced it to a few words, and if I can get an opportunity, I shall offer this amendment:

"All property shall be subject to taxation, except as follows: First, that belonging to the United States; second, that made exempt from taxation by the laws of the United States; third, that belonging to this State, or some political subdivision thereof; fourth, growing crops. No deduction shall be made from any assessment on account of debts of the person assessed. Taxes assessed to or paid by any debtor shall be at the time of such assessment or payment a set-off against the debt to an amount equal to such proportion as the debt bears to the whole amount of the property assessed to him."

REMARKS OF MR. SMITH, OF FOURTH DISTRICT.

MR. SMITH, of Fourth District. Mr. Chairman: I do not wish to detain the committee long. I only rise to question one feature of the last amendment offered by the gentleman from Sonoma, Mr. Moreland. I had myself an amendment written out very much like the one he has introduced, and am therefore in favor of the principle involved in the amendment, and, so far as I understood the argument of the last gentleman who spoke, it seemed to me that he was in favor of the same principle, for, if no qualification is placed in the Constitution, it is a direct taxation upon all property in the State, not allowing any reduction. It is an inflexible rule applied to all property in the State. Now, the question is, whether we wish in this Convention to make an inflexible rule of direct taxation of all the property in the State. As I understand Mr. Moreland, his idea is to have the Legislature unrestricted in regard to the taxation of property. I believe it is the understanding of this Convention that all property should be taxed, and that there should be no qualification of the word property. Now, in order to prevent a qualification of that word, there must be a broad definition of property. As long as a single word is placed in the Constitution by a certain meaning of that word, the Legislature is restricted, and if you wish to prevent a restriction upon the Legislature, you have got to have the broadest definition of that word. Now, we have used here the word property. There is a restriction upon the Legislature—by the definition of that word, and in order to prevent that restriction, it is necessary to give the broadest and fullest definition in the Constitution of the word property. But in doing that are you not giving another qualification, and making a rule of direct taxation of all property—of every conceivable thing that has no value whatever? Now, it seems to me that there should be one qualification in this amendment, and that qualification should be such as to give the Legislature some power of direct taxation upon one species of property, or upon another. To invent a scheme that may be suitable to-day, and may not be suitable to-morrow, or any other time, suppose, for instance, that includes both franchises and capital stock. Then, without qualification, the Legislature could not have the power to levy a tax upon the property of corporations by the word franchises alone. It would have to levy taxes upon the franchises and upon the capital stock also, which would be double taxation. Now, if the Legislature had power to tax the corporation in one way, so as to get at the value of all the property of the corporation, it would be all that would be required. I am not so much afraid of this double taxation. I think it is very difficult to get double taxation, as is clearly shown by the report of the Commissioners of New York. I had in the amendment which I had drawn, the words, "under the direction of law," so as to read "all property in this State shall be taxed under direction of law, in proportion to its value, to be ascertained as provided by law." Now, "under the direction of law," or some such words as these, would give the Legislature the power to fix a scheme of taxation. Let them try it. If it fails, let them try another scheme, as an experiment. But it seems to me that it is necessary to give the Legislature this power to fix the scheme of taxation, because a scheme which would be good for one time would not be good for another, and we should give the Legislature that power.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I wish to say just a word in regard to this amendment as offered by the gentleman from Sonoma, Mr. Moreland, and to compare it with the amendment which is proposed by Judge Hale, because there is a point upon which we differ, perhaps, in both amendments, although parties who are advocating the one proposition and the other claim that they wish to have all the property in this State taxed; but there is this difference between the two: one party claims that an evidence of indebtedness is not property. The amendment proposed by the gentleman from Sonoma, Mr. Moreland, distinctly says: "For the purposes of taxation, bonds, notes, mortgages, evidences of indebtedness, solvent debts, franchises, and everything of value capable of transfer, or ownership, shall be considered property." Now, if we believe that they should be considered as property, we should support that amendment, and have that property included in the assessment roll, because if it is property it should be so included, and thereby increase the assessment roll, and by that means reduce the rate per cent of the taxation. While, upon the other hand, the amendment offered by the gentleman from Placer, Mr. Hale, distinctly says, in so many words: "No tax shall be imposed on growing crops, debts, evidences of debt, private property exempt from taxation by the laws of the United States, property belonging to the United States, or to this State, or any municipality thereof. No deduction shall be made from the assessed value, on account of any debt or debts," etc. There is the difference between the two propositions. One party claims that evidences of indebtedness are not property, and consequently should not be taxed; the other claims that they are property, and if so should be included in the assessment roll, and thereby reduce the per cent. upon the dollar for taxable property. I believe that evidences of indebtedness, for the purpose of taxation, should be considered as property, and I think the definition, as stated in the amendment offered by the gentleman from Sonoma, is concise and clear, and could be perfectly understood, and we ought to divide here upon that one proposition, whether these mortgages, or the evidences of indebtedness which they secure, are to be considered as property for the purposes of taxation. The proposition of the gentleman from Placer, Judge Hale, does not consider them property until the debtor has been able to secure the money with which to pay the indebtedness, and then be allowed to retain in his possession the amount of taxes paid. But excluding them from the assessment roll increases the rate of taxation upon every dollar of the property. If we are to have them as property in any sense, they should go into the assessment roll as property, thereby increasing it and reducing the rate per cent.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: The reason why I shall vote against this proposition is this: it recites that mortgages, evidences of indebtedness, solvent debts, franchises, and everything of value, shall be taxed. A mortgage is an abstract thing; a note covered by a mortgage is an abstract thing. I owe a man five hundred dollars and it is a solvent debt. A note is the evidence of it. Then a mortgage secures the note, and you tax a man for the mortgage and then tax him for the evidence of the debt. I shall vote against the amendment, because, as I have stated, I am in favor of taxing property once. Here is a note secured by mortgage on a piece of property; you propose to tax the property, and then the note, and then the mortgage.

MR. HOWARD. Have not the Courts decided that a note is a mere incident of a mortgage?

MR. GREGG. No. The mortgage is an incident to the debt. Here you have got triple taxation. The mortgage is incident to the debt, it is true, but not for the purposes of taxation, because your Constitution says that mortgages must be taxed, the evidence of your debt must be taxed, and then the debt itself must be taxed. If you don't have any note, you tax the debt, and then you tax the mortgage.

I am opposed to taxing franchises, as such, as I said the other day. You incorporate a mine; men purchase it and they own a franchise there. All it is worth is the property in it. The mine is worth fifty thousand dollars, and it is a franchise worth fifty thousand dollars. You go to Inyo, where the mine is located, and tax it there as property. If it is not property it is not worth anything. Being property, it is taxed in Inyo County; then the franchise is taxed in San Francisco, where the company's principal place of business is located. If it is true that a mortgage includes the debt, then the franchise includes the property, and your mine located in Inyo is taxed in San Francisco.

Growing crops are an improvement. A man may have a piece of land that is only worth two dollars an acre, as it lies idle. Nobody will give more for it. But there is forty bushels to the acre of wheat growing upon that ground, it adds to the value of the property: it is a part of the realty and it makes the property more valuable, but the Constitution says it is a growing crop, and cannot be taxed. It is a false quantity.

MR. HEISKELL. Is not the production reduced by raising a crop every year?

MR. GREGG. If a farmer is a farmer he sometimes manures his land.

MR. STEELE. Can a man determine how much wheat there will be when it is gathered?

MR. GREGG. Can you determine how much your house will be worth next June? That house may burn down. Personal property is an uncertain thing. I am not in favor of taxing a growing crop as a growing crop, but it is a part of the realty. It is an improvement. It is valuable in proportion as it adds value to the land. Separate and apart from the land I think it ought not to be taxed, but when you say that

growing crops shall not be taxed, you have got a false quantity. A man sows on the first of March; the Assessor comes on the first of June——

Mr. HITCHCOCK. The report provides that they shall be assessed all on one day.

Mr. GREGG. That is another false quantity. It is an impossibility. I say that the system of taxation in California has been bad. The Board of Supervisors really had not the power to put a value upon property. They had no power to increase it or decrease it without the complaint of some person. One neighbor would not complain of another. The Assessor and his half-dozen deputies assessed property unequally. The County of Kern to-day pays more taxes on stock than the County of Tulare, because of the want of the power of equalization. This thing is only a false quantity. After long struggles in the Courts they were compelled to decide simply that property alone should be taxed, and that when a thing was not property it should not be taxed. For that philosophy they have been condemned. Why? Because politicians have traveled over the State and started the howl that the rich man is escaping taxation, and the poor man is bearing all the burdens of government—it is an *ignis-fatuus*. I say there is not a man in the State of California who is in favor of taxing but property. When you say that these debts shall be taxed you are doubling and tripling taxation, and the poor man and producer must always pay.

Mr. WILSON, of Tehama. The law says mortgages shall be exempt. There is where the wrong comes in.

Mr. GREGG. It does not say that mortgages shall be exempt.

Mr. WILSON, of Tehama. The decision says so.

Mr. GREGG. I own a lot and borrow one hundred thousand dollars to build a house. The house is built with the money I borrow. Then you propose to tax the house and the thing that was in existence before. I object to this amendment because it uses the franchises. It is a false quantity and will cause taxes to be levied in San Francisco which should be levied in Kern. I object to taxing mortgages and evidences of debt, and solvent debts, because it is a gain of false quantity. Three independent transactions that you must tax to each individual separate. I object to excluding growing crops and taking property away from taxation. I shall vote against the amendment.

REMARKS OF MR. HOWARD.

Mr. HOWARD. Mr. Chairman: The gentleman says that a loan is a mere abstraction. That is, if I have one thousand dollars in gold when the Assessor comes, he says that is property, and I am compelled to pay the tax upon it. But if I loan the one thousand dollars to my friend from Kern, and have not only the one thousand dollars, but receive interest upon it, he says that is an abstraction. I would like to have a good many of those abstractions. The trouble with me is I have not got enough of them. Now, as to the matter of franchises, the gentleman says that is an abstraction also. Well, as I shall show presently, he disagrees with the Supreme Court of the United States; and the Supreme Court of the United States unfortunately does not happen to be equal in metaphysics to some gentlemen on this floor. What is a franchise? It is a privilege for certain persons to associate and by associating make money, or accumulate property in a particular manner, and the Supreme Court of the United States has held that a franchise is property, and is liable to assessment for taxes. I refer to the late decision of the Supreme Court of the United States in the case of The Delaware Railroad Tax, eighteenth Wallace, page two hundred and thirty-one. The Court says:

"The State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation, or its separate corporate property. And the manner in which its value shall be assessed, and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion."

Thus it is perfectly legitimate, the Courts say, to tax a franchise and also to tax the property; and there is no injustice in it because both are property. The franchises of mining corporations are taxed now. The Court goes still further, and says:

"A tax upon a corporation may be proportioned to the income received, as well as to the value of the franchise granted or the property possessed."

That covers the whole question. Now, gentlemen get up here and state propositions of law which seem to me most absurd, because I do not find any books supporting them, unless it may be a contradicted decision which has been contradicted four or five times by the decision of the Supreme Court of the United States. The way the advocates here argue matters of law reminds me of a definition once given of law. It was said that law was that which was boldly asserted and plausibly maintained. I think some of them have fallen upon that definition.

REMARKS OF MR. TERRY.

Mr. TERRY. Mr. Chairman: The amendment offered by the gentleman from Sonoma, Mr. Moreland, appears to me to be a simple solution of the difficulty which we have been wrestling with for several days past. The object is to have all the property of the State taxed according to its value; and because of contradictory decisions as to what is property, it is necessary that we should here define what we mean by the word property. It seems to me that the definition given here is sufficient to cover the ground, and to cover every species of property. Now, the amendment proposed by the gentleman from Placer, as I understand it, exempts evidences of indebtedness from taxation. What is a bond issued by the State of California but an evidence of debt? What is a bond issued by a county or city of this State but an evidence of debt? The owners of these bonds, according to the amendment offered, are not owners of property at all, and therefore are exempt from taxation. A man can set himself down with one hundred thousand dollars in the bonds of California, and draw his interest annually from the taxpayers of the State. He does not own any property, he only owns bonds, issued by a perfectly solvent debtor, upon which he regularly draws his interest. It seems to me that anything which can be reduced into money, anything that has a value in the market, anything which can pass in exchange between man and man, is property, and ought to be taxed.

Mr. REYNOLDS. When you bought these bonds and understood you were to pay two per cent. a year taxes upon those bonds, did it not mean, and did you not compute two per cent. from interest on those bonds?

Mr. TERRY. When I bought those bonds I supposed I would buy them for just as little as I could. If I thought it was worth more than the money I invested, I bought.

Mr. REYNOLDS. And if you knew that you had to pay two per cent. taxes it would be two per cent. less on the bonds when you bought them.

Mr. TERRY. I do not know what it would mean. I know that if I had one hundred thousand dollars of the bonds of the State of California, I should consider myself worth one hundred thousand dollars in good property, and there would be no reason why I should not be taxed upon them. If a man steals one of them, I can get it back; and for the protection of this property, or this thing which is not property, if you please, it is right that I should pay.

Mr. REYNOLDS. Will a bond that is required to pay two per cent. taxes bring as much as one that does not?

Mr. TERRY. I do not know, and I do not care. An acre of land does not bring so much when it is taxed higher, so that the argument is as strong in favor of exempting land as it is in favor of exempting a bond. It is better property.

As to the question of franchises, a gentleman stated that a franchise was just the same as a property of a corporation. Why, in hundreds of instances the property bears no relation to the franchise. Take the case where a man has got a ferry, and an exclusive right to ferry people across. His ferryboat is worth five hundred dollars, and his franchise is worth ten thousand dollars.

Mr. GREGG. Don't you pay a license upon your ferry? Then you are taxed.

Mr. TERRY. You are taxed upon the property, of course. The real value of a thing is so much money as it will bring. It is all property. It is all protected by the law, and all ought to be taxed.

Mr. TULLY. Would not the franchise be valued in going into insolvency?

Mr. TERRY. Of course it would. Take the case of a man who has an exclusive franchise for a bridge. If it was burned down or carried away by a flood he could replace it for a thousand dollars; yet his franchise might be worth twenty thousand dollars.

Mr. HEISKELL. There is the Oakland Ferry franchise.

Mr. TERRY. Do your steamboats upon that ferry bear any sort of proportion to the value of the franchise? I suppose that money enough is taken in there every week to build any one of those boats; probably a half dozen of them.

Mr. GREGG. Take for instance the Call and Bulletin establishment. The property may be worth twenty thousand dollars, and the good will worth one hundred and fifty thousand dollars.

Mr. TERRY. It is income derived from the brain, and it may produce a great many thousand dollars. We do not tax that income.

Mr. TOWNSEND. If you own a farm worth twenty thousand dollars, and it is mortgaged for five thousand dollars, and you are assessed for twenty thousand dollars, don't you pay upon all the property there is in existence?

Mr. TERRY. No, sir, I pay upon what I have got. There has been a thousand millions of bonds issued by the United States Government, which is simply evidence of debt, and backed up in property and in mortgages, and still it is property.

Mr. TOWNSEND. Then if you have to pay for that property and are permitted to receive a credit on your debt, would not that be eminently just between the parties?

Mr. TERRY. There is no justice in it. Let every man pay upon what he has got.

Mr. TOWNSEND. Does not the State receive all that it is entitled to?

Mr. TERRY. No. Every man is equally protected, and the State should tax every man, no matter in what shape the property is.

Mr. EDGERTON. You base it upon protection.

Mr. TERRY. Upon what else is it based? People go into society for the purpose of protection. Upon what other principle do we pay taxation except that we have a protection for our persons and property?

Mr. TOWNSEND. Is not the deed as much value as a mortgage?

Mr. TERRY. No. The deed represents the property.

Mr. TOWNSEND. The mortgage takes the property.

Mr. TERRY. The mortgage does not take the property. It gives you a right to have the property sold, and out of the proceeds of the sale to pay the mortgage.

Mr. TOWNSEND. Then a man who holds the land is paying on more than he is worth.

Mr. TERRY. Call it double taxation, if you please. You reduce the rate of taxation. If I have got a mortgage for ten thousand dollars on a place that is worth twenty thousand dollars, I have got ten thousand dollars worth of property.

Mr. TOWNSEND. But the man is worth ten thousand dollars.

Mr. TERRY. I don't care what the man is worth. The man who owns the land gets the whole benefit of the land. He has the use of it. What is the difference, now? You, gentlemen, say, notes are not property, yet it is a promise to pay money. The bonds of the State of California are promises to pay just as much as notes are. You say they are not property, but still there is nobody here who would not be willing to take any amount of them. If I own one hundred thousand dollars in

bonds of the City of Sacramento, I can go into the Courts and force my right, and I am protected by the law. I say that is the basis of taxation. We pay for the protection of the government thrown around our persons and our property; that is the only reason taxes are levied. Men have gone into society for that purpose. In a state of nature every man enforced his right as he could, but when he went into society, it is necessary that society should be supported. All we get from society is protection.

MR. REYNOLDS. I would like to ask one question more. Supposing all the property in the State was owned by the citizens thereof, and each in his own right, without any debts or credit at all in the State, then what would the taxable property consist of, lands, goods, and money?

MR. TERRY. Yes.

MR. REYNOLDS. And there would be no evidences of debt?

MR. TERRY. Certainly.

MR. REYNOLDS. If, on the following day, commercial transactions should commence, and debts be incurred, and credits given, would there be any more property to tax?

MR. TERRY. Yes; there would. I owe a man five thousand dollars, and he has got a mortgage. His remedy is not entirely against that land. He has got his lien upon my work, my labor, my ability to earn money for the years afterwards.

MR. TOWNSEND. But you are so much poorer.

MR. TERRY. No, sir; he has got a record of that; he is not confined to that remedy. He has got everything else that I have got, or that I may acquire afterwards.

MR. STEELE. And if a thief should steal the note, could you not punish him?

MR. TERRY. Certainly.

MR. EDGERTON. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have directed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

The hour having arrived, the Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment to section two.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I hope this last amendment offered by the gentleman from Sonoma will pass, not because it meets my peculiar views individually, because if I had an exclusive right to get up a system of taxation I am inclined to think I would tax no debts, solvent or otherwise; but I am satisfied that would not meet the views of the people, or a large part of the people, of this State. Therefore I am willing to compromise to a certain extent, and yield part of my views for the purpose of deciding upon some general system of taxation. But I am opposed unconditionally to this thing of making deductions, or rebate. I look upon it as introducing something into the law in which the State has no concern whatever. I agree with the gentleman from Sacramento, Judge McFarland, when he said such a provision has no place in the taxation law. If it be the policy of this State to compel my creditor, when I go to pay my debt, to deduct from the debt an amount equal to that which I have paid for taxes, then, I say, let that provision be placed in some other part, and not in the tax law. It has nothing to do with taxation whatever. Let it be placed in that part which regulates the rights of debtors and creditors.

Now, I will endeavor to illustrate, in my poor way, why I think it is unjust and unfair to make my creditor deduct anything from my debt that I owe him, in consequence of the tax I have paid for him. For instance: I am a lawyer (though a very poor one). But I go into a place and begin to make a living, provided I can get a little start, for I have no capital, except my efforts, whatever they are worth. I find some one willing to take the chances, and loan me one thousand dollars. I take the money, and with it purchase a law library, fit up an office, and go to work. I have the office and library. I have control of the library. It is mine. That property is mine. If my enemies come and threaten to take that property and pile it into the street, and set fire to it, I can appeal to the law to protect me. I can bring my complaint before a magistrate, and if I can establish the fact that my enemies have threatened to destroy my property, I can compel them to give bonds to keep the peace towards me. I can do all that at the expense of the State. The State is bound to give me protection. And if a thief comes and steals my property, and carries away my office furniture, I appeal to the law of the State, and no matter what the expense may be, the State follows that thief, and if he can be found, he is tried, convicted, and incarcerated in the State Prison, at an expense, it may be, of ten times the value of the property which he stole. The State protects me in that regard; and my creditor has no more interest in the protection of that property than any other citizen at large has. You may say he is interested so far as my ability to pay him is concerned, but that is only incidentally.

Now, I say I have had the use of that property, the State protects me in the use of it, and I can, if my rights are interfered with, come into Court and ask the State to vindicate me in my rights. That is not the rights of my creditor, but my rights. If a man comes into my office and interferes with my property there, it is my right that he interferes with, and I can appeal to the strong arm of the State to protect me, and the State is bound to do it.

Now, then, I say I am protected just in proportion to the amount of property I own. If I have borrowed ten thousand dollars and fitted up my office with it, put that amount of property in it, then, I say the State protects me just that much more. Now, when I come to pay my creditor at the end of the year, or at the end of three years, if I have made enough money to do so, I say what justice is there in saying that my creditor shall deduct from the amount I owe him, the amount of taxes I have paid on that property for the support of the government which protects me. I say there is no justice in it. I say that if there is any justice in it at all, it is in not taxing the debt to him. I would much prefer to see the debt go untaxed, than to make my creditor pay it. To illustrate further, suppose a man owns a ferry franchise. He owns a ferry, and the right to keep that ferry. This property is worth something; if he pays a license it is worth that much less, but he owns a ferry franchise and is going to do business. He says, here, if I had one thousand dollars I could make money running that ferry. He borrows the money of his neighbor—I do not care whether it is secured or not, whether he gives security or not, makes no difference—he finds a neighbor who loans him one thousand dollars to build a boat with, after a while he takes that thousand dollars and builds a boat, thereby enabling him to go into business, and the State is bound to protect him in that property. If his neighbor comes and cuts the line and takes off that boat in the night, he can appeal to the strong arm of the law, and the Government will follow the trespasser and bring the property back to him, no matter what the expense may be. If any trespasser interferes with his rights in the use of that property, in any way whatever, he can appeal to the Courts, and the Courts are bound, if it is proven that his grievances are well founded, to punish the trespassers, and may award him damages—he may collect money for damages sustained. Thetr espass is not committed upon the man who loans him the money—he is entirely disinterested; he has no more interest than any other man at large in the community. Of course we are all more or less intercsted with individual rights, but this is only as part of the community at large. But the man who is directly interested in the protection of that property is the man who borrowed the money with which to build a boat for his own use. Now, he runs a ferry upon borrowed capital; the Assessor comes along and assesses that boat to him at one thousand dollars, and he pays the tax on it, as he ought to. Now, I say, what justice is there, what right is there, when he comes to pay his creditor who has loaned him this money, what justice or right is there in saying that the creditor shall deduct from the debt, with interest from the date of payment, the amount of taxes which he has paid on that thousand dollars? I am unable to see any justice in it at all.

A farmer may have a tract of land worth five thousand dollars. He has nothing else in the world. He knows if he had some capital to carry on business he could make money. He knows a neighbor who is willing to loan him the money, five thousand, or two thousand, say. I don't care whether he takes a mortgage or not, because it makes no difference in the principle. His neighbor loans him two thousand dollars. With that money he buys horses, and wagons, and plows, and other farming tools. He has the use of that property on the farm, and is thereby enabled to make the farm pay. Now, if his rights in the possession of that property—ownership of that property—though bought with borrowed money, are interfered with; if one of his neighbors comes in and drives off his stock, and takes down his fences, he can appeal to the Courts, and the Courts will follow that neighbor and compel him to pay the amount of the damage. It is not his creditor who loaned him the money who appeals to the Court. It is not the rights of the creditor that have been interfered with; it is his rights. Or, if an incendiary comes and burns up his stacks of wheat, and kills his horses or steals them, he can appeal to the law, and, without expense to himself, punish the wrongdoers. It is his right. The State is bound to use its best endeavors to see justice done, though it may cost ten times the amount of the property stolen. It is the duty of the State to do it; she is bound to do it. Therefore I say that a man should pay taxes in accordance with the amount of protection he receives from the Government. What justice is there in the case of a man who owns a five thousand dollar farm, and is doing business on borrowed capital, protected fully in the possession of his land and improvements, to the value of seven thousand dollars in all—what justice is there in saying that when he goes to pay his creditor the creditor shall deduct from the amount that is due him the amount of taxes which have been paid on that two thousand dollars? I say there is no justice in it at all. It is not protection to the creditor which the State has afforded during this time; it is the debtor who has had the full protection of the law. If the creditor pays taxes on the debt, which is assessed to him as a debt, let him pay it directly, because there is reason in that, and reasons against it, too. But I am willing to tax every debt that exists. I am willing to compromise. But I say make no deduction. If I loan a man two thousand dollars and he refuses to pay me, I will appeal to the law and the law will compel him to pay me. I have protection, and the debtor is protected in the use of his property. Therefore, I say in this view I can see no justice in making these deductions, and I hope this amendment of the gentleman from Sonoma will prevail, and assess everything that has value, everything that is property.

SPEECH OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: We have declared that taxation shall be equal and uniform. I suppose we all desire to see the burden of taxation equal and uniform. But we have great difficulty in devising a scheme that will effect this end. In comparing views, it seems that while we are all disposed to effect the end, we are not all agreed as to how that end can best be effected. I suppose there is no gentleman here who does not wish to do it, because, by a large majority here, we have declared that taxation shall be equal and uniform throughout this State. Now what is that, if it is not that all property shall be burdened alike, and that every man shall pay in proportion to his ability to pay? If it be that every man must pay in proportion to the protection he receives from the Government, as suggested by the last gentleman, then you levy taxes without reference to property. A man may not be worth a dollar, and yet he can demand protection from the Government. A man may have no property in reality—that is, he may be in debt for the last dollar he has, so that all his property would go to his creditors, he simply managing it in the interest of his creditors for the time being, and yet he really be worth nothing. Now, if a man like that is to be assessed in proportion to the protection he receives, then that is one rule. But that is a rule that goes independent of property. The idea is that all property is to be assessed, and that taxation is to rest upon property, and upon property alone. During the whole history of this State we have assessed men—with the simple exception now and then of a poll tax and succession tax—for property, and property alone. And I supposed that was what we were trying to do here, to place the burden eventually upon property, and property alone.

Now, sir, the proposition here is the amendment offered by the gentleman from Sonoma. Several gentlemen have expressed the wish that the proposition might be adopted. It seems to me there are serious objections to it. It does not effect the end sought, and it is to these objections I propose to speak. As I understand it, sir, it is that all property of every kind—everything capable of ownership, or sold, shall be subject to taxation. And then gentlemen say there shall be no deductions from this. Whatever a man has that he can sell, shall be assessed at its cash value. Now, that is not according to the history of this State in the first place. Go back over the history of this State and you will find we have never done that. I have just looked at the revenue law passed in eighteen hundred and fifty-one. Under that law solvent debts—all solvent debts—over and above a man's indebtedness, were assessed. And I have looked at the law passed in eighteen hundred and sixty-one, by which all a man's solvent debts, over and above indebtedness, were to be assessed. According to the proposition here by the committee, the indebtedness is to be deducted from the solvent debts. If we go back all through the history of this State, there is nothing up to this time—I have just now looked at the revenue law of eighteen hundred and fifty-one and eighteen hundred and sixty-one—and I say, if my recollection is right, all through the history of the State, from time to time, that when solvent debts were assessed at all, only the balance over and above a man's indebtednesss was assessed. Now, why should this not be so? What reason is there against it. The gentleman says a man may resort to the Courts for protection. That may be so; but go all over this State, and in every town and village you will find men engaged in trade as well as in the cities. The man from the country goes to the city and buys a bill of goods. He takes along, perhaps, money enough to pay for half the goods, the balance he gets trusted for. He takes these things and sells to the miners, receiving some cash, and charges on his books a portion of the goods. Now, he is both in debt and has debts due him. Suppose when he went into business he had ten thousand dollars to start with. That money he invests in goods and goes in debt ten thousand dollars. He has sold goods on trust until he has ten thousand dollars due him. Now, the Assessor comes along and finds, say ten thousand dollars worth of goods in his store and assesses him. That is what he is worth. That is all the property he has. Why should he be assessed for what is due him, making no deductions for what he owes? Why should he be compelled to pay on thirty thousand dollars, when he is only worth ten thousand dollars? Now, I say why do it, when we never have done it before? All along through the history of this State we have deducted the amount of his debts. Why not do it now? But the proposition of the gentleman from Sonoma says, he shall be assessed for all goods he has, and all the credits he has, with no deductions whatever for what he owes. I say it is not right. There is no justice or propriety in it. It is not sufficient answer to say that he may collect these debts through the medium of the Courts. He may do it. If his creditors do not pay him, he may have occasion to resort to the Courts. But you are going to assess him upon this theory upon the property he has—the property he has in goods—and then on his credits without paying his debts. He should be assessed on his goods and then upon his credits over and above his debts. That is all he has, and all he ought to be assessed upon, unless you change the theory of taxation, and say that a man shall be assessed for the protection the law gives him, and not for the property he has.

Take another case. All that a man has, all that a corporation has, all that anybody has, that is capable of sale and delivery for value, must be assessed. The Hibernia Savings Bank of San Francisco is a corporation. It has deposits to the amount of fourteen million dollars. Those deposits are from the poor men of San Francisco, mechanics, laborers, men of small means, men who are unable to use their money profitably, who are unable to loan it, and they take it to the bank to be loaned out, and they receive the interest at the end of six months. Now, every man who goes and makes a deposit there receives a passbook. As between him and the bank, the relation of debtor and creditor arises. If that be true, when the Assessor comes around this fourteen million dollars must be assessed to the several depositors there, because it is something of value, and a great deal of value. There is something that can be sold and transferred.

MR. TERRY. Is it not a fact that money has always been taxed from the very beginning?

MR. BELCHER. Yes, sir. If you take the savings banks of San Francisco, it is said that there are sixty million dollars deposited there, and these sixty million dollars must be assessed to the small depositors. I do not object to the assessment of all the property there is, for I say that is the end we all want to effect. But what follows? When you have assessed these sixty million dollars to the small depositors, the Assessor goes to the bank and finds that the bank has loaned this money out, and has mortgages for it. The banks owe it—the banks are not worth anything themselves—it is the creditors of the banks who own that property, but the banks have sixty million dollars in their possession, and it must be assessed to them again. The creditors have been assessed once for this same money, and now the banks must be assessed. Now, the bank pays the depositors the surplus interest which this money loaned out on mortgages has earned, so that when the creditor is assessed once, and the bank is assessed again, then all these poor people have to pay the second tax on their money, which they cannot afford. You effect just this end.

Gentlemen say it is the protection they receive that they are assessed for, because they are protected. In a certain sense they are. They have the benefit of the law. If you have a deposit in a savings bank, and the bank refuses to return it to you, the law will compel the bank to pay you. But is that any reason why this money should be assessed once in the hands of the depositors, and again in the hands of the bank, thus taking two taxes out of the depositor? That is precisely the end which this amendment purposes to effect. And there are at least sixty millions of dollars that will be reached and doubly taxed in this way if you adopt this proposition. I say it is simply wrong. It is unjust. It is enough if men are assessed once for what they are worth, for what they have. I do believe, sir, in making deductions. I do believe that a man who is in debt should be assessed for only what he is worth, and not on what he owes. Property must be assessed, because government must have revenue. You cannot say, if I am a farmer worth ten thousand dollars, that you may assess me for so much of the farm as I may own, over and above the mortgage, because, perhaps, I have given the mortgage to somebody in New York, or somebody in Europe. My property must be assessed at what it is worth, because the government must have revenue. It is a right you have to assess property. But it is not right, after you have assessed my property, after I have paid taxes upon all the property I have, for all I am in fact worth or have of value, to assess me on anything else.

Now, sir, the proposition here is to assess my farm for what it is worth. And if I owe to the bank half or three quarters of its value, you are going to assess it again to the bank. And if you allow business to be done as it has been done, you allow them to put a provision in the mortgage that I shall pay that tax too. What right have you to assess me once, twice, or three times what I am worth. It is wrong. You have a right to make me pay on what I am worth, but there your right ends. It is idle to talk about the increased value of property by assessing these things, and the consequent cutting down of the tax rate.

The gentleman from Sonoma says when a man has a note, he has something of value. So he has, in a certain sense; but because he has a note he adds no property to the property of the State. If I am worth fifty thousand dollars to-day, and give a note for twenty-five thousand dollars—half of what I am worth—it does not add any property to the State. It does not increase the property at all. Take a case which has been cited here many times: Suppose all the property in the State were owned by one man, to the value of one million dollars; one man has the whole of it. Now, sir, suppose he sells to B, and takes a mortgage for one million dollars. When it was assessed to A, it was assessed at one million dollars. When it was sold to B, a mortgage was given for one million dollars. Now, we haven't two million dollars worth of property; you have only the same one million dollars worth. It is all the property there was before the note was given; it is all the property there is after the transfer. You don't make property by giving notes.

Suppose, as suggested here, that a man has a horse worth one hundred dollars, and sells it and takes a note for the amount; you have not increased the aggregate value—there is one horse left, and that is all there is. If the second man sells the horse to a third party, and takes a note, you haven't got three hundred dollars worth of property. You don't make property by selling it. In a certain sense you may have the right to the protection of the law in the possession of these things. Each man who holds a note may resort to the Courts for the collection of the money, but there is no more property, and so long as the basis of taxation is property and not protection, you have nothing but the horse. You have the single item of the horse and that is all.

Now, sir, suppose I have bought Mr. Wilson's horse for one hundred dollars; I give him my note for it; I am worth nothing; I may not have a dollar, but he is willing to trust my expectation of making one hundred dollars to pay him. The horse should be assessed and the horse only. There may be a question whether I should pay the taxes on that horse or whether he should pay it, because he can at any time reclaim the horse—but there is not two hundred dollars worth of property. It is a question between him and me, and not a question that the State has anything to do with. I say when you carry out this proposition, you are working a wrong. You are assessing property once, twice, or three times. You are assessing where there is no property to be assessed. You are putting the burden upon the poor. Gentlemen say here that the rich ought to be made to pay; so I say. The difficulty is now you are putting the burden upon the poor man; the man who is least able to stand it. Go all over the State and you will find farmers in debt, mortgages on their farms, in debt with mortgages and without mortgages. Go all over the State and you will find farmers heavily in debt, and they are made to pay constantly once, twice, and three times on what they are worth.

We are here to remedy this evil. It is to relieve these poorer classes if we can, from the burdens which oppress them, instead of making the burden to bear still more heavily upon them. There are men all over the State who are paying taxes on what they do not own.

MR. TERRY. By increasing the aggregate amount of property on the assessment roll you decrease the tax rate accordingly.

MR. BELCHER. Yes, sir; the man who has no debts, simply has property, gets the benefit of it. Suppose the assessment roll in this State foots up one million dollars. If I have one hundred thousand dollars' worth of property, and am not in debt, if you can increase the assessment roll to one million five hundred thousand dollars, you will reduce the per cent. I have to pay, and that will be a benefit to me. But the man who is in debt, and has to pay on more than he is worth; who has one hundred thousand dollars' worth of property and owes fifty thousand dollars, and has to pay upon one hundred thousand dollars, will pay on more than he is worth. I am benefited, because my property is clear, and I pay only on what I am worth; but the extra burden falls upon the man who is in debt; you still make him pay on all his property. The burden is still upon the poorer classes. It is the wealthy class of men who are the least sufferers.

I object to another proposition in the report of the committee as well. They say, and I suppose this body will agree to it, that growing crops should be exempt. Now, sir, I think not. I think growing crops should not be exempt by a constitutional provision. Suppose they are to be exempt, for what reason? Why, gentlemen say the crop may turn out to be nothing. That may be. You come to the people on the first of March and find a crop growing, see the field, but there may be no crop harvested from it; therefore, gentlemen say it should be exempt. Not that you should not consider it with the land, but arbitrarily exempt it by constitutional provision. Why, sir, when the Assessor comes around, he can take no account of the growing crop, with this provision in the Constitution. What will be the effect. I have a section of land of a certain quality, and you have a section of land adjoining of the same quality, and the land that you have and the land that I have should be assessed equally, it may be ten dollars an acre. Now suppose I have planted my land at an expense of three dollars an acre. Suppose I have put in a crop of wheat, expending so many dollars an acre. I have put that much money into the land, say four dollars an acre. The first of March comes, and the land will sell under the hammer for all I have put into it. I can find a purchaser any time who will give me all I have put into it. It is a growing crop. Now, why say in the Constitution that I shall not pay on this three or four dollars an acre I have put into the land, that is there to be seen, that may be sold, that anybody will take, that adds to the value of the land. Why say in the Constitution I shall not pay anything for that, while if you have the same amount of money invested in any other industry you will be compelled to pay taxes on it. I might lease a piece of land and put in a crop on it. I own no land, but I have a crop growing. The Assessor comes to me and finds my crop growing, which is worth money, which I can sell or mortgage, and I say, my property is exempt under the Constitution. It is exempt. The man who owns the land and has money borrowed on it, pays two taxes, or on twice as much as he is worth, while I, with my valuable crop, in which I have invested my money, am exempt from taxation. I say it works a wrong, because you allow me to have my money invested there with no taxes to pay on it.

Take the case of Dr. Glenn, of Colusa County, where he has under cultivation thousands of acres. He has tenants cultivating the land, and he takes one fourth of the crop, without putting in a crop. The money is invested in the crop until harvest. The Assessor comes along, but he cannot assess anything there, though it may be worth thousands and thousands of dollars, and the land must be assessed as if it was not cultivated land, for you must assess the land without reference to the crop that is on it.

MR. STEELE. The man pays taxes on his seed wheat, tools, etc.

MR. BELCHER. The assessment comes on the first of March. I know that crops sometimes fail, but I know, too, that they do not always fail. In this great country we have, we raise good crops nearly all the time, though they are sometimes short. In a Winter like this, in this cold weather, cattle are dying upon the plains; sheep are dying, too. Property fails. The flood comes along and destroys one man's property. We have big fires. A fire comes and burns up the barn or the house. But that does not meet the question. Here in this county, with one hundred and fifty miles of territory, with farms scattered all over the valley, are you to say there shall be no assessment at all, no reference whatever to the growing crop when the Assessor comes around? Will you say that all property shall be taxed except that, and that taxes shall be equal and uniform throughout the State?

Now, sir, I have a thousand acres of land, with a growing crop on it which cost me, say five dollars an acre. I have the crop in on the first of March. I would have expended five thousand dollars in putting in that crop. The land is worth ten thousand dollars, and the five thousand dollars I put into the soil brings the whole up to fifteen thousand dollars, which I am worth on the first day of March. Now, sir, you propose to say that the Assessor shall assess me only for ten thousand dollars, because I put my money in that crop that is growing; because, perchance, it may turn out no harvest. Why say so? Why say there may be no harvest, and therefore this five thousand dollars which I have put into that crop shall not be taxed? What reason is there for it, if you are going to say that everything that has a value, everything else, shall be assessed? Why say that this growing crop shall go free, when it can be sold as cows and horses and sheep can be sold? I can go to the banks and mortgage this crop, and raise money on it. Why exempt it from taxation?

Now, sir, I do not believe in taxing growing crops in view of the harvest. But I do believe if I have put five thousand dollars into my land, in putting in a crop, that it adds to the value of my farm, and in that form should be considered and assessed. The very moment I have planted my land, and put one thousand or three thousand in it, I can sell it for so much more money. If I am worth three thousand dollars more, why should I not be taxed? A man should pay taxes on what he is worth, and not on what he has not. You should not let anybody go free, nor should you demand more of any man than he is able to pay. Let us make the burden as equal as we can.

Now, I prefer this second proposition, reported by the committee, to the proposition submitted by the gentleman from Sonoma. I do not believe his will work. This does not meet my view exactly, but it is much more easy to criticise than to remedy. Much easier to pull down than to build up. There is great difficulty in making a system of taxation satisfactory to ourselves.

MR. ROLFE. Could not the Legislature, under our present Constitution, adopt the same system which you advocate, without changing the Constitution at all?

MR. BELCHER. The Legislature has unlimited power, if we don't restrict them. It has been legislating in this State upon the subject. It is true that the Supreme Court has declared that debts are not property within the meaning of the Constitution, and hence were not subject to taxation. But there is no difficulty now in the Legislature doing what I am proposing, that is, to equalize the burden of taxation between the debtor and the creditor. This system must not be a cast-iron system, because there may be something in it that won't work. If you are going to take the system proposed, that all things shall be taxed, and that all things that have any value are property; that whatever a man has that is valuable, that may be sold, shall be assessed to him without discount or reduction, that will be an iron rule, and one which it seems to me will bear heavily upon the people. It would bear heavily now and in the future. We want a system that will come as nearly as possible making the burdens of taxation upon men in proportion to their ability to bear them. I say that a man who is worth one hundred thousand dollars should pay ten times as much as the man who is worth ten thousand dollars, and the man who is worth ten thousand dollars should pay ten times as much as the man who is worth one thousand dollars. I say that the proposition reported by the committee is better than those which are offered as substitutes, and I am opposed to them. If something better cannot be devised I am for it. Other propositions may follow which will work better. A proposition which says assess everything you can find that has value, credits included, without making any deductions, can work only mischief.

SPEECH OF MR. SWING.

MR. SWING. Mr. Chairman: I am in favor of the amendment offered by the gentleman from Sonoma, not because I am in favor of putting in restrictions or making any declarations in the Constitution, or of affecting the right in any way of the Legislature to regulate the matter of taxation. I believe now, as I believed when this first section was up, that what we want is a system of taxation that can be made to conform to exigencies as they arise. We don't know what is the best system of taxation. We can only find out by trial. And when we have tried a system, if it is satisfactory; if it makes the burden of taxation fall where it should fall, we want to keep it. But if it is pernicious; if it does not meet the end which is sought to be arrived at, we want to reserve the power to change it. But I am in favor of this section, because it says that taxation shall be equal and uniform. I am willing to take it, and leave it to be construed hereafter. We have had a trial of that first section, and I believe there has never been a case, whether overruled or not, which has decided that under that system mortgages could not be taxed. Under that system I believe there has been a vast amount of property in this State which has been paying no portion of the taxes. Therefore, I am in favor of this amendment, because it will give a construction to the words "equal and uniform," and I think it will make these words of some meaning. I believe the only remuneration which the State gives to the taxpayer is the protection which he receives. I believe that is the only difference between taxation and robbery. It is taking the property of another against his will, forcibly, with the intention of appropriating it to their own use. And I believe there is no other difference between taxation and robbery than the security which the State affords the taxpayer. Now, if that is the difference, then I say that they should be given themselves the right that every taxpayer should pay in proportion to the security he receives; not in proportion to the amount of land he owns, merely; not in proportion to the amount of horses he owns, but he should pay in proportion to the security he receives. Now, taxation should be equal and uniform.

Now, there have been some illustrations given here to show that by taxing notes you thereby make double taxation. Now take this instance: Suppose I own a horse. I sell the horse to General Mansfield and take his note for it. He sells the horse to Mr. Reddy, and takes his note for it. Those notes are running yet, not having been paid. Well, General Mansfield has the right to enforce the collection of that note and take back the horse. I have a right to enforce the collection of my note and take back the horse. During that time I have had protection in my note, and General Mansfield has had protection in his note, and Mr. Reddy has been protected during that time in his horse. We have had equal protection, equal security. These notes have to be collected. We have each had equal security. We stand in the same position that we did before. Who has paid for that security? Mr. Reddy has paid for it. General Mansfield and myself have not paid a single cent. There is that illustration carried to its legitimate end. Do you call that equal and uniform? Now, if the horse was worth one hundred dollars, and the rate is three dollars, then Mr. Reddy would have paid it, and we would have paid nothing. If you had taxed the notes, Mr. Reddy would have paid one dollar, I one dollar, and General Mansfield one dollar. Isn't that nearer equality and uniformity than to compel one man to pay it all?

There has been another illustration given here: Suppose that all the property in the State is worth a million dollars. That is all the property there is. Suppose I own it all. (That is hardly possible.) Suppose I sell that property to Mr. Reddy, and take a mortgage upon the property. The property has got to pay, and we two are the only taxpayers in the community. Now, I require protection for my mortgage; I require the right to enforce the collection of it through the Courts. I can enforce it by taking back the property. Now, under the system which the gentleman advocates, while I have protection for my mortgage, and can take back the property, he has to pay for the entire amount of security, and I pay nothing for the protection I receive. Is that justice? Is that equal and uniform taxation? On the contrary, should not each one of us pay our share, because we each one had equal security during that time?

I want a low rate of taxation, and for different reasons. I would rather incorporate into the Constitution a clause that not more than one cent on the dollar should ever be levied in this State than to incorporate any other kind of provision. Find more property, but expend less money. I want a low rate of taxes, because a low rate will encourage property to come to this State; it will encourage capital to come to the State. A business man in the East, with a million dollars, is desirous of investing in some mining property here, or buying a ranch, or a water ditch in this State. The first question he will ask is in regard to the rate of taxation. If he finds the rate is two and a half per cent. he says, at once, that is too much. He prefers to invest less, and pay less taxes, in the East. He finds also that he has to pay taxes on the enterprise in which he invests, that the burden rests upon the very enterprise in which he desires to invest. He don't come here.

Again, if you tax notes and mortgages it discourages the loaning of money, the holding of money, and the dealing in money, notes, bonds, etc., and encourages the investment of capital in permanent property. It reduces the rate of taxation upon real and personal property, thereby encouraging the investment in that direction. Now I am not in favor of encouraging enterprise for the benefit of the poor man, or for the benefit of the rich man. But I am in favor of doing things which will give employment to laborers and decrease crime, and decrease the expenses of government, and which will bring happiness to this country, where there is now sorrow, distress, and starvation. I am in favor of a provision that will encourage the investment of capital in enterprises which will give employment to those who need employment.

Again, I am in favor of exempting growing crops. And the reason is this, that you cannot properly assess growing crops. The Assessor starts out on his mission of destruction about the first of March, and he goes to A and assesses him. His wheat is just coming out of the ground and his corn, perhaps, is not yet planted. He assesses the wheat, and puts the corn at the same figure as the wheat, for a small amount. He goes on his round and reaches B along about the last of June, or the last of May, and his crop by that time is matured. It is in good condition. It is no better than A's, which was assessed on the first of March, but he pays ten times as much taxes on it as A pays on his.

Again, I am in favor of exempting growing crops, because I am in favor of encouraging that kind of employment. Not because I want to help the farmer, because I do not care any more for the farmer than I do for the lawyer, or the doctor, but because I want to encourage that kind of enterprise. Why? Because it gives employment to more men and brings happiness to more households. And I am in favor of it because, if growing crops are exempt, it will encourage men to engage in the cultivation of the soil, and discourage the holding of idle land.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: A gentleman started out on Saturday in a very clear and forcible speech upon this subject, basing his opinion that solvent debts ought to be taxed, upon the principle of protection. To-day the distinguished gentleman from San Joaquin argues that theory before the committee. Now, sir, I deny that that is a fair principle upon which to base any system. To carry it out to its logical conclusion, suppose the theory of protection comes up in this way: if the maker of a note refuses to pay, the holder of the note can enforce his demand through the Courts; that is, he can enforce his right, and there the theory of protection ends. If it is stolen, he can invoke the authority of the State to punish the thief. Suppose a man publishes a libel on my friend from San Joaquin? He has his action at law; he has his remedy; he invokes the judicial and executive power of the State to redress the wrong. The cases are precisely analogous. He can resort to criminal prosecution, the same as he can if a man steals a promissory note. Now, then, why not tax the other men for the protection they receive against criminals, as well as the holder of a solvent debt? It is no more than right, if it be true that protection is the proper basis of a system of taxation. I deny it. What is that theory?

MR. TERRY. The protection you receive from the government.

MR. EDGERTON. The burden of government should be placed upon values—actual wealth—and not upon a conclusion of law, for that is all under heaven that a promissory note is—a mere conclusion of law, a mere deduction of law, that the person holding it has the right to recover whatever property is mentioned in it. Now, a good deal has been said here, when an important subject is under discussion, about the people, and gentlemen upon every occasion invoke the people, and claim that the people have sent them here from some obscure corner of the State—Jackass Gulch, or somewhere else. I don't mean to imply that the gentleman from Sonoma came from there. [Laughter.] If I have read the opinion of the people aright, from what I can gather by conversing with them, and by newspaper reports, it is that the constitutional tinkers do not understand their trade. I say there is no reliable evidence at hand as to what the desire of the people of this State is, as regards the taxation of solvent debts, mortgages, notes, and bonds. Now, I have a right to assume that it is the wish of the people that there shall be deductions made for what a man owes from what is owing to him.

MR. HEISKELL. I never heard of it in my county.

MR. EDGERTON. Your representatives have voted upon it. Now, sir, in eighteen hundred and fifty, the Legislature—many members of which were members of the Constitutional Convention which framed this provision referred to by the gentleman from Sonoma, who thinks the Supreme Court made a very great mistake—the men who made the Constitution under which this decision was made, put a provision of this kind in themselves. The Act of eighteen hundred and fifty provides, in defining personal property, that all moneys at interest owing to the person to be taxed more than they pay interest for, or other debts owing to them from solvent persons more than they are indebted, shall be taxed. That was the very first Act of the people of this State, through their representatives, in eighteen hundred and fifty. In eighteen hundred and fifty-one, another Act was passed, providing that all money at interest owing to the person to be taxed, more than he pays interest for, shall be taxed. In eighteen hundred and fifty-two, the law was, that money at interest, solvent debts, deducting indebtedness; and in eighteen hundred and fifty-three, the law provided that all money loaned on interest should be taxed, and no other provision as to taxing the indebtedness. Now, there is one instance where the people receded from the position suggested here now: that solvent debts should be absolutely taxed, without any deductions whatever, and the next Legislature in the following year restored the old provision. The representatives had gone home, and had got the will of their constituents; and they sent back their representatives the next Winter to restore the old provision: that money at interest, exceeding indebtedness, should be taxed. Then, in eighteen hundred and fifty-five and eighteen hundred and fifty-six, and way down to eighteen hundred and fifty-seven, there was no law passed, but that general enactment covering the whole time. In that year they provided that money on hand, or deposited, or invested, or money at interest, secured by mortgage or otherwise, and solvent debts—no deductions were made that year, or until the Legislature again met in eighteen hundred and sixty-sixty-one, when they enacted a new revenue law, which was enforced as a general system until the Codes came in. That provided for taxing solvent debts in excess of indebtedness.

Now, I undertake to say, backed by indisputable authority, that it is the will of the people of this State, as expressed in their laws over and over again, that solvent debts should be taxed, but that there should be deducted therefrom the indebtedness owing to other persons. Now that rule, I undertake to say, never would have been changed if it had not been for the rule laid down in this case reported in the thirty-fourth California, in eighteen hundred and sixty-eight. In that case the Court held that solvent debts were property within the meaning of the Constitution, and they further held that it was incompetent for the Legislature to exempt any property from taxation, though in another case they held directly the other way, and made the question squarely presented. Afterwards the people, through their Legislature, sought to elude even that stringent iron rule of law laid down in that case, and the Legislature of eighteen hundred and sixty-nine passed a law in express terms to prevent double taxation, and the people of this State enacted that law for the express purpose of exempting mortgages from taxation, and I think my friend from San Francisco, Mr. Wilson, was one of the counsel in that case—The People vs. Eddy—in the Supreme Court, a case growing out of the statute. Now, sir, that is the history of the legislation on that subject.

Now I would like to call attention to this proposition now before the Convention. In the first place I would like to ask the author what he means when he says "franchises of corporations."

MR. MORELAND. The privileges they exercise.

MR. EDGERTON. Well, that applies to mining corporations, incorporated for the development of mines. They are assessed perhaps two, three, four, or ten thousand dollars, to try an experiment, to see whether they can develop and bring to light millions of dollars, which will result in adding a large volume of taxable property to the tax rolls. They are to be taxed, under this provision, for that privilege.

MR. TERRY. Taxed according to their value.

MR. EDGERTON. How are you going to estimate the value?

MR. ROLFE. I can tell you what a franchise is.

MR. EDGERTON. I didn't ask you. Now, sir, this provision provides that notes, evidences of indebtedness, and solvent debts shall be subject to taxation. Now, take that class of savings banks, such as the Sacramento Savings Bank; they have in that bank five or six million dollars; Mr. Freeman, the attorney of that bank, is here. For the purposes of illustration, say it has five million dollars. I believe the great bulk of that money belongs to poor people—wash-women and men who work by the day—it don't belong to lawyers, and merchants, and rich men, sir. Now, if I understand the proposition—the result of this proposition—one of these persons goes to the Sacramento Bank with five hundred dollars, the accumulation, perhaps, of two years' labor, and they issue to him a passbook. It is an evidence of indebtedness between the depositor and the bank. The bank is simply organized as an agent for the purpose of loaning out money, the accumulations of this class of depositors, and the interest is turned over to them after deducting the expenses of the bank. Now, the bank is an independent person before the law. It is a person just as much as a depositor. It loans out this money again, secured by mortgage. Now, according to this provision, as I understand it, you tax the person with the passbook for the five hundred dollars, and then tax the bank on the mortgage for five hundred dollars, which amounts to a clear case of double taxation. The party who owns the passbook pays one tax and the bank pays another tax on it. Now there is a double tax on all the money deposited in that bank in the same way. Somebody ought to pay the tax, but this is a proposition to make the same persons pay taxes twice. In addition to that there is a tax upon the franchise of the bank, according to the phraseology of this provision. I say it is preposterous.

Now, as to this question of growing crops. It seems to be a very ill

devised system that taxes the land, and then the house, and then the fences, and then the barn, and then taxes the growing crops—all in separate columns. But I understand this system grew up from this state of things: in early days the land was supposed to belong to the government, and this system of taxing improvements has grown up because of that, as the improvements were the only things they could get at. They taxed improvements on possessory claims. That was the only way to get any revenue. But where titles are settled, it seems ridiculous to multiply subjects in this way. It ought to go on as real estate. In older States, land is listed at its value, and everything from the center of the earth to the sky is land, and everything raised on it is land. It is listed once, and that list remains for ten years, and the tax is based upon it. In some of the States it is listed once in five years. It seems to me that values have become permanent and settled enough now in this State to permit of that kind of taxation. It is wrong to multiply these subjects in this way. Now, sir, I am opposed in toto to any tax of any kind on any crop. I am not opposed to it for the benefit of the poorer classes, but for the benefit of that portion of the community that develop the resources of the country; that develop farms; that develop manufactures; that makes real, substantial property, which is subject to taxation.

Now, sir, my friend from Los Angeles, General Howard, the other day read the case of The People vs. The Hibernia Bank, and he commented on Judge Wallace's opinion in relation to the feasibility of taxing solvent debts, even under the old Constitution. He says in that case that a tax on a mortgage must be paid eventually, not by the creditor, but by the debtor. And, sir, I undertake to say that no system of taxing these conclusions of law can be devised which will not cast the burden of the tax upon the borrower, the ones who are aiding in developing the country.

MR. MORELAND. I ask the gentleman if he has not reported a section to prevent this. I will read section six: "Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void."

MR. EDGERTON. The gentleman from Sonoma has a fund of sarcasm in his speech, and a funny look on his face, and I suppose he is ready to criticise the grammar for my benefit. As to the obscurity of this report, the gentleman from El Dorado complained about that the other day. Mr. Chairman, this Convention imposed upon the Committee on Revenue and Taxation a very arduous task, to present something for a basis of action for this Convention. But they did not impose upon the committee the impossible task of furnishing these gentlemen with comprehension and ideas. As a gentleman once said of another, you could not get a joke into his head without performing a surgical operation upon him. Now, I do not propose to undertake a surgical operation on my friend Larkin.

MR. MORELAND. I ask the gentleman if he did not admit that he did not understand this section, and ask to have it stricken out.

MR. EDGERTON. No, sir, the gentleman has gone wrong again. It is very difficult to make the gentleman understand anything. Now, as to this section two, I expressly stated that this report expressed the sense of a majority of the committee. It is not my report. There is a good deal in it I like, and a great many things I do not indorse, and do not want to go into the Constitution.

MR. HOWARD, of Los Angeles. Which member of the committee is responsible for the grammar?

MR. EDGERTON. The gentleman from Los Angeles, and the Chairman of the Committee on Corporations, have occupied so much time here on the question of corporations, that they have demoralized the whole Convention on the question of grammar.

MR. HOWARD. I supposed the grammar of the report was the grammar of the Chairman.

MR. EDGERTON. I have no doubt—I would be willing to father it. We paid no special attention to the grammar, but I challenge any gentleman to point out any difficulty with the grammar.

Now, the difficulty encountered by the Supreme Court in this Hibernia bank case, was that it was found to be utterly impossible to make a correct assessment on these solvent debts that would be equal and uniform on other kinds of property. It seems to me that is unanswerable. Now, as to the question of policy. Why, there are men in San Francisco who own millions of money and bonds, and when the time comes round, they send it right over to Virginia City, and avoid taxation. They would be out of the jurisdiction of this State. There is the case cited by General Howard——

MR. TERRY. They decided, in that case, that the ownership followed the residence of the owner.

MR. EDGERTON. Senator Jones lives in Nevada.

MR. HOWARD, of Los Angeles. Suppose a man in this State owns bonds, and lives here——

MR. EDGERTON. Here is a thing I want to call your attention to. I say this provision of Mr. Moreland's will have a tendency to make a race of shifts, a race of hybrids. That has always been the result of attempting to subject this kind of property to taxation, and men seem to settle down to think it is all right as far as the taxation of these things are concerned, to manufacture debts, and get rid of taxation in that way, or to send money out of the State. I wish to read a few lines from the report of the New York Commissioners, on this subject of taxation. They say, in short, that under such a system there is hardly an assessment roll that does not work or tell lies. That was the fact in this State up to the time that solvent debts were declared not to be taxable. The best way to reach correct conclusions, it seems to me, is to take experience as our guide and test. Now, the Legislature of the State of New York passed a law authorizing the Governor to appoint a commission to investigate this whole question, and present some plan to the Legislature of the State. Among the men on that commission was Mr. Wells, a man of very large experience, and for many years connected with the revenue department of the government. He is recognized everywhere as high authority upon this subject. Now, the gentlemen read a few extracts from this report, such as suited their views, but why did they not go further? Why didn't they say that the commission reported against the taxation of personal property in any form—any personal property whatever. I read from the report, page sixteen:

"Within the last few years, moreover, such changes have been made in the tax systems of several of the States contiguous to New York, either by special enactments, variations of the methods of valuation and assessing of property, or a diminished necessity for the raising of revenue, as to place New York relatively at great disadvantage, and urgently call for the adoption of measures, on the part of the State, which will at once prevent the arrest of its development and the deviation of its legitimate capital, population, and enterprise. Thus, for example, the Legislature of the State of New Jersey, during the year eighteen hundred and sixty-nine, exempted, in certain of the counties and cities of that State, which lie contiguous to New York, all mortgages from taxation, by a provision of law."

The report goes on to show that the State of New Jersey offered such strong inducements that many capitalists were induced to change their residence, and invest their money in New Jersey, and that the State of New York, by continuing its taxes on mortgages and bonds, limited and obstructed the flow of capital in that channel, which, the report goes on to say, contributes so much to small enterprises, gives employment and homes to the working classes of our population, and augments the amount of visible tangible property available for taxation.

One gentleman said if money leaves the State other money will come in and take its place. Upon what process he arrived at the conclusion that if you tax money out of the State, the same kind of taxation is going to bring it in again, I cannot understand. I would not tax money at all, sir; not one cent. Now, this report says further:

"In forty-three out of the sixty-five counties of Pennsylvania, all mortgages, judgments, recognizances, or moneys owing upon articles of agreement for the sale of real estate, are exempt from all taxation, except for State purposes, while the maximum of tax at present levied by the State upon this species of property, in common with all other moneys loaned at interest, is only three tenths of one per cent."

I read further from page seventy-six of the report:

"On the other hand, New Jersey and Pennsylvania, with a wider experience, have, as before shown, entirely exempted mortgages from taxation over a large part of their territory, and will, no doubt, at no distant day, make the exemption universal."

And here occur points to which special attention should be given, viz.: in both of these States it is represented to the Commissioners that the demand for this exemption came not in any degree from the capitalists, but from the small landholders, particularly those of the working classes: and, further, that the influence of the exemption has been most beneficial to the districts affected by it—so much so, to use the words of one conversant with the question, "that if it were possible to take in, from an eminence, a view of the whole State, the counties in which mortgages were exempt from taxation would be as readily distinguished from the others as would be a field of luxuriant wheat or corn from a field of scrub oak or brushwood."

Now, sir, what is the condition of things in this State? There are many enterprises that would never be started, if you load down money in this way. I say the more you load down money with taxes the dearer you make it to those classes who need it to develop the State. Money is the instrumentality under which the great material resources of the country are brought out. The gentleman from San Diego, Mr. Blackmer, insists that the rate of taxation will become less and less as you increase the assessment roll. That is all true, but it will never be swelled by taxing solvent debts. You have to swell the assessment roll by something out of which taxes can be paid, like actual wealth—tangible things. I do not deny that a solvent debt is property in a vulgar sense. It is protected. A promissory note is protected. But look a moment and see whether there is any actual wealth. Suppose my friend from San Joaquin loans me ten thousand dollars on my ranch worth twenty thousand dollars. I apply to him and he loans me ten thousand dollars in gold notes. By some accident these gold notes are destroyed out of existence. Now, that is a matter between him and me. The land is there worth twenty thousand dollars, but there is no money.

MR. TERRY. My note is secured by your ability to make the money.

MR. EDGERTON. I might get to be an old man and yet not make that much money. There is an illustration given by Justice McKinstry, in the Hibernia Bank case. He says:

"Independent of other constitutional restrictions, the State might take such portions of the wealth within its borders—the burden being distributed with uniformity—as the legislative department might deem necessary for the support or defense of the government. In this respect there would be no limitation, save that resulting from moral considerations, addressing themselves to the consciences of individual legislators. Supposing—what would thus be possible in theory—that the necessities of government required a tax of one hundred per cent. on all values, or, what would be the result of such a tax, an appropriation of all the property in the State, it is plain that the State would receive no benefit from evidences of debt due by some of her citizens to others, and payable out of the tangible property which the State had already taken. It is property in possession or enjoyment, and not merely in right, which must ultimately pay every tax."

Now, a ranch, if it has value, is something tangible out of which the tax can be collected, but a solvent debt has no value independent of the property which it represents. That note which the gentleman has is worth just half my ranch. The note can be sold; why? Not because

it has any value of itself, but because it is backed up by the property out of which it can be paid. Because it is a representative of value, and not value itself. Now, sir, for these reasons I am opposed to the amendment of the gentleman from Sonoma.

MR. CROSS. Is land valuable in itself, or because it is capable of producing something?

MR. EDGERTON. Because it produces something.

MR. CROSS. Isn't that the reason a note is valuable, because it is capable of producing something?

MR. EDGERTON. No, sir; because you may destroy the note, or it may be lost, or burned up, but the property is there always. Destroy the property and your note is not worth a snap. The property is there always. It is visible, tangible. The Assessor can see it, and assess it in proportion to its value.

Now, I am opposed to this. I do not believe it will satisfy the people. I think gentlemen are in error when they strive to establish their own popularity by voting for such measures as this. I say the legislation of this State shows quite the reverse. And upon the grounds of policy it is wrong.

Now, so far as the taxing of capital stock of corporations is concerned, I understand that can be done now; but the shares cannot be taxed to the individual shareholders too, because that would be double taxation.

Now, a great deal of the complaint has come because of careless or dishonest Assessors, and because we have not had a State Board of Equalization with full power to raise and lower taxes. I think if this Convention adopts the report of this committee, and establishes a State Board of Equalization, with full power to act, there will be no more complaint about the taxation of solvent debts.

SPEECH OF MR. TERRY.

MR. TERRY. Mr. Chairman: I agree with the gentleman who has just taken his seat, that a great deal of dissatisfaction has been owing to the incompetency and dishonesty of Assessors in improperly assessing the value of property. I say I admit that. Now, what the opinion of a majority of the people of this State may be I do not know. What the people demand I do not know. I have never received any instructions in regard to what the opinion of the people of this State may be on this subject. But I proposed to them before I came here, and I propose now to do, as far as my action and words can have any influence, what, in my opinion, will be for the best interest of the people of the whole State. When I have done that I shall have done my duty. Whether the people shall approve of the Constitution when we get through with it is their business and not mine. I do not propose to stop to inquire whether it is popular or not popular. I propose to exercise my best judgment as to what is right, and I do not care whether it is popular or not.

MR. EDGERTON. I do not propose to place my views upon that——

MR. TERRY. You spoke of some gentlemen from obscure corners of the State.

MR. EDGERTON. I didn't mean you. [Laughter.]

MR. TERRY. I propose to do what is right. It is for the people to say whether they approve of it or not. Now, the propositions of these gentlemen seem to be two—I allude to the gentleman from Sacramento and the gentleman from Yuba—First, that evidences of indebtedness are not property. Second, that if they are property, it is impolitic to tax them. A great many people live very comfortable on this kind of property, and if I had a few thousands of these conclusions of law, I could quit work and live very easy. And I should think one hundred thousand dollars worth of bonds of the State of California, or of any county in the State of California (except the county from which Mr. Larkin comes), I would consider it very tangible property. It would furnish me with food and lodging, clothing and drink, and all the necessaries and luxuries of life. If I had all these things why should I not pay taxes on them? I could change it into real estate to-morrow. I could buy land and houses, and all kinds of property. It affords me a revenue more perhaps than the land would afford. Why should I not pay taxes upon that property, as well as my neighbor, who pays upon his land and house? Why should I be allowed to invest one hundred thousand dollars in bonds, and set down and rent a house, or board at a hotel, and make no contribution whatever to the support of the government, which protects me in my personal property, while my neighbor is compelled to pay taxes on everything he has. There is no fairness, or justice, or honesty in such a proposition.

Now, the gentleman from Yuba contended that growing crops should be taxed. That while neither bonds, nor notes, nor the interest which they bear should be taxed——

MR. BELCHER. I don't want them exempted.

MR. TERRY. But he excepts taxes upon bonds which produce interest—the notes that produce interest. Why the debt grows every day by interest. The growing crop is but the interest which the land produces. Why should he insist upon taxing the interest which the land produces, and refuse to tax the interest which the note produces? The growing crop is simply the interest which the land produces by being cultivated, the interest of the labor and capital expended on it. I cannot understand it. The farmer pays taxes upon the land, tools, horses, cows, and the products of the land is the interest on the labor and capital expended in producing the crop. There is no more justice in taxing that interest than there is in taxing the interest on bonds.

Now, my friend from Sacramento says that to attempt to tax indebtedness in any shape is to manufacture a nation of liars; that men are not honest enough to tell the truth when you ask them how much they have due, and when the Assessor comes around he will meet men who will perjure themselves. Now, I do not believe that the majority of the people of this State will perjure themselves for the purpose of escaping taxation. I don't believe, when the Assessor goes to a man and asks how many notes he has, how many solvent debts he has, for the purpose of assessing him, that he is going to commit deliberate perjury. To be sure, men will sometimes do it, but I think it will be found to be the exception, and not the rule. The rule will be that true statements will be given, and the roll will be greatly increased. I think the other proposition, to deduct what a man owns from what is owing to him, would be productive of much greater abuse, and open a wider door to fraud and perjury.

Now, I think fairness and justice require that every man who owns property in the State, whose property is protected by the laws of the State, should pay his fair proportion of taxes upon the value of his property.

MR. EDGERTON. Suppose that is so, should he pay twice? Would you have them pay twice, as the savings bank depositors would have to?

MR. TERRY. Certainly not. Under the law, as it stands now, a person who has money must pay taxes upon it.

MR. EDGERTON. Is it not double taxation, to tax the passbooks and then the money?

MR. TERRY. The money is taxed now.

MR. EDGERTON. But they will tax the passbooks and then go to the bank and tax the mortgage. The depositor pays two taxes upon the same property.

MR. TERRY. Certainly not, because if there is five hundred dollars loaned on mortgage it is no longer in the bank. It is taxed as indebtedness. The law now provides that you shall pay taxes on money in your possession or deposited in bank. A mortgage or note is another thing. If his five hundred dollars has been loaned on mortgage it is no longer on deposit. It is not double taxation.

MR. EDGERTON. The gentleman is mistaken. In the case of the People vs. the Hibernia Bank that precise thing was double taxation.

MR. TERRY. It is no longer deposited if it is loaned. If the money has been loaned on mortgage it is no longer on deposit, and is not taxed as a deposit.

MR. EDGERTON. The passbooks represent the entire amount of money that is in the bank. Now, you tax them. Now, when you come to the bank you find that this money has been loaned on mortgages, and you tax the same money again, or the mortgages, which is the same thing.

MR. TERRY. Certainly not. You tax the money in the hands of the owner of the passbook. Then you tax the evidence of debt, which the bank has; you tax it as any other evidence of debt.

MR. EDGERTON. That money belongs to the depositors—the Court has said so.

MR. TERRY. I know the Supreme Court have said a great many things at different times. I understand that every dollar of money that is put into the bank as a general deposit, belongs to the bank. The bank may take and loan that money—may take it and use it for any purpose. You have no right to go and demand it back as you would a special deposit; it is the money of the bank; the bank owes the depositor that amount. They have a right to deal with it as their own—loan it or pay other depositors with it.

MR. BELCHER. The Hibernia Bank has fourteen million dollars. The depositors pay taxes on this fourteen million dollars, and the bank pays taxes on the same fourteen million dollars.

MR. TERRY. And suppose it is twice taxed? They loan it out and take the evidence of indebtedness, and it is their property. The bank makes the profit on it. They never pay to the depositor the whole amount of interest they receive. I don't understand that any bank pays anything of the kind. They allow such a per cent. to time depositors. I never heard of a bank loaning money at the same rate of interest as they pay their depositors. Here is a bank with one million dollars, and not paying a cent to the support of the government. They draw interest, and don't pay one cent of taxes. That is sufficient argument for my side of the case. Here is an institution with one million of dollars that don't pay one cent of taxes to the support of government—men who have occasion at every term of Court to go into Court and invoke the aid of the Courts to foreclose mortgages and collect money.

As to this question of franchises, gentlemen don't seem to discriminate between a franchise that is worth something, and one that is worth nothing. We do not propose to tax a franchise at any particular amount, but to tax each franchise in proportion to its value. There are many corporations whose franchises are worth nothing. There are others whose franchises are worth ten times the amount of property they own. Take a bridge company; the value of the franchise bears no proportion to the price of the bridge. Take a ferry, the same way. Take the case of a company with a franchise to lay down city gas, with the exclusive privilege; the value of the property bears no proportion to the value of that exclusive privilege. Take street railroads; what proportion do the cars and old horses and track bear to the value of the franchise and the privilege of collecting tolls? They have the exclusive right to lay down tracks in certain streets. Now, they should all be taxed. Every man should pay a fair tax on what he is worth. It may be that there will be individual instances where there will be double taxation, where men will have to pay twice on the same property. If that be the case, when you increase the volume of property you decrease the rate. As the rule stands now, the most wealthy men, and those best able to bear taxation, escape altogether. This is extreme injustice. It is neither fair nor honest. I hope that the proposition introduced by the gentleman from Sonoma will carry, and that every person in the State, who owns property of any description, shall be called upon to contribute to the support of the government.

SPEECH OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: If it should happen that this Convention should make what I should consider a great mistake, and continue this system and confine taxation to property values alone, I should certainly be in favor of the principle involved in the proposi-

tion offered by the gentleman from Sonoma. But I do not think it is possible for this Convention to make a greater mistake than to confine taxation to property values. Under our present system it is often the case that parties are subject, to a certain extent, to double taxation. Now, the system of levying taxes is a system grown up and confined to the United States. The old State Boards levied their taxes on a different basis entirely. It has grown up in the western country when that country was thinly settled. It was made at a time when there were no corporations, few lenders, and few banks. When, in fact, all the property there was, was visible, tangible property. The idea that taxes should be based on this basis alone, grows out of that school of political economy which ignores entirely the man and considers wealth only. It does not rest upon the plane of judicial or political science.

It is assumed here that the passbooks shall be subject to taxation. I do not understand by that construction that the passbook itself, which is only a certificate that the bank has a certain sum of money, can be taxed.

The gentleman from Sacramento is very hostile, and afraid of an income tax. He rises to his feet, and very generously, after discussing it awhile, moves to lay the question on the table. Now, sir, the Assessor comes to my farm and assesses it, and assesses my plows, and harrows, and cultivators. He makes a list of the furniture in the house and everything he can find, and puts me under oath. He asks me how many hogs, and cows, and sheep I have, and if he doubts my word he proceeds to count them. That is not inquisitorial, there is nothing inquisitorial about that, but he goes to the banking house in town, and asks the President of the bank what his income is, and that is inquisitorial in the extreme. Now, sir, I cannot see wherein it is inquisitorial to ask a man under oath what his income is, any more than to ask me how much stock and furniture I have. I think the banks should be compelled to pay taxes on their income. I understand, sir, that you can make out a case in theory, but when you come to put that theory into practice, it does not always prove correct. Gentlemen say here, that if you tax money that it will be simply added on as interest, and the borrower will have to pay the tax in the end. Now, if it is true that the rate of interest will be raised just exactly in proportion to the amount of taxes paid, then it would be true also that money loaned under the rule of not taxing solvent debts, that the rate of interest would decline. Is there a gentleman here who will tell me when the Supreme Court made their decision exempting that class of property the rate of interest declined? Did any gentleman who had money loaned out reduce the rate of interest, or loan money at any less rate than he had before? Again, sir, it is well known to every gentleman here who had occasion to borrow money that the rate of interest declined faster and more in the six years preceding that decision than it has in the six years subsequent to it, and neither the gentleman from Sacramento nor any other gentleman, can make it plain, that there is any danger of capital fleeing this State because of being compelled to pay its just share of taxation, for there is no place under heaven where capital can earn as much as it can here.

When taxation is levied on property values alone, it works a very great hardship and injustice. Under that system there is a vast amount of property that pays no taxes, and that puts an undue burden on property which is due to taxation. I am in favor, right here and now, of making these large capitalists contribute something for the support of the government, something in proportion to their ability to pay. Small property holders are compelled to pay in excess of their ability by reason of the exemption of this other class. I don't know of any way of coming at that except by levying an income tax upon the incomes of these corporations. If you loan money upon the income of borrowed money, that is always something tangible. There is no more difficulty in getting at the income of the Sacramento Bank, than there is in getting at the number of cattle and sheep a man has. There is no difficulty in taxing incomes. It is not listed for a direct tax, and as a matter of course there is no double taxation about it. I don't want the Convention to forget the proposition I introduced the other day. I propose, at the proper time, to offer that, and I believe it is the only solution of this question. I believe it is the only possible way in which you can get this class of property to contribute, and yet avoid the semblance of double taxation. I am opposed to taxing growing crops. It is a discrimination against the man who cultivates his land and invests his money in producing a crop, and in favor of the man whose large tract of land lies idle and uncultivated. The crop is the prospective income, the product of this investment of labor and capital. No product should be assessed until it is matured. You might as well tax the wool growing on the sheep's back, because that is something that is growing and may grow into money. There would be just as much sense in going into the orchard and assessing the young fruit; and yet the horticulturists would not think of such a thing. The whole thing is absurd upon the face of it. There ought to be no system adopted looking toward the assessment of any immature crop, no matter what that crop may be.

MR. BARRY. I move the committee now rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. HUESTIS. I move that the Convention do now adjourn.

Carried.

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

NINETY-FIFTH DAY.

SACRAMENTO, Tuesday, December 31st, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Herold,	Prouty,
Ayers,	Herrington,	Pulliam,
Barbour,	Hilborn,	Reddy,
Barry,	Hitchcock,	Reed,
Barton,	Holmes,	Reynolds,
Belcher,	Howard, of Los Angeles,	Rhodes,
Bell,	Howard, of Mariposa,	Ringgold,
Biggs,	Huestis,	Rolfe,
Blackmer,	Hughey,	Schomp,
Boggs,	Hunter,	Shoemaker,
Boucher,	Inman,	Shurtleff,
Brown,	Johnson,	Smith, of Santa Clara,
Burt,	Jones,	Smith, of 4th District,
Caples,	Joyce,	Smith, of San Francisco,
Casserly,	Kelley,	Soule,
Chapman,	Kenny,	Steele,
Charles,	Keyes,	Stevenson,
Condon,	Kleine,	Stuart,
Cross,	Lampson,	Swenson,
Crouch,	Larkin,	Swing,
Dowling,	Larue,	Terry,
Doyle,	Lavigne,	Thompson,
Dudley, of Solano,	Lindow,	Tinnin,
Dunlap,	Mansfield,	Townsend,
Eagon,	Martin, of Santa Cruz,	Tully,
Edgerton,	McCallum,	Turner,
Estey,	McComas,	Tuttle,
Evey,	McConnell,	Vacquerel,
Filcher,	McCoy,	Van Voorhies,
Finney,	McFarland,	Walker, of Tuolumne,
Freeman,	Moffat,	Webster,
Garvey,	Moreland,	Weller,
Gorman,	Nason,	Wellin,
Grace,	Nelson,	West,
Graves,	Neunaber,	Wickes,
Gregg,	Noel,	White,
Hale,	O'Donnell,	Wilson, of Tehama,
Hall,	Ohleyer,	Wilson, of 1st District,
Harrison,	Overton,	Wyatt,
Harvey,	Porter.	Mr. President.
Heiskell,		

ABSENT.

Barnes,	Freud,	Murphy,
Beerstecher,	Glascock,	O'Sullivan,
Berry,	Hager,	Schell,
Campbell,	Laine,	Shafter,
Cowden,	Lewis,	Stedman,
Davis,	Martin, of Alameda,	Sweasey,
Dean,	McNutt,	Van Dyke,
Dudley, of San Joaquin,	Miller,	Walker, of Marin,
Estee,	Mills,	Waters,
Farrell,	Morse,	Winans.
Fawcett,		

LEAVE OF ABSENCE.

Leave of absence was granted for five days to Mr. Dean.

Indefinite leave of absence was granted to Messrs. Morse and Martin, of Alameda.

THE JOURNAL.

MR. GORMAN. I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

REVENUE AND TAXATION.

MR. EDGERTON. I move that the Convention do now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the article on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment offered by the gentlemen from Sonoma, Mr. Moreland.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. Chairman: This subject has been very thoroughly discussed here. In regard to this amendment offered by the gentleman from Sonoma, it seems to me that there is one objection to it which has not been stated in this Convention. Now, sir, as I understand it, the class of people who complain are of the debtor class; they are the ones who complain of the present system of taxation. Now, if the proposed amendment does not, in some degree, relieve that class, then these complaints will continue. It seems to me, sir, that the adoption of this substitute will cause an increased burden to fall upon the debtor class. Now, I don't know whether I understand the temper of the people or not—the Chairman of the committee claims to understand it—and other members claim to understand the temper of the people; but if I understand this question, what a majority of the Convention desire is to relieve somewhat the burden of taxation from the debtor class, and, perhaps, from the poorer class. Gentlemen have suggested that the energy and

enterprise of this State is largely in the debtor class—the class of men who do business on borrowed money are perhaps the most energetic class of people in the State. They are the class of men who bring labor and capital together, and make both productive, and that is certainly something to be desired in the present condition of the State, in which there is so much capital and so much labor unemployed. Now, any measure that will sever these two interests would be a most unwise measure, and a measure certainly which increases the burden of the borrower must of necessity have that result. Now, we have heard so much about farm mortgages from men who never owned a farm—in fact a farm with a mortgage on it has become a nightmare with doctors, and laboring men, and men who never owned a farm or a mortgage. These gentlemen who argue so learnedly about a farm with a mortgage would do well to recollect one fact. Now, for instance, Mr. Dudley has a farm worth thirty thousand dollars (I believe that is the standard price of farms in this Convention), and he wants to borrow ten thousand dollars on it. This provision requires him to pay taxes on what his farm is worth—thirty thousand dollars. When the Assessor comes to him he will assess it at thirty thousand dollars. And when he wants to borrow ten thousand dollars, these men who make a business of loaning money, if a tax is imposed on solvent debts, will say to him: "I shall have to increase the rate of interest so as to include the tax upon the mortgage." Now, sir, if that is to be the case, if the proposition of these gentlemen who are familiar with the subjects of loans be true, then the result will be this: the debtor must first pay taxes upon the whole value of his farm, and in the next place he must, indirectly, pay taxes on the mortgage, or money which he borrows, and the result will be that this debtor class, instead of being relieved, will, after the adoption of this provision, be burdened with double taxation.

Now, sir, another matter has been lost sight of. All these taxes, whether they are laid upon the land or upon the mortgage, must come out of the produce of the land. The mortgage itself creates nothing. Money creates nothing. But when a farm has a mortgage on it, the owner of the farm and the owner of the mortgage divide the profits of the farm. The farm produces but one profit; but if a man has a mortgage on that farm, he gets part of the profits of the farm, and the owner of the farm gets what is left. Now, sir, if a farm produces twenty thousand dollars, and there is a mortgage, the interest on which is ten thousand dollars a year, the mortgage gets half the profits, and the owner gets half. The farm produces it all. It is the only thing that produces or can produce anything. The note can produce nothing. Now, sir, since the two receive the profits of that farm, and since the two divide the profits of that farm, and since the two have to be taxed, it is their farm, and since the two have equal protection from the government, they ought to share the burden of expense alike between them, in proportion to the interest that they own. But this provision proposes that because the profits of that farm are divided between them, that therefore they shall pay double taxes upon it. That is not right, sir. Neither has any method been proposed by which those men who divide the profits shall divide the expenses of government, except the proposition of Mr. Boggs. It is the only provision which will accomplish this result. And, sir, the proposition of the gentleman from Sonoma will have the effect, instead of relieving these poorer classes, of increasing their burdens. I am opposed to the proposition for that reason, and I hope that this Convention will vote it down and adopt the Boggs proposition.

SPEECH OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I don't understand that the gentleman from Nevada is correct in his proposition, that all the complaint concerning taxation comes from the debtor classes. I understand the complaint comes from various classes, that those who are able to pay taxes are not taxed. I am in hopes the amendment will pass, because I believe it is the only method by which we can reach and tax solvent debts. I do not understand whether the gentleman who has just taken his seat has defined his position, whether or not he is in favor of taxing solvent debts.

MR. CROSS. In the way suggested in the Hale amendment, yes, sir.

MR. ANDREWS. Do you believe that credits, notes, mortgages, bonds, etc., are property?

MR. CROSS. I believe that class of indebtedness should be treated as an interest in the property. If you owe me a solvent debt of two thousand dollars I have an interest in your property, and when the debt is due I can take out an attachment and take that property.

MR. ANDREWS. Should you not pay part of the expenses of the Government? Should you not pay for the protection you have, and the privilege you have of taking out an attachment and collecting that debt?

MR. CROSS. Yes, sir.

MR. ANDREWS. The gentlemen have ignored in this argument a very important class in the State of California, I mean the frugal class, that class who pay as they go. That is a class who are neither debtors nor creditors; that is a class who are no expense to the Government. That is the class who will be directly benefited, and should be benefited, by the taxation of solvent debts.

MR. REYNOLDS. Is an evidence that some man owns an interest in some other man's land, property?

MR. ANDREWS. I say it is property, and has been so decided by the highest Courts in the land.

MR. REYNOLDS. If I have a mortgage on your land, is that evidence property, or is it merely an evidence that I have an interest in your property?

MR. ANDREWS. It is property. The party in possession of the farm owns it and has the title.

MR. REYNOLDS. Does he own the whole of it, or merely an interest in it?

MR. ANDREWS. He owns it, has the right to sell it, subject to the lien upon it. The only right the mortgagee has is to collect his money when it is due. The gentleman from Nevada, and other gentlemen here, have failed to come squarely up to the proposition. Are they in favor of taxing solvent debts? Are you in favor of taxing State bonds? Are you in favor of taxing county bonds and county warrants? The gentleman from Nevada says yes, by a shake of the head. Then, I say he would not accomplish it through the Boggs amendment—that would exempt them from taxation, if I understand the amendment. It exempts all debts and evidences of indebtedness. Are not these warrants money; are they not worth the amount for which they call? Are they not the best class of investments that can be had in the State? I say if you are going to attempt to assess mortgages and solvent debts, that the amendment of the gentleman from Sonoma is the only method by which they can be reached.

MR. BIGGS. Will not the amendment be double taxation?

MR. ANDREWS. No, sir; not really double taxation. The notes are property. The gentleman might as well say that the taxation of State and county bonds and county warrants is double taxation. The history of legislation in this State, as cited by the Chairman of the committee, is in favor of taxing solvent debts. The only exceptional instance was the Legislature of eighteen hundred and sixty-nine and seventy, and the gentleman says that Legislature represented the will of the people. I ask the gentleman if that Legislature was not called a recreant Legislature, which did not represent the will of the people. Let him look into the history of that Legislature in relation to the taxation of mortgages. The gentleman knows the history of that Legislature on that question full well, and I need not rehearse it. It will be remembered that the Bank of California withheld from their depositors their proportion of the money that it cost to get that legislation through. If there is any Legislature that has ever been marked, and derided, it is that very Legislature in its action on the mortgage tax question, and the gentleman knows too that afterwards in the Courts the banks failed to recover the money from their depositors, which it had cost to get that legislation through. Then I say, sir, that it is only through the amendment proposed by the gentleman from Sonoma that we can reach this desirable result. That is the only way we can reach solvent debts. Now, in relation to the assessment of banks. Under the present plan we assess the amount of money by the statements of the banks, made out at the time of the assessment. It is a well known fact that in the case of some of the banks in this State, that mode of procedure does not reach more than twenty per cent. of the money actually in those banks, as shown by their semi-annual statement. It is only through the assessment of solvent debts that we can get at the actual amount of money in these banks. If the gentleman from Nevada proposes to tax county and State bonds, and county warrants, the only way he can reach them is through this Moreland amendment. As I said, I believe in the assessment of solvent debts. I believe they are property. I believe it is the very kind of property that should bear a part of the expenses of government. I say that class of our population alluded to by Mr. Eagon is a very important class. It is composed of saving, careful men, who pay as they go, and are neither debtors nor creditors. They always pay their taxes.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: I would like to ask the gentleman from Sonoma some questions in relation to this amendment.

MR. MORELAND. Certainly.

MR. REDDY. It reads, "everything of value capable of transfer," etc., shall be considered property. I want to know if it is the intention to tax corporate stock under that clause.

MR. MORELAND. I think it is the intention to provide for it under another section.

MR. REDDY. I will ask you whether it would not be taxed under this provision.

MR. MORELAND. Not if we make no exception.

MR. REDDY. Then you intend to tax the property, and afterwards the representative of that property—the corporate stock.

MR. MORELAND. No, sir; we have another section—section seventeen, of the report of the committee—which covers that ground.

MR. REDDY. Has that been adopted.

MR. MORELAND. We propose to adopt it.

MR. REDDY. Why not reach the matter through this section. This provides for taxing the corporate stock of the corporations, and also the capital stock.

MR. MORELAND. Not if we provide otherwise.

MR. REDDY. We certainly don't intend to adopt another section that will be in conflict with this.

MR. MORELAND. No, sir; it is a very simple exception.

MR. REDDY. It would be very short. Why not add it to this section; put an exception in here before we pass this section? Have you any objections to that?

MR. MORELAND. Yes, sir; I don't want it too long. I want it so it can be understood. You can provide for that in another section. Read section seventeen, and you will understand it.

MR. REDDY. I don't see that it belongs there at all. It will only make this section stronger. It seems to me, Mr. Chairman, that there is a determination on the part of many delegates here to impose a tax of this kind on these corporations. The injustice of such a measure has been pointed out, and I hope that any gentleman having such a tax in view will come out squarely, and not put it in the shape of a little joker like this. If it is desired by this Convention to tax corporate property, and then tax it again, I hope they will say so plainly, all the way through. Here is the proper place to deal with this question. If such a tax is not to be imposed, then this is the proper place to make the exception, and unless it is made here I shall oppose the measure.

REMARKS OF MR. LARUE.

MR. LARUE. Mr. Chairman: I had not intended to say anything on this question, but I have listened to the theories expressed by these theoretical farmers, and they remind me of the theoretical farming in newspapers—all very nice on paper, but not practical. In thinking this matter over, I have had occasion to refer to some old books and receipts. In eighteen hundred and sixty-seven I bought a tract of land, eight hundred and forty acres, for ten dollars an acre. The following year it was assessed at six dollars an acre, which was a fair valuation. All property guarantees and indebtedness were assessed at that time. The tax on the land was one hundred and twenty-three dollars and forty cents. Subsequent to that time, so much property had been exempted that the land was assessed at twenty-seven dollars and fifty cents an acre. The rate was one dollar and sixty-seven cents on the one hundred dollars, and the assessment was four and a half times as much as it was before. The rate of taxation has increased steadily, and the valuation of our land has increased until now the tax is nearly three times as much as it was then, and I can account for it no other way than that so much property escapes taxation. It costs less to run the government now than it did ten years ago. Our taxes are now about fifty cents more on the acre. Ten years ago it was only assessed at six dollars an acre. I hope the Convention will adopt this amendment of the gentleman from Sonoma. When we have done that we have done all the Convention was called for. The amendment of Mr. Boggs leaves it as it is now, and I know the people desire a change in that respect.

SPEECH OF MR. JONES.

MR. JONES. Mr. Chairman: During the course of this amendment I have not been able to ascertain whether the friends of the Moreland amendment support it because it is politic to impose a double tax upon the borrower, or on the ground that it is not double taxation to tax solvent debts. Now, we do not want to have any uncertainty upon that point. It is desirable that we shall proceed upon some distinct principle, either to have one assessment upon property pro rata—applying to property in its true sense—or else we should distinctly and intelligently proceed upon this basis: that it is best to tax some species of right, under the name of property, whereby we claim right to a thing, the tax upon each being double taxation.

Now, it seems to me there is an extensive idea here—somewhat extensive—how prevalent I do not know, because the language of the gentlemen will not enable me to determine, that solvent debts—in whatever form, whether they be secured by mortgage or not, or whether by any other instrument or not, that to tax those debts is not double taxation. It seems to me that there are many who seem to have an idea that debts are property, in the same sense as the property which was taxed last year is property. I hold that nothing is more certain than that this is a fallacy, and if the gentlemen will consider the very section which the gentleman has introduced here, it will be evident that he recognizes the fact in his own mind that solvent debts are not property, in the same sense as the present property, for if they were, it would not require a constitutional enactment of this Convention to make them property, and that is just the office which this amendment proposes, to declare that certain things shall be property for the purpose of taxation.

MR. MORELAND. That is not because I did not consider them property, but because the Supreme Court did not so consider them, and I wanted to define it.

MR. JONES. Then the gentleman disagrees with the Supreme Court, and announces clearly that in his opinion solvent debts are property, in the same sense that cattle and horses and land are property. Then all we have to do to make ourselves rich is to execute notes enough, and the State will be immensely wealthy. The more we owe to each other the richer we will be. If any one can explain in what manner any new value is created, it will remove a great doubt from my mind. I would like to know how to create something out of nothing. You are creating wealth by getting another man's goods and not paying for them.

MR. MORELAND. I ask the gentleman if he considers State bonds property?

MR. JONES. In the sense in which the word has been used for the purposes of taxation, they are not property. They are a confession upon the part of the State that the State has got so much property which belongs to somebody else.

MR. MORELAND. Is the gentleman in favor of taxing State bonds?

MR. JONES. That is another question. It does not change the question as to the word property. For myself I distinctly declare that in the scientific sense in which the words are used, no credit is property at all, except the mere value of the paper it is written upon. They are no more property than the expectation which I may have of acquiring some property hereafter, whether by industry or donation.

MR. TERRY. Suppose a man steals a note, does not he commit grand larceny?

MR. JONES. Yes, sir.

MR. TERRY. If it is not property, then he has not stolen anything. If the value is over fifty dollars he is guilty of grand larceny.

MR. JONES. Yes, sir; but this does not meet the question. The gentleman may go round it, but I am going to meet the matter squarely. Now, what is a promissory note? What does it mean? It means that, whereas, I, Mr. Jones, have received one thousand dollars cash from Mr. Wyatt, and am not able now to pay him, I promise to pay him when I can, and will pay interest in addition. That is a strict and correct definition of a note, though not as perfect as it might be. It is a certificate that so much money is owing by the maker of the note to the holder. That is what it signifies. If there is any value created by it, I would like to have some gentleman point it out, for no political economist has ever yet succeeded in creating values in that way. It is a generally recognized idea, and a sound idea, that the property of this world consists of the earth, its fruits, and the production of labor. What else? What else is there? What else are you going to call wealth? If these evidences of debt are property, they are not the product of labor, nor the product of nature. They are the product of the pen, and there is no limit to the amount of them which can be created. The consequence of such a doctrine as that, that they are property and part of the wealth of the State, is to say that the wealth of the State depends upon the indebtedness of its citizens. The more they owe, the more wealth the State has. According to that doctrine the more the people of the State are oppressed, the more prosperous the State will be, and the larger will be the assessment roll, and the larger the amount that can be collected for taxes. I say such a doctrine as that is not tenable, and you cannot evade it when you adopt the idea. You are trying to create value out of nothing, and if you can succeed in doing that you will have certainly found the philosopher's stone. We do not need any philosopher's stone in this State when, by simply signing our names we can get a million dollars where there was not a cent before.

As soon as I borrow one thousand dollars of my neighbor, as soon as it is delivered it is mine, not his. As soon as I receive it and give him my promise that I will return it at the end of two months, or two years, I am the owner of it, and he ceases to be the owner. He does not own one cent of it. He could not do it. He has my written promise that I will pay it, and that is no better in law than my verbal promise, and my verbal promise is no better than my implied promise. Then you propose to tax it in his hands when it is in my hands. He could not get it until it becomes due under the agreement. Then he is entitled to receive it again, and then he has it again, and I have it not. But we cannot both have the one thousand dollars at the same time, and it is impossible to tax it in the hands of each one of us without imposing double taxation, unless you can create wealth by mere fiat power, and that is what the thing leads to. If it is good policy for an individual State it ought to be good policy for the national government, and the idea of basing the national credit upon national wealth is a fallacy. Better base it upon manuscript and pen and ink. That is all you need to create wealth. After a little start you get a debt created, and soon you are wealthy.

We want to proceed upon some principle or other. Either that we can tax actual wealth, the actual property of the State, once and no more, or twice and no more, or else that we will tax a certain portion of it twice, and another portion once. It follows, of course, that whenever the credits of the State are taxed to the creditors, and whenever the property upon which these credits are based are taxed to the debtors, then there is double taxation. The same value is twice taxed, and twice one is two. That is certainly a very simple mathematical statement, that the property is twice taxed. All I ask is that this Convention shall understand clearly what they are doing. I don't mean to imply that any gentleman does not clearly understand it, but they should have some harmony of views, and not proceed to do what would be propriety under one theory and not upon another. It is competent for the people of this State to declare that anything shall be property. That might be extended to the expectations of people who have wealthy relatives in critical health. All these things might be taxed. It would not be desirable to propose it, but I say if you can declare that these other things are property, you can, with equal propriety, declare anything to be property. It is in the power of the people of the State to declare that these debts shall be taxed. They may declare that they shall be taxed once or twice, or three times, if they see fit.

If this Convention should declare that a credit shall be taxed, and the property upon which it is based, which it represents, shall also be taxed, then that is clearly double taxation upon that class of property: then that principle is established; then it will become a matter of policy, and as to the matter of policy, I do not think it is a wise policy to do that, because it is not in accordance with the idea of justice, or fairness, or equality. I think all property should pay alike, as far as possible, an ad valorem pro rata tax, for the support of the Government. I do not think it is just to those who are the better class; they are, already, too greatly oppressed, and instead of giving them any relief by the amendment of the gentleman from Sonoma, both taxes shall be laid upon their shoulders; they will find the tax from both the money they borrow, and the note which is held by their creditor, will be laid upon them. The tax upon the note, in the shape of increased interest, will be greater, in my judgment, than the actual tax itself. Money will be less easy to borrow; the annoyance of the creditor will make him less desirous of loaning money, and he will charge a little more interest, and be a little more slow in loaning. Even if he imposes half, or two thirds, or three quarters upon the debtor, it becomes a heavy burden upon the borrowing class of this State, from which they cannot escape. I think there will be a very great demand for the renewal of notes, and I do not think they will be renewed. I know, from observation, that the rate of interest dropped down more than one half per cent. after the decision of the Supreme Court in the case of "The People vs. the Hibernia Bank," it dropped down and stayed down. I know there were thousands of dollars loaned at one per cent. upon the express condition that if the man who loaned had to pay the taxes it would be one and a quarter per cent. I do not doubt that it will be the case again. There is no injustice in it; everybody deals in that way. Everybody charges for his goods according to the expense attached to their disposal. If you tax credits the whole tax will undoubtedly fall upon the borrower. I do not know, but I believe that under any system which this Convention may devise, it will fall upon the debtor eventually, to a very great extent.

The proposition introduced by the gentleman from Placer is less objectionable, because there is no double taxation imposed. It taxes the mortgage in the hands of the creditor, by allowing the debtor to deduct the amount. As to the strict fairness or justness of it, I don't propose to speak; but at any rate there is but one tax levied, and that one the debtor is allowed to retain out of his debt when he pays it. I

say, in point of fact, it is far more just than this proposition, which proposes to tax the property itself and then tax the representative of that property. I do not consider the Boggs proposition philosophically correct, but I would assent to it if it seemed to meet the views of this Convention; but I will never consent to a proposition which proposes to impose two taxes upon one portion of the community and only one tax upon another. I know it is a desirable thing to reach the rich man; it is desirable to make him contribute his portion of the taxes to the State. But we will never be able to do it if we continue to grope in the dark as we have been doing. I do not profess to be a political economist, but I can see no way out of the dilemma but by adopting an income tax—net incomes. That is the only way by which the rich can be reached. Their money will do them no good unless they invest it or let somebody else use it. If he retains it he will have to pay the taxes upon it. I say it is desirable to reach this class, and I know of no method by which it can be done effectually except by an income tax. I would levy a tax upon net incomes. In the case of money loaned on a note it is all net except attorneys' fees. The revenues of farmers, merchants, and others are not net. Oftentimes there is a loss, hence it would not be just to tax gross incomes. At something I think it would be desirable, and I would be in favor of exempting a certain amount of income. I don't propose to enlarge upon that. Gentlemen know just as much as I do about it. I believe that to be the only way by which you can reach these large accumulations of capital. The objection is made that there would be a great deal of lying. There is a great deal of lying anyway about taxes, and the smaller we can make it the more we can commend our system to the consideration of the people. But if this Convention undertakes to levy double taxation, they may be sure that men will lie about their property. It is human nature, and always was and always will be.

One other objection is made to an income tax, and that is that it is an inquisitorial tax. Well, sir, I am not aware that it is so. The only income tax with which we have had any experience, was that levied during the war, and to some extent that was inquisitorial. But I ask you if it is any more inquisitorial than the assessment will be under the section offered by the gentleman from Sonoma? I say it is not, for this reason: the Assessor has his book upon which he must put down every species of property he can imagine. I don't understand whether the gentleman means to include a contract to build a bridge, and which may be sold for five hundred dollars. I don't know whether he means to include contracts to survey and dig canals, or something of that kind. I don't know, by the terms of his amendment, whether he means to include those contracts or not. He might include a contract to build a Court House, as such contracts are transferable, and have value. Such rights have value, and are often transferred for large considerations. The Assessor comes round with a book upon which everything that can be called property in the sense of the amendment, everything that can be transferred, everything that has value, must be entered. Have you got any land? Yes, sir. How much? So many acres. What is it worth? Not to multiply words, he goes through the entire list, and gets everything you have. How much money, how much scrip, how many State bonds, and what the face value of them is. He wants to know who owes you any money, and how much they owe you; how many notes; how many chickens you have; how many watches. If you have a family, how many stoves; how many dishes; how much furniture, and how much it is all worth. I don't object to it, for it is the only way to get at it; but how much less inquisitorial is it than an income tax? Not materially less, certainly. All he has got to ask is, what were your gross receipts during the past year, and what is your total expenses? Deduct one from the other. I believe it will not be any more inquisitorial, and certainly it is the most just system that can be adopted. It will not hurt the poor man, the producer, but will reach the rich, and make them contribute their share of the burdens of government.

THE PREVIOUS QUESTION.

MR. TULLY. Mr. Chairman: I feel that this question has been discussed enough and I therefore move the previous question.

Seconded by Messrs. Smith, of Santa Clara, Lampson, and McComas.

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

Division was called for; the committee divided, and the main question refused, by a vote of 42 ayes to 57 noes.

THE CHAIRMAN. The committee refuses to order the main question, and the Secretary will read section three.

TAXING LANDS.

THE SECRETARY read section three as follows:

SEC. 3. Land and the improvements thereon shall be separately assessed. Cultivated and uncultivated land, of the same quality and similarly situated, shall be assessed at the same value.

MR. EDGERTON. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

ON ADJOURNING OVER.

MR. EDGERTON. I move we do now adjourn until Thursday, at ten o'clock.

MR. HALE. Will the gentleman withdraw that motion for a moment.

MR. EDGERTON. Certainly.

MR. HALE. Mr. President: I ask unanimous consent to offer an amendment that has been agreed upon by the friends of the Boggs amendment which makes some modifications. I desire to have it read as a substitute, and printed in the Journal.

THE PRESIDENT. There being no objection it will be printed.

Following is the substitute:

"SEC. 2. All property within this State, including the excess in value, if any, of the capital stock of all corporations and joint stock associations, over the value of their property, including franchises, subject to taxation within this State, shall be taxed in proportion to its value; *provided, always*, that no tax shall be imposed on growing crops, debts, and evidences of debt due or to grow due in this State, except State, county, or municipal bonds, and evidences of State, county, or municipal indebtedness; on private property exempt from taxation by the laws of the United States; property belonging to the United States; property belonging to this State, or any municipality thereof, or public school property. No deduction shall be made from the assessed value of property on account of any debt or debts owing by the owner or owners of such property, but such debtor or debtors shall, upon payment of such indebtedness, be entitled to retain therefrom a sum with interest thereon at the same rate borne by such indebtedness, to be computed from the time or times of the tax payments, which shall equal the amount of taxes paid by such debtor or debtors, during the existence of such indebtedness, upon property of like amount in value of said indebtedness; *provided further*, that if any such indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year."

MR. HALE. I now renew the motion of the gentleman to adjourn until Thursday, at ten o'clock.

The ayes and noes were demanded, on the motion to adjourn, by Messrs. Smith of Santa Clara, Larue, Brown, White, and Larkin.

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

AYES.

Barbour,	Herrington,	Reddy,
Belcher,	Hilborn,	Reynolds,
Bell,	Hughey,	Ringgold,
Casserly,	Larue,	Schomp,
Condon,	Lavigne,	Swing,
Doyle,	Mansfield,	Tully,
Dudley, of Solano,	Martin, of Santa Cruz,	Turner,
Eagon,	McFarland,	Van Voorhies,
Edgerton,	O'Donnell,	Walker, of Tuolumne,
Gregg,	Porter,	Wilson, of 1st District,
Hale,	Pulliam,	Mr. President—34.
Hall,		

NOES.

Andrews,	Hitchcock,	Prouty,
Ayers,	Holmes,	Reed,
Barry,	Howard, of Los Angeles,	Rhodes,
Barton,	Howard, of Mariposa,	Rolfe,
Biggs,	Hunter,	Shurtleff,
Blackmer,	Inman,	Smith, of Santa Clara,
Boggs,	Johnson,	Smith, of 4th District,
Boucher,	Jones,	Smith, of San Francisco,
Brown,	Joyce,	Soule,
Burt,	Kelley,	Steele,
Caples,	Kenny,	Stevenson,
Chapman,	Keyes,	Stuart,
Charles,	Kleine,	Swenson,
Cross,	Lampson,	Terry,
Crouch,	Larkin,	Thompson,
Dunlap,	Lindow,	Tinnin,
Estey,	McCallum,	Tuttle,
Evey,	McComas,	Vacquerel,
Filcher,	McConnell,	Webster,
Finney,	McCoy,	Weller,
Freeman,	Moffat,	Wellin,
Garvey,	Moreland,	West,
Gorman,	Nason,	Wickes,
Grace,	Neunaber,	White,
Harvey,	Noel,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wyatt—79.
Herold,		

MR. AYERS. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to consider the report of the Committee on Harbors, Tide Waters, and Navigable Streams. It won't take over twenty minutes.

Lost.

MR. BARRY. I move to substitute revenue and taxation.

MR. EDGERTON. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to consider the article on right of suffrage.

THE PRESIDENT. The motion is to go into Committee of the Whole, to take up the article on revenue and taxation.

Adopted.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on section three of the report of the committee.

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

Lost.

MR. LARKIN. Mr. Chairman: I desire to amend section three by striking out the word "quality" and inserting "agricultural capacity." Instead of the word "quality" add the words "agricultural capacity." Land might be of the same quality, and yet not be fit for cultivation.

The quality of the soil might be the same, and yet the agricultural capacity be entirely different. "Similarly situated" means in the same locality.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. The gentleman draws a very fine distinction. That term was thoroughly considered in the committee, and it was thought it would express it. "Land of the same quality, and similarly situated." The gentleman from Santa Clara, Mr. Laine, had a section in which he used the word "located," but we found that the word "situated" was broader and more comprehensive. The section is right as it stands. The amendment of the gentleman would limit it to the agricultural capacity of the land. Now, why should not grazing land be assessed upon the same principle? I can see no reason for the distinction.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: The first clause in this section three is all well enough: "Land, and the improvements thereon, shall be separately assessed." I have no objections to that, but the last clause is simply nonsense, and if adopted will operate to defeat the equality and uniformity of taxation that we have declared for here. Take the river lands on the Sacramento, or any of our rivers here, if they were cleared out they would be worth say from fifty dollars to one hundred and fifty dollars an acre; but suppose it is not cultivated, or that it is covered with brush, it would cost fifty dollars an acre to clear it up; now, are you going to assess that land as much as the other? Such a theory is in direct conflict with the principle which lays at the basis of the system proposed to be established, and that is, to assess property in proportion to its actual value. Now, when you undertake to say arbitrarily where this dividing line shall be you at once destroy uniformity. Take any class of lands. The gentlemen who are advocating this amendment say that uncultivated land ought to be assessed as much as cultivated land. But there is another side to that question. Here is a piece of land that has been under cultivation for twenty years, it was thin soil in the first place, and is about worn out now; and that land close alongside of it, that this committee make pay as much taxes, is worth double as much. How are you going to get at it? Under this rule you are binding the Assessor to assess all kinds of land at the same price. Now, is that not a clear conflict with the theory of equality? There are one hundred thousand acres of this land about worn out; been cropped year after year until it is not worth half as much as the land right alongside of it; now, I cannot see the justice of assessing that land under an arbitrary rule for the same price as the land right alongside of it, which is worth twice as much. It takes away from the Assessor all discretion with which he ought to be invested in order to discharge the duties of his office—in order to do justice. It is a blind discrimination which ought not to be allowed. Now, sir, if it be in order to move as an amendment to the amendment offered by Mr. Larkin, to strike out all after the word "assessed," in the second line, "cultivated and uncultivated lands, etc., shall be assessed at the same value," and leave the section stand that "lands and the improvements thereon shall be separately assessed," I am utterly at a loss to comprehend any good end that is to be secured by retaining the latter clause; it certainly can operate only in the one way, to absolutely force the Assessor to assess property without reference to its value, and under an arbitrary rule. I protest against it, and I hope the last clause will be stricken out.

No second.

THE CHAIRMAN. The question is on the amendment of the gentleman from El Dorado.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: I hope the amendment will not prevail. I do not see that there is any necessity for the amendment. It seems to me it is a distinction without a difference. I believe the committee carefully canvassed this matter, and I think they use a word about which there can be no doubt. If there was anything to gain by the amendment I should be glad to favor it, but there is nothing to gain. As I understand the section, the object is to reach that class of land in this State which is now almost exempt from taxation. There are thousands of acres of land in the southern portion of the State, very valuable land, that is not assessed, in many cases, for more than one quarter or one sixteenth of its value, and we want those who own that land to pay for what it is worth—on its actual producing capacity. That this land, and land similarly situated and under cultivation, shall be assessed alike. Now, I believe I recognize the necessity for such an amendment as this. It is for the purpose of compelling the large landholders to pay their share. If this is done—if this section is incorporated into the Constitution, together with the taxation of solvent debts, and other evidences of indebtedness, then, sir, we will have equal and uniform taxation. Then the wealthy will help bear the burdens of government, and the poor and middle classes will not have to pay more than they ought to pay. I do not see the necessity for the gentleman's amendment. I believe this fully covers the whole matter. That it is intended that agricultural land of the same producing capacity shall be taxed the same, when similarly located. In other words, it shall be taxed in proportion to what it is worth. That is all we desire in this Convention.

MR. CAPLES. Would you have uncultivated land assessed the same when it is only worth half as much as land that is cultivated?

MR. BARRY. I don't understand that this section says any such thing.

MR. CAPLES. Suppose the cultivated land is worn out.

MR. BARRY. If it is worn out it is not of the same quality as land which is capable of producing. But the idea is that land of equal producing capacity shall be assessed alike when they are similarly situated. If land is capable of producing, and does not produce, we propose to tax it the same as land that does produce.

MR. LARKIN. You understand the section to mean the producing capacity of the land?

MR. BARRY. Yes, sir.

MR. LARKIN. Why not put in the words "producing capacity?"

MR. BARRY. If it is the same quality it will produce the same.

MR. LARKIN. Suppose the land is covered with brush?

MR. BARRY. I don't care. I say this: if it is of the same producing capacity, then it ought to be taxed the same as that immediately joining which is cultivated. I propose to stand by the section.

MR. CAPLES. Who is to be the judge? Who is to determine that the land is of the same producing capacity?

MR. BARRY. I believe this: that as far as the Board of Equalization is concerned, the Board of Supervisors, or Assessors, are fully capable of determining.

MR. CAPLES. Suppose, now, that the latter part of the section is stricken out, and allow the Assessor to assess the land according to its value, wouldn't it amount to the same thing?

MR. BARRY. No, sir; I don't think it would. I hold that this is only carrying out the desires of the people, that cultivated and uncultivated land of the same quality shall be assessed at the same price, so that there shall be no discretion. There will be no judgment about it.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: It seems to me there are good reasons why this part of the section should be stricken out. I am utterly at a loss to understand where the good comes in, because there must be some power, some authority to determine whether the land is of the same producing capacity. Who is to determine? Is it the Assessor or is it the Board? Very well, suppose it is stricken out, the Assessor and the Board will be guided primarily in their action by the rule of valuation. Is not the same object accomplished, and through the same agency, by striking out this clause? If we adopt this clause it ties the hands of that discretionary power, and forces the Assessor to assess land that is worth only fifty dollars an acre for as much as land that is worth one hundred dollars an acre. Now, such a rule is unjust upon the face of it. There is but one rule that is just, and that is to assess anything and everything by that broad universal rule of actual values. Why is it proposed to make an exception in this case? It is not certainly in the interests of justice.

MR. INMAN. What is it that places value upon agricultural lands, except their power to produce something?

MR. CAPLES. I will answer the gentleman. Again I say that land is worth just what it will sell for, and its value must be determined by some authority.

MR. INMAN. In determining the value of agricultural land, is it not by what it will produce, what it is capable of producing?

MR. CAPLES. Let me illustrate——

MR. INMAN. That is not answering the question.

MR. CAPLES. Here is a tract of land on the American River, half of it under cultivation, which is worth one hundred and fifty dollars an acre. The other half, covered with brush and drift, would not sell for more than fifty dollars an acre. Now, the Assessor, if he be a man of information, acting honestly, with such a knowledge as he should have in determining the value of that land, will assess it at what it is worth, one part at fifty dollars, and the other at one hundred and fifty dollars an acre. That is the rule of equality and justice. I deny utterly that it would be in conformity with equality and justice, to assess the two parts of that tract at the same figure. That is my answer to the gentleman. It is utterly impossible to attempt by statute, whether it be by organic statute or legislative law, to fix the value that is to determine the action of the Assessor or Board of Equalization. It would be quite as possible to attempt the most impossible thing. You have but one way, and that is to elect an Assessor who is an honest and intelligent man, if you can find such. Elect an Assessor who will assess all property at what it is worth, no more, no less. But if you attempt to tie him up by restrictions, how can he exercise that discretion that will do justice. He cannot do it. By this rule we bind him to assess land that is worth fifty dollars an acre, and land that is worth one hundred and fifty dollars an acre, at the same price. If any gentleman can see justice, or equality, or uniformity in taxation of that kind, I would like to have him explain it. I cannot see it. There is no justice in it. It is wrong. The people will not thank you for it. Where is the equality? Where is the uniformity? I say again it is not right, and there is no justice in it.

REMARKS OF MR. REED.

MR. REED. Mr. Chairman: I desire to state a case that has come under my own observation, which will show the necessity for a section like this. I own a tract of land which has been under cultivation for many years. On two sides of my land are two large tracts, entirely uncultivated. I have been assessed two or three times as much as these other parties are assessed at. I have complained to the Assessor, and have been before the Board and asked for a reduction. I have been met with the answer that my cultivated land is worth more. I am, in reality, taxed for my energy and enterprise. This is true of my neighbors, also. I have tried to buy this land I speak of, and the owners refuse to sell it. I have offered to rent it, and they refuse to rent. They will neither rent nor sell, nor yet pay taxes. They put a higher value on my land because I cultivate it and make it produce something.

SPEECH OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: The question now before us I regard as of vital importance. Members on this floor do not need to be reminded of the continuous cry raised against land monopoly. Owing to the system of Spanish grants, a few men hold large tracts of land. There is no country on the face of the globe that could stand it, and the only reason that it has not entirely destroyed our prosperity is, that we

have been so favored by Providence. This great evil should not be permitted to continue. The evils of land monopoly, the concentration of great bodies of land in the hands of the few people, is one of the greatest evils of which the people of this State complain. To meet this evil measures of the strongest kind have been constantly advocated, and even communistic doctrines have been favored by some. Sir, as one who has continually and honestly opposed this evil, in its present form, I have every belief that a just and equitable system of taxation will remedy it to a great extent, and this section I consider of the highest importance in that view. We know it is the case to-day, that parties own large tracts of land and escape their due proportion of the burdens of taxation. We have examples right here next door to Sacramento, in the Norris grant, and other grants. We have large tracts of land in the western portion of my county, that is better land, on an average, than land right west of it, which is assessed at from eight dollars to fifteen dollars an acre; and under the present system there is no justice, there is no equality; it is pernicious in its character, and it becomes the duty of this Convention to remedy it. I can see no injustice in this system proposed. Certainly, if land will produce as much, and is of equal capacity to other land in the same vicinity, which is cultivated and made to produce something, it ought to be taxed the same. It is worth just as much, and oftentimes more. Why should it not be assessed for as much? Why is it not worth as much? It is a well-known fact that new land will produce more than land that has been used for a long time.

I know of men who have recently paid more for new land than they would have paid for land that has been under cultivation, because they were certain of getting a better crop. I say the quality of the land includes its productive capacity. If cultivated land is assessed at ten dollars an acre, and there is land adjoining which is not cultivated, and which will produce the same crop, it should be assessed at the same price. If I have a small piece of land fenced, the Assessor comes and finds it worth ten dollars an acre—he will put it down at that—whether it is cultivated or not, merely looking at the quality of the land—its productive capacity. When he climbs over the fence on to the next one hundred and sixty acres, he does not inquire whether it belongs to a land monopolist or not, or whether it is cultivated or not; if it is capable of producing the same crop as mine, he assesses it at ten dollars an acre. If he finds it belongs to the same man as the last one hundred and sixty acres, or if he finds a thousand acres belonging to the same man, it is no concern of his. I want it so that the man who can afford to own ten thousand acres, or one hundred thousand acres, shall pay the same tax that I pay on my small tract. I am willing he should own it, but I want him to pay taxes on it, and if he does that, perhaps he will not be so anxious to hold it in idleness. As a matter of fact, he could not afford to hold it unless some use is made of it; and it was for this purpose that this section was framed, in part. It is to break up land monopoly. There is General Bidwell, and other landholders, who own large tracts of land, but they cultivate it and make use of it. If men who own large tracts of land can afford to let them remain idle, let them pay taxes for the support of the government. The man who cultivates his land produces something which adds to the wealth of the State, and gives employment to labor. The land that is not in cultivation produces nothing, but is capable of producing as much as the other. I do not believe there are any two sections in this report that will secure to the people so much good as sections three and four. For my part, though I had a proposition differing somewhat from section three, I am satisfied with the section as it stands, and I hope it will be adopted. It might be improved, perhaps, but I shall vote for it as it is.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Steele, West, Evey, and Brown.

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

Carried, and the main question ordered.

THE CHAIRMAN. The question is on the amendment of the gentleman from El Dorado.

Lost.

MR. BROWN. I move an amendment.

THE SECRETARY read:

"Strike out the word 'and,' in line two, and insert after the word 'situated,' the words 'and possessing the same advantages of location.'"

Lost.

MR. CAPLES. I move to amend section three by striking out all after the word "assessed," in the second line.

Lost.

MR. SMITH, of Fourth District. I move to amend by adding, "provided that lands belonging to the Government of the United States, to which homestead or preëmption rights have not been perfected, shall not be assessed."

Lost.

THE CHAIRMAN. If there are no further amendments the Secretary will read section four.

SUBDIVIDING LAND.

THE SECRETARY read:

SEC. 4. Every tract of land containing, within its boundaries, more than one government section, shall be assessed, for the purposes of taxation, by sections or fractional sections; and where the section lines have not been established by authority of the United States, the Assessor and County Surveyor shall establish the section lines, in conformity with the government system of surveys, as nearly as practicable. Each section, or fractional section, shall be valued and assessed separately; and for the purpose of subdividing and assessing, the Assessor and Surveyor, and their assistants, may enter upon any land within their respective counties.

MR. HOWARD, of Los Angeles. I move the committee rise, report progress, and ask leave to sit again.

Lost.

MR. BLACKMER. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Insert after the word 'lines,' in the fifth line, the words 'at the expense of the owner.'"

THE CHAIRMAN. The question is on the amendment.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I see in this section, as it now stands, an opportunity for the Assessor and County Surveyor to run up a very large bill against the county, for the purpose of establishing these section lines. The County Surveyor will say to the Assessor, "Why, the Constitution requires you to have these section lines established. You cannot assess the land properly unless they are established." And he will have a pretty good leverage upon the Assessor to induce him to set him at work on these lines, so that the land can be assessed by sections. I do not think it is policy to give an opportunity for an officer to run up such a bill against every county in this State. If this is to be done it ought to be done at the expense of the owner of the tract, if it has not yet been sectionized. For that purpose I offer this amendment. I do not wish to occupy the attention of the committee any longer.

REMARKS OF MR. STEELE.

MR. STEELE. Mr. Chairman: I hope this amendment will not prevail. If this section is for the benefit of the State, to enable the State to derive a larger revenue from this land, the State ought to pay the expense of it. There are very many large ranch owners in this State who are subdividing their lands for the purpose of selling them off, and you now propose to tax them for a resurvey of it. It is not for their benefit, but for the benefit of the State.

MR. BLACKMER. Does not the section already provide that, where the section lines have been established?

MR. STEELE. They are not surveyed according to sections. The tracts they wish to sell off are surveyed without reference to the section lines. Now, to put this additional tax on them is an injustice. Where they have had their lands surveyed it would be a manifest injustice to compel them to go to the additional expense of surveying it by sections. It is for the benefit of the State; let the State bear the expense. The State would derive a much larger revenue by having it done, and she ought to pay for it.

MR. REYNOLDS. I move an amendment to the amendment.

THE SECRETARY read:

"Amend by adding 'and the expense of said survey shall be assessed to the land so surveyed, and collected with other taxes.'"

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: The reason I desire to make the expense of these surveys part of the assessment is to make it definite. That is the objection to the amendment offered by the gentleman from San Diego. I do not suppose that this Convention desires that the State shall go into the business of surveying private property for the benefit of private property. Even for the purpose of taxation we do not propose to survey other people's lands, and under the provisions of section four it will only be a cheap method of getting large tracts of land surveyed at the public expense. And if it is desirable that the State should have these tracts of land surveyed, I wish to have it done at the expense of the owner of the land, and collected as other taxes are collected.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: The theory of this section is, that the exact value of a large tract of land, owned and held in one body by one person, shall be approximated as near as possible for the purposes of taxation. Now, sir, the mode suggested by this section is simply to arrive at the value of a particular tract of land. It is in aid of the assessment of certain kinds of property, and I ask the gentleman from San Diego why it would not be just as proper to charge the owners of other kinds of property with the expense of assessing it? It is of no benefit at all to the owner. It is not for his benefit to have the property subdivided. He has ten or fifteen thousand acres of land which he holds for the purpose of grazing. Now, I am informed by the Surveyor-General that the expense will be absolutely nothing, except the time it takes with a pen and ruler to make the maps. It can all be done in the Surveyor-General's office.

MR. TERRY. Isn't it a fact that all the land is divided into sections—all the land disposed of by the United States?

MR. EDGERTON. This only applies to the grants made by the Government of Mexico. I think they have all been surveyed.

MR. HOWARD. They have not been sectionized.

MR. TERRY. I propose to the gentleman from San Francisco to insert after the words, "United States," the words, "or the State." Swamp lands are surveyed by the State.

MR. EDGERTON. What I object to is making the owner of the property pay the expense. There is no reason in it.

MR. LARKIN. If the Assessor goes to the merchant, would it be necessary for him to hire an expert.

MR. EDGERTON. The Assessor is paid by the county. But when you come to assess a specific piece of property, and you make the owner of that property pay for the expense, I say there is just as much justice in making a merchant pay the expense of assessing his property. It is a mere mode of ascertaining its value.

MR. REYNOLDS. I ask leave to withdraw my amendment.

MR. TERRY. I move to amend section four, by inserting after the words "United States," in the fourth line, the words, "or the State."

MR. EDGERTON. I think that is a very proper amendment and should be adopted. I would inquire of the gentleman from San Diego, if he withdraws his amendment.

MR. BLACKMER. No, sir.

REMARKS OF MR. CAPLES.

MR. CAPLES. This section is very objectionable as it comes from the committee, and the amendments make it worse confounded. They are improvements over the other way. Now, sir, permit this section to stand, and you will roll up an expense that will be enormous, and will extend over a period of years. As a matter of public policy it is unwise, and I very much desire that the section shall be stricken out, and I shall move to that effect. And, now, sir, in regard to the amendments here offered, let us see what they amount to. I would like to inquire of the legal gentlemen, if there be any such advocating these amendments, where they find any law, or logic, or right, or justice, in forcing a man to pay such an expense as that. I call your attention to a celebrated case just decided by the Supreme Court of the United States, a case which was taken up from the State of Kentucky. The Legislature of that State by statute required that all owners of unsurveyed and unoccupied lands should do certain surveying within a given period of time. The land owners appealed, and the Court held that it was unconstitutional, as it was. And it stands substantially and precisely upon the same basis. If that was unconstitutional this would be. I deny that there is any necessity for this expense. What is your Assessor for but to go and work at the land and value it. How will his labor be facilitated by surveys? He might survey it till doomsday, and yet get no more information about the value of it than he would by riding over it without a compass. It requires no great amount of knowledge if a man rides over a piece of land to tell its value. He can do it just as well as if he had a whole corps of surveyors there. What I object to is this attempt to interfere with private rights. It is nothing more nor less than inquisition, because that is what it amounts to.

MR. SWING. I call your attention to section three thousand six hundred and thirty-four of the Political Code. That is law enough. This is no new principle. It is the statute law already.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I am opposed to this section, and opposed to the amendment, and when opportunity offers I will offer a substitute. I do not believe it is right for the State to go into the business of assessing these tracts of land at public expense, neither do I believe it is right to compel the owners to have it surveyed at their own expense. I will offer a substitute that where the section lines have been run it shall be surveyed by sections.

MR. HOWARD, of Los Angeles. Mr. Chairman: For the purpose of preventing land monopoly this is the most important section in this whole report. And as we are not in a condition to dispose of it to-day, I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress therein, and ask leave to sit again.

PRESENTATION.

MR. EDGERTON. Mr. President: I was about to make a motion to adjourn, but some of my young friends have some business on hand, and I will defer it.

At this point Master Henry Durner, one of the Pages, stepped in front of the desk and addressed President Hoge as follows:

Mr. President: I have been chosen from among the Pages to present you with this testimonial. The time has arrived when the Pages of this Convention—J. D. Ricks, August Rose, M. Shepley, E. H. Morris, Carey Goods, J. Doak, Willie Campbell, and myself—desire to show our gratitude towards you for appointing us to the position. We thank you most heartily for the many kindnesses you have shown to us during the session of this Convention. We have not chosen anything costly, but something which will, we believe, be appreciated by you. Many were the aspirants for positions in the Convention, but you have seen fit to choose from among them the eight who are now assembled around you. Through our appointment many a heart has been made glad and many a home rendered happy. We have tried hard to do our duty, but in our efforts if we, perchance, have made mistakes, we hope that you and the Convention will overlook them. We hope that with this, our testimonial, our names will remain in your memory. We know that you are growing old, that by and by we will be taking your place, but, nevertheless, I hope you may have many, many years to live, and that this simple testimonial will often bring our names back to your memory. [Applause.] The Convention, I have no doubt, feel proud of you, in guiding them in this, a great era in the history of the State of California. This Convention is, perhaps, the last that will be called during your life, or even during ours. This Convention, we hope, will not only be remembered by our people here, but throughout the United States and throughout the world. I desire now to present you this testimonial, in the name of the Pages, who join in wishing you a happy New Year, and may your life be all sunshine and no shadow. [Applause.]

The cane was carried up and handed to the President by little Willie Campbell, one of the Pages, amid great applause.

ADJOURNMENT.

MR. EDGERTON. I move that the Convention do now adjourn until Thursday, at two o'clock P. M.

Carried.

And at twelve o'clock and thirty minutes P. M., the Convention stood adjourned until Thursday, January second, eighteen hundred and seventy-nine, at two o'clock P. M.

NINETY-SEVENTH DAY.

SACRAMENTO, Thursday, January 2d, 1879.

The Convention met pursuant to adjournment, at two o'clock P. M., President pro tem. Belcher in the chair.

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

PRESENT.

Andrews,	Herold,	Prouty,
Ayers,	Herrington,	Pulliam,
Barbour,	Hitchcock,	Reddy,
Barry,	Holmes,	Reed,
Barton,	Howard, of Los Angeles,	Reynolds,
Belcher,	Howard, of Mariposa,	Rhodes,
Bell,	Huestis,	Ringgold,
Biggs,	Hughey,	Rolfe,
Blackmer,	Hunter,	Schell,
Boggs,	Inman,	Schomp,
Boucher,	Johnson,	Shoemaker,
Brown,	Jones,	Shurtleff,
Burt,	Joyce,	Smith, of Santa Clara,
Caples,	Kelley,	Smith, of 4th District,
Chapman,	Kenny,	Smith, of San Francisco,
Charles,	Kleine,	Soule,
Condon,	Lampson,	Steele,
Cross,	Larkin,	Stevenson,
Crouch,	Larue,	Stuart,
Dowling,	Lewis,	Swenson,
Doyle,	Lindow,	Swing,
Eagon,	Mansfield,	Terry,
Edgerton,	Martin, of Santa Cruz,	Thompson,
Estee,	McCallum,	Tinnin.
Estey,	McComas,	Townsend,
Evey,	McConnell,	Tully,
Filcher,	McCoy,	Turner,
Finney,	McFarland,	Tuttle,
Freeman,	McNutt,	Van Voorhies,
Freud,	Mills,	Walker, of Tuolumne.
Garvey,	Moffat,	Webster,
Gorman.	Moreland,	Weller,
Grace,	Morse,	Wellin,
Gregg,	Nason,	West,
Hale,	Neunaber,	Wickes,
Hall,	Noel,	White,
Harrison,	Ohleyer,	Wilson, of Tehama,
Harvey,	Overton,	Wilson, of 1st District,
Heiskell,	Porter,	Wyatt.

ABSENT.

Barnes,	Fawcett,	O'Donnell,
Beerstecher,	Glascock,	O'Sullivan,
Berry,	Graves,	Shafter,
Campbell,	Hager,	Stedman,
Casserly,	Hilborn,	Sweasey,
Cowden,	Keyes,	Vacquerel,
Davis,	Laine,	Van Dyke,
Dean,	Lavigne,	Walker, of Marin,
Dudley, of San Joaquin,	Martin, of Alameda,	Waters,
Dudley, of Solano,	Miller,	Winans,
Dunlap,	Murphy,	Mr. President.
Farrell,	Nelson,	

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Dudley, of Solano, for one day; to Mr. Keyes, for two days; to Mr. Waters, for one week, and to Mr. Laine, for one week, on account of sickness.

THE JOURNAL.

MR. LINDOW. I move that the reading of the Journal be dispensed with.

So ordered.

NOTICE OF MOTION TO ADJOURN SINE DIE.

MR. FINNEY. Mr. President: I give notice that I will, on Saturday morning, introduce the following resolution in regard to adjournment:

WHEREAS, This Constitutional Convention was ordered by a small majority of the people of the State, showing that they were unprepared for any radical change in the organic law; and whereas, this Convention was called by a hostile Legislature which so framed the calling Act as to render impossible the completion of its work in any such thoughtful and finished manner as to make it acceptable to the people, or a credit to the State; and whereas, the time fixed by the Legislature for the session of this Convention has now expired, and the State authorities seem disposed to construe against it every technicality of the law; and whereas, it is now evident that only a doubtful quorum can be kept together, which will not fully represent the various interests of the State; and whereas, it seems to us desirable to resubmit the whole matter to the people of the State, that they may take such action therein as may to them appear best; therefore,

Resolved, That the President appoint a committee of five, whose duty it shall be to prepare an address to the people of the State, setting forth briefly the various causes and circumstances which have prevented the Convention from completing its labors, and requesting them to elect a Legislature which shall make the necessary appropriations for the completion of the work of the Convention, if, on full consideration, they desire it to be completed; the address to be reported on or before the sixth day of January, instant.

Resolved, That when this Convention adjourns on the sixth day of January, it stands adjourned to the first Monday in September, A. D. eighteen hundred and eighty, at which time it shall convene and proceed with its work, provided the Legislature shall have made the appropriations necessary for the expenses of the Convention.

MR. CAPLES. I move to lay the resolution on the table.

MR. WHITE. Ayes and noes. I want to know who the traitors are.

MR. FINNEY. The resolution is not offered yet. I simply read it for information. I ask leave to have it printed in the Journal.

THE PRESIDENT pro tem. The gentleman has not offered the resolution yet. He asks leave to have it printed in the Journal.

MR. HOWARD, of Los Angeles. That is a motion, and I move to lay it on the table, upon which I call the ayes and noes.

MR. MCFARLAND. Mr. President: I do not understand that the

resolution is before the Convention at all. The gentleman merely gave notice that he would introduce it.

MR. WHITE. I hope it will not be allowed to go on the Journal, for I think it is disgraceful, and I think it should not go on the Journal.

THE PRESIDENT. The motion is to print it in the Journal.

MR. EDGERTON. He simply gives notice that he will introduce that resolution on Saturday.

MR. CAPLES. He asks to have it printed in the Journal.

MR. HOWARD, of Los Angeles. I believe the motion was to print.

THE PRESIDENT pro tem. I understood the gentleman asked leave to have it printed in the Journal.

MR. HOWARD, of Los Angeles. That is a motion, and a motion to lay it on the table is in order.

THE PRESIDENT pro tem. There is no second.

MR. AYERS. Fire it out.

MR. EDGERTON. I move the Convention resolve itself——

NEW RULE.

MR. CROSS. Before that motion is put, I wish to send up a notice.

THE SECRETARY read:

I hereby give notice that at the next session of the Convention I will move to adopt an additional standing rule, as follows:

When the Convention shall have refused, by vote, to have the previous question put, the Convention shall proceed in all respects as though no such vote had been taken.

Laid over for one day.

PROPOSED AMENDMENT.

MR. WELLIN. Mr. President: I ask leave to read a proposed section in relation to fire and marine insurance companies. I ask leave to have it printed in the Journal and referred to the Committee on Miscellaneous Subjects.

THE SECRETARY read:

"SECTION 1. The amount named in either a fire or marine insurance policy shall be deemed to be the true value of the property insured.

"SEC. 2. Fire and marine insurance companies shall not combine for the purpose of regulating the rates of insurance, under penalty of forfeiture of charter, or the right to do business in this State."

Referred to the Committee on Miscellaneous Subjects.

REVENUE AND TAXATION.

MR. EDGERTON. I move that the Convention resolve itself into Committtee of the Whole, the President pro tem. in the Chair, for the purpose of considering the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The second section and amendments are before the committee.

[MR. EAGON in the chair.]

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I have not monopolized any of the time of this Convention in the discussion of this subject, and I shall endeavor now to be brief in what I have to say. I wish to call your attention to such points as I deem worthy of consideration. There are certain well established and conceded principles in regard to taxation, to which it will be well enough to advert, and which we should bear in mind, that we may not be led astray by false lights.

Mr. Cooley says, in his Constitutional Limitations: "Taxation is the equivalent for the protection which the government affords to the persons and property of its citizens; and as all are alike protected, so all alike should bear the burden, in proportion to the interests secured." Again: "When taxation takes money for the public use, the taxpayer receives, or is supposed to receive, his just compensation in the protection which government affords to his life, liberty, and property, and in the increase in the value of his possessions, by the use to which the government applies the money raised by the tax; and either of these benefits will support the burden."

Again, he cites the case of The People vs. The Mayor of Brooklyn, 4 N. Y. 419, with approval, in which the Court say: "A rich man derives more benefit from taxation in the protection and improvement of his property than a poor man, and ought therefore to pay more."

The very able Chairman of the Committee on Revenue and Taxation in the Ohio Constitutional Convention of eighteen hundred and seventy-three and eighteen hundred and seventy-four, in speaking of the provision in the Ohio Constitution of eighteen hundred and fifty-one, in respect to taxation, says: "It is, in fact, and should ever be recognized as the true mode of distributing the public burdens, for it measures every man's contribution to the government by the amount of protection which the government gives to him and his property. The principle of taxation should be, and must be, in all well regulated governments where there are no privileged classes of property, that all the property should pay its distributive share to the support of the government, and to the discharge of the public burdens, just in proportion to the amount of the value of the property protected by the government and its laws."

I cite these authorities because some gentlemen are very sensitive about double taxation, and in order that we may go back to the true theory of taxation, the basis upon which this sovereign power rests, which is the protection which the citizen derives from the Government. If, therefore, the citizen transfers his property, and receives in lieu thereof something else, which has a money value, be it a mortgage, a note, or simply a parol promise to pay, and government protects him and his legal rights in this line of business, opens the doors of its forums of justice to vindicate his claim for redress, when his debtor fails to respond to his obligation, on what principle can it be insisted that he should not pay for this protection in the form of taxation, when taxation is based upon the protection which the government gives to the citizen.

One man sells his land and gets in lieu thereof mortgage notes. Government protects the vendor in his mortgage notes, and the vendee in his land. There is no increase in property, but there is a change of properties, which the government recognizes and upholds, and it is this protection which the government extends over a man's property, and all the changes and shapes which it assumes in the business affairs of life, which underlies the sovereign right of taxation.

Passing from this point, as to what constitutes the basis of taxation, I come to another proposition, and to sustain this I also cite from Cooley. He says: "Absolute equality and strict justice are unattainable in tax proceedings. It must happen, under any tax law, that some property will be taxed twice, while other property will escape taxation altogether. Instances will occur where persons will be taxed as owners of property which has ceased to exist." It must be borne in mind, therefore, that, so far as the equality or justice of taxation is concerned, it is only approximative, and long after this Convention shall have ended its labors, the Sisyphean toil will remain for other Constitutional Conventions to grapple with, how nearly can the approach be made to the ideal standard of equality and justice in taxation. My proposition is, that perfect equality in taxation is a chimera, an eidolon of the brain.

They who claim that only tangible and visible property should be taxed, cannot fail to see that this is not entirely practicable. The retail merchant often buys his goods of the wholesale merchant who has paid the taxes on the goods, and then takes them to another jurisdiction, to a different locus, where he is assessed for the same goods, and is compelled to submit to double taxation. In formulating any system of taxation, we must take human nature just as we find it, with its disposition to shirk the demands of the State, and, on the other hand, the imperious exigencies of the State itself, its duty to extend protection to all its citizens and property of every kind, and maintain its dignity and power; and from these postulata we must systematize our tax laws so as to make them as nearly as may be practical, effectual, equal, and uniform. Abandoning Utopian theories and aspirations after perfect equality and ideal perfection, we must come down to practical details. The armor of constitutional provisions is generally iron-clad, and we are not in favor of inaugurating any experiments in it, especially on this all-important subject of taxation. We want to wait no long efflux of years for some slow problem to work its own solution, such as David A. Wells, the distinguished financier, has proposed. He says, "that all taxes equate and diffuse themselves, and that if levied with certainty and uniformity upon tangible property, and fixed signs of property, they will, by a diffusion and repercussion, reach and burden all visible and also all invisible and intangible property with unerring certainty and equality." His doctrine is to "tax but a few things, and then have those taxes diffuse, adjust, and apportion themselves by the inflexible laws of trade and political economy."

The people of California have been waiting ever since the decision of our Supreme Court, in the case of The People vs. Hibernia Bank, for these taxes on tangible property to equate and diffuse themselves, so that by some system of diffusion and repercussion they would reach and burden all visible property. But the process is too slow; the Fabian tactics of delay, the Micawber expectancy of something's turning up, must be abandoned for a system of taxation, which shall be general, vigorous, and operative. We have had enough of this diffusive, repercussive taxation. By way of further elucidation of our proposition that there is no such thing as perfect equality in taxation, we may instance the fact that the shapes which taxation practically assumes are protean. It may be in the form of duties, imports, and excise. It may be in the form of license fees. It may be specific, as on corporations, in reference to amount of capital stock, business done, or profits earned. It may be direct on property according to value, as on real estate and tangible personal property; but there is one great underlying principle which should govern all taxation, and that is, uniformity in the tax levy. This requirement is universal.

If all men were honest; if the laws would not be evaded; if no encouragement to deception, lies, and perjury was given thereby, so as to make it against public policy, it would seem that for the purposes of taxation debts should be deducted from credits; in other words, that intangible indebtedness should be deducted from intangible credits, and that the residuum and all visible property should be taxed; but, at any rate, if this cannot be done successfully, all visible property should be subject to the burden, because it has a situs and can always be reached, and mortgages and solvent credits should also be taxed, because, though they have not a situs as visible or tangible property, they are equally protected by the government and represent a money value, and for all purposes of transfer and exchange are property. They have all the indicia of property. Lands, houses, and all other visible property may be purchased with them, and no other values be passed between the contracting parties. The coffers of any bank will respond to their presentation, and in the business ramifications of life, they are not only valuable, and universally regarded as such, but they also subserve the purposes of mutual convenience. They are the subjects of the law's protection, as much as any other kind of wealth. They are equally protected by the civil and criminal laws. Larceny may be committed of them, and many a felon has experience to his sorrow, that as between them and other kinds of property, "their partitions do their bounds divide." The difference is a good deal like the difference between a Jew and a Christian, in the language of Shylock:

"Hath not a Jew eyes; hath not a Jew hands, organs, dimensions, senses, affections, passions? fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same Winter and Summer, as a Christian is? If you prick us, do we not bleed? if you tickle us, do we not laugh?

if you poison us, do we not die? and if you wrong us, shall we not revenge."

But it is said that our Supreme Court, in the case of The People vs. Hibernia Bank, have decided that credits are not property. That decision was based upon the provision in our present Constitution, section thirteen, article eleven, requiring that taxation shall be equal and uniform throughout the State. It is very apparent that this idea of equality and uniformity was predominant in that decision, for they say: "That causes of action are dependent on too many contingencies to be capable of appraisement which shall accord with any rule of equity or uniformity of value, is too plain for argument." Again, they say: "The Constitution provides that no property, as property, shall be taxed except such as is capable of valuation by the Assessor, which shall be relatively equal and uniform with that affixed to all other property." In the case of Savings and Loan Society vs. Austin et al., in forty-sixth of California Reports, I notice, in the argument of a distinguished gentleman of this Convention, that he gives it as the result of his investigations, that credits are taxed in Florida, Indiana, Kansas, Minnesota, Michigan, Oregon, Ohio, West Virginia, Louisiana, Kentucky, Maine, Iowa, Connecticut, Massachusetts, New York, Maryland, New Jersey, New Hampshire, Wisconsin, Georgia, Alabama, and Missouri, either under direct and explicit constitutional provisions, or legislative enactments in pursuance of the reserved sovereign powers of the Legislature.

I must admit, Mr. Chairman, that I have some objections to the amendment proposed by my colleague, but they are not of such a character as will prevent my voting for it. I will state concisely what my preference would be. I find in the Constitutions of North Carolina, Ohio, Arkansas, and Minnesota, the following provision:

"Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money."

Now, if we eliminate from this provision "stocks, joint stock companies, or otherwise," which I would have provided for in a subsequent section, and then, if we insert the bonds, mortgages, and franchises, the provision will read thus:

"Laws shall be passed taxing all moneys, credits, mortgages, investments in bonds, franchises, and all real and personal property according to its true value in money."

Of course this would be followed by subsequent sections as to taxing stocks, and deducting debts from credits, if this latter should be deemed advisable. I believe such a provision, besides substantially complying with the constitutional provisions in four or five of the States of the Union, would be a clearer and more potent provision than that contained in the proposed amendment. The word "credits" is shorter, and will include "notes, evidences of indebtedness, and solvent debts," in the Moreland amendment; besides, the words "solvent debts," is a misnomer when applied to choses in action held by the creditor—they are not his debts, but his credits. Again, the word "solvent" is misapplied, limiting only debts, and not applying to bonds, notes, mortgages, and evidences of indebtedness. This misapplication would occasion the same animadversion which the Supreme Court gave utterance to in the case of The People vs. Hibernia Bank. Referring to the provision in our Political Code, to the effect that personal property includes money, goods, chattels, evidences of debt, and things in action, they say that under that provision, "unless the provision in the Constitution limits or restrains the power of the Legislature, it is the duty of Assessors to assess, not only mortgages, but all debts, solvent or not solvent, and also all rights of action, whether arising ex contractu or ex delicto." I refer to this because I think the word solvent misplaced. But, in the provision which I have suggested, the word solvent is not necessary, because everything is to be assessed according to its true value in money. It is my judgment that a provision of this kind would be more satisfactory, and a clearer expression of the subjects of taxation, and, although I shall vote for my colleague's amendment, yet I wish to say that in the event it does not prevail I shall offer the following:

"Laws shall be passed taxing all moneys, credits, mortgages, investment in bonds, franchises, and all real and personal property, according to its true value in money, except as hereinafter provided; and no property shall be exempt from taxation except growing crops and such as may be used exclusively for public schools, or places of burial not used for private or corporate profit, and such as may belong to the United States, this State, any county or municipal corporation within this State, and institutions of purely public charity."

I use the words "investment in bonds," instead of simply "bonds," as in the Moreland amendment, which includes too much. There are a great many different kinds of bonds, and some of them do not prove to be an investment.

Inasmuch, also, as there are specific taxes sought to be laid on corporations in a subsequent section of the committee's report, I think it would be advisable to qualify the words that "laws shall be passed taxing all real and personal property according to its true value in money," by the additional words, "except as hereinafter provided."

It will be noticed, also, that the words in the clause excepting certain property from taxation, as I have suggested, leave less room for doubt, and they are substantially the same as in the Constitution of Missouri of eighteen hundred and sixty-five. The power to exempt from taxation property for charitable purposes is left with the Legislature in the following Constitutions: Pennsylvania, Florida, Illinois, Indiana, Kansas, Minnesota, North Carolina, Ohio, Oregon, South Carolina, Virginia, and West Virginia. And in most of these Constitutions the same power is left with the Legislature in respect to exempting cemeteries. In many of the other Constitutions there is very little said about taxation, leaving the whole subject with the Legislature; and of course, under the general grant of legislative authority over the subject of taxation, as well as where nothing is provided on the subject, the Legislature possesses the power of exemption, but I have not had time to examine the laws of those States and ascertain to what extent the exemption has been carried in respect to charitable institutions.

In conclusion, Mr. Chairman, I have this to say, that there is nothing in which the people of my county are more interested than in the taxation of mortgages and solvent credits, and therefore I am willing to support any amendment which has a prospect of success, that will accomplish this most desirable result, although differing, as I do, in matters of detail and the phraseology to be used. In other words, I will support no proposition or amendment which omits from the list of taxable property mortgages and solvent credits.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I regret very much that I was not able to be present in the Convention at the opening of this discussion. A great many gentlemen have already expressed their views upon the subject under consideration. Coming here without a pledge to anybody, with a desire to arrive at what will be best for the people, and being ready now to be convinced by any arguments which may be presented, I regret that I did not hear the arguments of all who have spoken, as I might have obtained some information convincing me as to the right course to pursue here. I have given this subject, for some years past, considerable thought. I have some preconceived notions upon the subject—notions which have been formed after a good deal of study, and which are more and more confirmed as I continue to read and hear the matter discussed. Not that I am beyond the reach of conviction, for I hope never to be, but as far as my information goes, and as far as my studies go, my preconceived notions stand confirmed; yet I am ready to give way whenever any gentleman shall present views to the contrary which are well founded and demonstrative of the right. I hope to have an opportunity of presenting my views here to gentlemen who are willing to be convinced, and I hope there is no member who, upon being convinced as to what is right, will not be willing to act upon that conviction.

This subject is a difficult one. That it has intrinsic difficulties there is no doubt. It is a subject that has occupied the minds of great students, great political economists, and great statesmen. Alexander Hamilton, who was the first Secretary of the Treasury of the United States, says, "There is no part of the administration of government which requires such extensive information and a thorough knowledge of the principles of political economy so much as the business of taxation." The arguments here must have convinced everybody of the intrinsic difficulties of the subject, and therefore, in approaching the subject, I shall present my views in no dogmatic manner, but with the earnestness of sincere conviction.

Now, I agree with the last gentleman who addressed this body, and the authorities which he cited, showing that absolute, mathematical equality is not to be obtained. But it should be approximated as nearly as possible. I do not suppose any member will disagree with this proposition. It is a principle to be followed as a landmark, and the fact that we cannot absolutely obtain equality is no reason why we should not approximate to it. Therefore, looking at it in a practical way, I insist that equality and uniformity must be sought after. It is impossible to discuss any great question of government, or religion, or ethics, unless we agree upon some general and common propositions; for, if we differ on elementary principles and attempt to discuss them, we shall never arrive at a solution of the questions before this body. We must, therefore, have some common ground on which to stand; some base, from which to start; certain axioms; some agreed platform of great underlying fundamental principles. So agreeing, we can proceed to discuss and solve the matter which is really in dispute. What, then, shall we agree upon? In the first place, that taxation must be equal and uniform, and I will not debate the question now before this body with any one who will not agree to that proposition. He is beyond my reach who says taxation should not be equal and uniform. That is almost a universal provision in American Constitutions. There is hardly a Constitution to be found in which it is not expressed in precisely these terms, that taxation shall be equal and uniform, and all lawyers and Courts start out with this proposition as something not to be disputed.

What is the next proposition? That there shall be no double taxation. That is another elementary principle that we all agree upon. I hardly think any gentleman will be found who will declare himself to be in favor of double taxation. Of course, there may be occurrences of double taxation under any system, but it will be vague in its character and infinitessimal in amount. But we must be careful not to admit the principles of double taxation. If you tax a man's house twice, or his stock twice, you admit the principle of double taxation, and assert the right to tax the homestead over and over if a single assessment is not sufficient to raise the required revenue. It is a principle that certainly ought not to be laid down in the Constitution. Therefore we should, as an essential principle, avoid double taxation. We should also avoid a government capitation tax, except to a very small degree, usually called a poll tax. We have had a poll tax for a number of years, but it is hardly worth mentioning, except to distinguish between it and the tax upon property. So, that is out of view. As my friend from Kern County observed, it is a false quantity—a very proper phrase. As in mathematics, a false quantity is to be rejected, so here we reject this, and arrive at another elementary principle, and that is that taxes are to be levied upon property.

Now, we will assume these great elementary principles to be the principles upon which to base our action, and it remains for us only to determine the property to be taxed, and the mode and manner of taxing it. Now, what is taxation? It has been defined here by several gentlemen in different ways. The last gentleman who spoke, the gentleman from Sonoma, gave Cooley's definition. Cooley is only one of probably a hundred writers upon that subject. It has been defined in various ways, sometimes as far back as the old black letter tomes.

[Mr. Wilson here gave definitions of taxation according to several authors which he cited.]

The power of taxation is one of the greatest attributes of sovereignty; it is a necessary power. It may be regarded as an exaction which the highest power—the sovereign—makes of the subject, to pay for the support of the government. The question of protection, as a consideration for taxation, amounts to nothing, for the humblest citizen—the tramp, who has not a dollar in the world, or reputation, or home, or place to lay his head—is entitled to the protection of the law. Government is a complex piece of machinery, and only runs at great expense. The true question, then, is this: What is the best system of taxation for the support of the government? In every State in the Union, with the exception of the instances mentioned by gentlemen here, the matter of taxation is left to legislative discretion, with only certain broad principles on the subject laid down in the Constitution. In some few States the Constitution fixes the objects and subjects of taxation, and makes it mandatory upon the Legislature. In most cases it is left with the Legislature to select the objects and subjects on which taxes should be levied consistent with the general principles of equality and uniformity—the tax being upon property, and not upon persons. The Legislature should have this discretionary power. My individual opinion is that the Constitution should only prescribe that all real estate and all tangible property shall be taxed, and that such taxation shall be according to value, and that the Legislature should have, beyond that, the power and discretion of imposing any other tax that it might see fit, except a capitation tax. Then the Legislature, in its discretion, could enact a stamp act, a tax upon incomes, or a tax upon anything else, according to the necessities of the State at the time.

That would be justice to all, and would leave it more elastic—in a better condition, and more in accordance with the general principles prevailing in all the States of the Union. That would tax everything that should be taxed, except in some particular crisis, when it might become necessary to pass a stamp Act, or enforce an income tax, or tax on something else. The question here is, what shall we prescribe in the Constitution? What should be put into it in the shape of mandatory provisions, compelling the Legislature to act? Shall the tax be upon real estate? Everybody agrees to the proposition that real estate should be taxed. Everybody, I believe, agrees that tangible personal property should be taxed. When we have gone beyond that, we have entered upon a very disputable domain. Now, in its true and proper sense, when we have taken real estate and tangible personal property, we have all there is that is property. When you go beyond that, you are getting into deep water. Debts are incorporeal; they are simply creations of the mind, and exist only in contemplation. A right of way across a man's land would be incorporeal. It is not real property; it is not personal property. It may be of great value, and yet not be property. He does not own the land; he does not own a stick grown on the land; and yet the right to pass across it is a valuable right. It is incorporeal. And there are vast numbers of things which are valuable, and which are taken cognizance of by the law, and yet which nobody ever thought of putting on the assessment roll and taxing, because they are purely creations of the mind. We find far back in very early times that this doctrine was laid down very plainly. I will read now a few brief extracts from an authority which my friend from Sonoma will recognize:

Sir William Blackstone says (Blk. 2 Com., p. 17), in defining hereditaments, that they are of two kinds—corporeal and incorporeal. "Corporeal consist of such as affect the senses; such as may be seen and handled by the body. Incorporeal are not the object of sensation; can neither be seen nor handled; are creatures of the mind, and exist only in contemplation. An incorporeal hereditament is a right issuing out of a thing corporate (whether real or personal), or concerning, or annexed to, or exercisable within the same. It is not the thing corporate itself, which may consist in lands, houses, jewels, or the like, but something collateral thereto, as a rent issuing out of those lands, or houses, or an office relating to those jewels. In short, as the logicians speak, corporeal hereditaments are the substance, which may be always seen, always handled. Incorporeal hereditaments are but a sort of accidents which inhere in and are supported by that substance, and may belong, or not belong, to it, without any visible alteration therein. Their existence is merely in idea and abstracted contemplation, though their effects and profits may be frequently objects of our bodily senses. And, indeed, if we would fix a clear notion of an incorporeal hereditament, we must be careful not to confound together the profits produced, and the thing, or hereditament, which produces them. An annuity, for instance, is an incorporeal hereditament, for though the money, which is the fruit or product of this annuity, is doubtless of a corporeal nature, yet the annuity itself, which produces that money, is a thing invisible, has only a mental existence, and cannot be delivered over from hand to hand."

A laborer's lien, for instance, exists purely in contemplation. Therefore, it is called in law an incorporeal right. It cannot, like corporeal property, be seen and handled. It exists merely in contemplation; there is nothing corporeal, and there is therefore no property. He cannot take it and handle it, and yet it is of value to him. Choses in action are things which you cannot recover without a lawsuit, unless voluntarily paid. The gentleman from San Joaquin says, a man can be put in jail for stealing a promissory note. I say at common law it could not be done, because it was held not to be property. It is only by virtue of a California statute that stealing a promissory note is made a larceny. But the English law, from which we derive the great bulk of our laws, did not regard a promissory note as property, and it was no larceny to steal it. Nor was a debt, as a debt, assignable; negotiable paper, which depended upon great mercantile principles, was assignable, but a debt itself was not, as such, assignable at law, because it was not a thing corporeal. Debts were simply incorporeal things, and not assignable. There are many things which may be mentioned of the same character which have value, but which could not be taxed. Let us take some instances. A man rides upon the railroad, and through some negligence of the railroad employés has his leg broken. He has a cause of action against the railroad company. He has a chose in action. He has a claim for damages for a broken leg. Are you going to tax that claim? When the Assessor comes around to the hospital where the man is lying with his broken leg, and learns that he has a claim against the railroad company because of his broken leg and injured feelings, is he to tax that claim? Is it property? It has value. He has a claim at law and he may assign it, because we have changed the common law with regard to the assignability of choses in action.

We next find a man with a patent right. It may be most valuable. Some of the most valuable things owned are in the shape of patent rights. So, also, I may own a patent almost indispensable to a railroad company, and I may charge a large royalty for the use of it. It is mine; it is the result of my ingenuity, and they cannot use it without paying me a royalty. The Government has given me the exclusive right for the purpose of encouraging invention. Yet, whoever thought of taxing that kind of property? Take, also, a copyright. I have written a book. No man can print it except by my consent. It is valuable; but whoever thought of taxing it? Take a newspaper with an immense circulation, and the value of the actual property employed bears no relation to the real value of the concern; yet whoever heard of the good will of a newspaper being taxed? You may tax the type and the press; but the great value of a newspaper is its popularity with the public. Its value lies in the good will; but whoever heard of taxing the good will of a newspaper? It is an intangible, incorporeal thing, which depends upon enterprise, energy, tact, talent, management, and popularity with the people. We had an instance of it in the City of San Francisco, where a newspaper with a very wide circulation and great success and prosperity went suddenly down, and was worth only what its type and presses would sell for. Take the San Francisco Herald at the time the Vigilance Committee existed. It had a very wide circulation and a large patronage. It took a position against the committee and lost its patronage. Before that, the institution could have been sold for two hundred thousand dollars. The next day there was simply a lot of old type and presses. Whoever thought of taxing the good will of a newspaper?

Take a policy of insurance, the option to purchase property, etc.; they are valuable, but who ever thought of taxing them? Take the right I have to the earnings of my son until he is twenty-one years old. He must work upon my farm, or in my shop, or in my office, until he is of age. His labor is mine, and it is valuable to me; yet who ever heard of taxing it? All these things it is impossible to tax, and therefore no one has ever thought of taxing them. Therefore the idea of universal taxation must be abandoned. It is not necessary to equal and uniform taxation that it should be universal. Those things occupy the same position precisely as a debt. A debt is incorporeal, exists in the mind, in contemplation, and it is no answer to say that you can get something for that debt. So you can for a copyright; so you can for a claim for a broken leg which has been caused by the negligence of a railroad employé. Now, I say that all modern political economists insist that taxation should be limited to visible, tangible property, with a very few exceptions, and the leading minds of the age contend that the best mode of taxation is to tax that which is visible and tangible only—real property and personal property that you can see and handle. Men who have studied taxation—all great publicists—say so. It is curious that there is such uniformity of opinion among learned and able men, who have studied the philosophy of taxation, if they are not right in those views. Alexander Hamilton says that taxation ought to be based upon tangible, visible property, and a mind greater than his never existed in the United States. These New York Commissioners, who have been referred to, proceed upon the same basis, and, in an article in the Atlantic Monthly, Charles Francis Adams lays down the same proposition exactly, and denounces the system of taxing mortgages as an absurd system.

Now, suppose some gentleman starts to go through the State of California, in order to ascertain the material wealth of the State. Let him start with the land and assess it at its value. Let him take the cattle and other personal property upon the land. Let him find all the things that are to be seen and handled—drygoods, produce, and stock of all kinds. When he shall be through and shall have added the figures, will we not have, beyond all question, the material wealth of the State? Now, if we should ascertain that half the citizens of the State have borrowed from the others an amount equal to one half that material wealth, have we added anything to the material wealth of the State by that debt? Now, is it a debatable proposition in political economy that he should stop when he has assessed all the visible and tangible property? But in despite of all this, it is said here that we must tax mortgages, which are evidences of the debts of the people. The farmer who desires to improve his place has borrowed ten or fifteen thousand dollars for that purpose, and insists that the mortgage should be taxed. It is one of the most curious features of this thing that the farmer who has to borrow money should want mortgages taxed. I do not understand why he insists on this, for he wants to use the land for the purpose of negotiating a loan upon it. I don't care if he is perfectly independent and free from debt to-day; independent of everybody and everything: still he does not know what misfortune may happen to him. He may want to enter upon some new enterprise, some new developments, and he may want to borrow some money upon the farm. If mortgages be taxed it is the borrower who must pay the tax by a great law of trade. He cannot escape; he must pay the tax upon the land and upon the mortgage too. He may struggle as he pleases, he will never get the money except by paying it. We may provide that there shall be no contract between the mortgagor and the mortgagee; that the mortgagee shall pay the tax. We may pass a usury law to prevent high rates of interest, and when we get through we will find, as a result, that the farmer cannot borrow ten cents upon his land. He is merely rendering

it unavailable as a security. His land may be very productive; situated in a fine portion of the country; accessible to market; but when he offers it to a business man as security for a loan, he will be laughed at if such restrictions as these are prescribed.

If you tax land and then tax mortgages, you, in the first place, raise the price of interest which the land owner pays. If, to prevent that, you pass a usury law, you render land unavailable as a security. The borrower inevitably pays the tax in all cases, upon the mortgage, and the borrower should cry aloud against a mortgage tax. As a friend to the farmer, I am opposed to a tax upon mortgages. The money lender will take care of himself. He has the money, and he can command the terms upon which he will loan it, and the farmer who wants to borrow must accede to those terms or he will not get the money. When he has paid taxes upon the land, for God's sake don't tax him upon the mortgage too, when he seeks to raise money for the purpose of developing the resources of the State. What else will this tax effect? It will drive away capital from loans upon farms. This New York Commissioners' report which has been referred to, expresses the idea, when it says that if you want capital to develop your land do not raise the price, cheapen it. You will then bring money down where the farmer can reach it for the purpose of developing the land. They say the State of New York has been set back and retarded ten years in its growth by not having correct ideas of taxation, and by the taxation of mortgages. It is against the interest of the country, and particularly against the interest of that class who develop the resources of the country on borrowed capital. It is against the interest of the land owner. It does not cheapen money, and the tax must fall upon the borrowing class. You cannot make a man lend you money according to your wishes. He will loan it according to the principles and rules of trade and business, and he will send his money, to subserve his own interest, from one city to another, as shown by the New York Commissioners. Wherever it is paid best, there will it go. Sometimes it comes here, sometimes it goes away. It is plenty here now, because it pays here. It is scarce at another time, because it doesn't pay here. The laws of trade will control, and we cannot control the laws of trade by constitutional enactment. We must conform to them, abide by them, and act upon them; and the man who does not act upon the great laws of trade is as foolish as the man who expects the tide to obey his wishes.

I do not propose to go into any further details in this matter in showing how it is double taxation, because it is manifestly double taxation. There is no property but that which we see and handle, except in mere contemplation. The gentleman from Sacramento read you authorities and precedents from other States, which show that the people, desiring to arrive at what is right and best for the State, exempted mortgages from taxation, and under circumstances, too, where there was no question as to the power of the State to tax mortgages. They found from experience that it was inexpedient to tax mortgages, and resolved on a different course, to their great benefit. Now, as I said, there is no property in these incorporeal things. They are simply the representatives of property. I do not intend to introduce the same old horse which has been trotting around this Convention in my absence, as an illustration. But there are many things that illustrate the falsity of the idea that these ideal and incorporeal things are property in the true sense. The very moment we tax a debt, we are taxing property doubly. I have seen illustrations of these mortgage tax matters in my professional experience, one of which I will mention here, which demonstrates the workings of the mortgage tax law. A number of years ago, and before the decision of the Supreme Court in the Hibernia Bank cases, a firm in San Francisco had loaned one hundred thousand dollars and taken a mortgage upon land near Marysville. The Assessor came along and viewed the land, and assessed it to the owner at one hundred thousand dollars. Then he went to the records, found the mortgage, and assessed it to the mortgagee at one hundred thousand dollars. Now, there was the land taxed, and the money loaned upon it taxed, and then the mortgage taxed. The borrowers failed in the enterprise for which they borrowed the money, and became unable to repay the one hundred thousand dollars secured by the mortgage. They went to the mortgagee and said: "We cannot redeem, and will convey you the land in payment of our mortgage debt." The arrangement was made and the land was conveyed to the mortgagee before the tax was payable. Now, after the mortgagee had become the owner of the land, along came the Tax Collector; the mortgagee had only the land; he had loaned one hundred thousand dollars on the land, and had taken the land in payment. And yet the Tax Collector said: "I have a claim against you on the assessment of one hundred thousand dollars, the value of the land, and on the assessment of one hundred thousand dollars on the mortgage. The land was assessed and you have now the land and must pay the tax. The mortgage is gone, but the assessment was made and cannot be changed; so you must pay the tax on the land and the tax on the mortgage;" that ideal thing, which did not exist even at the time, except in contemplation, and now even that is gone. That one hundred thousand dollars, treated as property, was annihilated; it had been absolutely destroyed by the transaction of taking the land for debt. Was the material wealth of the State lessened one hundred thousand dollars by that transaction? I submit it to you as political economists. In my judgment, not at all. It is simply absurd. There was no destruction of property because there was no property to destroy. Therefore, when this citizen came to pay, he was compelled to pay a double tax upon the value of that land. You cannot escape from the logical result of the transaction. The land was worth one hundred thousand dollars only, and yet he was compelled to pay on two hundred thousand dollars. Now, the gentleman from Sonoma earnestly desires to tax mortgages. I hold he cannot do it unless he taxes an ideal thing or a mere piece of paper. I desire to call his attention——

MR. HITCHCOCK. Suppose the mortgage was upon a house for one hundred thousand dollars, and the house burned up?

MR. WILSON. I cited this illustration for the purpose of showing that there was no loss of material wealth. If the house is burned down there is a loss of material wealth. The State has lost property worth so much money. That is the proposition I have presented. When the mortgage is lost or canceled, there is no loss of material wealth. There is no wealth destroyed. When the house burns down, there is a loss of material wealth. You are speaking of one thing and I am speaking of another. Next in order I would ask, are you going to tax debts? I will assume that I owe Mr. Gregg a debt. He is taxed upon it. He owes me a debt and, under the law, they are both satisfied and annihilated, because one offsets the other. Here is no loss of property. When there is only one debt owing, it is asserted that there is property to be taxed, but when a counter debt is owing, then the first debt is met by the offset, and there is no property whatever.

MR. McCALLUM. Suppose you owe Mr. Gregg one thousand dollars, and he owes you one thousand dollars, is there any debt existing in that case?

MR. WILSON. Yes, sir; there are two debts. He owes me and I owe him. Suppose he sues me and I do not plead my debt as an offset. Then he gets judgment for the full amount.

MR. McCALLUM. There is an action in each.

MR. WILSON. Of course, I was showing you the nature of these things which are to be called property, and the absurdity connected with their taxation. You may say such and such things are property, but they are not real, tangible property, and ought not to be taken cognizance of by the Assessor for the purposes of taxation.

Now, I wish to call attention to the first proposition in this Moreland amendment, as it is called, and if the Convention can adopt this as a whole, they can stand a good deal. "All property shall be taxed in proportion to its value, to be ascertained as provided by law." So far, so good. There is hardly anything so bad but that you can find a little good in it. But that is about the provision of the old Constitution. "For purposes of taxation, bonds, notes, mortgages, evidences of indebtedness, solvent debts, franchises, everything of value capable of transfer or ownership, shall be considered property," etc., excepting growing crops. This is double taxation and you cannot escape it. Take the elementary principles which I laid down in the beginning, and you cannot avoid the conclusion. Now, the first error is that the terms "solvent debts" ought to be "credits" instead of "debts." We have been using the term "debts" here in this debate when we really have meant "credits." However, we understand what is meant. The term "solvent debts" either embraces bonds, notes, mortgages, and other evidences of debt, or it does not embrace them. If it does embrace them, then they ought to be stricken out, because when you have one comprehensive word which embraces everything which you desire to enumerate, that is the word to use. But, if there is the least obscurity, or doubt, or confusion, then, of course, it is better to make it plain. Therefore, if you mean that bonds, and notes, and mortgages are solvent debts, you ought to say so.

If this proposed amendment should be adopted as it now is written, and comes to be judicially considered, this charitable view will not be taken of it, because it is the universal legal rule that every word and sentence, or portion of a sentence, is to be considered as having some force or meaning. Legislative or constitutional bodies are supposed to have used particular words because they convey particular ideas. Therefore the Court construing it will say, "solvent debt" occupies one position, performs one office, and the mortgage is a different thing entirely. What is the result then? The judicial interpretation will be this—that when you have taxed "solvent debts," you have taxed only one of the things which are mentioned. You have not finished; you must go farther. Here is the note; you must tax that; you must tax the evidence of indebtedness, independent of the debt, or else there is no sense in this provision. You propose to tax mortgages. What is a mortgage? It is a mere instrument in writing by which a debt is written. It is a contract. All these paper writings, and evidences of contract, would have to be taxed, independent of the debt. It proposes, also, to tax a bond, or a note, irrespective of solvency. By this amendment it is proposed to tax bonds. What kind of bonds? Why, all bonds. Official bonds are literally embraced in the term, and are you going to tax them? Officers give official bonds for good conduct and the faithful performance of official duty, such as Sheriffs, County Clerk, etc. Are you going to tax such bonds—attachment bonds, appeal bonds, indemnifying bonds, and the thousands of bonds of various kinds known to the ordinary business affairs of life—are you going to tax them? Now, mortgages may be given for something else besides money. They are given for the purpose of carrying out collateral engagements. I may become surety for a man, and he may give me a mortgage to indemnify me for any losses which may arise. Now, should it be taxed? There is no money due upon it. These are only a few of the difficulties which may arise if this loosely drawn provision is inserted into the Constitution. Evidences of debt are to be taxed, not the debts themselves. What does that mean? Why, if you are a merchant and keep books of account, they are evidences of debt, under the law. You may introduce these books of account in evidence against a man to whom you have given credit, and they are considered as very potent evidence. A man might write a letter in which he admits that a certain debt is due, and that is one evidence of debt. There are many evidences of debt which are not negotiable. They are not money. Shall the State tax them? It is not the debt, because you have already once taxed the debt under the first head, "solvent debts." Why, then, do you hunt for the evidence of that debt, and tax it also? Besides, it would seem that the evidence of debt is to be taxed whether the debt itself is solvent or not. The proposed amendment provides that everything of value, capable of being transferred or owned, shall be considered property. Now, that is very broad language—very sweeping. Let us see what it leads to. Let us see what is capable of being owned. A man's deed to his land is

valuable to him. It is owned by him—he can transfer it. Are you going to tax his deed? A claim for unliquidated damages is owned by a man. He may have a libel suit, and may assign his cause of action. There are also copyrights, the good will of a newspaper, and hundreds of things which are capable of being owned and transferred, which ought not to be, and never have been, regarded as proper subjects of taxation.

MR. MORELAND. Did you ever hear of a mortgage or note being taxed?

MR. WILSON. I never did; it was always the money at interest that was taxed, and there never was any attempt to tax bonds or anything else of that kind. It was heretofore expressly provided that it was money at interest that was to be taxed. If a man sold a farm and took a mortgage without interest to secure the unpaid purchase money, it was not taxed at all under the old law. It was only taxable when it ran on interest. It never was sought to tax it in any other way. It is also proposed in this amendment to tax the property of corporations, and then tax the capital stock. That is one of the remarkable features of this amendment. Now, to tax the property of a corporation, and then tax its capital stock, is double taxation under all the authorities. It has been decided in six or eight States that it is double taxation, and is not, therefore, in accordance with true principles of political economy. When you tax the property and money of a corporation, you have taxed every piece of property it has. If, after that, you tax the capital stock, you are taxing that corporation twice on the same property. So it has been held by all the Courts of the Union.

Again, this exemption of growing crops is one which, in my opinion, ought not to be made. The views presented by the gentleman from Yuba, Judge Belcher, exhausted the whole subject. Instead of taxing them as growing crops, the Assessor should go upon the land, and whatever he finds he should assess for what it is worth, whether it is growing crops or anything else. He should assess the land of my friend Colonel Biggs for what it is worth. We want to arrive at the value. Let the Assessor use his best judgment in arriving at the value. I would take into consideration everything regarding the land, just as if I were buying it. If I were buying the land I would take the crop into consideration. I would not estimate separately at all, but would assess the land with the growing crop on it; looking at the land in such or such a condition, I would say it is worth so much. If I found a good crop on it, I would consider it more valuable than if it were lying uncultivated. I would not tax it as a growing crop, but part of the value of the land.

With regard to the proposition of the gentleman from Placer, Judge Hale, I will say one word. It comes nearer to my idea of fair and just taxation than the proposition of the gentleman from Sonoma. It comes nearer to a just and correct mode of taxation. There are some objections to it in its present shape; there are some things which should be corrected to make it altogether fair and just. Certainly it comes nearer to the true principles than the Moreland amendment. I should like, however, to see it amended in some respects, and then adopted, if it is the best we can do. It certainly does not permit double taxation in its main provisions; it distributes the tax between the borrower and the lender, and altogether comes nearer to equality and uniformity; therefore, I would like to see the Hale amendment divested of some objectionable features. If it shall be permitted by parliamentary usages, at some time to offer an amendment, which I am unable to do now, I shall propose to reform the Hale amendment so as to read something like this:

"All property shall be taxed in proportion to its value, to be ascertained as prescribed by law. No tax shall be imposed upon debts or evidences of debt, upon private property exempt from taxation by the laws of the United States, or property belonging to the United States, this State, or any municipality thereof. No deduction shall be made from the assessed value of property on account of any debt or debts, owing by the owners of such property."

The other portion of the amendment to stand as it is. I would not allow deductions to be made for ordinary little debts like butcher, and baker, and grocer's bills; I would avoid all of these objections. There ought to be an amendment, too, of this kind, that the debtor, in making these deductions, should have paid the taxes upon the property; that he should not escape his taxes and then deduct from others; and, also, that this should not apply to the bonded debts of corporations. With these exceptions I shall sustain the amendment of the gentleman from Placer in preference to that of the gentleman from Sonoma. The latter is utterly wrong, and contrary to all principles of political science, justice, and right.

Another word in relation to bonds, spoken of here. If you tax State or municipal bonds, it is taking money out of one pocket and putting it into another, because if you tax them it will affect their market value, and thus be a loss to the State or municipality issuing them. That is the reason why the United States provided that their bonds should not be taxed, for if they might be taxed at all they might be taxed to such an extent as to ruin their value. These things are all governed by the laws of trade. There is no use in running one's head against a stone wall. Tax these bonds and the State will not get as much for them as she would without the tax. The market value of the bonds will drop down just in proportion to the amount of the tax upon them. Leave off the tax and they are a more desirable investment, and the State gets more for them. No government ever taxes its own bonds. My own idea is that all we should require of the Legislature is that real estate and tangible property should be taxed, and beyond that, leave it to legislative discretion as to whether they will tax anything else. I shall favor the Hale amendment with the alterations I have suggested. Failing in that, I cannot conceive of anything more objectionable than this Moreland amendment, not even a deluge. [Laughter.] I would rather take this report of the committee, including all of its objectionable features. I prefer the Hale amendment. But either is infinitely better than the Moreland amendment. Its adoption into the Constitution would set this State back in its growth and development ten years.

SPEECH OF MR. REDDY.

MR. REDDY. Mr. Chairman: I hope that whatever I may have to say upon this subject will not be construed as my remarks were the other day, when the gentleman from Santa Cruz represented me as attempting to create hostility between the farmers and the miners. I agree with him fully that the two interests are united, or ought to be so. That the interest of one is the interest of the other.

Now, sir, we have laid down one very clear, distinct rule in this first section of the report of the committee, and that is, that taxation shall be equal and uniform throughout this State. Now, you might as well strike out that section at once, unless you are going to be guided by it as a fundamental principle. It should be our guide all the way through. It seems the committee, and also the gentleman who has offered this amendment, lost sight of this rule, because they provide in the next section for taxing the property of corporations, and then taxing the capital stock. It is only necessary to mention the fact to show you that it is a clear violation of the principle I refer to. Now, for the purpose of comparison let us see how the farmer will stand under this proposed provision, and how the miner will stand, and see whether the taxes which the miner has to pay are not more onerous than the farmers' taxes. The great cry before was that taxes were unequal in this State, and that a great deal of property escaped taxation. That I believe to be true. A great deal of property did escape taxation, but I wish to call your attention to a certain kind of property that has escaped taxation, and which, if this provision is adopted, will continue to escape. One little item will give some idea of what the gross amount would be. The wheat export from this State during the year eighteen hundred and seventy-seven was valued at eleven million seven hundred and fifty thousand dollars, to say nothing about what remains in this State. The total exports, exclusive of bullion, was twenty-nine million nine hundred and fifteen thousand two hundred dollars. How much of this balance is produce, I do not know; but most of that which was raised on farms escaped taxation entirely. Growing crops are exempt from taxation, and why? I presume as a matter of policy, to encourage that industry. Another reason given is that it is part of the realty while it is growing, and that it is impossible to determine its value at the particular time when the Assessor comes round. It is impossible at that time to tell whether the growing crops will mature or not. Now, if that is the reason, we can avoid that difficulty by having the Assessor wait a little while, until they harvest the crop (by machinery made in the East), and until they have it put in sacks, and then the Assessor can ascertain the value. But that is not done, and by this means the entire crop is exempt from taxation. Now we can easily correct that by having the Assessor come a little later.

Now, there is another reason, perhaps, for exempting this property from taxation. They say that the farms some years don't raise a crop; that it is an arduous business. That is true; but is not mining an arduous business? I have never raised but one crop by mining, and every gentleman who invests in mines must realize that fact. And yet these people are not exempt from taxation; nor are the miners assessed upon their crops; they are assessed upon holes in the ground; upon their hopes and expectations. The miner does not ask that his property shall be exempt from taxation; all he asks is, that other interests shall not be exempt, but that all shall be assessed equally and fairly. He wants the mining interest assessed fairly, like every other interest in the State. He wants one tax upon his property, and only one. Tax the stock, if you will, but don't tax the mine and the stock, too. There is no reason in that. It is the worst kind of double taxation, while the rule that we have laid down is, that there shall be but one tax, and that shall be equal and uniform throughout the State. Now, if it is equality to exempt any property—the property of the farmers of the State—and taxing the miners twice, I am unable to see it. If the farmer can exempt his growing crop from taxation, under the pretense that it is part of the real estate, and for that reason should be exempt, they should allow the same rule to apply to the miners. But it is a mere technicality upon which the farmer seeks to have all this property exempted. The farmer has his seed, and puts it into the ground. The farmer manages to keep the Assessor away while this seed wheat is personal property, so as to avoid having it taxed as personal property, and to have him come after it is in the ground, when it at once becomes part of the real estate. That is probably equal to the ingenuity of the farmer I heard of in Sonoma County, or somewhere up there, who usually took counsel from a lawyer in Sonoma, or somewhere up there. [Laughter.] He was called upon to pay a dog tax. He kept two dogs for the purpose of keeping squirrels off his growing crop. That was their usual occupation, except about the time the Assessor came around. He trained them so that when the Assessor came around the dogs would run up near the house and stick their tails in two holes in the ground made for the purpose, and the farmer claimed that they were exempt from taxation, on the ground that they were part of the real estate. [Laughter.] This was about on a par with the exemption of growing crops.

Now, it is said by some gentlemen here that this amendment does not tax the capital stock of corporations. It is clearly stated here that everything capable of transfer or ownership shall be considered property. I believe the capital stock of mining corporations is capable of being transferred. It is capable of ownership, and hence would be considered property and subject to taxation. But we are told that we are relieved of taxation by section seventeen. I don't so understand it. That section reads as follows:

"SEC. 17. The value of the capital stock of a corporation shall be assessed in the county in which its principal place of business is located, and separately from all other property belonging thereto; and such stock shall be assessed at its market value when the assessment is made. The

real and other personal property of such corporation shall be assessed in the several counties respectively in which the same is situate. The value of such stock, over and above the aggregate value of such real and other personal property, according to such assessment, shall be taxed in the county in which the principal place of business of such corporation is located; and the value of such real and other personal property shall be taxed in the several counties respectively in which the same is situate. The shares of stock belonging to the stockholders in such corporation shall be exempt from taxation; *provided*, that the provisions of this section shall not apply to railroad corporations."

Now, as I understand it, the section provides that the corporate property and the corporate stock shall be assessed. It provides that only the stock held by individuals shall be exempt, while that held by the corporation shall be taxed. Now, the reason why that held by individuals should be exempt and that held by the corporation taxed, I cannot understand. It seems to me it should make no difference who holds the stock. That is not in accordance with this principle laid down here. It is clearly double taxation, and no man can gainsay it. Now, I hope the members of this Convention, when this matter comes to a vote, will not saddle any such a double load as this upon the miners. That is certainly just as important an interest as you have to deal with; perhaps not quite as important as the farming interest, but nevertheless very important. It is the interest which keeps the factories and machine shops of San Francisco running, and furnishes employment to thousands of people, and as it is an industry which can only be carried on by corporations, it seems to me you should not seek to heap any more burdens upon them. All I ask is that you shall make one general rule, that shall bear alike upon the miner and the farmer. If you choose to do otherwise and enact this provision, the miners will swamp your Constitution. They will not stand still under this unjust discrimination. The mining interest is one that should be fostered, as well as the farming interest.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: Section first of this article, as adopted by the committee, provides that taxation shall be equal and uniform throughout this State. The section proposed by the gentleman from Sonoma is not in harmony with this proposition. I am opposed to it for many reasons. First—I think it is open to the very grave and just criticism made to it by the gentleman from San Francisco, Mr. Wilson. Second—I think that the language used by the gentleman in his proposed amendment does not convey the idea which he himself seems to think it does; and for that reason I am persuaded that when the Courts shall hereafter undertake to construe this section, they may, and probably will, give it an entirely different meaning from that which the gentleman now attributes to it.

The amendment, among other things, provides that: "Everything of value, capable of transfer, shall be taxed." A warehouse receipt is a thing of value, capable of transfer. Then why cannot it be taxed? I am not here to defend the farmers; they need no defense, but I submit to them—are they willing that the evidence that they have a certain amount of property in a warehouse, like a warehouse receipt, for instance, shall be the subject of taxation? And I submit to them, will not such an evidence—namely, the warehouse receipt—be subject to taxation under the proposed amendment?

It is true, we are here to form an organic law for the whole people of the whole State, and not for any particular class. Yet the illustration that I make must necessarily strike home to all that class of people who keep their property in store like the farming community.

It has been stated on this floor that a caucus was held by a portion of this Convention upon the adoption or rejection of the proposed amendment, and that in that caucus it was agreed that this amendment should be adopted, and therefore I am led to believe that there is very little use in discussing the question in open Convention if that be true. Because if a grave question of constitutional law can be settled outside of the Convention, by the action of a portion of the Convention, without the knowledge of another portion of the Convention, then discussion here on this floor seems to be utterly useless and unnecessary. But I cannot believe that the thoughtful people of this State will indorse our action if we adopt the proposed amendment so earnestly asked for by the gentleman. "Everything capable of transfer that has value" shall be taxed according to this amendment. You can hardly imagine a written instrument that has a value that can't be transferred, and yet under this amendment it will be taxed. This will necessarily lead to double taxation, and double taxation is necessarily wrong.

The great secret of good government is to tax every dollar in the State, and to tax it once and tax it alike. All property should be taxed once, and only once. I know it was stated on this floor the other day by one of the advocates of the proposition now under discussion that this section would lead to double taxation. The admission of the proposition is as remarkable as the fact itself is dangerous to civil government. If some property is taxed twice and other property is taxed but once, why then could not some people be taxed on their property, and other people be entirely exempt from taxation? The enforcement of a rule of this kind would necessarily lead to tyranny. It could not be just. It is anti-republican. It is not necessary in order to remedy the evils of the past to provide greater dangers for the future. Because in the past some property has not been taxed and other property has been taxed, gives us no license to make a solemn provision in the organic law of the State sanctioning double taxation.

Double taxation is repugnant to every fair-minded man. It is uncertain, and an uncertain rule of taxation is necessarily a dangerous rule. In San Francisco alone it is said there are over forty millions of dollars in savings banks, I do not recollect the exact amount, but I think this belongs to twenty thousand depositors. Most of these banks have a rule that no deposit above five thousand dollars shall be received by the bank. The result is that those depositors are generally people of small means, people who know little of business affairs or of the laws of the State. They only know that it is their duty to obey the laws. That class of people always pay their taxes. Now you provide that their bank books shall be taxed, and then you provide that the money in the bank shall be taxed, and then you provide that the mortgages shall be taxed. For instance, A has one thousand dollars on deposit in the savings bank. You go to him and he gives in the amount of his money, one thousand dollars. The bank is then called upon for the amount of money that they hold in trust for A, they give him the amount, then they go through the books of the bank, and they find the amount of mortgages, that is the amount of money held by them in trust for others that is loaned on mortgage, and these are taxed.

This must necessarily amount to an oppression, not upon those who are best able to stand it, but upon those who have but little, and who invariably pay their taxes. Shall they pay these taxes once, or more than once? It is not the poor people of the State, or the people of limited means, that evade taxation. They always help to support the Government by paying their full quota of the taxes. In time of war they are the first to enlist, and in time of peace they are the first to contribute their quota towards making up a sum necessary to sustain the Government. It is those only who possess very large means, and who have both the ability and the power of evading the payment of taxes, that don't pay the taxes on their property. You are, then, punishing the small property owners for the benefit, in my judgment, of the large property owners.

MR. JONES (interrupting). I will ask the gentleman, if in addition to that, the Assessor does not go out and find the money of the poor depositor in the savings bank wherever it is, and also assesses it wherever so found?

MR. ESTEE. He can do it; it is frequently done; indeed, it would be his duty to do it under this amendment. It would appear to me, sir, that by reason of the excitement and dissatisfaction that now prevails in this State relative to the mode of taxation, some gentleman desired to go beyond what I consider right and just. In trying to remedy an admitted evil, I fear there is a class of people who would bring down upon our heads greater evils than those we now endure.

It is undoubtedly a recognized fact that there are certain large capitalists, individuals, as well as banks engaged in loaning money, and that they have never paid their proportion of taxes upon the amount of money owned by them. In other words, all the money in the State owned by the citizens of the State, has not hitherto been taxed. Now, in order to reach that evil, the gentleman from Sonoma has presented this very broad amendment, providing that these documents, in whatever shape or form they may present themselves, shall be termed property, and shall be taxed to the person whose name is written upon it. The motive may have been correct; the result will be a failure. There are always some means provided for the people to evade a clearly unjust law, and in this, as in other cases, the means will be found when a necessity for doing so arises. I maintain that it is the settled law of this State to-day, that equal and uniform taxation means that property can be assessed and taxed but once. I affirm further that it is the settled law of the country, and of all the States in the Union, where there has been a judicial determination of this question, that the presumptions are all in favor of taxing property but once. In the present Constitution we propose to define what the word "property" means, and you propose to say by this amendment that everything that has value and is capable of transfer shall be deemed to be property; that solvent debts shall be property; that a note shall be assessed as property, and that a mortgage shall be property. Now, a note is not a mortgage; nor is a mortgage a note. The mortgage is assessed in the county where it is recorded; the note is assessed where you find it. They are two separate things; they both represent a value. One, it is true, made to secure the payment of the other, yet under this amendment both would have to be assessed. And I would like to ask the gentleman from San Joaquin whether he does not think that the proposed amendment will in many instances lead to double taxation.

MR. TERRY. No, sir.

MR. ESTEE. You cannot convince the people of this State that that is true. All the people demand is that all the property in the State shall be taxed. Here has been the great evil. All the property has not been taxed. But the people do not demand—common honesty does not require that any particular or specific property shall be twice taxed. The amendment offered by the gentleman from Placer, Judge Hale, is definite—points out exactly how property shall be taxed, and will require every species of property in the State to be taxed once, no more. And I am unable to see, if this be true, why that amendment should not be adopted in place of the one proposed by the gentleman from Sonoma.

MR. WELLER. Would not a warehouse receipt escape because it is not assignable?

MR. ESTEE. No, sir; a warehouse receipt is assignable; it has value. And if it is assignable, and if it has value, under the Moreland proposed amendment it must be taxed. Take a bill of lading; that is assignable. It is a thing of value to the party to whom it belongs. Why can it not be taxed? The goods, it is true, may not have arrived in the State; but the consignee of the goods has the bill of lading. It is a thing of value, and under any reasonable construction of this section it must also be subject to taxation.

All the evils which will arise if this Moreland amendment be adopted cannot now be anticipated. One of the most serious of those evils is, that it will place it in the power of the Courts, and almost make it a necessity, for the Courts to legislate in order to protect the people from the great wrong. This has had to be done in the past; it will certainly be done in the future, and it is the part of wise legislation to separate the various departments of this government, so that the judiciary will be confined entirely to the duties imposed upon them by the Constitu-

tion, and that they will not be called upon to protect the people from a great and unbearable wrong by adding to the organic law what the makers of that law failed to do themselves. For the people of this State will not, for any period of time, endure double taxation. It is tyranny in its worst form; it is uncertain; it leaves to Assessors the power to oppress the people; it places the power in the hands of the Legislature to enact such a revenue law as will imperil some of the most important financial interests of the State.

Again, you propose to tax the property of a corporation, then to tax its stock, each for its full value. What does the stock represent but the value of the property? I make this illustration, not in the interests of corporations, but in the interest of common fairness. Money will never seek investments where one man's dollar is not the equal of another man's dollar before the law. I confess I am in favor of taxing the franchises of corporations for what they are worth—it has a value; if it had not a value they would not possess it. Without the franchise the corporation itself would be of no value; it gives them the right to call into exercise the full power of the State. In condemning property it gives them the privilege, as in the instance of railroads, to cross private lands, public highways, and the like. It certainly has a value, but this property, like all other property, should be assessed at what it is worth in the market. This question of taxation is one of the most important questions that can come before this Convention. It ought to be treated with the greatest care and the utmost candor, and in the interest of all the material rights of the State. A Constitution should not be made to punish even the strongest man in the State, or to reward even the humblest. It is intended to survive through a long period of time, and be the charter by which the people of this State are to direct the course of the Ship of State. For these and other reasons, sir, I am opposed to the amendment proposed by the gentleman from Sonoma, Mr. Moreland.

SPEECH OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I had not expected to say anything upon this question, but as only one side has been alluded to in this body this afternoon, I deem it due to myself to state the reasons why I shall support the amendment offered by the gentleman from Sonoma, Mr. Moreland. Not that I concur in all the provisions of that amendment, fully, but I believe it comes nearer to what is right than any other proposition now before this body, and I shall support it. I do not concur in some of the exemptions set forth in the amendment, but I hope that our country friends, before we are through with this subject, will reconsider this matter, and allow themselves to be taxed as all other persons are taxed in this State. I hope, sir, that in the end they will concur with us by placing themselves upon an equality, and not resolve themselves into eleemosynary institutions, asking that their property be exempted. I hope they will place themselves on a level with the miners of Siskiyou and Inyo, and not insist on any special privileges. But now as to the question. I concur with the distinguished gentleman who has preceded me on the other side, in saying that the subject of taxation is the most difficult problem which will come before this body. When this Convention was called, the principal object of the people was to have it deal with this question. It is a fact that the laboring and producing classes have contributed more than their quota of the taxes. Any system that can be devised which will more evenly distribute this burden ought to receive the support of this body. I propose to support the Moreland amendment. I am willing to admit, in fact I know, that in some instances it will work double taxation on certain kinds of property, and that this tax will fall to a great extent upon the laboring and producing classes.

MR. ESTEE. Will that be honest?

MR. TINNIN. I propose to explain. During the past ten years two or three hundred millions of property in San Francisco has escaped taxation. Under this proposed amendment this property will be placed upon the assessment roll, and this will more than compensate for the double taxation which it causes, by decreasing the rate. It will bring these parties up and compel them to pay their taxes.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I propose to vote for the amendment of the gentleman from Sonoma, because I feel it to be my duty to take the best that is offered. I can do this consistently, because I did not support the clause in section one, that taxation shall be equal and uniform. And I still insist that to be consistent, if this amendment is adopted, that part of section one must be stricken out. The gentleman from San Francisco insists that this provision is found in a majority of the Constitutions. I deny the proposition, sir. In an examination I find that only eleven of the States retain in their Constitutions the principle of equal taxation, while all the modern Constitutions have dropped the word "equal," and substituted the word "uniform."

Now, my idea briefly stated is this: that taxation should be laid upon all property in the State. As to debts, assess the amount which the individual has coming to him in excess of what he owes. I am content to make the offset in that way, but I am not willing to offset a debt against property. There may be some inequalities in this mode, but we must place the Assessors of this State in a different attitude from what they have been, otherwise by changes between individuals, shoving property back and forth, it would escape taxation. I am in favor of this system of taxation because it meets the demands of the people. The people have expressed themselves upon the question, and the poor depositors in the savings banks in San Francisco, who are to be so cruelly taxed, according to these gentlemen, have spoken in favor of it. The people have been oppressed by the escape of millions of property from taxation, and while the gentlemen upon the other side are deprecating double taxation so loudly, they might profitably consider the fact that these poor people have submitted to double taxation for years, by reason of the escape of all this property. These mortgages must be taxed. We want to declare here fairly and squarely that they are property, so that the Supreme Court cannot get around it. We want to settle that question by declaring that they are property and subject to taxation. This also declares in favor of exempting growing crops. I accept that because the people demand it. If I cannot get exactly what I want I will accept the best that is offered, and I believe that to be contained in the amendment of the gentleman from Sonoma.

I am somewhat astonished at the hypercriticisms of some of the gentlemen. One says that "bonds" may include official bonds. Why, sir, an official bond has no value. If it has, it should be taxed. That is a term that is well understood. It is contained in many of the Constitutions which tax bonds and shares of capital stock. What we want is to establish a system of taxation that will be fair and just, and tax all property in the State. It is an indisputable fact that millions of dollars which have been produced in this State, and which have gone into these securities, escape taxation continually. Gentlemen say they are but bits of paper. Call them bits of paper, or what you please, but they are powerful enough to draw the money of the people into the vaults of the moneyed institutions of the country. Forty or fifty millions of the money of the people have been gathered in and put into this class of securities. This Convention will remember the assessing of mining stocks in San Francisco. The mining stock was not more than half the amount of church property. Nine hundred thousand dollars was the total amount assessed, and not more than one fourth of that was collected; and yet, sir, twice that amount changed hands in a single hour oftentimes. Is that fair and just? I say we can reach that property, and it is the duty of this Convention to reach it, and tax it for what it is worth.

MR. GREGG. How much mining property have you in San Francisco?

MR. BARBOUR. I do not know how much there is. There are millions. It is not all in the hands of the companies, it is in the hands of thousands of men.

MR. REDDY. Are you in favor of taxing corporate property, and then taxing the capital stock too?

MR. BARBOUR. No, sir; tax the stock at its market value.

MR. REDDY. I am perfectly willing to do that, but I say you should not tax both.

MR. BARBOUR. I do not suppose we will tax the value and the representative of that value in the same hands, but when it is in different hands——

MR. CROSS. Will you allow me to ask you a question?

MR. BARBOUR. No, sir; not you [laughter]. As I said, I want to lay this burden of taxation where it belongs. If the rich pay their taxes as they should do, there will be no cry of oppression from the producing classes, for all will be taxed alike, and the burden will be light.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I am like most of the gentlemen who have spoken on this subject—the amendment does not quite come up to my idea of what it should be, but, sir, I am in favor now of what is known as the Moreland amendment, as against all others that have been presented before the Convention. I am instructed, so far as I am concerned, to vote for the taxation of mortgages, as they were taxed before the decision of the Supreme Court rendered their taxation a nullity; and the constituency which I represent are intelligent enough to comprehend that money loaned out at a high rate of interest on mortgage security, upon the real estate of the State, so that the money cannot be lost or thieved; so that it cannot be wiped out by fire or flood; so that it will stand when other property ceases to have value, is property that should be taxed. And I am here, in obedience to that opinion, to see that such property should be taxed. I believe it is property of the best kind, and ought to be taxed. As I understand it, property is that which has value, not that which is of utility—horses, cattle, hogs, land, and everything else—is property by reason of being valuable, not by reason of anything else. It is that which has value, and it makes no difference whether it is a horse or a piece of paper, if you can go into the market and sell it, the thing is of value. They are all equally protected by the laws of the country. I want this Convention to rebuke the Supreme Court of this State and declare that this is property, and as such must be taxed. It belongs to the legislative department of the government to declare what shall be taxed, and not to the Supreme Court. I want a provision in there that will stop the mouth of the Supreme Court, for that Court has become too uncertain upon that subject, starting with the twenty-second volume with one decision and winding up with the thirty-fourth with another and different decision. When it comes to a test case between money bags and the people, we have seen to our sorrow which way the decisions of the Supreme Court go. A mortgage, which has been described as only a piece of paper, is better than money, for money can be stolen from you or destroyed, but a mortgage never dies and cannot be stolen. Money can be sunk in the river or in the middle of the ocean, but a mortgage never. I hope the amendment will be adopted.

MR. HUESTIS. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress therein, and ask leave to sit again.

ADJOURNMENT.

MR. EDGERTON. Mr. President: I move we do now adjourn.

Carried.

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

NINETY-EIGHTH DAY.

SACRAMENTO, Friday, January, 3d, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barnes,	Farrell,	Miller,
Belcher,	Fawcett,	Murphy,
Berry,	Glascock,	O'Sullivan,
Campbell,	Hager,	Shafter,
Casserly,	Hilborn,	Stedman,
Cowden,	Keyes,	Van Dyke,
Dudley, of San Joaquin,	Laine,	Walker, of Marin,
Davis,	Martin, of Alameda,	Waters.
Dean,		

THE JOURNAL.

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

Carried.

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section two, and amendments, are before the committee.

SPEECH OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I agree with one proposition which was advanced in argument yesterday, that the taxation must be upon property. Now, the question is, what is property? And here let me say, sir, what I observed the other day, that I regard this report, on the whole, as presenting very good provisions on the subject. The only objection that I find to it is this principle of rebate which it contains, and which I think, under all the authorities, is objectionable, because it leads to fraud and a loss of revenue, and I think the amendment which is accepted to the first section has not improved it at all. I think that the original section, as it stood, was better than it is now with the amendment.

But as to property. Gentlemen deny that credits are property. Upon what principle they make that denial, or upon what authority, I do not know. No well considered work on political economy has been produced which is not directly to the contrary. No work upon the common law, in relation to this subject, since the reign of Queen Anne, has failed to say that commercial paper is property. No adjudication of any Court, English or American, from that day to this, upon this subject, has failed to announce the principle that choses in action are property, and I challenge the production of any such proof. Now, sir, it is a little extraordinary that we forget our horn-book here so quickly, and the gentlemen rise here gravely, and, because we insist upon the doctrines of the common law and the decisions of the Courts, they charge us with ignorance, with stupidity, and with barbarism. Now, sir, it is a question of authority, and let us see how it stands. I refer, in the first instance, to Williams on Personal Property, page four:

"Choses in action, though valuable rights, had not in early times the ordinary incident of property, namely: the capability of being transferred; for, to permit a transfer of such a right was, in the simplicity of the times, thought to be too great an encouragement to litigation, and the attempt to make such a transfer involved the guilt of maintenance, or the maintaining of another person in his suit. It was impossible, however, that this simple state of things should long continue. Within the class of choses in action was comprised a right of growing importance, namely: that of suing for money due, which right is all that constitutes a debt. That a debt should be incapable of transfer, was obviously highly inconvenient in commercial transactions; and in early times the custom of merchants rendered debts secured by bills of exchange assignable by indorsement and delivery of the bills. But choses in action, not so secured, could only be sued for by the original creditor, or the person who first had the right of action. In process of time, however, an indirect method of assignment was discovered, the assignee being empowered to sue in the name of the assignor; and, in the reign of Henry VII, it was determined that a 'chose in action may be assigned over for lawful cause as a just debt, but not for maintenance, and that where a man is indebted to me in twenty pounds, and another owes him twenty pounds by bond, he may assign this bond and debt to me in satisfaction, and I may justify for suing it in the name of the other at my own costs.' Choses in action, having now become assignable, became an important kind of personal property; and their importance was increased by an Act of the following reign, whereby the taking of interest for money, which had previously been unlawful, was rendered legal to a limited extent."

MR. VAN VOORHIES. What are you reading from?

MR. HOWARD. Williams on Personal Property. Then, sir, the book goes on to state that by the statute of Anne choses in action were made assignable, and from that time to this they have been recognized as property in all treaties and all decisions in relation to the common law. Mr. Walker, in his work on American law, at page sixty-two says:

"The term of 'property' includes every valuable thing which can be made the subject of exclusive ownership, and the laws which regulate the acquisition, enjoyment, and disposition of it, form a large part of the laws of every society."

Chancellor Kent announces the same doctrine, that choses in action are property; and by the Courts everywhere they are treated as property, and it would be most extraordinary if that was not the case, for the largest part of the transactions of the country are evidenced by credits, or in other words, by choses in action, and I supposed that our State had set that question at rest, so far as we are concerned. The fourteenth section of the sixth subdivision of the Political Code declares:

"The words 'personal property' include money, goods, chattels, things in action, and evidences of debt."

So that it seems that Mr. Moreland, in using the term "evidences of debt," has only used the language of the Political Code. And yet gentlemen get up here and tell us that choses in action, credits, are not property, and they denounce our assertion that they are property, as stupid and as ignorant, in short. A celebrated Englishman said that his objection to Macauley was that he was always too cock-sure. I regret that I do not see the gentleman from San Francisco in his seat. If he were here I should say that in his argument upon this subject he had been somewhat too cock-sure, and the books do not bear him out. It is in violation of all the principles of law, and all commercial principles, in relation to this subject.

Now, sir, the gentleman says that certain things cannot be levied upon; certain things cannot be taxed. That is true. For instance, you cannot tax the genius of Bulwer or Dickens, but the English Government reaches it by levying an income tax upon the works, and each and every year's income. After the reënactment of the income tax of eighteen hundred and forty-two, by Sir Robert Peel, they were compelled to return the amount of the profits which they had reaped from their books and their genius; so that there are things that can be reached. For, although the genius of the author cannot be reached or taxed, yet an income tax is levied in England upon his works, because he is bound to render a faithful account, under oath, of all his income. Therefore it is certain that it is a mistake to say that everything which results in property cannot be taxed. It is taxed under a proper system of taxation. The gentleman instanced a variety of things which could not be reached by taxation. Those instances that he put are true enough, but they do not illustrate the principle. I will state one myself which I think illustrates it much better: A distinguished head of the New Orleans bar, whom Judge Story pronounced the greatest advocate in America, and whose income was large—but it was always scratched out of his pockets by the tiger—[laughter], owed everybody, and never paid anybody except at the end of an execution. On one occasion he won a large suit, and his clients sent him a present of a fine span of horses and a barouche. The advocate was in great difficulty, but he got into the barouche, invited a friend to drive with him, drove down the shell road, and at last up to the St. Louis Exchange for a drink. As the gentleman got out of his barouche, the Sheriff stepped up and levied on the horses for a debt. The advocate simply remarked: "Well, I have had one glorious ride and you can levy on them and be damned to you!" [Laughter.] But one thing was undisputed: this credit, this chose in action, brought the blood, and it takes Grimes' horse and carriage. So it is not so harmless a thing as the gentleman seems

to suppose. It is a real, tangible thing. The gentleman says you can tax only tangible property, but here is tangible property.

Suppose, under the present law, you go to the United States treasury and you deposit your coin, and you take a certificate of deposit; it passes in the Custom House, it passes in commerce. You can go back to the treasury and get your money. Is not that tangible? Is he not able to touch the property which that instrument evidences? What is more tangible than that? Isn't it the same thing, only more convenient than it would be if you had the money in your hand? The gentleman says it is not property; it is a mere imagination, a sort of coloring in the mind; or, to use his own language, an anticipation. Well, I think it would be a tolerably lively anticipation if a man had one of those treasury certificates. It would not be so remote as the gentleman seems to suppose. Suppose a party brings a suit in an English Court in relation to money, and the adverse party comes in and says: "You have a twenty pound bank note of the Bank of England, which is a legal tender, and is to you so much gold." The party replies: "But it is not property; it is merely imagination; it is an anticipation." What answer would an English Court make to an advocate who rose upon the floor and made such a plea? Why, sir, they would pooh-pooh him out of Court. That is what would happen to him. He would be either considered a lunatic, or so far gone in stupidity as to be unworthy of his position. So of an exchequer bond and of an exchequer bill. Now, sir, is not a greenback property? It was not very much at one time, but latterly it is an equivalent of gold. Suppose I take my friend's greenback off his table, and he brings a suit against me for recovery of it, would I be heard to say, that is not property; that cannot be sued for. Why, it is a legal tender, it is the equivalent of so much gold. It is not only so much property, but so much property in gold. Under our statute it has been decided, in the case of Lazard vs. Wheeler, that detinue lies for a warrant issued by a County Treasurer, which his deputy got into his possession and transferred wrongfully. Although transferred and not in existence, they gave a judgment in detinue for the specific recovery of the warrant, or its equivalent in cash. The gentleman cannot look into a new book on the subject that does not tell him that detinue lies for a debt.

THE CHAIRMAN. The gentleman's time has expired under the rule.

[Cries of "Leave!" "Leave!"]

MR. HOWARD. Now, sir, I say there is no book of respectability but what says that choses in action are property. It is so said by Adam Smith; it is so said by Mr. Mill; it is so said by Walker; it is so said by every book on the subject, and there is no authority to the contrary. It is true, sir, that the Supreme Court of this State have said, or decided—that I believe is the last turn of the slate—in the case of the Hibernia Bank, that it was not property taxable under the peculiar language and phraseology of the Constitution of eighteen hundred and forty-nine. But the Court admitted in the argument—in the opinion—that in ordinary language, and in vulgar terms, it was property.

Now, sir, here we propose to remove all doubt upon the subject, by saying that it is property, and is to be taxed. We propose, then, by our action, if it is vulgar, to make it polite literature, in the immortal jurisprudence of this country. We propose to make it so plain that no Supreme Court that comes hereafter can dodge out of it. And, with all due respect to my friend from San Francisco, however ignorant he may esteem us, I think we have the better case, and it is our duty to so make the law in this Convention.

The next idea advanced in opposition to the amendment is that property must be taxed uniformly. The language is, that taxation shall be equal and uniform. It means that all mortgages shall be taxed alike, and that all other property in the same class shall be taxed alike. It was a provision of the section, and a good provision, as it originally stood, and it means nothing else. It means that there shall be no favoritism; no discrimination; no letting off of a party, merely because his property is in money, or in credits. That is the true meaning of it, because we have had abundance of instances of parties going untaxed. The gentleman from Solano, the other day, in his able speech, stated, and stated correctly, that one half of the property in this State goes untaxed. The principle is that all who receive the protection of the government, and all who enjoy the advantages of the government, should contribute to its support. Now, then, the gentleman from Solano instanced the insurance companies, which pay only one half of one per cent., as he estimates, and which therefore escape taxation nearly altogether. Now, sir, I wish to refer the Convention to an English work upon this subject, to show the duties on fire and marine insurance. It is a work by Mr. Levi, on taxation:

"The first duty upon insurance was a sixpenny stamp charged on the policy, without distinction between fire, life, and marine insurance, but the rate for fire insurance was afterwards increased at different times. In seventeen hundred and seventy-five the duty was six shillings on policies of all amounts below one thousand pounds sterling, and five shillings more on insurances of sums of one thousand pounds sterling and upwards. In seventeen hundred and seventy-two a percentage duty at the rate of one shilling and sixpence per one hundred pounds sterling was first imposed. This was afterwards increased, in seventeen hundred and ninety-eight, to two shillings per cent., and in eighteen hundred and four, whilst the policy duty was reduced to one shilling, the percentage duty increased to two shillings and sixpence per one hundred pounds sterling. The duty was further raised to three shillings per cent., in eighteen hundred and fifteen, and at this rate it has continued to this day."

And he goes on to say that the taxes collected by the British government from this source alone was between eight and nine million dollars. Now, sir, they tax credits. They tax profits. They make everything pay, either by a direct tax upon property or an income tax. I remember some months ago—and I have been trying to find the article—there was published in a San Francisco newspaper, during the excitement about the deposit banks, a statement of one of the savings banks, in which it was stated, if my memory serves me, that the capital stock was two hundred and thirty-seven thousand dollars, and the bank had received as deposits and loaned on mortgage seven million dollars capital. Now, sir, without seeking to comment upon the safety of that system of banking, let me ask, does not that statement show that this bank must be making large profits from the reception and loaning of this money? And is it not right that by an income tax, or by some other method, their profits should be reached? Is it not honest? Is it not fair? And, although the taxes upon the deposits, or rather upon the loans made, fall ultimately upon the depositor, primarily the bank pays them; and at all events the bank is liable to an assessment upon the profits which they make, which must be charged out of the reception and loaning of this money.

Why should a party be allowed to change his real estate in the State into State or municipal bonds and escape taxation? It is contrary to public policy; for the public policy of the country is that the funds of the country and money of the country should be kept in active productive business, as a matter of business interest and as a matter of justice on the subject of taxation. Now, there is not a piece of real estate in San Francisco that pays as much profits as the interest on State and municipal bonds. There is not a farm in the whole country that pays as much profits as the interest of these State and municipal bonds—not one. Why, then, should these parties be allowed to convert their property into State and municipal bonds to escape the burdens of government and their just contributions for its support?

Now, sir, take by way of illustration an anecdote that was told me the other day by a gentleman in Stockton. The Assessor went to him to get an assessment of his property. He says: "Well, I live here in this rented house. My furniture is worth about a thousand dollars; you may have it for a thousand dollars." So the Assessor puts it down for a thousand dollars. "Well," says the Assessor, "your money." "I have got a twenty-dollar piece." So the Assessor puts down the one thousand dollars for the furniture and twenty dollars money. The Assessor says: "Is this all the money you have? You have money at interest?" "True, I have ninety thousand dollars at interest, but that is not taxable, under the late decision of the Supreme Court, and I do not put it in." Therefore he escapes taxation on pretty near all his property, and makes no contribution to the support of the government which protects him, and whose Judges, and whose Sheriffs, and whose officers he must have in order to enable him to collect the interest on the money and the money itself which he has loaned out. It strikes me, sir, that such a system of taxation is monstrous, and there is no defense for it.

Now, sir, we propose here to make a law that will remedy this. I do not criticise the decision in the case of the Hibernia Bank. It may be good law, perhaps, under the old Constitution. I do not find it necessary to discuss that question; but I say we propose to make a different law, which will be just and honest, and we propose to so make it that we can hold the Courts to its execution.

But it is said here that the taxation of mortgages is double taxation. I deny it, sir. The money, if taxed to the creditor, is a single taxation, and the land, less the face of the mortgage, if taxed to the owner of the land, is single taxation. I read the other day, and I will read again, a paragraph from Professor Walker on that subject. It is headed "Taxation of Credits:"

"It has sometimes been maintained that credits ought not to be taxed, but all assessments be made upon values, or property, personal and real. Taxes, it has been argued, ought not to be laid upon persons, but upon that out of which they can alone be paid, viz.: property.

"But credits are taxed as well as values. A holds a farm worth ten thousand dollars, mortgaged to B for five thousand dollars. A pays taxes upon the whole valuation, and B upon five thousand dollars, as money at interest. A, it is said, is doubly taxed. This is a practical question that has puzzled legislators in every age and country. Let us, therefore, carefully examine it.

"Suppose A and B aforesaid form an entire community, and that the whole tax of one hundred and fifty dollars is imposed on property. The whole valuation will then be ten thousand dollars (A's farm), and the rate one and a half per cent., which A pays, and B goes untaxed. We will now change the principle, and have both property and credits taxed. The valuation will then be: A's farm, ten thousand dollars, and B's money at interest, five thousand dollars; total, fifteen thousand dollars; and, with the same amount to be assessed (one hundred and fifty dollars), the rate will be one per cent., of which A pays one hundred dollars, and B fifty dollars. So, then, we discover that A is not doubly taxed, as assumed, but at the worst pays only twenty-five dollars, or one third, more than his share. Such must, in principle, be the result of this kind of taxation, taking a whole community together. All the amount taxed upon credit is so much relief to taxation upon property. This seems to be clear; and the justice of the thing is established by the fact that A bought his farm knowing that it would be subject to a full taxation, and bought it cheaper, as we have shown in another place, on that account. B, on the other hand, accepted his mortgage on the same ground, knowing that it would be subject to tax on the common valuation. Is either party, then, wronged?

"But perhaps another reason may be given why A should pay taxes upon the whole value of his farm, viz.: that, having the usufruct of the whole, he is entitled to all the profits on the farm. 'But he don't own the whole of the farm.' True, that is his misfortune; if he did, he would obtain a larger amount of net profits; but his obligation to pay tax on the whole is not impaired, because he has the use of a part of B's capital. As the owner of the farm, A has a chance for all the profits that can be made from the whole, while, by the taxation of B on the mortgage, the former saves a part of what he would otherwise pay in taxes. One pays taxes for the profits of business; the other for the income on his capital.

"In the absence of the income tax principle, what can be more equitable and just than the practice of taxing both mortgagor and mortgagee? If the former were allowed to deduct from his inventory the amount he owed the latter, it would often happen that the mortgagee not living in the same town or State, so much property would escape taxation altogether."

And that is the objection I have to the rebate principle in the report of the majority of the committee.

"This in some communities, especially our Western States, would be a great evil. That much hardship may often result from taxing credits as well as property is undoubtedly true; but that only affords additional evidence that the income tax principle is the only correct one."

Now, it is a mistake—it is an entire mistake—and it cannot be demonstrated either legally or mathematically, that a tax of the money to the lender, and a tax of the property, less the amount of the money, to the owner of the property, is double taxation. I deny it altogether. It is not true. But if true, it is just.

It is argued also that the tax must be equal—must be uniform, and must be equal. Now, sir, absolute uniformity and absolute equality in taxation has been proved to be an impossibility. All that you can do is to approximate to it. It is a good general principle, but when you come to the practical working of the thing it is not possible, to an absolute mathematical demonstration. John Stuart Mill says:

"The proper sense to be put upon it, as we have seen in the preceding example, is, that people should be taxed, not in proportion to what they have, but to what they can afford to spend. It is no objection to this principle that we cannot apply it consistently to all cases. A person with a life income and precarious health, or who has many persons depending on his exertions, must if he wishes to provide for them after his death, be more rigidly economical than one who has a life income of equal amount, with a strong constitution, and few claims upon him: and if it be conceded that taxation cannot accommodate itself to these distinctions, it is argued that there is no use in attending to any distinctions, where the absolute amount of income is the same. But the difficulty of doing perfect justice, is no reason against doing as much as we can. Though it may be a hardship to an annuitant whose life is only worth five years' purchase, to be allowed no greater abatement than is granted to one whose life is worth twenty, it is better for him even so, than if neither of them were allowed any abatement at all.

"Before leaving the subject of equality of taxation, I must remark that there are cases in which exceptions may be made to it, consistently with that equal justice which is the groundwork of the rule."

That is the true principle. If we cannot arrive at absolute equality we get as near it as we can.

Now, sir, another objection is raised to the report and also to the amendment offered by the gentleman from Sonoma, Mr. Moreland, that it taxes franchises. Now, sir, under all the authorities, franchises are held to be property. They are property separate and apart from the business itself. A franchise, the Supreme Court says, "is the privilege or right of association in a particular manner to accumulate property and make money. The grant of a corporate existence is the grant of special privileges to the corporators enabling them to accumulate property, free from individual liability." That is a franchise. It is a separate thing; separate from the property of the corporation; separate from the stock of the corporation; and under all the authorities it is rightfully taxed, and properly taxed. And, as was said here yesterday, in argument, a man may have a ferry franchise. His boat may not be worth a thousand dollars, but his franchise may be worth a thousand dollars a day. Therefore it is that by adopting the principle of the gentlemen upon the other side, you do not reach him at all if you tax nothing but his boat.

Again, sir, it is said that we ought not to tax both the franchise and the corporation. Well, sir, the Supreme Court of the United States has held that it is legitimate to tax the franchise; it is legitimate to tax the corporation as an entity; it is legitimate to tax the stock; it is legitimate to tax the net proceeds; it is legitimate to tax the profits. I read from the Delaware Railroad Case, 18 Wallace, 208, and shall read only the head notes:

"The State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion.

"A tax upon a corporation may be proportioned to the income received, as well as to the value of the franchise granted or the property possessed.

"The fact that taxation increases the expenses attendant upon the use or possession of the thing taxed, of itself, constitutes no objection to its constitutionality.

"The exercise of the authority which every State possesses to tax its corporations and all their property, real and personal, and their franchises, and to graduate the tax upon the corporations according to their business or income, or the value of their property, when this is not done by discriminating against rights held in other States, and the tax is not on imports, or tonnage, or transportation to other States, cannot be regarded as conflicting with any constitutional power of Congress."

Is there not sense in that decision? The franchise is one thing, the capital stock is another thing, and unless the corporation is a humbug the books show the amount of money paid with which to commence business. The property of a corporation may be an entirely different thing, and is, in this State, because it consists mainly, or to a large extent, of lands outside of the corporated towns, granted by the Federal and State Governments to the railroads, in order to enable them to build them. It is therefore right that there should be a separate tax upon the franchise, a separate tax upon the capital stock, and a separate tax upon the property owned by the corporation, just as much as there should be a separate tax upon the property owned by an individual. These objections to this report are all sophistry. They have no solid foundation either in science or law. The gentleman from San Francisco said he was open to conviction. So am I, and I am quite anxious to be enlightened, but he will pardon me for suggesting that his attack upon the report and the amendments reminds me a good deal of a Mexican war: the pronunciamento is fierce, but the fight don't come off. There is no sympathy, there is no relation between the two things. Now, no doubt, as he seems to suggest, that a man's opinions may be somewhat influenced by the atmosphere in which he moves, the company he keeps, and the constituents whom he represents. Those of us who come from the pure air of the country districts are disposed to have justice done, and to have all men taxed alike upon their property, but those who live in a community of lenders, where the most influential persons are lenders, may have their views very much clouded. If his constituents are mainly money changers, and belong to that class of persons that Christ drove out of the temple, he may have very different views from those who come from the country.

MR. WILSON, of First District. As the borrowers always equal the lenders, there is no point to the argument.

MR. HOWARD. The borrowers are not mostly in the city. Suppose they were, is that any reason why the lenders should escape?

MR. WILSON, of First District. What point is there to the argument when I am living where there are more borrowers than lenders?

MR. HOWARD. The gentleman might as well ask me what relation there is between chalk and cheese.

MR. WILSON. I would if you would try to make them appear the same.

MR. HOWARD. You try to make a thing which is cash in your pocket, nothing.

MR. WILSON. No. You are dodging the proposition. You say I live in a community of money lenders. I only say to you that there are more borrowers in the community in which I live than lenders.

MR. HOWARD. What of it?

MR. WILSON. That answers your proposition completely.

MR. HOWARD. It is no answer at all. Suppose there are, does that prove that the lenders ought to rob the borrowers?

MR. WILSON. No. But it proves that I am not clouded by living in a community of lenders when there are more borrowers there than there are lenders.

MR. HOWARD. I was only speaking of the influence on your views of your surroundings. I do not say that you are quite as much controlled by the influence of the money changers as I am by the influences surrounding me.

MR. WILSON. I do not think that either of us are controlled upon this proposition.

MR. HOWARD. But I say that our opinions may be influenced by the opinions of our constituents, the men with whom we associate, and by our surroundings. It is a curious fact here that when an attempt is made to regulate and control corporations, gentlemen get up here and say you cannot do it because it is private property; but when you want to tax them for the purpose of forcing them to pay their due proportion towards the expenses of the Government, then it is said, "Oh, it is not property, and you cannot tax it, it is an imagination." It is somewhat singular but it so happens day after day in this hall. Now, sir, we ask for no injustice. We ask that all men, as provided for in this report, and these amendments, should contribute according to their means. It makes no difference whether it is done on the ground of protection, or as an exaction. As an exaction it is not right unless all contribute in proportion to their property.

Now, in relation to the remarks made by my friend from Inyo, Mr. Reddy, yesterday. I am inclined to agree with him, that there is injustice in the manner in which mining corporations and mining interests are taxed. My idea of a proper tax upon a mine would be an income tax, because, unless a mine produces, or as it is termed by the Mexicans, in bonanza, it is not property at all.

MR. REDDY. How do you like the Nevada system, where they tax the proceeds of the mine?

MR. HOWARD. That is the same thing. The proceeds then should be above the expenses. For instance, if you tax a railroad. A railroad has property, it has a franchise, it has a right of way, it has its rolling stock, its roadbed, its depots, and its other property, and, therefore, it is right to tax their property. But, if you put up expensive machinery on a mine and, to use a miner's phrase, the mine peters out, the property is valueless.

MR. GREGG. When it is taxed upon a franchise and taxed upon the mine, is it not double or even triple taxation?

MR. HOWARD. Not necessarily.

MR. GREGG. Inyo County raises half its taxes upon mines. One half of them are incorporated and have their principal place of business in San Francisco. Now, if you tax the franchise in San Francisco and the mine in Inyo is not that double taxation?

MR. HOWARD. No, sir; you are confounding the franchise with the stock of the mine. They are not the same. They are not treated, under any enlightened system of taxation, as the same. Now, I know that a friend of mine put up extensive works upon a mine. The machinery was of the most expensive character. He worked a little while, and found he had no mine; therefore his property was a dead loss. His franchise was nothing; his stock was nothing; his income was nothing, and even the machinery that he had there was comparatively of no value. Therefore it is, I say, that a mine should not be taxed unless it yields, and then it should be taxed by an income tax. If it yields well, the miner ought not to object, and will not object, to a reasonable income tax, or any other reasonable tax which reaches his property. I do not speak, sir, now, of one species of mining business which is carried on in this State. Legitimate mining is a great productive interest which ought

to be encouraged; that is, a mine where parties combine and extract the bullion from the earth and bring it into commerce. But that is not the history of a large portion of the mining in San Francisco. I read some years ago, in Blackwood's Magazine, that a clerk in London hired a room, bought and sold, put a pen behind his ear, and levied contributions upon the world. But we have got ahead of John Bull, particularly in San Francisco. They find a fellow—we will call him Snooks—who tells somebody that he has seen some nice signs up in the mountains somewhere. They buy him some grub and a pick, and they send him up. He digs a hole in the ground, and reports that the thing looks rich. A company is incorporated, and stock is offered in the exchange for sale, although nothing has been discovered, actually, as yet, and nothing has been sent to market. Sharon and Jones patronize the hole in the ground, and presently the papers come out and say that Snooks has struck a perfect mountain of gold. The stock goes up. The drayman, the farmer, the milliners, the seamstresses, are running with all their little cash to put into this hole in the ground. It is worked on awhile, and there comes a report that the mine is filled with water; because, they say, good mines always do fill with water. Then it is necessary to have an assessment to pump out that water. Then it is stated that it is frozen up, but it will thaw out in the Spring, and it will be all right. But the Spring never comes, and in a few months the hole in the ground sinks into oblivion, and gives way to the next new swindle. Now, it would be no use to tax the capital stock, because it is nothing but lies, and a lien upon it would not be worth having. The stock probably has been sold upon a margin, at large prices enough to break a multitude of people. But my friend from San Francisco comes and tells us all these people are of age; you cannot wet-nurse these people; let them gamble on margins. But, sir, in this Convention we have endeavored to stop these sales and their gambling, and I think we will succeed.

I shall vote for the amendment offered by the gentleman from Sonoma, Mr. Moreland. At the proper time I shall move to strike out the words "evidences of indebtedness," so that it will read "for the purposes of taxation, bonds, notes, mortgages, solvent debts, franchises, and everything of value capable of transfer or ownership, shall be considered property." It seems to me that in the words "evidences of indebtedness" there is mere tautology; for when you tax bonds, notes, mortgages, solvent debts, franchises, and everything of value, you certainly tax evidences of indebtedness.

MR. EDGERTON. If you tax solvent debts, is not that taxing evidences of indebtedness?

MR. HOWARD. Yes. Any Court would hold it to be the same thing, but if you tax the debt I do not see any necessity of taxing the evidence of the debt.

MR. EDGERTON. If you tax the debt, why do you see any necessity for taxing the note?

MR. HOWARD. I propose to strike out "evidences of indebtedness," and then it is precisely the proposition of Mr. Boggs, except that that proposition provides that the State shall be a bookkeeper between the lender and the borrower, and that it shall make an official settlement between the two.

MR. SCHELL. Why not strike out mortgages?

MR. HOWARD. Because we want to have it in, to show that we decided here that mortgages are a legitimate subject of taxation.

MR. EDGERTON. Is not the mortgage a mere incident of the debt? What does it amount to in foreclosure? It is a mere incident of the debt. If you tax a debt, why do you tax the mortgage which is given to secure the debt?

MR. HOWARD. The mortgage is the debt, and means the debt, and nothing else. It is mere hypercriticism to say that it means anything else.

MR. EDGERTON. Did the gentleman ever hear any Court call the mortgage the debt?

MR. HOWARD. It is always called the debt.

MR. VAN VOORHIES. Is the evidence of indebtedness the mortgage or the note? Is the mortgage the debt, or the note the debt, which?

MR. HOWARD. Both. Both evidence the same thing. Taken together they constitute one debt.

MR. SCHELL. Do you propose to tax the mortgage and the debt which it secures separately?

MR. HOWARD. That is the report. The report is to tax the debt to the lender, and the property, less the amount the money loaned, to the owner.

MR. SCHELL. If you had a debt of one thousand dollars, do you propose to require the Assessor to assess that debt at one thousand dollars and then to assess the mortgage, as contradistinguished from that debt, again?

MR. HOWARD. I do not propose to assess it at all that way. The gentleman is confounding himself on his own conundrums. In that case the equity of the law would be to tax one half to the lender and one half to the owner of the property. That is the meaning of it.

MR. EDGERTON. Do you claim that the Moreland amendment allows any rebate under any circumstances?

MR. HOWARD. No; and that is the reason I support it. It allows no rebate.

MR. EDGERTON. You were understood to say that it did.

MR. HOWARD. I did not say so. That whole subject is provided for in your report on the subject of mortgages. It is all provided for there, and therefore it is not necessary to provide for it here.

MR. EDGERTON. Do you propose to adopt section five with the Moreland amendment?

MR. HOWARD. I propose to retain section five to the extent of taxing the land to one party and the loan to another.

MR. EDGERTON. Then you are right. Then you do admit the principle of rebate.

MR. HOWARD. No, sir.

MR. EDGERTON. That is the theory of section five.

MR. HOWARD. No, sir. It is the theory of section five that the lender should pay on the loan, and the owner of the property should pay on the property, less the amount of the mortgage.

MR. EDGERTON. That is not the Moreland amendment at all.

MR. HOWARD. In taxing mortgages you tax the money to the lender and the land to the owner of the land, less the amount of the mortgage.

MR. EDGERTON. Yes, certainly; but that is not the Moreland amendment. He taxes both.

MR. HOWARD. He does not do any such a thing. He does not supersede the part with reference to taxing mortgages. He is not dealing with the subject, but leaving it to the other section.

MR. EDGERTON. Then the gentleman supports section five. He would have section five retained with the Moreland amendment?

MR. HOWARD. Yes, to the extent which I have mentioned. I have not criticised it closely. I think that section five, so far as I recollect it, is right in principle:

"SEC. 5. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county in which the property affected thereby is situate."

That I support. That is perfectly consistent with Mr. Moreland's amendment.

MR. EDGERTON. I would be obliged to you if you would demonstrate it. Perhaps you don't want to perform that surgical operation on my head that was alluded to the other day.

MR. HOWARD. I do not see why the gentleman should contend that the Moreland amendment, which leaves untouched the fifth section, is inconsistent with the fifth section. If it was inconsistent, so as to obliterate the fifth section, then there would be some force in the position, but that is not the case. The whole idea is that the amount of money should be taxed to the lender, and the land, less the amount of the money, should be taxed to the owner of the property. That is the whole principle of the report, it is the whole principle of the amendment, and it is all that justice requires upon the subject. Therefore, it is, I say, that I shall vote for the Moreland amendment, and trust to getting any improvement upon it hereafter which may be necessary. I believe that the Moreland amendment is right in principle.

MR. EDGERTON. The gentleman from Los Angeles, and the gentleman from San Joaquin, Judge Terry, who is a distinguished lawyer and an ex-Justice of the Supreme Court, take an entirely different view of the Moreland amendment. The latter insisted that it did subject the credits to a tax, and in addition to that it subjected the mortgage to a tax.

MR. TERRY. I insisted that the mortgage was not the man's only remedy, because he had a lien upon all the property of the borrower, and all the property that he might acquire.

MR. EDGERTON. There is an illustration. The gentleman from San Joaquin takes one horn of the dilemma, and the gentleman from Los Angeles takes another.

MR. HOWARD. The gentleman is mistaken. The Supreme Court of the State decided, in the ninth volume of reports—the opinion by the learned gentleman from San Joaquin—that credits were property, and a part of the property of the county.

MR. EDGERTON. That is not the point I am making. The point I make is that you have got a double view of it. You do not agree upon it. It is dangerous because it is uncertain.

MR. HOWARD. We have got no double views whatever. There is no conflict between us who are supporting the Moreland amendment; and the gentleman will excuse me for saying that his point reminds me of what General Randolph said about the point of the gentleman from Rhode Island. He said it reminded him of a point in Delaware called Point No Point.

MR. EDGERTON. That is a good peroration to your speech.

MR. HOWARD. It shows there is no point in you anyhow.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. Chairman: We all wish to arrive at a just system of taxation, such as will do justice to all. The legal definition of the word taxation given by Mr. Wilson was undoubtedly correct originally, but that meaning of the term has become obsolete. A tax now is an obligation. It has been dwelt upon here that the basis of obligation is protection. Now, government is instituted not alone for protection, but it is instituted in the interests of human progress. Its province is to secure protection to all, to promote industry and enterprise, to facilitate commerce and trade, to encourage literature, science, art, and religion. Here are higher interests to subserve. Now, that country is the best where wealth and intelligence are most generally distributed. Now, a system of taxation which makes the rich richer and the poor poorer should be avoided under our enlightened and republican form of government. We must adjust our system of taxation and our legislation to meet such issues and such disparity as may arise from one class becoming rich and another poor. All property should be taxed. Property now is that which in itself is something tangible, of tangible and material value. Property takes many disguises. If we follow property through all its ramifications we will find that one species of property generates another. I may have a fine growth of trees that are growing upon my land. That growth of trees may be taxed. The trees may be cut down and sawed into lumber and taxed again as lumber. The lumber may be built into a house and taxed again. Thus we can call it

triple taxation. I will say here that none of the propositions fully meet my views. Mr. Moreland's proposition, I think, is too broad. Evidences only, that are properly secured, should be taxed. Take notes; there is a great difference in value. Some notes are not worth much, and other notes are as good as gold. Evidences of debt, properly secured, are as much property and have as much intrinsic value as the coin that bears the government stamp. I think Mr. Moreland's proposition is too sweeping, and covers too much. I am in favor of taxing evidences of indebtedness when they are properly secured. Mr. Hale's proposition is good, because it provides that a man should pay taxes upon what he really has. He should pay only upon property free from incumbrance.

Further, to meet the principle of the greatest good to the greatest number, and to distribute wealth as much as possible, I am in favor of a graded tax, or an income tax. Wealth is a reproductive power, and why should it not be taxed in a geometrical progression? A man that has ten thousand dollars has more than ten times the facility of the man that has but one thousand dollars. Mr. Peabody himself says that it cost him more effort to acquire his first ten thousand dollars than all his vast fortune afterwards.

I do not believe in taxing growing crops, but I do believe in taxing the grain when it is in the granery. I am not in favor of taxing the voluntary offerings of the people for charitable, educational, or religious purposes. I am not in favor of taxing institutions whose benefits are public. With regard to taxing educational institutions, it is a principle of our State that we should encourage education. I know you all agree with me that the educational system of the State, the common schools, should not be taxed; but I am not in favor of taxing private educational institutions, because they save the State a vast amount of money. I believe we have no right to tax the voluntary contributions of the people for religious purposes. The Christain church is the right arm of the government. I do not know how the State would do without it. I think that the church, in education, is at least of as much importance as the magistracy. A good government must rest upon an educated conscience as well as upon the accumulated property of the people. I say that the State should do nothing that would injure the church in any of its branches. It is the province of the State to strengthen the bond between the church and the State.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. Chairman: It is not my intention to speak at length of the virtues and vices of the amendments now before the committee, but sir, I merely wish to say that I cannot, with any degree of consistency or with any shadow of reason, support the amendment offered by my young friend from Sonoma, in its present shape. Upon its face it is fair and inviting, but when thoroughly examined, it is, in a great many respects, monstrous and hideous. Now, sir, I wish to state to you a little piece of personal history in relation to the effects of this amendment. I had occasion, very recently, to renew a mortgage of some eight thousand dollars upon a piece of property in the City of San Francisco. That mortgage had been running at the rate of seven per cent., the banker now demanded eight per cent., and I asked him why? He said he had read of and expected the adoption of an amendment to the Constitution that would levy a tax upon mortgages, and upon the probability of the adoption of that amendment in the new Constitution he had raised the interest upon that mortgage one per cent. There, sir, is an example of the effects of this amendment. I am in favor of the taxation of mortgages, but I want the weight of that taxation to fall upon the mortgagee and not on the mortgagor. And that is what the granger element of the State wants, and all the borrowing portion of the population of this State wants. It is an outrage upon reason to think that any borrower would commend a mortgage tax if the weight of it would fall upon himself. The amendment upon its face is fair, but, sir, I believe that the men who to-day cheer you on in the hope that the weight of this taxation will fall upon the mortgagee, when they come to see, in paying their own interest and their own taxes, that it falls upon themselves, they will curse instead of praising those who vote for the amendment.

MR. MORELAND. Did the gentleman ever hear any complaint until the decision of the Supreme Court declaring that mortgages were not property?

MR. FREUD. Well, I do not see as that would affect the argument. I merely cited this as the effect.

MR. MORELAND. This simply restores the thing just as it was before that decision, nothing more nor less.

MR. FREUD. I have heard complaints, and I am willing to support an amendment so worded that the weight and burden of the matter will rest upon the man that loans the money.

MR. MORELAND. We propose to insert another section which prohibits the making of any contract, directly or indirectly, by which a debtor is obligated to pay the tax.

REMARKS OF MR. REED.

MR. REED. Mr. Chairman: I had not intended to have said anything on this subject, but the question has taken such a wide range, and there is such a diversity of opinion on the question, that I deem it proper to briefly give my views on this important matter as affecting the agricultural interests of this State. The question of taxation has seriously engaged the attention of the best writers on political economy for many years, such writers as Bastiat, Foster, David A. Wells, George W. Cuyler, and Edwin Dodge, and pronounced one of the most vexed questions that modern writers have to deal with; but all have agreed that no healthy system of revenue can be devised except based on real, tangible, property. The agriculturists of the country have felt aggrieved that, as a large class of borrowers, they have been compelled to pay more than their just share of taxation; and hence the general cry from the farmers that mortgages and evidences of indebtedness should be taxed. But I venture the assertion, at the risk of political ostracism, that the farmers, as a class, neither ask, desire, or expect any system to be devised that will, in effect, be double taxation, for they know full well that double taxation means increased rates of interest for them. Sir, I have been engaged in agricultural pursuits for over twenty-five years in this State, and my facilities, from official positions honored by the farmers, and intimate, close relations throughout the State, have given me abundant opportunities to study the condition of the agriculturists in this connection. By far the largest number of the farmers of this State commenced with comparatively but little money, and, owing to the variableness of the seasons, they have struggled hard from year to year, and necessarily have become borrowers, and I venture the statement, that during any one year nine tenths of the farmers are borrowers; *i. e.*, that there are times in every year that nine tenths of the farmers are compelled to borrow; as during harvest season, purchasing sacks, paying hired help, before the grain can be sent to market. And I make this statement, without fear of contradiction, that there is no industry in this State less remunerative, and pays a higher rate of taxation, than agriculture, and I repeat it.

The property of the farmer cannot escape taxation; the property is real and tangible; the Assessor has the opportunity to see and examine it, and while this is true, knowing that agriculture is the basis of wealth, they naturally feel indignant when they go to the capitalist, compelled to borrow, that that man is a non-producer and non-taxpayer; and this has naturally aroused the people, the producing classes, throughout this State, and to that extent, my fellow-members, your existence here to-day is due. And the farmer knows full well that if the mortgage is taxed, and he is also taxed on the value of his farm, that he is compelled, by the exactions of the money lender, to pay both; for the lender will ask higher rate of interest to cover the taxes on the mortgage, and the actual result is that the borrower really pays a higher rate than he is now compelled to. And if any system can be devised by which the mortgagee and the mortgagor can share in the taxes on the property, I am satisfied that the agriculturists throughout the State will be perfectly satisfied; and of all the propositions thus far, the amendment of Mr. Hale strikes me as the best, and when digested, will give greater satisfaction to all classes than any hitherto offered. I regret that some members have apparently discovered an antagonism between the farmer and the miners. I am certain no such a desire exists, and would deprecate such a feeling.

As to taxation of growing crops, there is no principle of justice or fairness in it. It is not definite or tangible; it is a tax sought to be placed on his labor, industry, and energy; it is the same as an income: it is his income after paying his expenses, and the profits go into next year's assessment, as the farmer must invest it on his farm, as they rarely engage in outside speculations; hence it is really taxed the succeeding year, the same as the income of the lawyer, the physician, and other professions—many of whom realize large incomes but are not taxed—and the profits are invested is some productive property as an investment, and hence are taxed the succeeding year. Now, in conclusion, I appeal to those in this Convention engaged in agriculture, to pause well before they adopt any system that will create such friction between the borrower and the lender that double taxation will produce. And I really do not believe that the farmers of this State intend to tax mortgages in the sense as will be effected by the Moreland amendment. Although the popular cry throughout the agricultural districts has been, and now is: taxation of mortgages! arising, as I have heretofore said, from the fact that the farmers, having been taxed beyond endurance, and required to borrow money, are compelled to ask of him, the non-producer and non-taxpayer, assistance by way of a loan. This has well called forth this popular demand, and, sir, I deny that the farmers demand any system that will create double taxation; and when they investigate this amendment, I am fully satisfied I shall be substantiated in my assertions by the agriculturists throughout this State, and, therefore, sir, I prefer the amendment offered by Mr. Hale as a more satisfactory solution of this vexed question to any other that has been presented.

MR. HITCHCOCK. Would not the loaner, knowing that the tax would be deducted from the claim, require a higher rate of interest?

MR. REED. Under any proposition that is submitted or adopted, the farmer in the end will have to pay it any way.

MR. LARUE. According to the gentleman's argument, the farmer pays all the tax at present. By assessing mortgages you increase the assessment roll and decrease the rate. Suppose he has to pay it in the end, is he any worse off? Let us divide the thing a little.

MR. REED. That is my proposition. Let us divide it. He has to pay double according to the Moreland amendment. If I have a mortgage of ten thousand dollars on your property worth twenty thousand dollars, you are assessed twenty thousand dollars and I am assessed ten thousand dollars, and you have to pay it all.

MR. LARUE. There is only a certain amount of money to be raised, and you say the farmer has to pay it anyhow.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I have been requested by one or two of the committee to make a statement in regard to section two. The section reads as follows:

"SEC. 2. All property, including franchises, capital stock of corporations or joint stock associations, and solvent debts, deducting therefrom debts due to bona fide residents of this State, and excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States, or to this State, or any municipality thereof, and all property and the proceeds thereof which is used exclusively for charitable purposes, shall be taxed in proportion to its value, to be ascertained as directed by law."

I am informed that there is an impression resting upon the minds of many members of the Convention, that the object of that section is to

deduct the indebtedness that a person owes from the entire property subject to taxation. I have already stated that there is a misprint in the printed report, but that, there can be no doubt, according to the original report, means that the indebtedness shall be deducted from the solvent debts. Now, sir, the author of that part of the report introduced it originally in the form in which it stands, except that it was in one sentence, "solvent debts deducting therefrom debts due to bona fide residents of this State." There never has been any doubt what that meant, and that it meant deducting the indebtedness from the debt.

I propose, if we should ever come to a vote upon that subject, to offer an amendment, which shall read as follows: "All property, including franchises, capital stock of corporations or joint stock associations, and solvent debts, deducting from such debts indebtedness due to bona fide residents," etc., so that there would be no question; and there would be no reduction of indebtedness from the other property owned by the person to be taxed. I desire to say a word or two further in answer to the gentleman from Los Angeles, Mr. Howard, and that is with regard to this Moreland amendment. There can be no doubt about this, that it imposes a tax upon the credit to the extent of the value of the credit, and that in addition to that it imposes a tax upon the entire property. There can be no doubt about it, and the author of this amendment expressly said that that was one of its cardinal principles, and that it was because it did propose that system of taxation that he supported it; and he made the antithesis clearly that this did not allow any rebate, whereas sections two and five did. That was the view taken by the distinguished gentleman from San Joaquin, and every gentleman here, until the gentleman from Los Angeles spoke. Now, sir, it is dangerous to adopt a proposition when two lawyers of admitted ability and eminence, like the gentleman from Los Angeles and the gentleman from San Joaquin, take these two opposite views upon it. Is it safe for this Convention to adopt it? And another thing which I cannot understand at all, is this: I do not see how the gentleman from Los Angeles arrives at the conclusion that there is no conflict between section five and this Moreland amendment. One word more. I understood my friend General Howard to say that he had no criticism to pass upon the opinion of the Supreme Court in the Hibernia Bank case; that he had no fault to find with the law of that case.

MR. HOWARD. I said that I did not make any criticism upon that case because the proposition would render another such decision impossible.

MR. EDGERTON. I say that the Moreland amendment does not help the gentleman at all. It will leave the Supreme Court in the same relation with the Hibernia Bank case. We have started with the general declaration that taxation shall be equal and uniform throughout the State. That has been agreed to. Then everybody here has agreed to the declaration that all property in this State shall be taxed in proportion to its value, to be ascertained as provided by law. These two propositions everybody has agreed to. Then you go on and declare that solvent debts shall be taxed. Now, that is just the precise case of the Hibernia Bank. They undertook to tax the solvent debts, and the Supreme Court held in the case of the Hibernia Bank that that could not be done, because solvent debts, credits, bonds, and mortgages, could not be assessed. They would not be capable of definite assessment by any rule of equal and uniform taxation with other property.

MR. HOWARD. Did not the Courts say in that case——

MR. EDGERTON. I am coming to it.

MR. HOWARD. They say that credits are property, but they are not property for taxation under the Constitution of eighteen hundred and forty-nine.

MR. EDGERTON. I will make my point so plain that even the gentleman from Los Angeles cannot misunderstand it.

MR. HOWARD. Suppose we say that credits are property in the Moreland amendment, adopt the fifth section and let both provisions stand together.

MR. EDGERTON. I do not know what somebody else is about to add to the amendment. I am talking of the amendment as it now stands. I understand that the Moreland amendment is not now open to amendment.

MR. HOWARD. I take the Moreland amendment to be a supplement to the fifth section.

MR. EDGERTON. Now, let us see. The Supreme Court, Justice McKinstry delivering the opinion, in the Hibernia Bank case, 51 Cal. 245, says:

"That causes of action are dependent on too many contingencies to be capable of appraisement which shall accord with any rule of equality or uniformity of value, is too plain for argument."

Then he goes on to say:

"The Constitution provides that no property, as property, shall be taxed, except such as is capable of a valuation by the Assessors, which shall be ratably equal and uniform with that affixed to all other property."

And again, construing the very terms of the Constitution which we all agree to adopt:

"The thirteenth section of article eleven of the Constitution requires that each article of property capable of valuation, shall be fixed or estimated, and the owner thereof made to pay a sum which shall bear the same proportion to the whole amount levied as does the value of the particular property to the aggregate value of all the property in the State or tax district. Under our Constitution, therefore, the subject of taxation is the sum of all the values."

Then he goes on to say that the very idea of taxing these credits, bonds, and mortgages, under the provisions of the Constitution which says that "taxes shall be equal and uniform throughout the State, and that all property shall be taxed in proportion to its value, to be ascertained as directed by law," would involve a contradiction in the Constitution, and that is just what you propose, by the Moreland amendment, to write into the Constitution of this State, and leave the Court to declare that it is idle to undertake such taxation:

"The Constitution, in its application to the various departments of the Government, and to individual rights, must receive such a construction as to give it a practical operation. There would be a contradiction in the single section of the Constitution if it were construed as requiring that all property should be taxed equally and uniformly with reference to its value, and that the word 'property' includes those things practically incapable of an appraisement bearing any definite relation or proportion to other things or property."

That is just what you are attempting to do. You propose to write, in express words, the unmistakable and flat contradiction which is pointed out here, and made as clear as the noonday sun, which nobody can answer, and nobody has attempted to answer. Though I have once or twice before called the attention of the committee to it, no gentleman has seen fit to allude to it. Now, sir, am I not right? Suppose you had the present Supreme Court to decide upon a case under this amendment, as you propose it? They would say, all you have accomplished is written in the Constitution—the very contradiction which we pointed out in The People vs. Hibernia Bank—and it cannot be sustained. Nobody has cast any slur on the Supreme Court; that is, they say they do not; but it is perfectly evident that they are trying to get around that Court. No man on this floor stands higher for integrity, and no man ever breathed the breath of life more unapproachable than Justice McKinstry, who wrote that opinion. He is a sound and an able lawyer, and everybody admits it. He has had an experience of a quarter of a century upon the bench. I would like to see some gentleman before the Supreme Court with this Moreland amendment in the Constitution. He would be told: "All you have done is to write in the Constitution the very contradiction that we pointed out in the case of The People vs. The Hibernia Bank."

MR. BLACKMER. If this Constitution, after saying that taxation shall be equal and uniform, should then go on and say that mortgages should be taxed, do you mean to say that the Supreme Court would again decide that mortgages could not be taxed?

MR. EDGERTON. I mean to say that the Supreme Court has said if the present Constitution contained that it would be a contradiction, and you propose to put it into the Constitution.

MR. TERRY. Do you mean to say that the hypothesis of the Court is the judgment of that Court?

MR. EDGERTON. I say it is the ground of the decision. It is the reasons upon which the Court based their opinion. These things are not capable of appraisement, and by putting it into the Constitution it would be a contradiction. You might elect Judges perhaps who would take a different view. Men may argue around it, but when we come to take cold law, no gentleman, in my judgment, can escape the conclusion which I point out. The gentleman from San Joaquin was very much puzzled the other day, and did not acquit himself with his usual success when he was pressed upon the subject of double taxation. I say that no man has yet answered the assertion, that this amendment calls for double taxation and of the most odious form. And these gentlemen from San Francisco, who represent the workingmen, the poor people in San Francisco, how in the name of God they can support this amendment I cannot see; when their platform commands them to support a proposition for taxation which admits of a rebate. I read it for the consideration of those gentlemen. It is the twenty-fourth article in their platform:

"No person shall be taxed for that which he does not own; in other words, debts due by the person assessed should be deducted from the assessable value of his property, and should be assessed against the person to whom they are payable."

MR. MORELAND. Now read the seventh plank.

MR. EDGERTON. "Money, mortgages, and bonds must be taxed"—Yes. [Laughter.] When gentlemen have got through with their mirthful demonstrations I will proceed. I say I am talking to the San Francisco Workingmen. When you say a man should be taxed according to what he owns, it means the principle of rebate upon which section two is based, and it means nothing else. And that is what many of your representatives say—and I was about to say your recognized leader; but there seems to be some controversy as to who is the leader. I supposed in the first place it was Dennis Kearney. Then I thought it was Mr. Reynolds. Then it appeared for awhile to be Mr. Barbour. Then I thought that my friend from El Dorado, Mr. Larkin, was going to loom up, until I find that my distinguished friend from San Joaquin, Mr. Terry, is the boss of the Workingmen's Party. [Laughter.] Now, sir, you talk about platforms and instructions. The Workingmen's Party on this floor is under an obligation; it is under an instruction. If there is anything binding in platforms they are bound to support the report of this committee in some form. Now, sir, I have heard a statement to-day that bears out with the utmost force what I said the other day, coming from my friend from San Francisco, Mr. Freud, and I cannot understand why such declarations will not convince members here. The gentleman gives an instance under his own knowledge where a mortgage was held upon a piece of property, and he was paying seven per cent. interest. He goes and wants it renewed, and they immediately raise the rate in anticipation of what you are doing here, in view of the very attempt at double taxation, in view of the very suggestion of taxing mortgages. What is the effect? How sensitive this thing of capital is. Up it goes, and they will not renew it now short of one per cent. advance.

MR. TERRY. It might have been demanded for the purpose of frightening somebody.

MR. EDGERTON. That won't do. My friend Dr. Shurtleff has just been home, and he brings back the information that they are printing their forms for mortgages and notes already, in view of what you are

doing here, so as to add the burdens you propose to impose here upon the contracts that they make with the borrowing class.

MR. ESTEE. In some of the savings banks they are making loans only on trust deeds, and with provisions for no notes at all.

MR. EDGERTON. Take this amendment in connection with section six, which is as follows:

"SEC. 6. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void."

Now, how idle it is for anybody who has ever had any experience in these matters, to talk about printing any section in any law or in any Constitution, to govern this subject.

MR. MORELAND. Did not the gentleman report that as Chairman of the committee?

MR. EDGERTON. I dissented from it.

MR. MORELAND. I do not dissent from it.

MR. EDGERTON. You never dissent from anything. This is the proposition of Mr. Laine, of Santa Clara. I am opposed to writing sections into a Constitution, or into a law, that will lose their prestige or authority, or will never get any prestige or authority; and the ability of man has never yet invented any law by which you could prevent people from paying any amount of interest they have a mind to agree upon. How easy it would be for a savings bank to avoid this. Mr. Moreland goes to a savings bank in San Francisco and wants to borrow twenty thousand dollars. They say: "All right; but there are taxes to pay, and you must pay them." "But the Constitution says that any contract we make would be void." "That is all right. You go and give my attorney a bonus in advance, and you can have the money." There are ways enough to avoid it. It is idle to rely upon it. They have had a usury law in New York during this whole century, yet interest runs all the way from three per cent. to fifteen, sixteen, seventeen, and eighteen per cent., the same as here. I assert that interest in California is cheaper than it is in any State in this Union. You can get money in this State cheaper than in any State in this Union. You can get any amount, on good security, at seven per cent. or eight per cent.

MR. DUDLEY, of Solano. I have been a borrower to a considerable amount, and I believe the security furnished is good, but ten per cent. is the best I can get.

MR. WHITE. It is one and a quarter per cent. a month, compounded every three months, in my county.

MR. EDGERTON. The quicker you get out of that neighborhood the better for you.

MR. TERRY. I know a prominent banker who has made his money by borrowing in New York at four per cent. and loaning it here for twelve and fifteen per cent.

MR. EDGERTON. When did he tell you that?

MR. BOGGS. I am informed that one bank lately loaned two hundred thousand dollars at seven per cent.

MR. MCCALLUM. I will state that the Hibernia Bank has had a standing advertisement in the papers offering to loan sums of thirty thousand dollars and upwards, on city property, at seven per cent.

MR. GRACE. Is that on Convention scrip—seven per cent.? [Laughter.]

MR. EDGERTON. There is a very great difference in loans. The gentleman from San Joaquin talks about twelve and fifteen per cent. There is a very great difference between call loans and loans secured by a mortgage on real property. My friend from Butte asked me if the Hibernia Bank makes these loans outside of the city. I saw a statement in the Bulletin not many days since, that they were loaning money outside of the city.

MR. MCCALLUM. I understand not. Not even in Oakland.

MR. EDGERTON. I certainly saw the statement that some of the banks in San Francisco had departed from that rule and were now loaning money in the country in some instances.

MR. MCCALLUM. The regular rate in Oakland is ten per cent.

MR. EDGERTON. Judge Schell says there are several loans in his county as low as ten per cent.

MR. WEBSTER. I borrowed some money on property in Oakland from San Francisco, for eight per cent for one year.

MR. EDGERTON. There cannot be any escape from this conclusion, that the more you relieve capital from these burdens, the lower the rate of interest will be. Every tax you put upon capital is bound to be paid by the borrower, as Chief Justice Wallace says, in his opinion in the Hibernia Bank case, no matter in what shape it is imposed, as the borrower is bound to find out it has got to be paid by him. Now, I never heard anybody deny that mortgages were property in one sense. It is admitted.

MR. HOWARD. Mr. Wilson did. He denied that any credits were property.

MR. EDGERTON. I do not understand so. The Justice, in the Hibernia Bank case, admits that it is property in the vulgar and technical sense, but the question is whether we should treat them as property for the purposes of taxation, and I say no.

MR. HEISKELL. I would like to ask Judge Schell if the money he refers to was loaned to individuals or to the banks.

MR. SCHELL. Loaned to individuals, sir, in a good many instances that I know of, and even as low as eight per cent.

MR. EDGERTON. I do not profess to be a financier, and until I came to this Convention, my reading on the subject had been exceedingly limited. I had read in days gone by, what John Stuart Mill had to say, and the works of some great political economists on the subject of taxation; but I assert unhesitatingly, that my friend, General Howard, cannot produce a respectable authority on the other side of the Atlantic in the last fifty years, that has advocated the tax of personal property directly.

MR. HOWARD. They reach it there by an income tax.

MR. EDGERTON. They go to the land and tax a man according to its rental value. They do not tax his property in this way there. They used to, sir, but for the last hundred years they have not done it. In the report of the New York Commission, they point out a system in England, Belgium, and France, where they have abandoned the whole thing after experimenting upon it since the time of Henry VIII. Tax them on what they make, but do not tax this intangible thing of a debt which comes back on the borrower. You tax the money where you find it. Now, sir, this Moreland amendment seems to me to be full of these difficulties. Gentlemen make a very great mistake in attempting to arrive at the result which they seek to reach, through the medium of such an amendment as that, and I challenge anybody to take the rule laid down by the Supreme Court in the case of The People vs. Hibernia Bank, fifty-first California, and controvert the position that the Supreme Court would have to ignore it, because you would have adopted the very contradiction pointed out in that decision.

MR. HOWARD. What force has that if you make a new law?

MR. EDGERTON. You will have to abandon the two propositions which are adopted, or rather the first proposition, that taxation shall be equal and uniform throughout the State, and the first part of the Moreland amendment, which provides that all property shall be taxed in proportion to its value, to be ascertained as provided by law. You have got to abandon these two propositions in order to sustain the remainder of the Moreland amendment.

MR. MORELAND. Judge Campbell raised that very point about equality and uniformity the other day, and the gentleman denied it.

MR. EDGERTON. I said that the principle of the Hibernia Bank case was, that they were not subject to taxation, because they could not be assessed by any rule which would agree with that rule by which you assess other property; and, notwithstanding that you incorporate this provision in the Constitution, it cannot be affected, because the Supreme Court say:

"* * * No property, as property, shall be taxed, except such as is capable of a valuation by the Assessors, which shall be ratably equal and uniform with that affixed to all other property."

If the gentleman will give me his attention for one moment I will read it again:

"There would be a contradiction in the single section of the Constitution if it were construed as requiring that all property should be taxed equally and uniformly with reference to its value, and that the word 'property' includes those things practically incapable of an appraisement bearing any definite relation or proportion to other things or property."

I say again, that this Supreme Court, as now organized, would be compelled, unless they went back on their decision in the case of The People vs. The Hibernia Bank, to say that the amendment of Mr. Moreland contained an indisputable clause which worked its destruction.

MR. PULLIAM. Was there not general dissatisfaction throughout the country on account of that decision—that the Supreme Court had used favor?

MR. EDGERTON. Yes, Mr. Chairman; but I know that the gentleman has too high intelligence himself to attempt to countenance any such talk on this floor.

MR. PULLIAM. I do not believe it myself.

MR. EDGERTON. It has nothing to do with the question. As I said the other day, I deny that the people demand this kind of taxation; and I repeat, that the history of legislation in this State shows that they do not demand it; that the farthest they have ever claimed in this State has been taxation subject to reduction in some form. That is what the people of this State have always demanded. Nobody undertakes to deny that.

Now, so far as I am personally concerned, as to the amendment before this body, I believe that the amendment of the gentleman from Lake is the best proposition that has been submitted here, so far as these credits are to be listed by the Assessor and the Collector at all; but, at the same time, to be entirely frank upon the subject, I do not think that will amount to much, because the whole thing will be remanded to adjustment between the debtor and the creditor.

MR. HALE. Yes, sir.

MR. EDGERTON. It seems to me that is the proper place to leave it, if it is to be left anywhere.

MR. HALE. So far as section two is concerned, it remands that question to the creditor and the debtor, in this sense: that in the absence of any special contract the law fixes the rule of rebate. Of course there will be those who are favorable to the adoption of this section six. That is independent.

MR. EDGERTON. I want to know if there is any gentleman in this Convention who has any idea that he can go to a money lender and borrow money except upon certain terms agreed upon between him and the lender? And after they had agreed upon certain terms, is there a gentleman in this Convention who would countenance their violation? Talk about Constitutions and laws! What would such a law amount to among men of honor?

MR. MCCALLUM. If all men were honest and honorable, what need would there be of any Constitution or laws?

MR. EDGERTON. That requires some consideration. I refer you to my friend from Los Angeles, General Howard.

MR. HOWARD. My friend has provided for it in his report, by declaring that all contracts which compel the borrower to pay the tax shall be void.

MR. EDGERTON. I stated that I opposed that in committee, and I oppose it here.

MR. HOWARD. I thought you was the father of this report.

MR. EDGERTON. I am the father of very little in this report. I am the father of all that is good, and nothing that is bad. If the amend-

ment is adopted you will have to strike out section two and section five, because the theory is, that it treats the mortgage, or the lien, or the trust deed, as an interest in the thing which is affected, and the mortgage, or the lien, or the deed. It then subjects the property to the tax, the property being all the amount of the assessment less the value of the debt. It then provides that the owner of the property may pay the entire tax, or the creditor may pay the entire tax. Either party may pay the tax. If the mortgagee pays it, it becomes a part of the debt secured. If the debtor pays it, he is allowed so much as a set-off. It is rebate, and nothing but rebate, whereas the Moreland amendment admits of no rebate at all. Section two and section five will have to go out of the report, if the Moreland amendment is adopted. I did not hear the speech of my friend from Trinity, but I have read a report of his remarks, and he takes a very singular ground. What surprises me is, that having understood it as he does, and as I do, he can find it in his constitutional conscience to support it, because he squarely says that he supports it because it is double taxation, and because it imposes the burdens of that tax upon the borrowing classes, and upon nobody else.

MR. TINNIN. I said, Mr. Chairman, that I acknowledged it was double taxation; that the Moreland amendment would admit double taxation, but that in doing so, it would raise the assessment roll so much, and take in so much property that entirely escapes taxation now, that the burden of taxation would be reduced upon these persons, and in the end they would pay less than they do at present.

MR. EDGERTON. Let us see what the gentleman from Trinity, Mr. Tinnin, did really say, and newspapers never lie:

"Mr. Tinnin spoke in favor of the Moreland amendment. He did not agree with it entirely, but he hoped that the farmers would yet decide to allow themselves to be taxed the same as the miners, and not ask to be exempted from their just portion of the burdens of the State. He knew that the proposition would cause double taxation, and it would fall mainly upon the poor people, but he would support it because it would bring upon the tax list two or three millions of property in San Francisco which had hitherto escaped taxation, and thus reduce the rate of taxation."

I hope, for the future prospects of the gentleman, that the Record-Union does not circulate in Trinity County.

MR. TINNIN. That is a condensed report of my remarks, and does not bear me out entirely in what I said.

MR. EDGERTON. I do not see much difference. I hope that the Moreland amendment will be voted down. It will be a source of difficulty whenever it is submitted to litigation, as it assuredly would be.

SPEECH OF MR. MORELAND.

MR. MORELAND. Mr. Chairman: The opposition which my proposition has encountered in this Convention has been no surprise to me. I expected, sir, that it would encounter opposition, and that opposition has come from the very parties whom I expected to oppose it. It is entitled to opposition, sir. Now, Mr. Chairman, I was going to say this proposition puts in issue the whole question of taxation between the people and the parasites. Now, sir, this proposition is no new thing, and I claim no particular credit for introducing it. The effect of it will be simply to reëstablish the system of taxation that was in vogue in this State before the decision of the Supreme Court that has been so often referred to during this debate. And, sir, I hold that system ought to be reënacted and perpetuated in this State. I hold that the people were satisfied with that system, and that the dissatisfaction arose after this decision had been rendered; and, sir, no amount of ridicule, no amount of sophistry, no amount of quibbling, no amount of special pleading, no amount of denunciation shall swerve me from its support. The gentleman from San Francisco, Mr. Wilson, in a set speech, yesterday, in which he occupied about one hour and a quarter in telling us what he was opposed to, and about one minute and a quarter in telling us what he was in favor of, criticised the proposition because, in his opinion, it was not perfect. Now, Mr. Chairman, the supporters of this proposition never claimed that it was perfect. Mortal man has never conceived, and mortal hand has never penned a paragraph so perfect as

"Whoever thinks a perfect work to see,
Thinks what ne'er was, ne'er is, and ne'er can be."

And, sir, if the gentleman wants to see perfection, he had better put on his white robe and ascend. When he gets up there among the angels, with a crown upon his head and a palm leaf in his hand, probably he may find perfection; but here on earth, never! never!

MR. EDGERTON. Except in this Convention.

MR. MORELAND. I do not think that the imperfection of this amendment is what alarms these gentlemen so much as the very perfection of it. It aims to reach, and it does reach, the Shylocks of this State, and it aims to make them come up at the proper time and interview the Assessor, and to give in their property; and it aims to make them also come up at the proper time and interview the Collector and pay their taxes; and it is perfect enough to accomplish this object. Now, sir, the gentleman from Sacramento the other day in his remarks endeavored to belittle and ridicule this proposition, because it came from a member who has not heretofore taken a very active part in the proceedings of this Convention, and who he insinuates——

MR. EDGERTON. You are mistaken about that. I used no such language.

MR. MORELAND. You insinuated that I came from a remote and sparsely settled portion of the State. When I look at the gentleman and see the silver hairs among the gold, it admonishes me that he has already reached if not passed the meridian of life. I know that he has the advantage of myself in age and experience. I admit that he has sat at the feet of the modern political Gamalians for years. He has had better opportunities than myself for acquiring a knowledge of the ins and outs of modern legislation. I admit, sir, that he lives at the Hub of the State; I admit he resides in a city that was once the home of Max Marcuse, and Samuel Poorman, and Tom Lawton; I admit that he lives in a city which is now and has been for years past the abiding place of Anderson and Troy Dye. [Laughter.] I place him, sir, far above and beyond my humble self; but my life, however short, has been not altogether uncheckered by those scenes through which we must all at some time pass. I have learned some things, sir, the memory of which only death can efface. I have learned, sir, not to gauge or criticise a proposition by ridiculing its author. I have learned, sir, that the truth is the truth, though it be uttered by a beggar. I have learned, sir, that falsehood is falsehood, though it fall from the lips of a king. Now, sir, this sneering at the humble origin of the proposition is no new thing. The gentleman does not deserve a patent for it. More than eighteen hundred years ago it was a mooted question among the pharisees of that day whether or not any good thing could come out of Nazareth; and yet, sir, some good things did come out of Nazareth, and the mild teachings of the gentle Nazarene have continued to influence mankind from that day to this, and will continue until time shall be no more.

Again, sir, I repel the insinuation that I come from a remote and sparsely settled portion of this State. The county that I have the honor in part to represent is situate nearer the metropolis than that in which the gentleman lives. It has five members upon the floor of this Convention. It has a population of more than thirty-five thousand of as sober, industrious, and virtuous people as are found within the boundaries of this State. It pays upon an assessed valuation of property under the present arbitrary, tyrannical, and vicious system of taxation, which the gentleman says that he wants to see perpetuated in this State, of seventeen million dollars.

Now, sir, the criticism which the gentleman passed upon the proposition itself was, that if it were adopted and incorporated in the Constitution of this State, it would have a tendency to make the people of this State a community of liars. Sir, I deny the assertion. But, sir, admitting that it were so; admitting that it would have a tendency to make the people of this State a community of liars; I submit that the adoption of sections two and five, as embodied in the report of this committee, would make every man in this State an Ananias in less than two years. Under this proposition he could pile up fictitious indebtedness against property until there would not be twenty-five cents worth of taxable property in the State.

MR. EDGERTON. That is what they have been doing for twenty years.

MR. MORELAND. I warn gentlemen that this projected system of rebate of credits, if adopted in this Convention and incorporated in the Constitution, will prove a delusion and a snare. The people of the State of Oregon had almost exactly the same system. They tried it for themselves; they weighed it in the balance, they found it wanting, and they have spewed it out of their mouths. Now, sir, I do not consider it necessary to restate all the arguments that have been used in support of this proposition, or to attempt to traverse all those which have been used against it. I do not think it necessary to restate all these arguments. The Convention is weary, the subject has been exhausted, and therefore I shall not continue to argue that part of the subject.

In conclusion, I will say that it was an understanding between many of the members of this Convention from the interior counties of this State, that if they were elected to this Convention they would use their best endeavors to have the species of property taxed which is mentioned in that amendment. That was the understanding between these members now around me and their constituents, either implied or expressed by speeches, by pledges, or by platforms. Now, sir, as the gentleman has seen fit to read from platforms here I propose to read a little from platforms also, and see how we stand on that subject. I read from the platform which was adopted in Butte County—adopted by the level headed constituents of my friends Pulliam, Boucher, Biggs, and Chapman. We will see what they say, and this is only a specimen of the platforms that were adopted in almost all of the interior counties of this State:

"*Resolved*, That we are in favor of that system of taxation which shall be equal and uniform. That notes, mortgages, bonds, and choses in action, should be regarded as property, and bear their just proportion of taxation, etc."

That is from Butte County; from the platform of the Non-partisans. Now, I propose to read from the platform of the Workingmen of San Francisco, and I will read first section seven:

"Money, mortgages, and bonds must be taxed."

I now read from section nine:

"The legislator who violates his pledges given to secure his election should be punished as a felon."

MR. REYNOLDS. Now read section twenty-four. Will the gentleman read section twenty-four?

MR MORELAND. It simply provides for offsets like this amendment over here does.

[Cries of "Read!" "Read!"]

MR. MORELAND (reading). "No person should be taxed for that which he does not own; in other words, debts due by the person assessed should be deducted from the assessable value of his property, and should be assessed against the person to whom they are payable."

Now, sir, I know that that looks like an apple to the eye, but it will prove to be the bitterest of ashes to the taste.

MR. WHITE. Allow me to ask a question?

MR. MORELAND. Not at present, if you please. Now, sir, I want to see in this supreme moment in the history of this State, whether pledges are given only to be broken. I want to see who intend to stand by their pledges, and who intend to abandon them. I want to know, sir, whether platforms are made simply to catch votes. I know that it is very easy to promise; I know that it is sometimes hard to perform. "Faith without works is dead." Let us to-day prove our faith by our

works. Adopt this amendment, and the people of this State will say: "Well done, thou good and faithful servant."

MR. HUESTIS. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have directed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

NEW RULE.

MR. CROSS. Mr. President: On yesterday I gave notice that to-day I would move an additional standing rule for the government of this body. This is made necessary by reason of the state of our business, when gentlemen sometimes call for the previous question before the house is ready to sustain it. When this is done, and the previous question is voted down, the section goes over for one day. That has caused some inconvenience, and some delay in the business. When the previous question is not sustained, the section goes over. For that reason, I offer this additional rule.

THE SECRETARY read the proposed rule:

"When the Convention shall have refused by vote to have the previous question put, the Convention shall proceed in all respects as though no such vote had been taken."

MR. HUESTIS. I move the adoption of the rule.

MR. WILSON, of First District. Mr. President: I think this amendment is a very desirable one. I think it is a very good rule. I would like to ask whether, in its present shape, it will embrace the Committee of the Whole, as well as the Convention?

MR. CROSS. The rules we are acting under provide that the same rules shall govern the Committee of the Whole as govern the Convention, except two or three, of which this is not one.

MR. WILSON. If it applies to the Committee of the Whole, I am in favor of it; if not, I would move that it apply also to the Committee of the Whole.

THE PRESIDENT. The rule will apply to the Committee of the Whole. The question is on the adoption of the rule.

Adopted.

REVENUE AND TAXATION.

MR. WEST. Mr. President: I move that the Convention do now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Revenue and Taxation.

So ordered.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section two and amendments are before the committee.

SPEECH OF MR. WEST.

MR. WEST. Mr. Chairman: I desire very briefly to explain a few of the reasons why I shall, in the first place, support the amendment offered by the gentleman from Sonoma, Mr. Moreland, and if that should not carry I shall then support the amendment offered by the gentleman from Placer, Judge Hale. In doing so, permit me to say that the people of this State, and I might say the people of the United States, have exhibited in their popular capacity an unrest, a discontent, a want of satisfaction, and mutterings are heard all over this country, and, in fact, all over the world, as we see by the resolutions and platforms adopted in public assemblages, which demand a redress of their grievances, and remedies for the evils complained of by the people. Now, I am not one of those that believe that these popular commotions—these tidal waves—have their origin in natural causes. I believe that all effects are produced by some underlying cause, and that it is the duty of the members of this Convention to seriously, and honestly, and steadily inquire what the meaning of this is: where the evil sprang from; and what remedies can we provide in this Convention to redress the grievances complained of, if any. I need not inform members, for every gentleman knows it full well, that the one great cause for the calling of this Convention was the inequalities in taxation in this State. The poor and the rich have not been equally taxed. The workingmen—and when I say workingmen, I mean all those persons who make their living by industry, whether it is the result of their muscles or their brains—have not been equally compensated. You may think it a strange expression. When the workingmen used to work for three dollars a week, then they were amply paid. Now they get six, seven, nine dollars a week for the same amount of labor. So it is not the amount of compensation of which we complain, but the want of equality of compensation furnished to the different employments, the different interests of the State, which is not equal or uniform. The man who drives a dray receives double the compensation he did years ago, yet he has a harder struggle to keep the wolf from the door than he did when he received three dollars a week. Since the termination of our unfortunate civil war, an era of prosperity, we are told by the politicians, has spread all over the country. Now, what are the facts? I admit the general principle, that our country is growing and becoming richer; but, sir, dividing this increase, and you find that the poor are constantly becoming poorer and the rich are becoming richer; that the money and wealth are concentrated in the hands of the few, and that power follows the accumulation of wealth; that this interest domineers over the laboring and producing interest of the country. And, while the laboring man is receiving more compensation in dollars and cents than he did years ago, he is growing poorer every day, while the wealth, and power, and political influence is concentrated in the hands of those who control these monopolies. The few men who have been fortunate enough, by the turn in fortune's wheel, or by their own exertions, to amass wealth, are constantly growing richer, and the spectacle of a man amassing millions of dollars in a year or two is not so strange as it used to be years ago when there were very few millionaires, and the man who was worth half a million was accounted a very rich man; and now, unless he can count his money by millions, he is not considered rich.

It is this wealth in the hands of the few that has caused the first ground-swell. It is this conviction in the minds of the people, that the laboring men are in danger of extermination, that wealth is every day growing more tyrannical in its power, until all other interests are in danger. Can we stop it? Can we remedy it? Is there any power in any political organization which can check it? If there is, then we, as just and reasonable men, should try and find a remedy. We should devise some system, if we can, that will stop this inequality, that will protect the laborer and the result of his industry in this country.

But we are told that this class who have amassed all this wealth, these great monopolists, are a class over which we can have no control; that we cannot tax them. The gentleman from Sacramento says we cannot; that the moment you impose a tax upon them they will transfer it to the poor. While I admit that may be true in practice, it is unjust in principle. It is unjust in principle, and we are told there is no remedy. Is there no remedy? Shall we sit supinely down and kiss the hands of the tyrants, and say we have no remedy against their oppressions? While we are building up the foundation for an organic law, the foundation of all the laws of the State, can we not devise and interpose some remedy? If we cannot, then let us say so by a resolution of this Convention, and adjourn and go home, as was proposed yesterday. Let us admit to the people at once that we are incompetent to perform the duty for which we were selected. Let us invite Governor Stanford to frame an organic law from his own supreme and infallible brain, and let us declare that the people are serfs, and that the money lenders and monopolists are the only rightful rulers of this great commonwealth. Let us do that, and act upon a common sense principle, and carry out the principles of gentlemen on this floor who declare that we cannot control this element. They would make us believe that they are above and beyond the reach of the law. Sir, I do not propose to be driven out of this country. I propose to try if we cannot find a remedy. I do not admit, nor will I admit, that these men are above the law.

Now, the idea—I take a small amount of money—that when you loan forty thousand dollars on interest, and you exact from the borrower a mortgage security for money loaned; you get your mortgage recorded: you have your debtor effectually under your control; you have a mortgage upon his farm; a mortgage upon his industries, and his wife and children, because they must deny themselves of the common comforts of life, that you may receive your one and a half per cent., which accumulates night and day. The simoon may desolate the country, and destroy the industry of the country; fire and flood may destroy property and the industries of the country, but your mortgage never dies; it lives and draws interest when you are asleep and when you are awake: you get your interest whether your debtor gets anything or not. But a very few years will roll around, as has been well said here, until you take the property of your debtor, and there is no reprieve. If you see your debtor has got cramped a little, his credit failing, and he cannot meet his engagement, when he comes to you for further time you demand two per cent. interest on the money. Shylock-like, I want my money, I can loan my money, you say, at two per cent. per month, and unless you will pay me that rate of interest, you cannot have it any longer. It is not a matter of objection, not a matter of contract, but a matter of dire necessity. He has the unfortunate man down, with his foot on his neck, and he extorts the two per cent. a month. That was a case which occurred to my knowledge He had borrowed the money of one of the principal banks, and when the time was up they demanded it, or two per cent. A neighbor was fortunate enough to have money, and let the farmer have it, and he came into the bank about an hour afterwards and says: "Here's your money." "Oh, you could have had it just as well as not: we didn't intend to put you to any trouble. It can just run along." But when they thought they had him at a disadvantage they wanted their money.

Now, sir, we have started out by declaring that all property shall be taxed. For the purposes of taxation, we propose to say that all values shall be considered property; that wealth shall be considered property. Now, in the name of all that is true, in the name of all that is sensible and logical, is not forty thousand dollars, secured by three dollars for one dollar, property? Is there any better property in the whole country? Is it not property in the sense that it brings a sure and certain income, and wealth, and power? And ought not such property to be taxed? You must not tax it, says the plausible and ingenious gentleman from San Francisco, because it is not property. The Supreme Court has so decided, he says. Now, sir, I have some veneration for Supreme Courts, but I believe Judges are no better now than they have been—perhaps a little wiser and more shrewd in the way of evading things. I have lived long enough to see the decisions of the Supreme Court of the United States reversed upon general principles, and I hope I will live long enough to see the decisions of the Supreme Court of California reversed, and I believe they will be reversed, and that mortgages, whether as collateral security, or as real estate security, shall be taxed. Now, these attorneys need not be told by a farmer that a debt may be secured by a mortgage without a note. I think it was a very unnecessary criticism upon the Moreland amendment, in regard to what is termed unnecessary language. The gentleman very well knows that if I borrow ten thousand dollars of the Chairman, and give him a mortgage

upon my farm, that there is no evidence of that debt but the mortgage.

Now, sir, we propose to assert in the organic law a declaration that these evidences of debt, whether secured by mortgage or otherwise, shall be property in the sense of the law, and that they shall be taxed; and I would like to know upon what principle the Supreme Court will decide that you cannot levy and collect a tax upon that piece of property. But, say the attorneys, that question has been decided. It is decided in the old Constitution, which the people have decided to ignore. They have tried again and again to have this class of property taxed. I assert here, that had it not been for that decision of the Supreme Court, this Convention would never have been called. The people have been clamoring for years against it, in fact ever since that decision was rendered. Why, sir, there are a certain set of gentlemen in this State who have been in the service of these corporations so long, who have been sucking the public pap so long, that they have become oblivious to the wailings of the people in their demands for reform.

Now, I wish to refer to a party platform, adopted by the best men in my county of all parties—farmers, merchants, mechanics, business men, and I believe there were some editors there too. There were as intelligent men as any in the country. It says that such constitutional plan of taxation should be such as will throw the burdens of government upon all alike, in proportion to their wealth, whether that wealth be railroads, stocks, mortgages, moneys, or lands, etc. Now, sir, the labor of this country has been oppressed. It demands relief. But it demands no unjust discrimination in its favor. The laborers of the State say they are willing to bear their just proportion of taxes, but they are not willing that there shall be any privileged class established in this country, to reap the benefit of their labors and the sweat of their muscles. Tax all property, tax all values, tax stocks in a railroad wherever you find it, no odds who owns it, no difference in whose possession it is, let it pay its just proportion of the expenses of government.

We are told, sir, that no political writer of repute has ever advocated the taxation of anything but tangible property, and they have read from a few of their select authors, men who are of the same mind with themselves, men who view things from the standpoint of wealth, and one would think from hearing them that these were the only authors who have ever spoken on the subject. My honored colleague read you from Amasa Walker, in his work entitled "The Science of Wealth." Permit me to refer briefly to the report of the committee appointed to investigate the subject in New Jersey, in eighteen hundred and sixty-two–three. "Taxes on property are defined," they say, "as the tribute that all property owes the State for the security it receives from the government. If the owner of land be indebted to his debtor to the value of the land, and this indebtedness is represented by a note of hand, the land is one property and the note another."

MR. EDGERTON. In eighteen hundred and sixty-nine the State exempted all that kind of property.

MR. WEST. I will read this paragraph from the report in full:

"Taxes on property are defined to be the tribute which that property owes to the State for the protection, security, and consequent value it receives from the government of the State. The protection so received is commensurate with the property held, and not with the sum, or balance, the holder may be found to be worth. If the owner of the land be indebted to his creditor for the value of the land, and this indebtedness be represented by note or bond, the land is one property, and the note or bond another. Each is protected by the law, and each owes its tribute to the law. They are in no sense the same; different in their natures, their titles, and the uses to which they may be put. Each may be sold and transferred by the holder without regard to the other; nor does the note necessarily represent or depend for its value on the land. It may be paid by other means and other property; by the industry, the labor, or the future services of the maker. For all other purposes the note and the land are regarded by the law, and are treated, in fact, as distinct and valuable things. Why should they not be treated as such in the levying of taxes? The credit is given, and the note, or bond, or mortgage is made, because the convenience and advantage, both of buyer and seller, are thereby subserved. The buyer prefers the one property, the seller the other. Taxing each property once is not double taxation."

Now, this cry of double taxation is a great bugbear. It is something like the skeleton we used to set up to scare off the birds. This cry of double taxation is merely a cry gotten up for the purpose of scaring off the simple minded. I am not arguing the question, whether it is tangible property or not; I am arguing this broad proposition, that as far as the law is concerned, it has its value. It is valuable; it is a source of income; it is in all respects property, and ought to be taxed. This kind of property exercises Government in its protection more and to a greater extent than any other. This is the kind of property that goes into the Courts. It always has an amply guarded provision under which the maker of the note always pays the expenses of prosecution and attorneys' fees, so that the holder is not out a dollar. If there is any immunity to be granted to any species of property, it ought certainly not to be granted to this species of property, which enjoys the full protection of the law. And we are told that if we tax evidences of debt that they will, through some contract or other, implied or understood, saddle it on to the debtor. Now, we propose, if this section is not strong enough, to adjust and amend it, until it is so strong and so well guarded that it cannot be evaded, cannot be disregarded. We propose by this following section to say that if any such contract be made it shall be void, and the holder shall not be entitled to collect any interest. I agree with the committee in that section, and when we come to vote upon it, I shall vote for it; and if it needs any amendment to make it stronger, we can get at it and make it so it will hold and cannot be evaded.

Again, it has been charged that the rate of interest will be increased. Well, now, I understand that money is a mercantile article. This money will go where it will produce the largest revenue to the owner. It goes from place to place, seeking the best investment. It will invest itself where it can earn the most interest for the owner, and it can only do that even if you do tax it. I propose to add a usury law, beyond which they cannot go, for the purpose of preventing these enterprising money lenders from oppressing people and shirking taxation. We propose to tax them, and we propose that they shall not escape that tax.

MR. EDGERTON. Mr. Chairman: Permit me a moment. The gentleman from Los Angeles has quoted extracts from the report of the New Jersey Commission of eighteen hundred and sixty-two. Seven years later, in eighteen hundred and sixty-nine, the New Jersey Legislature passed a law exempting, in certain counties of that State, those lying contiguous to New York, all mortgages. They had tried the other plan and found it a failure. The gentleman can read the law for himself.

MR. WEST. I admit, sir, that there never has been an effectual reform accomplished in any State, and especially in the State of New Jersey, which has not united the monopolies in an attempt to crush it out, and New Jersey was the victim of a combination of capitalists who have been said to own the State. The Amboy Railroad Company, and other large companies, have control of the State. There is no other State in the Union so cursed by monopoly and capital as the State of New Jersey, and they are powerful enough to crush out any reform, as they have done in the case cited by the gentleman. That is my answer.

SPEECH OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I have listened patiently to the various arguments made, with considerable interest and a great deal of instruction to myself. I have been both edified and instructed. I may say in the opening that while I favor the amendment of my colleague, Mr. Moreland, I do not do it solely out of courtesy towards him, but because I believe that it is the most correct amendment yet offered. I believe it has objections. As he and other gentlemen have said, we must not expect perfection. We do not expect perfection. This Convention is not more wise than other Conventions which have preceded it. But I believe, sir, that the people that sent us here expect some reform in the way of taxation. I know, as far as my constituency are concerned, had it not been for the one fact, of the exemption of mortgages, and the consequent discontent arising from it, this Convention would not have been here. As far as my immediate constituency are concerned, I am satisfied we would not. They would have voted against the calling of the Convention. I believe, while I am here for the purpose of making reforms, I do not believe this is going to affect particularly the man who has got to borrow money. I doubt very much whether it will be to their interest at all, but my constituency want it, and as far as I am concerned I want them to have it. I believe it is right. I believe that every individual, I care not who it is, who receives the protection of the Government, should contribute towards the support of the Government. I believe the rich and the poor ought to be taxed alike, though personally I am interested in having the decision of the Supreme Court remain the law of the land. Since that decision I have been the gainer several hundreds of dollars, which I, by having mortgages, have not been taxed on. But I have never approved of that decision. I believe in being taxed upon what property I have, I believe it is right; but at the same time, while I expect to be taxed upon mortgages, I am frank to say that the man who borrows my money will pay the taxes. You may make it as strong as you please, you may pass a usury law, but the man who borrows my money, or any other man's money who loans money, will have to pay the tax. It is self-evident. The man who loans money produces nothing. If he makes nothing, how can he, as far as he is concerned, pay any taxes. The interest he receives is the source from which he pays the tax. There is nothing made except what is produced from the earth, or manufactured by hands. The man who loans money makes nothing, produces nothing, and adds nothing to the wealth of the country, and I care not what provision you put in this Constitution, I say the man who uses the money, whether laborer, farmer, or manufacturer, will have to pay the tax. There is no question about it. But at the same time, while I am willing to admit that to be the fact, there is such a thing as apparently making things equal and just to the people, to the common mind. And I say it is right. I say we all understand that these men who loan money have an equal interest in the country, and should be made to pay their share of the taxes for the support of the government. And I know, too, that no other means will satisfy the public mind of this State, and hence I am unequivocally in favor of taxing all property, in favor of taxing mortgages, in favor of taxing evidences of debt, or credits, choses in action, everything which a man has. I believe this will stop the discontent. It is to the interest of capitalists that every man should be treated alike.

Now, one word about double taxation. It is a bugbear. There is nothing in it; nothing in the world. As far as mortgages are concerned, I do not intend to spend any more time trying to convince this body that they are property, because they are unquestionably property. It represents value. A greenback is not property, in one sense. A gold note is not property in the sense that the gentlemen speak of, but they are based on property, and are valuable. It is the same with a mortgage—it represents value, and is property of the very best kind. It is safer than a greenback, backed up by the Government. If a greenback falls in the fire, you lose the face value of it; it is gone, and you cannot recover. If you have a mortgage, and the mortgage is lost or destroyed, you do not lose it. You can go to the record, and you will find it there. If a man has a note secured by mortgage, he can walk into the bank any time, and get twenty-dollar gold pieces for it. Then how can you say it is not property? Take a promissory note, signed by my friend from San Francisco, Mr. Wilson, and, if I mistake not, you can go into any bank in San Francisco and get the money on it, in gold coin. Is not that property? It represents property.

MR. JONES. Allow me to ask you a question.

MR. OVERTON. No, sir.

MR. WILSON, of First District. Allow me a question.

MR. OVERTON. No, sir; not now. I expect to make but one speech on this subject, and I do not want my time cut short by questions. When I get through, gentlemen can speak.

MR. WILSON. I wanted to know merely if you would indorse my note?

MR. OVERTON. No, sir, I would not. [Laughter.] I would buy it, though. Now, the question of double taxation, sir, is a bugbear. It is not double taxation. When a mortgage is assessed, it is assessed for its face value, whatever it calls for. Now, sir, there is one assessment. Now, we come to assess the land, and land in this State is not assessed at its full value. Take the assessment of land in this State to-day, and add it to the mortgage, and I say it would not more than bring it up to the true value of the land. It is a notorious fact, not only in this State, but in most of the States, for the last quarter of a century, that land has not been assessed at more than from forty to sixty per cent. of its actual cash value; and every man on this floor who has had any experience in real estate, knows that to be a fact. Admitting that proposition to be correct—and I hold that it is—there is but one assessment on the full value of the land, even assessing the mortgage at what the face calls for and the land, and taxing both to the owner of the land, and he would pay but one tax on the full value of his land. It is not double taxation at all.

Now, in relation to rebate. I opposed that section in the report which provides for rebate. I go a little further than mere rebate on visible property, and object to even a rebate on mortgages.

MR. EDGERTON. The gentleman, I believe, voted for section two.

MR. OVERTON. I voted against rebate. If I voted that way it was a mistake. I claimed that right in the committee to oppose that principle on the floor, and I think the gentleman will bear me out. Here are two gentlemen who say so. If the report shows it, the report is in error.

MR. EDGERTON. In the committee the ayes and noes were called by the Clerk, and the gentleman is recorded as voting in favor of section two.

MR. OVERTON. I care not what the Clerk has recorded, I stated these facts in the committee, that I was opposed to that principle. I remember the speech I made, and other gentlemen also remember it. If the report shows a different state of facts, the report is in error. Now, sir, I say there ought to be no rebate. There ought to be no rebate on mortgages. They ought not to be taken from the value of the land, for the reasons I have already shown. I say the land in this State is not assessed at its full value, and you may take the mortgages of this State and add them to the assessed value of the real estate, and it will not more than come up to the true cash value of the land. Then why should there be any rebate? If this system of rebate is allowed I do not believe there will be anything left to assess in California. There are a great many more debts owing by people in this State, among neighbors and business men, than most people think. Business is transacted to a very great extent upon the credit system, and I do not think it is safe to rebate debts from visible property. I think it ought to be assessed. And prior to the decision of the Supreme Court that was the law in this State. It permitted at one time the deduction of debts from credits. But there was no deduction made from visible property. If you are going to permit debts to be deducted from visible property, you may be sure that you will have very little left to assess, because in many instances the debts are not assessable, because they are out of the State.

Now, some gentlemen say they are going to put in some provision which will prohibit the borrower from paying this tax. Mr. West says he don't intend that the borrower shall pay the tax. I am willing to chance that, as far as I am concerned. They may make the strongest kind of a usury law, and yet they will not accomplish it. Men who want to borrow money will be the first ones to regret a usury law. There is nothing more desirable than cheap capital. And here let me say, as there has been some discussion on that question, my position has been such as to ascertain the effect of the decision of the Supreme Court, and I believe that decision had a very decided effect in reducing the rate of interest. Either that or some other cause reduced the rate of interest one quarter of one per cent. in my community. I believe that any system that will add to the expenses of capital will add just that much burden to the borrower. The farmers, who at certain seasons of the year have to borrow money, will be the first to feel the effect of this tax.

MR. ESTEE. Will my friend allow me to ask him a question?

MR. OVERTON. No, sir. I have but a minute to spare. The amendment of Mr. Moreland is founded on correct principles. It taxes a man for all he is worth. That is the spirit. It taxes promissory notes, evidences of indebtedness, and everything else that is valuable.

SPEECH OF MR. WINANS.

MR. WINANS. Mr. Chairman: There are three things aimed at by this Moreland amendment: corporeal or natural property, solvent debts, and mortgages. In regard to corporeal or visible property, in the estimation of this body, there exists no difference of opinion as to its being taxable. In its very nature and character it is property, and should be taxed. But, sir, when you come to the question of solvent debts, and of mortgages, that is entirely different. Look at a solvent debt, and what is it? It is something that represents an indebtedness from debtor to creditor, in consequence of the creditor's having parted with personal property to the debtor. Personal property has passed from the creditor to the debtor, and the credit passes to the creditor. Moreover, it is valuable only to the extent of the estates and property of the debtor—his tangible, material assets. Now, those being the subjects of taxation, must be taxed in the hands of the debtor. And when the property has been once taxed in his hands, if you tax the debt besides, in the hands of the creditor, you cannot avoid the conclusion, by any sophistry or ingenuity of argument, that this constitutes double taxation, which is incompatible with the fundamental principles of justice.

Now, as the gentleman from Los Angeles has taken occasion to refer to an obsolete New Jersey law, I wish to refer to another and more recent authority, which stands as high as any that can be produced. I refer to Professor Sturdevant, one of the ablest political economists in the United States. In his work on Economics, or the Science of Wealth, he says, page 308, Sec. 223:

"The question is much agitated at present on what forms of property taxes may be properly levied. One of the most important points in this discussion relates to the adjustment of tax levies in respect to debtors and creditors. A definition of property has been proposed, according to which, debts due any one are not property, and are, therefore, not taxable. All property, it is claimed, has materiality and a local situation. Debts due to any one have neither, and are therefore not property. The reader need not be told that we cannot accept this definition. According to our definition of wealth, skill and power to labor are property, yet they have no materiality. An invention is a mere conception of the mind, yet it is property. But in the case under consideration, the definition of property proposed, even if admitted, would not avail. A man may be to-day the owner of one hundred thousand dollars in gold, to-morrow he may lend it, and receive for it real estate security; he has not, by that transaction, divested himself of all his property, or of any of it. Indeed it matters not whether he has taken security on real estate or relied on the bare credit of the borrower, the moment the loan is made he owns the property of the borrower to the amount of one hundred thousand dollars. The evidences of indebtedness which he holds is the proof of his right to such an interest in the property of the borrower; it is his title deed. The borrower may use the gold as he pleases, but the creditor is the owner of that amount of property which is in the present possession of the borrower. The question is certainly a fair one, how the transaction, as thus described, should affect the two parties, in respect to their liabilities to taxation? By the laws of some of the States, the Tax Assessor disregards this transaction entirely; he estimates the property of the debtor just as if the debt did not exist, and the property of the creditor as though the gold was still in his hands. It is only necessary thus to state the case to convince any candid mind of the unreasonableness of the law. That item of one hundred thousand dollars is doubled in the assessment, and twice taxed. A State that makes out its tax lists on that principle estimates the property of the people of the State at an amount immensely greater than it is in truth. Such an assessment is a delusion, and a tax levied on it is a public oppression. It would be easy to show that, if taxes are assessed on this principle, the same property is not only liable, as in the case above given, to be reckoned twice over, but to be repeated any number of times. It is wonderful that any legislator should fail to notice the bald injustice of such a system of taxation. Nothing can be plainer than that the same property should be taxed but once."

But, sir, the process, while it begins, does not end with double taxation. A man has a piece of land worth one thousand dollars. He sells it and takes the purchaser's note in payment. The purchaser, in turn, sells to another, for the same price, and takes his note in payment. It is sold in the same way again, and again, until the transaction is multiplied twenty times. There are twenty notes of one thousand dollars each, all taxed in the aggregate at twenty thousand dollars, against only a thousand dollars worth of property. It is remarkable that any member should contend, upon this floor, that a system under which such a state of things is rendered possible, is right. I say it is wrong in its effect, wrong in its principle. It does not contain a single element of morality or justice. Gentlemen have admitted practically that it is oppressive to place a heavier burden upon the poor, but that it is necessary to inflict this wrong in order to avoid a greater. That argument is unsound in principle, and cannot stand. The gentleman from Los Angeles has referred to the case reported from New Jersey, but he is entirely overruled in reference to that report, by the later consideration of this question, and by the practical adoption of the offset theory. That system has been found to work safely, as it always will.

The gentleman who last addressed this body, contended that it was perfectly right that there should be double taxation. At the same time, he admitted that the borrower would be the one who would invariably have to pay the tax. He also admitted that interest fell one quarter of one per cent. in consequence of the decision of the Supreme Court exempting mortgages from taxation. That was so much of a burden taken from the shoulders of the borrowers. They had been paying the tax upon these mortgages, which was a tax upon the money in their hands, and a tax upon the land on which the mortgages were based. If it is wrong to tax solvent debts, it is wrong, in a much greater degree, to tax mortgages. It is clearly double taxation, and the tax invariably falls upon the borrower. Now, sir, in San Francisco there were twenty-five thousand men who signed a memorial remonstrating against the taxation of mortgages, and all the succeeding candidates for office were pledged to the effect that they would oppose taxation of that kind. That was just before the decision of the Supreme Court in the year eighteen hundred and seventy-two. It has been remarked upon this floor, in my absence, that these people were obscure persons, and that there was no evidence that they were citizens, or taxable at all. Sir, that list embraces the names of men who are familiar to every resident of that city; men of integrity and character, and high standing in the community; men of various callings, merchants, traders, laborers, mechanics, wealthy men, and men of every trade and calling. And, sir, I know, and proclaim, that thirty thousand men would rise up to-morrow in that city, in indignant opposition against any attempt to force upon them that odious system of taxation. There is an entire mistake in regard to the sentiment existing there. Sir, upon this question San Francisco may be called, as she unquestionably is, a unit. There is but one feeling, one

opinion there, upon this subject. There may be exceptional cases, but they are very few.

MR. MORELAND. More than thirteen thousand citizens of San Francisco have already voted to do that very thing.

MR. WINANS. They do not demand the taxation of mortgages, except in a conditional way, in order to reach a result which we predict can never be attained. They would never consent to double taxation, and that is what this plan proposed amounts to. You may qualify and qualify, to avoid such a result, but your efforts will be unsuccessful. There is no such thing as evading the compulsion of the borrower in such cases to make payment of the tax. Laws cannot prevent it; human ingenuity is utterly powerless to ward off the consequences which are sure to follow. If it is not an increased interest which the borrower is compelled to pay it will be something worse. Pass your usury laws, and you will find them entirely unavailing. I refer you to the State of New York, where they had usury laws of the greatest rigor, and they were every day evaded and defied. No scheme has ever yet been devised, nor can the art of man contrive a law that will prevent the evil I have predicted. The law will be spurned or counteracted—if not directly, indirectly. Capital ever flows in channels of its own creation. You might as well attempt to dam the waters of the Sacramento in the seasons of its flood, and turn its waters from their natural career, as to stop the arbitrary flowing of these streams of capital.

Now, sir, I protest that under such circumstances we would be doing a grievous wrong to make mortgages taxable. We ought not to meet here to legislate for any special class. We assemble here to devise a scheme intended for the whole people and the general good. I know no man as a Granger; I know no man as a miner; I know no class of men as a distinctive class; I know of no such persons here; I only know we are a body met together at the call of the entire community for the welfare and protection of all the citizens of the State at large; and we are doing wrong to attempt to create a war or controversy between factions, interests, or classes. There exists no such war or controversy without, and here it only exists in the minds of certain factious men. The taxation of mortgages is so unjust and oppressive that I wonder at the idea being seriously entertained by those who wish to avoid the strife of factions, and to seek alone the common good.

There has been a disposition shown in this Convention to create antagonism between the interior and the metropolis. That spirit certainly should not prevail in a body of this kind, met together, as we profess to be, to legislate for the welfare of the commonwealth at large. San Francisco has the same interest in this matter as the interior. The borrower in San Francisco will find this extra tax saddled on his shoulders, and the borrower in the interior will have exactly the same experience. It is said here that the poor will have to bear their share of the burdens in order that the rich may be reached. Sir, the rich cannot be reached in this way, and the poor will have had their burdens thus enforced on them to bear in vain. Now, sir, as the interests of San Francisco and the interests of the remainder of the State are thoroughly identical, in this behalf, there ought, therefore, to be harmony of feeling. I regret the disposition to look upon these great questions from a sectional point of view. Let us fraternize and act together. Let us study the advantage of the great masses of the people, and not be devoted exclusively to the petty interests of this locality or that. Let us stand up as the champions of all, and do our duty fearlessly and firmly.

Now, sir, the right way to reach the rich men and prevent them from escaping taxation by transferring their money or their property from hand to hand while the Assessor is going on his round, is to make the assessment on all the property within the State at once and on a given day. Then, if you do not catch the money in the hands of the lender, you reach it in the hands of the borrower. I have heard it urged here that the laws were the only means of protecting morality; and I have heard it said, also, that in the absence of morality there was little power in the law. But what can laws accomplish for the enforcement of a constrained morality in the absence of its existence in the sentiments and conduct of the people? All we can do is to devise a system just in itself, and then allow the Legislature to enforce it on the people, if the people will submit. If they will not, sir, then we have reached a state of anarchy. But let us discharge our duty here in a faithful and conscientious way. If the populace approve our work, they will adopt the Constitution which we offer, and then it will be the duty of the Legislature to enforce its provisions in harmony with its requirements and design.

I think, sir, the last gentleman who addressed the Convention made a mistake in his illustration when he said that gold notes represent value. Gold notes do represent value in a certain restricted sense, but the value which they represent is not taxable. Now, all that is wanted to reach the evils complained of here, is to change our method of assessing, and you can reach every man in the State who has property to tax, without perpetrating a wrong. We must not impose double taxation upon the people. We have already adopted the principle of equality and uniformity, and if we adopt this amendment the two sections will be entirely inconsistent, for no man can show that this system does not, and few have the hardihood to deny that it does, impose double taxation. Most of those here assembled have the fairness and frankness to admit that it does amount to double taxation. But they do not go far enough and admit that double taxation is a curse to a people professing to be free. It is in open conflict with the section which provides for equality and uniformity. If one man is taxed twice while another is taxed once, do you call that equal and uniform taxation? It would be better to leave things as they are rather than resort to this unjust expedient. It would be better, far better, to rather bear the ills we have than fly to others that we know not of.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I will not attempt to discuss this question at length. The time for argument and discussion has gone by. The argument is exhausted, and if there can be found any pretenses, or masks, or disguises, it is time, sir, for some of them to be torn off. If I can find any such, I will address myself for two or three minutes to the task of tearing off some of them.

Mr. Chairman, great is humbug; and the man who expects to return to the Legislature is his prophet; yea, verily. [Laughter.] And, as I am not one of those, nor one who expects to be elected to the Board of Supervisors, or some other high office, I can afford to tear off some of these masks. How does the case stand here? These things are either true or admitted: First, that the land and chattels comprise all the property in the State. Second, that when you go beyond that for the purpose of taxation, you are swelling and watering the assessment roll with fictitious values. Third, it is admitted that for every dollar of those fictitious values that goes upon the assessment roll, it is double and treble taxation to the man who is in debt, to the advantage of the man who is not. That was admitted by the mover of the pending amendment; it is admitted by the gentleman from Los Angeles; it is admitted throughout this debate, and yet it is pretended—pretended, I say—that the people demand it. I declare that, sir, to be a false pretense and a fraud. I declare it to be untrue, and the gentlemen who have the hardihood to stand on this floor and make such statements, will sooner or later learn the fact to their sorrow. I declare this Moreland amendment to be a fraudulent pretense. I declare it to be abominable. I do not need to declare it. It is a vile pretense, keeping the promise to the ear while it intends to break it to the hope, and the gentleman who moves it knows it. Every gentleman who sustains it knows it. I promised not to debate the question, and I will not. But I will say that the trouble throughout this State is not that mortgages are not taxed, that debts are not taxed, that the assessment roll is not watered. That is not the trouble. What is it? It is, sir, that property goes untaxed. That's what's the matter! Your broad acres of rich land goes untaxed. You have spread a net over it to keep the people off. The land that you value at six bits an acre, whereas, the land alongside of it, no better than yours, which supports numerous families, is taxed at forty dollars an acre. That's what's the matter with you Grangers. That's what ails the assessment roll. That's what ails the people. Go to the city and what is the trouble? The little homestead occupied by the working man and his family, with a mortgage on it, is taxed for the last dollar it will sell for. By the side of it, the brick mansion, worth millions, is taxed by a bribed Assessor for one quarter or one tenth of its actual value. And that's what's the matter with you workingmen. That's what ails the assessment roll in San Francisco. And the gentlemen talk to me about inflating the assessment roll to reduce taxation. You have admitted here in this debate—you have admitted in your amendment—that for every dollar you have inflated the assessment roll, you have doubled the tax upon the man who has a mortgage on his homestead, while the man by the side of him, Michael Reese, or Flood, or Sharon, and others who have no mortgage on their property, have their rate of taxes reduced.

And now one word in regard to platforms. Don't deceive yourselves about your platforms. Don't deceive yourselves about what your constituents want. That is my advice, and I do not charge you a cent for it. You say the people want mortgages taxed. Very well, but you know that they do not want to be doubly taxed. Oh! you think they will never get it into their heads that you are doing it. I charge you—pause; they will find it out. Sometimes the people in their platforms express in a very awkward manner their views. They say they desire mortgages to be taxed. Well, they do, but in a qualified sense. And it is in the sense that it shall not operate to increase the burden which they already have to bear. And if you expect, after adopting the amendment now pending, to go back to the people and cajole them into the belief that you have kept your promise in good faith, you will find to your sorrow that you are mistaken. They will find out the truth of the matter sooner or later. And when they find that you have misinterpreted their language and instructions, there will be no excuse for you. It will be too late then for you to retrace your steps. You have voted to tax them doubly, and they will find it out. And that is what I ask you to do, is to interpret their instructions correctly; to interpret their platforms correctly, and their resolutions and their wishes. But I do not want you to inflate the assessment roll, because it is easier to do that than it is to do the right thing. But, sir, do the right thing, and interpret truly the mind of the people, and then you can go home to your constituents, and they will return you to the Legislature, or elect you to the Board of Supervisors.

This amendment contains no provision for deduction, and that is another reason why it is infamous. But gentlemen say they intend to amend it, so that it will provide for deductions, that is, some of them do, and others do not. But when you do that the remedy will be almost as bad as the disease. Now, sir, one word more. This debate has taken a wide range, and I will not consume any more time. But I do appeal to the consistency of this Convention, when they say they are in favor of executing the will of the people, not to do that which the people will rebel against. You are mistaken if you undertake to interpret their will in that way. They may have made a mistake; they may have expressed themselves awkwardly, but they will not excuse you in shirking your duty. They will not excuse you from acting the demagogue. I ask the Workingmen, what are you going to do with your platform? Are you going to stand by it? "No person shall be taxed for that which he does not own." And you know that the Moreland amendment does tax a man for what he does not own. And, sir, if you think the man in San Francisco cannot understand it when he is taxed for the whole value of his little homestead, and for the mortgage too, you are a deluded victim, and I am sorry for you.

And now I appeal to you to retrace your steps and get back to solid ground. Put that on the assessment roll which is property, and not any fictitious value. If you do, you will find it a delusion and a snare.

And I call upon you Grangers, when you go home from this Convention, and you come to fix a value upon your lands——

MR. HITCHCOCK. We do not fix the value upon our land, it is the Assessor does that.

MR. REYNOLDS. Put in the valuation of your broad acres that you have spread your titles over, that you never use, that you are holding away from those who would cultivate it, value it at the same rate that the little homestead is valued at, which supports a family. And you gentlemen from San Francisco, from the same city I live in, when we go home to San Francisco, let us endeavor to elect Assessors who will value the brick mansion for what it is worth, as well as the little homestead. Let us assess railroad companies, and banks, and their contents at their actual value. Do that and you will put an end to all this complaint. But do not water the assessment roll, for there will be no relief in that. I have said enough.

SPEECH OF MR. EAGON.

MR. EAGON. Mr. Chairman: It seems to me that the opponents of this amendment are arguing from a false basis. They argue from two standpoints—first, that evidences of indebtedness, notes, mortgages, etc., are not property. Now, if anything in the world is property, a note secured by a mortgage upon real estate is property. That proposition has already been argued to such an extent that I will not argue it any more. The Supreme Court, in the ninth California, says that "property is what we have the exclusive right to possess, enjoy, and dispose of. It is the right or interest which a man has in land or chattels, to the exclusion of others." That definition is comprehensive enough to embrace all species of property, real or personal. Can a man not own, and enjoy, and dispose of a note? Would it not come within the definition given by the Supreme Court as property? If it is property it should be taxed the same as any other property. I cannot see any reason why it should not be.

But gentlemen go off on the other proposition, that if these things are property it is not of such a class as ought to be taxed. And they argue from that standpoint that these notes and mortgages are things which men often have without value received; that notes are merely given in child's play. But in ninety-nine cases out of one hundred promissory notes given have been given for value received, and in most instances for twenty-dollar pieces. Why do they not represent value? I will not say, like Judge Terry, and other distinguished gentlemen, that it may not make double taxation in some cases. I believe it does. I am something like Mr. Tinnin on that matter. I take this amendment as the best we can get. I think it comes nearer to equal and exact justice than any other proposition presented to this Convention. Now, sir, these notes are valuable, and ought to be taxed. If a note is given that is good, it is creating value, and that note ought to be taxed the same as the value of real estate. I can see no difference in the two propositions. If one is taxed the other should be. Then gentlemen argue from another standpoint which I wish to notice, and that is that it will increase the rate of interest. Sir, we are here endeavoring to pass upon a great principle to assert in the Constitution of the State, and that is in relation to the question of taxation, regardless of whether it allows me to get cheap money or not. That is, to make all men pay their proportion of the burdens of government. It is for the purpose of making taxation rest equally upon all property.

It is admitted on all hands that millions of property escapes taxation. Is it right that this money should escape taxation? Under the present Constitution it is admitted that there are three hundred millions of property escapes taxation. We are here for the purpose of devising some means by which we can follow these men up and make them pay taxes. We are not here for the purpose of providing that men shall have cheap money, but for the purpose of devising a system of taxation that shall be just and equal. We have heard a great deal here in the way of sympathy for poor men. But heretofore we have not heard that the money lenders had very much sympathy for the poor man. It is the money lender who seems to be complaining about this amendment. I see poor men here who are in favor of the amendment. I have not heard any man who is borrowing money complaining.

Now, a word in regard to platforms. I am one of those who believe in carrying out promises made to the people. I believe that platforms sometimes express the will of the people. I do not believe in repudiating platforms, under the guise that the people have changed their ideas, when it is we ourselves who have changed. Platforms should bind us. I say the gentleman from San Francisco, Mr. Reynolds, has changed in this matter from the position he took last Summer. When he says that the people have changed since then he is mistaken. He has changed himself, and he has no right to say we must change our positions, because he has changed, or to say that the people have changed. It was the cry all through the State that mortgages must be taxed, and I think they are right. I thought so then. I think so now. The people of San Francisco, a short time ago, took a vote on this proposition, and there were over thirteen thousand people in that city who voted for the gentleman and his colleagues upon this very proposition, upon this very platform. And still the gentleman says we must go back upon the platform.

MR. REYNOLDS. I beg pardon, I have never said any such thing. I said, and I say now, that we must act upon it, but we must act upon the whole of it. I think the Moreland amendment only includes half of it.

MR. EAGON. Your platform says money, mortgages, bonds, etc., must be taxed. That a man must not be taxed for that which he does not own. Now, if you tax mortgages, and deduct it from the land, that is another thing. That does not affect the main question of the taxation of mortgages. But I understand the gentleman to say we should not tax mortgages.

MR. REYNOLDS. The gentleman does not understand me to say any such thing, because I never said it.

MR. EAGON. Then I am mistaken; but the same thing has been said by others. Now, sir, in regard to this great petition talked about here, before this body, as evidence why we should not tax mortgages, I recollect very well when that petition was gotten up. It was gotten up by the money lenders, sir, and not by the people who were borrowing money. It was the money lenders, who had power over certain people at that time. They exercised control over them, because they were borrowing money, and they threatened that if they did not do so and so, they would put this additional tax on them; and, for the purpose of obtaining mere temporary relief, hundreds of men signed this petition. How is it now? Do they come before you here and ask this thing as a matter of justice, as a matter of right? Not one word of it. But these other men come before you with a threat. They say, "We have been exempt, for a number of years, and if you do anything of this kind, to make us pay our portion of the taxes, we will oppress your poor men—oppress the men who borrow money, and the great mass of your people." That is the class of men—the rich—who are protesting. The gentlemen cite a number of suppositious cases, of how this will oppress the poor man; that we propose to tax the passbook; then follow the money to the bank and tax it there, and then when it is loaned out, tax the mortgage. There are no such cases. They cannot point to a single instance where this was ever done in the State of California, when we were operating under the mortgage tax law. The money is placed there in small quantities. When the Assessor comes around, he asks how much money the man has on hand. He answers: I have none. Have you any deposited or at interest? I have so much deposited in a certain bank, and here is the certificate of deposit. Well, says the Assessor, that is simply an evidence of indebtedness, and we can't tax it. Then he goes to the bank and propounds the same questions. The banker says you cannot tax it, because it is loaned out on mortgage. He then finds the man who has borrowed the money, and says, where is the money? I see you have borrowed so much money. Why, says he, that has been paid out for the expenses of living—for board. So the money is not taxed.

Now, they say that the money lenders, themselves, when you go to borrow money, will add the tax to the interest, and make you pay it in that way. Might not the farmer, when you go to tax him, just as well say, you must not tax me because I raise wheat, and wheat makes flour, and flour makes bread, and bread is the staff of life, and if you tax us we will simply add the tax to the price of bread, and the poor men who eat bread will have to pay it after all. It is to the interest of all men to have cheap wheat, and therefore you must not tax us. Is not that in keeping with the demands we hear on this floor? The shoemaker might set up the same claim, that it is to the interests of the people to have cheap shoes. But none of these are exempt, although they are all producers. The money lender alone, doing nothing for the support of Government, claiming constantly the protection of Government, only claims exemption. I say it is in very bad taste for them to come before the Convention and ask immunity.

Now, sir, this amendment does not suit me in all respects, but it is the best I have seen. Mr. Reddy thinks it may be construed as taxing certificates of ownership in mining corporations; if that is so, there is nothing but double taxation in that; it would hamper the mining interests. I agree with the gentleman that the agricultural and mining interests should go hand in hand together. The one depends to a great extent on the other. If one is prosperous the other is also. I believe that the mining interest should be encouraged, that it ought to be fostered. The proper way to tax them, in my judgment, would be to tax either the gross or net proceeds of the mine. Tax them for their improvements, but do not tax them upon their evidences of ownership in the mines. You might as well tax the farmer upon his land and then turn round and tax him upon his deed, which is nothing more than the evidence that he owns the land. There is no intrinsic value in the deed, none in a certificate of mining stock, and if that is the intent or effect of this amendment, I may say that I am opposed to that feature in it.

SPEECH OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I do not desire to take up the time of this Convention but a few moments. I do not propose to discuss the question but a few moments. I propose to sustain the action of the committee. I am opposed to both amendments. I wish to call Judge Winans' attention for a moment, to the general inconsistency and fallacy of the arguments here——

MR. WILSON. If the gentleman is going to do that we had better adjourn this Convention to some other day. [Laughter.]

MR. BIGGS. I don't mean the gentleman, I mean Mr. Winans. The gentleman cited a case of a farm that was sold for a thousand dollars, twenty times over, and notes taken each time. Now, I ask my friend, and the gentlemen upon this floor, to go way back, before the decision of the Supreme Court which has been referred to here; when we deducted our indebtedness from our debts. I ask them to go back to that time, and adopt the report of the committee, which is merely to engraft what was upon our statute books in eighteen hundred and sixty. Gentlemen have objected to this section offered by the committee, but I want to assure this Convention that they are laboring under a misapprehension, as far as that is concerned. Every gentleman knows we had a good law, with the exception of four years, from eighteen hundred and fifty-one down to the very time that the Supreme Court rendered this decision in the Hibernia Bank case. Now, a great hue and cry was raised, which has been going from that day to this, throughout the length and breadth of the State, to have what was then on the statute books engrafted in the organic law. And that is what this report of the committee does do, engraft it into the Constitution. I am in hopes the Convention will take the report of the Committee on Revenue and Taxation and examine it, and if that is not coming nearer what the people of this State want than either of the two amendments, then I am greatly mistaken.

I want to notice one more question. The question has been discussed here about men reflecting the will of the people. Yes, sir; I am one of those who believe in that. I was in the Convention that administered the pledge to the Butte delegation.

MR. PULLIAM. I construed that resolution differently.

MR. BIGGS. My friend Pulliam got up then on the floor of that Convention and told them he was in favor of taxing mortgages and solvent debts, and that is what I ask him to do now. I say I am in favor of that, and I propose to show why I stand upon the platform, as far as taxing mortgages and solvent debts is concerned. The platform says we are in favor of taxing mortgages and solvent debts. I do not speak for the Butte delegation. As a member of the committee, I have a right to vote as I please. You have the same right, and you are amenable to the people of Butte County, who sent you here, and to the people of the State. I don't come here wishing to dictate to any man, but for the welfare of the people of the State of California, and offer this as a compromise, as an olive branch, between the two contending parties—the Hale amendment and the Moreland amendment—and I say to them: come and go with us, and we will do you good.

Now, sir, I am a Granger, and I have the utmost confidence in the Grangers, and I want to correct the insinuation thrown out by Judge Reynolds. He said that some of the Grangers' land—miles I believe—was assessed at seventy-five cents an acre, but here is a man with his little homestead assessed at forty dollars an acre. That was his general language. Now, if the Grangers are that class of men I am deceived. As a Non-partisan here I am opposed to that kind of thing, and I propose to have every piece of land assessed at its full value, and if the Assessors don't do their duty, we will turn them out of office. I am for assessing real estate at its cash value, and solvent debts at their cash value, and that is all the people want. Convince a man against his will, he will be of the same opinion still, and I don't propose to try to convince the gentleman.

MR. REYNOLDS. I will give you an instance, in one of the upper counties. One man was the owner of eight hundred acres of land with a house on it. His neighbor was the owner of seventeen hundred acres, with three houses on it. The former was taxed sixty-five dollars more than the latter.

MR. BIGGS. Here you said one was assessed at seventy-five cents and the other at forty dollars. If there are any such cases it is the fault of the Assessors and not of the owners of the land. I would remind Senators that the question here has not been on the amendments so much as it has been on sustaining the decision of the Supreme Court. It has resolved itself into a question that we must sustain the action of the Supreme Court in the Hibernia Bank case. And they say that twenty-five thousand taxpayers of San Francisco signed this petition. Mr. Winans would have you believe that all the lawyers in San Francisco sent a memorial protesting against the taxation of mortgages and solvent debts, and perhaps he is correct.

Now, sir, I propose to show gentleman of this Convention that these twenty-five thousand distinguished persons of San Francisco, voted the other way at the last election. If I am wrong I hope the gentleman will correct me. I believe the party that was successful there had a platform, which declared in favor of taxing mortgages and solvent debts. The Democratic party in San Francisco put out a ticket for delegates to this Convention, both State and city and county ticket, and I believe they had in their platform that mortgages and solvent debts should be exempt from taxation. The great Democratic party of San Francisco adopted a platform that mortgages and solvent debts should be exempt from taxation. What was the result? Why, sir, only eighteen hundred or two thousand votes was polled. Now, where was the twenty-five thousand men who signed that petition that Mr. Winans talks about. When that very question was before the people, they only got eighteen hundred votes.

MR. WINANS. You will find them all when your Constitution comes to be voted upon.

MR. BIGGS. Yes, sir; and if we put in this clause taxing mortgages, I venture the prediction that there will be fifty thousand votes rolled up in favor of it, over and above what there would be if we strike it out. Exempt mortgages from taxation and you won't receive a Corporal's guard.

MR. WILSON, of First District. May I ask you a question.

MR. BIGGS. Yes, sir.

MR. WILSON. Don't you know that the Democratic Committee agreed not to run a ticket, but to vote the Non-partisan ticket.

MR. BIGGS. I know you voted the full Democratic strength at the last election.

MR. WILSON. I say it bore no proportion to the Democratic vote, and everybody knows it that knows anything.

Mr. BIGGS. I am in hopes we will carry on this discussion good naturedly. I do not want to be interrupted too often. If the Workingmen had made their canvass on the issue that mortgages should be exempt, they would not have seats on this floor.

MR. REYNOLDS. If the Colonel will allow me, I will answer that question.

MR. BIGGS. Proceed.

MR. REYNOLDS. I am happy to state to the gentleman that the Democratic platform contained no such provision as the one he referred to.

MR. TINNIN. There is no Democratic party in this contest.

MR. BIGGS. I quoted this merely to show where these twenty-five thousand votes went to. It seems to me that the object here is to break up my argument. I propose to go a little farther, and say that every taxpayer in this State shall be taxed on what he is worth, and no more. I believe that is but just, and ought to be engrafted in the Constitution. I know the people desire it, for the very reason that it was the law way back before the Supreme Court made that decision, and there was no complaint from the people then. I think that was the worst decision ever made in the State of California, and we are told here that we must sustain that decision; that if we tax mortgages we will set this State back ten years. Now, does any gentleman believe any such stuff as that? The people were prosperous and contented then. The discontent has grown out of that decision. Why not adopt the report of the committee? I believe in that report. I believe it is better than either of the amendments. It will satisfy the people. Adopt this section and the people will say: "Well done, thou good and faithful servants, thou hast been faithful over few things, we will make you rulers over many." If you do not, this Convention will be a great political graveyard. I say it is the duty of every man to carry out his pledge to the people, and if he can't, he had better resign and go home and let them send some one else. We must engraft this provision in the organic law, that mortgages shall be taxed.

MR. HUESTIS. The question has been suggested by Major Biggs, in regard to the Democratic platform. I find that the Major was right. I have that platform here, and I find just such a clause in it. It says that the taxation of mortgages and solvent debts must be forever prohibited.

MR. BIGGS. You see I was right after all.

MR. TINNIN. I deny that this is the Democratic platform. It is the platform of a few individuals.

MR. BIGGS. Are you the mouthpiece of the Democratic party of this State?

SPEECH OF MR. BARRY.

MR. BARRY. Mr. Chairman: I don't intend to take up the time of this Convention. I must say, I am highly gratified at the amusement afforded myself and this committee by the gentleman from Butte, Major Biggs. I am exceedingly gratified, because the Workingmen have scored another point. But, sir, I am not here for the purpose of speaking for future political success for myself. When I stood before the people of my district I proclaimed that securities should be taxed; that the property of the rich should be taxed as well as the little homestead of the poor. If that, sir, is demagogism; if to say that the people of this State shall no longer suffer from the oppressions and burdens of the past; to say that the rich shall pay their share for the support of the government, as well as the poor—if that is demagogism, then, sir, I stand before this Convention and the people of this State as a demagogue. I believe, sir, that when a man is a candidate for a public station, I care not how humble it is; that when he declares himself in favor of a certain proposition, in favor of certain principles which he believes to be right; that he wants the people to understand that if he is elected he will carry out; if he does not do it, I hold, sir, that he is recreant to his trust, recreant to his pledges, recreant to his sense of duty, to himself, and to all sense of honor, when he violates those pledges. I am one of those who believe that pledges and platforms are not molasses to catch flies, but that they are the expression of the will of the people, even when he makes no pledges, when he is elected upon a platform of that character. When the people select him to carry out their wishes it is his duty to do it. I don't wish to be understood as saying that the gentleman from San Francisco, Mr. Reynolds, is disobeying the wishes of the people of that city, but he seems to charge men in this body with being recreant, because they have expressed themselves on this floor in favor of what they consider and believe honestly that the people desire. It is only the demagogue who pretends to acquiesce in the popular will in order to obtain votes. I believe the members on this floor are doing what they believe to be right; that they are trying to carry out the will of the people, as they interpret it; that they are governed by the wishes of the people of this State. I do not want to believe that any man here is governed in his action by purely personal motives; who is willing only to vote and talk to carry out his own personal ends, but I would rather believe that they are acting from honest conviction, for the good of the whole people. That is as it ought to be in this Convention.

As I said in the start, I am in favor of taxing the rich equally with the poor. I am in favor of taxing mortgages and solvent debts. I believe there is a large amount of capital which has all along escaped taxation, which ought to be taxed. Under the decision of the Supreme Court of this State, more than one hundred millions of property were stricken from the assessment roll, which operated to increase the burden of taxation upon the poor, and the working and middle classes. Those who can afford to pay taxes, never pay on what they are worth. It operated as a heavy burden upon those who did not escape by reason of the decision of the Supreme Court. I say one of the great incentives on the part of the people for calling this Convention, was this question of the taxation of mortgages. I apprehend that this body will be willing to abide by this idea, and be governed by it. The only reason there seems to be in the opposition is that it will affect corporations and capitalists generally. Now, sir, I say this because I have heard these remarks myself. Now, I believe our action thus far has shown that we are not controlled by capitalists and corporations. I believe our action on these great questions will convince the people that we are desirous of promoting their best interests. The Supreme Court has decided that certain things are not property, but I believe there will be a majority rolled up in this Convention that will set aside that decision and establish a different rule.

Now, sir, as to the amendments upon this question, I am somewhat inclined to oppose them all. There is not one that fully conforms to my views except the amendment of the gentleman from Sonoma, Mr. Moreland, and I would like to have some amendments to that, and that is, that the orphan asylums, and the asylums for the aged and infirm, should be exempt from the provisions of that article. I believe, sir, when this Convention decided that appropriations from the State for this purpose should continue, they did right. We are now trying to extend aid with one hand while we hold it away with the other. I think it is our duty to hold that these institutions should not be taxed. They are doing a grand work for the State. They are performing their

work better than the State could do it. I think the Convention thought so when they passed a section which farther guarantees the appropriation. I think they ought to be exempt from taxation, because they are in the same position as institutions controlled by the State.

Now, sir, I would prefer the report of the committee as it came from them, provided they would strike out the words "capital stock of corporations, and joint stock associations." It would do a great injury to the mining interest of this State, and thereby injure the whole State, to tax them twice; it is double taxation, and double taxation injures not simply the miners themselves, but the whole State, and I cannot believe this Convention will do so unwise an act. The mining interest should be encouraged as well as the farming interests. Those who incorporate for the purpose of developing the great mineral resources of the State ought not to be doubly taxed; if you do that you tend to discourage a large class which is doing a great work for the State, which adds wealth to the State, which is one of the most important interests in the State. Mining and farming are the two great leading interests of the State; they should not be discouraged by loading them down with taxation. I will also say that for the same reason I do not think that growing crops should be taxed. The farmer is taxed for all his personal property and real estate. It is true that the Assessors in many cases do not do their duty, but that is the fault of the people in electing that class of men. I believe the people will hereafter elect that class of men who will do their duty; who will assess property for what it is worth. I believe when the Assessor assesses the land for what it is worth, and the personal property for what it is worth, that is all that should be taxed.

MR. WALKER, of Tuolumne. I move the committee rise, report progress, and ask leave to sit again.

Division being called for, the committee divided, and the motion prevailed by a vote of 73 ayes to 42 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. EDGERTON. I move we do now adjourn.

MR. REYNOLDS. I move we do now adjourn until seven o'clock.

THE PRESIDENT. The question is on the motion to adjourn.

The motion prevailed.

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

NINETY-NINTH DAY.

SACRAMENTO, Saturday, January 4, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Herrington,	Reed,
Ayers,	Hitchcock,	Reynolds,
Barbour,	Holmes,	Rhodes,
Barry,	Howard, of Los Angeles,	Ringgold,
Barton,	Howard, of Mariposa,	Rolfe,
Beerstecher,	Huestis,	Schell,
Bell,	Hughey,	Schomp,
Biggs,	Hunter,	Shoemaker,
Blackmer,	Inman,	Shurtleff,
Boggs,	Johnson,	Smith, of Santa Clara,
Boucher,	Jones,	Smith, of 4th District,
Brown,	Joyce,	Smith, of San Francisco,
Burt,	Kelley,	Soule,
Caples,	Kenny,	Steele,
Chapman,	Kleine,	Stevenson,
Condon,	Lampson,	Stuart,
Cross,	Larkin,	Sweasey,
Crouch,	Lavigne,	Swenson,
Davis,	Lewis,	Swing,
Dowling,	Lindow,	Terry,
Doyle,	Mansfield,	Thompson,
Dudley, of Solano,	Martin, of Santa Cruz,	Tinnin,
Eagon,	McCallum,	Townsend,
Edgerton,	McComas,	Tully,
Estey,	McConnell,	Turner,
Evey,	McCoy,	Tuttle,
Filcher,	McFarland,	Vacquerel,
Finney,	McNutt,	Van Voorhies,
Freeman,	Mills,	Walker, of Marin,
Freud,	Moffat,	Walker, of Tuolumne,
Garvey,	Moreland,	Webster,
Gorman,	Morse,	Weller,
Grace,	Nason,	Wellin,
Graves,	Nelson,	West,
Gregg,	Neunaber,	Wickes,
Hale,	Noel,	White,
Hall,	Overton,	Wilson, of Tehama,
Harrison,	Porter,	Wilson, of 1st District,
Harvey,	Prouty,	Wyatt,
Heiskell,	Pulliam,	Mr. President.
Herold,	Reddy,	

ABSENT.

Barnes,	Estee,	Miller,
Belcher,	Farrell,	Murphy,
Berry,	Fawcett,	O'Donnell,
Campbell,	Glascock,	Ohleyer,
Casserly,	Hager,	O'Sullivan,
Charles,	Hilborn,	Shafter,
Cowden,	Keyes,	Stedman,
Dean,	Laine,	Van Dyke,
Dudley, of San Joaquin,	Larue,	Waters,
Dunlap,	Martin, of Alameda,	Winans.

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Charles for two days.

THE JOURNAL.

MR. BEERSTECHER. I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

IN RELATION TO ADJOURNING SINE DIE.

MR. FINNEY. Mr. President: I wish to call up and move the adoption of the resolution sent up to the desk, in relation to adjournment, and if I can get a second I wish to say a few words in relation to it.

THE SECRETARY read the resolutions, as follows:

WHEREAS, This Constitutional Convention was ordered by a small majority of the people of the State, showing that they were unprepared for any radical change in the organic law; and, whereas, this Convention was called by a hostile Legislature, which so framed the calling Act as to render impossible the completion of its work in any such thoughtful and finished manner as to make it acceptable to the people, or a credit to the State; and, whereas, the time fixed by the Legislature for the session of this Convention has now expired, and the State authorities seem disposed to construe against it every technicality of the law; and, whereas, it is now evident that only a doubtful quorum can be kept together, which will not fully represent the various interests of the State; and, whereas, it seems to us desirable to resubmit the whole matter to the people of the State, that they may take such action therein as may to them appear best; therefore,

Resolved, That the President appoint a committee of five, whose duty it shall be to prepare an address to the people of the State, setting forth briefly the various causes and circumstances which have prevented the Convention from completing its labors, and requesting them to elect a Legislature which shall make the necessary appropriations for the completion of the work of the Convention, if, on full consideration, they desire it to be completed; the address to be reported on or before the sixth day of January, instant.

Resolved, That when this Convention adjourns on the sixth day of January, it stands adjourned to the first Monday in September, A. D. eighteen hundred and eighty, at which time it shall convene and proceed with its work, provided the Legislature shall have made the appropriations necessary for the expenses of the Convention.

MR. FINNEY. Mr. President——

MR. WHITE. I rise to a point of order. Is there anything before this Convention?

THE PRESIDENT. Yes, sir; the resolutions are before the Convention, and the author is entitled to the floor.

SPEECH OF MR. FINNEY.

MR. FINNEY. Mr. President and gentlemen of the Convention: Before going into my reasons for offering these resolutions, I wish to make, in justice to myself, one statement. I have been here in attendance upon this Convention from the start, and I have up to this time occupied less than thirty-five minutes of the time of this Convention in all that I have said and done upon this floor. If, therefore, I shall be unable to finish in fifteen minutes what I have to say, I hope I may receive the indulgence of the Convention. I also wish to clear up, in a few words, a little of this excited rubbish that has drawn itself around the offering of these resolutions. I offered them the other day for reading, as has been the custom in this Convention, and as I believe is right, that no important matter should be sprung unadvisedly—that they may have time to be considered. I need not remind the gentlemen of the Convention of the peculiar courtesy with which these resolutions—certainly unopprobrious in themselves and not improper to be introduced here—were received by the tender consciences of some gentlemen, and I use that word in its parliamentary sense. One gentleman, for whom I had the highest respect, and with whom I had counseled, who, while not giving his adhesion to the idea, still professed to me that they were unobjectionable and perfectly proper, made the sneering remark, "Sensational!" I beg to assure the Convention that the sensational idea never presented itself to my mind. It was the furthest possible thought from my mind. My desire was simply and alone to call the attention of the Convention to certain things which seemed to me we are apt to lose sight of. I disclaim entirely any design to lecture or tutor this Convention. I recognize myself as one of your weakest and most youthful members. Another person sprang to his feet and, in an excited manner, impugned my motives. He sneered at the proposition, and said the matter was a disgrace to the author and an insult to the Convention. There are persons from whom such talk is the highest compliment that can be received.

I throw myself upon the Convention to know if they believe, for one moment, that any intention of insult to this body can come from me? The word "traitor" was hissed through the room. In the name of God, gentlemen, traitor to whom? Traitor to what? Was it treason to my constituents? Although repeatedly urged to do so, they have ever refused, up to this day, to instruct me as to my duty on this floor. Was it treason to party? Gentlemen of the Convention, I know no party here. In a Democratic district I was elected by three fourths of the votes cast, against the regular Democratic nominee. All parties combined, and requested me to take this place, and serve them here one hundred days. Was it treason to the State? That suggestion does not come well from those who stayed at home, as against a man who for years marched under the stars and stripes in defense of his country. The word was unworthy to be uttered here; unworthy of the men, who-

ever they may be, and I know them not, who uttered it. Since then it has been called a political dodge. I scorn it. Every man in this world who knows me, knows, that as for politics, I have no ambition. I have ever refused to have anything to do with it. I made a vow, as a boy, that I never would take an office within the gift of the people, and if my place here is an office, I have, for the first time in my life, violated that vow. And I wish to say another word in justice to my friend Johnson, the Secretary of this Convention. An intimation of this thing was published, several days ago, in the Oakland "Times," and it has been charged that if I had no political ends to subserve that I had done it as his toady. Whether it is a Caliban or a Miranda, this child is mine. I talked the matter over, before I offered it, with a good many of the gentlemen of this Convention, and I mentioned it to the Secretary, among others, who happened to be in my room as I was working upon it. It was a surprise to him, as it was to many others; and in a conversation in the "Times" editorial rooms a few days afterwards, the matter was mentioned by him, and unknown to me or him, and without prompting, it was mentioned editorially the next day, by the acting editor. And perhaps, gentlemen, it may turn out that the avidity with which the editor, in daily communication with the people all over the State, seized upon the idea, may go to show more closely the views of the people of the State. A Convention that can calmly vote down the American flag, and coolly sit here day after day and listen to imprecations and threats to flush the sewers of San Francisco with human blood, and devastate the fairest portions of our land, provided this Convention did not raise the flag of rebellion against the General Government, and the moment an intimation was offered that they were unable to accomplish miracles; the moment their amour propre was touched in the least, could be thrown into such a pitiable state of excitement, demonstrated that there was a weakness that certainly needed no such evidence.

As I said, I have been here from the start. I have missed but two roll-calls. One day I was confined to my bed by sickness, and the half-day after Christmas that the Convention attempted to meet, I was absent on business. I am willing and glad to give the State the benefit of that day and a half, and stay here until Tuesday night, and fill to the full extent the contract which I made with the State to serve for one hundred days in the preparation of a Constitution. How many gentlemen are there here who can say more? I have carefully watched the action of this Convention—perhaps more carefully than many who have taken a more active part in the proceedings on the floor. My physical infirmity has prevented me from doing and saying many things, and perhaps the Convention is not sorry for it. I have tried to believe, and I still really believe, that this Convention is a great educational institution. I do believe that forty elections could not have brought together a more intelligent body, a more able body, or a body better fitted and calculated to carry out the objects for which the Convention was assembled. But, gentlemen, the magnitude of the work was underrated. Look at it for a moment. Just think what the work was that was given us to do. Our coast line extends over a distance equal to that from Boston to South Carolina. The interests embodied in these districts are as diversified as those in the district extending from the pine woods of Maine and Wisconsin to the orange groves of Florida and the cattle-covered plains of Texas. Every interest is represented here in our midst. More than that, we have a mining interest that is not equaled in the world More than that, we have a giant public interest growing up among us in the shape of an irrigation system which will, in a few years, equal the old time works of the far East. And all these interests—conflicting interests many of them—with all their industries, prejudices, and passions, were thrown into the cauldron here together to be reconciled and conformed one to the other. Each one felt a particular interest in his district. A great many were, to some extent, ignorant of the wants and industries of the other sections. At any rate, they did not realize their wants so keenly as they did those of their own districts. Even metropolitan San Francisco claims often, without blushing, that she is the State. Her interests are to be regarded, as the interests of other sections, in proportion to their magnitude, but she is not the State. It is perfectly evident that so coming together—such men from such districts, representing such interests, coming together here—an educational process was necessary before the work could intelligently commence. Delegates must rise to broader views here. They must see and know and understand the interests of the whole State. Then, if they could be reconciled here in the Convention, so that each man would think that the thing that was done was the best under the circumstances that could be done for the whole State, it was reasonable to suppose that when they went home they would educate their people to the same views. The only hope on the face of the earth for success—the only hope that a Constitution could be adopted by this Convention that would afterwards be ratified by the people—lay in the fact that if the delegates would come here, and, seeing the whole ground, make up their minds that the thing done was the best that could be done; that they would go home and educate their people to the same belief, and that their labors would secure a ratification of the Constitution.

But there were many of the delegates who came here with the express intention of not voting to support any Constitution that might be made. I say it not as a slur upon delegates, but simply this, that they represented a constituency who believed, with them, that changes in the Constitution were not necessary, and were dangerous. Under such fear they came here representing that idea. Others came here without seeming to rise to the dignity of the case at all, as you have heard often yourselves. As, for instance, the other day I heard a gentleman say he was not going home to spend Sunday, but "would stay and coach for the debate" coming on the next week. The highest idea he seemed to have was that it is a country school house debating society. An earnest, hearty, thorough appreciation of the work before the Convention has been lacking to a certain extent. This has been commented upon by the press, it has been commented upon by letters, it has been commented upon by the people of this State. I do not say it of myself, I say what others have said; I say what every man knows is said. The country has not yet got over the nausea occasioned by the tremendous mass of propositions and amendments which came pouring in the first few days of the session, when the people wanted but a few simple amendments to cure a few glaring evils, and it has been freely said, and said with a sneer, that if the multiplication table could come before the Convention fifty members would desire to amend it, and if the Decalogue or Lord's Prayer were offered here they would be torn to pieces, and a substitute offered. This shows one thing, and that is that the people of this State were not ready for any change. They had no such well defined grievances, they had no such well defined intentions in their minds when they sent their delegates, that they could come here, knowing what was the thing to do, and to say let the rest alone—hands off. It seems much more the idea of delegates to find a change which they can get hold of, so as to make their constituents believe that they are doing something to earn their regular ten dollars a day, than any earnest desire to remedy an evil that exists, ascertained and known to all. Now, the hope of their reconciling feelings, interests, and wishes is gone. The great idea of the Convention is hopeless.

MR. HEISKELL. If the fifteen-minute rule applies here, I shall object.

THE PRESIDENT. I will notify the Convention when the time expires.

MR. FINNEY. From thirty to fifty members have of late been absent daily; those, too, who must frequently and necessarily be absent, and it is anxiously asked if this Convention can keep a quorum together. The work of a bare quorum of this Convention must of necessity be bad work. The essential element of success is wanting in the Convention. We desire that the entire interests of the State shall be harmonized and brought together. A rump Convention can make only a rump Constitution. I find that twenty-five committees have been appointed to prepare work on which we must act. Of the twenty-five, eighteen have reported; and of the eighteen, only eight have been passed upon. Of the eight, only two should have consumed more than a day's time.

THE PRESIDENT. The gentleman's time has expired.

[Cries of "Leave!" "Leave!"]

MR. WHITE. I object.

MR. HEISKELL. I object.

MR. HUESTIS. I object.

THE PRESIDENT put it to a vote, and leave was granted the speaker to proceed.

MR. FINNEY. Gentlemen, I thank you. The ninth report is now being considered. Of all the sections of that report we have not yet finished the second section. We have nine reports now on the file waiting action. Six or seven of them are of the greatest importance, as much so as any that have been or can be considered. And yet, gentlemen, we have not even got out of the Committee of the Whole. And all this work must be gone over again in the Convention, and that the work in the Convention will not be slight, I ask each member to bear me out. How often do we hear the remark: "We will fix that when we get into Convention;" "Never mind that, let it go until we get into Convention?" Every member knows how hastily things have been passed over in the Committee of the Whole, with the expressed design that when we get into Convention, where perhaps the circumstances surrounding the subject will be more auspicious, the work can be better done. It is often said: "We will force things; we will move the previous question right along. Discussion will not be allowed." Gentlemen, this is the idlest of talk. In talking it, we simply show that we do not appreciate the situation. You cannot cram things down men's throats. Members must feel that when a thing is done, it is the best thing that, under the circumstances, was possible to be done. They must not feel that their views have been slighted and overridden. If there is any deep feeling of dissatisfaction among the members, when the work is done, where is there any hope of harmonizing the people? Any crude, hurried work will prove unsatisfactory both to us and to the people. Then, when the work is finished, it must pass through the hands of the Committee on Revision, and the work of that committee will not be slight. Then, again, it must come before the Convention for its approval. That Committee on Revision will be more fortunate than any committee we have yet had, if they are not extensively snubbed and their work extensively reconsidered. No body of men ever worked more industriously than this Convention. But we undertook too much. The work was underrated; it was not understood. If we undertake to finish it, we will slight it, and the results will be crude and unsatisfactory. Now, nobody will be hurt. There is no confession of weakness. There is no lowering of dignity, if we simply say to the people, you have given us a task to perform and we have not had time to do it to your satisfaction. If you want us to finish it, give us more time. It is not consistent with a decent self-respect to stay here and hurriedly and imperfectly perform the work for fear the people will never let us try our hands again.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: As far as this resolution is concerned, the gentleman had a perfect right to offer it, and no personal reflections as to his motives are called for or are justified. He is entitled, as a member of this body, to have his resolution respectfully considered at the hands of this Convention. But having said this much, I disagree altogether with the resolution. I think, sir, that all the business can be done under the five minute rule of speaking. I think the speeches made amount to very little else than talk. We can finish up in ten days, after the one hundred days have expired, all the work we have to do. That is the whole of it. Now, sir, there is no necessity for us to precipitate ourselves home, or to serve notice on the people in the manner of a common laborer, that if he is not paid next Monday he is going to quit. I do not see any propriety or sense in that course. Now, sir, there is a suggestion in an evening paper of San Francisco of last

evening which I think eminently worthy of consideration, and that is that we finish the finance report, and the matter of water rights perhaps, and perhaps the matter of ocean freights, which will not take more than an hour apiece, and we shall have done all that is really necessary to be done here. As to the judicial department, if nobody else does, I shall move to adopt the article in the old Constitution in place of it. I think the amendments proposed by the committee will injure the character of the Courts, and increase the expense fifty thousand dollars a year, and be worse in every respect than the present system. Therefore, I do not, for one, propose to vote for the report of that committee. Now, sir, I hold in my hand a note from a gentleman who has filled some of the highest positions in this State, a man of good common sense and business capacity. He says the great incentive in calling this Convention was our system of taxation, so greatly impaired by decisions of the Supreme Court. If there be any remedy provided in the new Constitution, its ratification will follow. Every item of property, of whatever character, must be taxed. The people do not want any homestead exemption. They want taxation equal and uniform. Tax all equally, he says, and the burden will be light.

I know that this resolution recites that the Legislature making the appropriations was hostile. That is true. I know that the monopoly and corporation organs have prophesied that we will never get through, and that whatever we do will be voted down. But, sir, the Constitution, in my opinion, will be ratified by twenty thousand majority. This is a work in the interest of the people. The people have demanded it, and we can bid defiance to corporations and monopolists.

MR. INMAN. Mr. President: I don't suppose any one wants to hear discussion, and I do hope the Convention will meet this thing squarely, and settle the matter now.

MR. JOHNSON. Mr. President: I move that the resolution be indefinitely postponed.

MR. HUESTIS. I second the motion.

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

The ayes and noes were demanded by Messrs. Beerstecher, Brown, Inman, White, and Heiskell.

The roll was called, and the Convention refused to adopt the resolution by the following vote:

AYES.

Edgerton,	Porter,	Turner—5.
Finney,	Townsend,	

NOES.

Andrews,	Holmes,	Reddy,
Ayers,	Howard, of Los Angeles,	Reed,
Barbour,	Howard, of Mariposa,	Reynolds,
Barry,	Huestis,	Rhodes,
Barton,	Hughey,	Ringgold,
Beerstecher,	Hunter,	Rolfe,
Bell,	Inman,	Schell,
Biggs,	Johnson,	Schomp,
Blackmer,	Jones,	Shurtleff,
Boggs,	Joyce,	Smith, of Santa Clara,
Boucher,	Kelley,	Smith, of 4th District,
Brown,	Kenny,	Smith, of San Francisco,
Burt,	Kleine,	Soule,
Caples,	Lampson,	Steele,
Chapman,	Larkin,	Stevenson,
Condon,	Larue,	Stuart,
Cross,	Lavigne,	Sweasey,
Crouch,	Lewis,	Swenson,
Davis,	Lindow,	Swing,
Dowling,	Mansfield,	Terry,
Doyle,	Martin, of Santa Cruz,	Thompson,
Dudley, of Solano,	McCallum,	Tinnin,
Estey,	McComas,	Tully,
Evey,	McConnell,	Tuttle,
Filcher,	McCoy,	Vacquerel,
Freeman,	McFarland,	Van Voorhies,
Freud,	McNutt,	Walker, of Marin,
Garvey,	Mills,	Walker, of Tuolumne,
Gorman,	Moffat,	Webster,
Grace,	Moreland,	Weller,
Gregg,	Morse,	Wellin,
Hale,	Nason,	West,
Hall,	Nelson,	Wickes,
Harrison,	Neunaber,	White,
Harvey,	Noel,	Wilson, of Tehama,
Heiskell,	Overton,	Winans,
Herold,	Prouty,	Wyatt,
Herrington,	Pulliam,	Mr. President—114.

MR. EDGERTON. I changed my vote for the purpose of giving notice of a motion to reconsider. I give notice that to-morrow I shall move a reconsideration of the vote by which the Convention refused to adopt the resolution, inasmuch as the vote is so nearly a tie.

MR. WHITE. In what church?

MR. EDGERTON. In the Church of the Latter Day Saints. [Laughter.]

MR. INMAN. What has become of the memorial on the Chinese question?

THE PRESIDENT. It is being engrossed.

REVENUE AND TAXATION.

MR. AYERS. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to consider the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment of the gentleman from Sonoma, Mr. Moreland.

THE PREVIOUS QUESTION.

MR. MORELAND. I move the previous question.

Seconded by Messrs. Howard, Perry, Shurtleff, Smith, of Santa Clara, and Weller.

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

Carried on a division vote—ayes, 57; noes, 44.

MR. EDGERTON. I desire to state, before the vote is taken, that I am paired with Mr. Ohleyer. He would vote aye, and I would vote no.

MR. BLACKMER. I am paired with Mr. Estee. He votes no, and I vote aye.

MR. TULLY. I am paired with Mr. Wilson, of San Francisco, who will vote no, and I would vote aye.

MR. HALE. I call for a division of the question, if that be permissible.

THE CHAIRMAN. No, sir. The question is on the adoption of the amendment.

Division being called for, the committee divided, and the amendment was lost—ayes, 47; noes, 68.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Placer, Judge Hale.

MR. TULLY. I am paired with Mr. Wilson, of San Francisco, who would vote aye, while I would vote no.

MR. EDGERTON. I am paired with Mr. Ohleyer, who would vote no, while I vote aye.

Division was called for, the committee divided, and the amendment was rejected—ayes, 36; noes, 76.

MR. EDGERTON. Mr. Chairman: I send up a substitute to section two, in behalf of a majority of the Committee on Revenue and Taxation. We have remodeled it in order to remove some ambiguities.

THE SECRETARY read:

"SEC. 2. All property, including franchises, capital stock of corporations or joint stock associations, and solvent debts, deducting from such debts indebtedness due to bona fide residents of this State, and excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States or to this State, or any municipality thereof, and all property and the proceeds thereof used exclusively for charitable purposes, shall be taxed in proportion to its value, to be ascertained as directed by law."

MR. WALKER, of Tuolumne. Mr. Chairman: I wish to offer a substitute.

THE CHAIRMAN. It is not in order at present.

MR. EDGERTON. Mr. Chairman: I desire simply to state to the committee that the only change made by this is to substitute the words "from such" for "therefrom," in line two.

MR. REYNOLDS. I desire to offer a substitute.

THE CHAIRMAN. Not in order at present.

MR. REYNOLDS. The gentleman offers an amendment.

THE CHAIRMAN. He offers a substitute for the whole section.

MR. REYNOLDS. Then I offer this as an amendment to the amendment.

THE SECRETARY read:

"All property shall be subject to taxation, except as follows: First—That belonging to the United States. Second—That made exempt from taxation by the laws of the United States. Third—That belonging to this State or some political subdivision thereof. Fourth—Growing crops. No deduction shall be made from any assessment on account of debts of the person assessed. Taxes assessed to or paid by any debtor shall be at the time of such assessment or payment a set-off against the debt to an amount equal to such proportion as the debt bears to the whole amount of property assessed to him."

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: This is the Boggs amendment pure and simple, without any of the trimmings that have been sought to be incorporated into it. I assert, sir, without fear of contradiction, that this is the only true policy of assessing, to assess the property of the State in the hands of the owners, and then stop, and then, if you please, leave the adjustment of debts and credits to the citizens themselves. When you have assessed a man for all he is worth, and collected the tax thereon, you have cleaned up that job. If he happens to be a debtor, and you wish to give him a set-off against the debts he may owe, you can make the tax receipt a legal set-off, anywhere, in any Court, not only as to mortgages, but as to every other debt. This amendment contains no other than the usual statutory exemptions, all property belonging to the United States, and so on, and growing crops. There has been so much said upon this subject that it is useless to go into a discussion of it. There can be no doubt but that this is the correct mode of assessing property.

THE PREVIOUS QUESTION.

MR. TINNIN. I believe this subject has been fully discussed, and I move the previous question.

Seconded by Messrs. Howard, Ayers, Terry, and Larkin.

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

Carried.

THE CHAIRMAN. The question is on the adoption of the amendment to the amendment, offered by Mr. Reynolds.

Lost.

THE CHAIRMAN. The question is on the substitute offered by the gentleman from Sacramento, Mr. Edgerton.

Lost.

MR. WALKER, of Tuolumne. I offer a substitute.

THE SECRETARY read:

"All property in this State shall be taxed. Franchises, money, and credits represented by mortgage, bond, or note for money loaned, and solvent credits not represented by securities, shall be considered property, and be taxed in proportion to its value as directed by law. Property exempted by, or belonging to the United States, or to this State, or any political subdivision thereof, and growing crops, shall be exempt from taxation. The Legislature may exempt specified solvent credits."

MR. JOHNSON. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Laws shall be passed taxing all moneys, credits secured by mortgage or trust deed, or unsecured investments in bonds, franchises, and all other property, real and personal, according to its true value in money, except as hereafter provided; but the Legislature may authorize, except in the case of credits secured by mortgage or trust deed, a deduction from credits of debts due to bona fide residents of this State. Growing crops and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county, or municipal corporation within this State, shall be exempt from taxation."

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I desire to say that the first part of this amendment is the same as in the Constitutions of North Carolina, Ohio, and I believe Arkansas, and one other State which I do not call to mind. They provide that laws shall be passed taxing all moneys and credits. Now, I have used that much of the phraseology. I should have added, also, investments in bonds. There has been something said about including official bonds, and bonds of different kinds. But this phraseology cannot be misconstrued. It says investments in bonds. This same provision is found in four different Constitutions of this Union. Now, I have added also, credits secured by trust deed or mortgage, and in order that there may be no controversy that these credits are property, I have added, "all other property, real and personal," so as to show clearly what is property. It is also stated here, following the language of these other Constitutions, that this property shall be taxed according to its true money value, except as hereafter provided. This exception was put there because I think section five will be substantially adopted. Section five should be adopted for this reason, because the interest of the real estate is taxed, and the interest of the mortgage is taxed. The mortgage constitutes a part of the land. I say section five is good, though it may need a little amending. Therefore, I suppose the committee will adopt section five; and I say, "except as hereafter provided," so as to cover the taxation of capital stock of corporations, and the subsequent section, which is a different process from direct taxation. I have added there, also, that the Legislature may authorize, except in cases of debts secured by trust deed or mortgages, a deduction of debts from credits, where the parties are bona fide residents of this State. It may possibly become a hardship by and by, and I have put this in so that if the people demand it the Legislature can make the change. I do not want to lay down an iron rule in that regard. In the case of mortgages and trust deeds section five will provide. This same provision is in the Constitution of Ohio, adopted in eighteen hundred and seventy-three and four. The exemption clause is substantially the same as that in the Moreland amendment, only the phraseology is a little different, being taken from the Missouri Constitution, except as to growing crops. I think, sir, that the adoption of this amendment will be satisfactory. I do not think there is any ambiguity about it, and I believe the principles are right.

MR. EDGERTON. Mr. Chairman: I was about to make a motion, and I ask leave to make an explanation. The motion is, that the committee rise, report progress, and ask leave to sit again, for the purpose of moving that the two amendments before the committee be printed. There are plenty of sections yet to be disposed of. There are a number of gentlemen who have not had time to study these amendments as closely as they desire, before voting on them. I therefore move that the committee rise.

Lost.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I second the amendment of the gentleman from Sonoma, and also call attention to one point in that amendment which, in my judgment, has not yet been presented to this Convention, and I deem it one of a good deal of importance. It is this: that the word property includes all kinds of property, assessed at its true value in money. Now, I believe that it is the judgment of a large majority of this Convention that these evidences of indebtedness should be taxed. I think it is evident to all that this is the sense of this Convention. Now, if these are taxed, they will be taxed at their true value in money, and those who are investing in them will pay taxes on their true value. If that be so, then we should see that all property in the State, no matter of what nature, whether solvent credits, real estate, or personal property, should be also taxed at its true value in money, or else we will do a great injustice to all who are taxed upon money loaned. Consequently, all property in the State should be taxed at its true value in money, and then you have equality.

MR. HOWARD. Mr. Chairman——

MR. REYNOLDS. I would like to ask the gentleman if he thinks equality consists in taxing secured debts, and allowing unsecured debts to go free?

THE CHAIRMAN. The Chair recognized the gentleman from Los Angeles.

THE PREVIOUS QUESTION.

MR. HOWARD, of Los Angeles. I do not rise for the purpose of discussing the amendment of the gentleman from Sonoma, though I favor it. But I think we have debated this question long enough, and I call for the previous question.

Seconded by Messrs. Terry, Freeman, Brown, and Huestis.

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

Carried.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Sonoma.

Division was called for, the committee divided, and the amendment was adopted—ayes, 75; noes, 24.

THE CHAIRMAN. The question now is on the amendment as amended.

Adopted.

MR. TINNIN. I send up an amendment to be added to the end of the section.

THE CHAIRMAN. It is not in order.

MR. TINNIN. I propose to add to it.

THE CHAIRMAN. You cannot add to it or detract from it. The Secretary will read section three.

MR. McCALLUM. The amendment adopted was a substitute.

THE CHAIRMAN. Yes, sir; and stands as section two of the report. The Secretary will read section four; section three was adopted.

THE SECRETARY read section four:

SEC. 4. Every tract of land containing, within its boundaries, more than one government section, shall be assessed, for the purpose of taxation, by sections or fractional sections, and where the section lines have not been established by authority of the United States, the Assessor and County Surveyor shall establish the section lines in conformity with the government system of surveys as nearly as practicable. Each section or fractional section shall be valued and assessed separately, and for the purpose of subdividing and assessing the Assessor and Surveyor, and their assistants, may enter upon any land within their respective counties.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Diego, Mr. Blackmer.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: The amendment offered by Judge Terry was accepted by Mr. Blackmer. I desire to state that the amendment proposed by the gentleman from San Joaquin is entirely acceptable to the committee. The other amendment I am opposed to. I think it is unjust that the expense of these surveys should be imposed upon the owners of the land. The survey is made for the benefit of the State, and for the benefit of the counties, and the political subdivisions thereof, that they may all derive additional revenues from the property of the State. The object is to benefit the public, and not to benefit the owner of the land, and the owner of the land ought not to be made to pay for it. As to the expense, it will amount to a mere bagatelle.

MR. TERRY. There is very little land that has not been surveyed.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: I intended to make a motion to strike out all after the word "section" in line three. The reason is this: As I understand it, the land from Lake County to Vallejo is all covered with grants. The original grant lines meander with the running streams. The result would be that the land would have to be surveyed, and it would do no good, except to make a big job for County Surveyors and Assessors. Again, in Kern County there are grants of perhaps two hundred thousand acres. I am told in the Surveyor-General's office that the per diem is six dollars a day. There will be a chance to roll up an enormous bill. Of course, I recognize as well as any gentleman the good that is expected to come from these surveys in certain counties. Judge Fawcett offered this proposition in the committee. He says there is a great deal of open land that escapes fair taxation by reason of being returned in large tracts. Admitted, but that is the fault of the Assessor, because he can just as well see the land and estimate its value without surveying it as he can to survey it. The Supervisors can raise the assessment if it is too low. If there have been such outrages, why is it that nobody has complained? Let the Assessor go over these tracts of land and fix a fair valuation upon them, as they do in my county. I hope there will be no such chance offered for a job as this affords. Some counties are entirely surveyed, and there will be no expense there, while others are not. I wish to strike out all after the word "section," in the third line, down to and including the word "practicable."

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope, sir, that section four will be stricken out. If it is necessary to provide for surveys in order to make an estimate of value of some particular great ranch, it is entirely competent for the Legislature to do it. Sir, the remedy for these abuses is not in the County Boards of Revision, but in the State Board. It is provided for in the Code now, and would be continued under this Constitution. While we had the State Board of Equalization in operation, we were fast making encroachments upon inequalities in land assessment in this State. We propose now to reëstablish that Board. All these Boards of Equalization are now powerless, unless a regular lawsuit is commenced, and those lawsuits are surrounded by technicalities common to lawsuits in the State of California. And when you go to the assessment roll, and turn over the leaves, and find that a hundred acre tract is assessed at one hundred dollars an acre, while a ten thousand acre tract is assessed at two dollars and eighty cents, and we know the Board is powerless to remedy it, certainly every candid man will admit that it is time for a change. It can only be remedied by a sworn complaint, and that complaint has to be heard, surrounded by all the technicalities of Courts of justice. Summonses have to be served, time set, witnesses summoned from different parts of the county, and then the question comes up, who is to furnish the money for all this? Who is going to be patriotic enough to begin a lawsuit against his neighbor, in

order to put some money in the county treasury, in which he has no more interest than any other citizen of the county? Who is going to incur the displeasure of the men who own these vast possessions? I tell you they will not do it. We want the County Board to have power to do it. The Board should be vested with power by this Convention to raise or lower, on their own motion, any assessment on the list, and the same power should be extended to the State Board. And then, if there is any necessity for a clause like this, the Legislature will be competent to put it upon the books, but let us not put it in the Constitution. It is too much like details, and is uncalled for. I hope, therefore, that section four will be stricken out.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I hope the section will not be stricken out. I am in favor of the amendment proposed by the gentleman from Kern, to strike out all after the word "section," down to the word "practicable." I am in favor of it, because if the survey be necessary the Legislature can provide for it. The remarks of the gentleman from Monterey are applicable. There can be no objection to the amendment of the gentleman from Kern. I am in favor of retaining the balance of the report, because there is no section in the whole report that will do so much to prevent land monopoly. If the lands in this State are taxed according to their real value, the owner of eleven leagues will not long retain his eleven leagues. He will find it to his interest to sell the land and put the money at interest. That will be a perfectly just and legitimate mode of breaking up land monopoly, and I think it ought to be adopted by all means. It is a movement in the right direction, and it is a movement of which the land owner cannot complain, for he has no right to complain when his land is assessed at its true value, as other people's property is assessed.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I am in favor of striking out the whole section. I cannot see the good of spending public money for the purpose of surveying this land. These large land owners, when they see we are going to assess their land, will be very anxious to sell, and they will be very glad to have it surveyed off in sections at the expense of the State. It does look to me like this is a provision in the interest of the men who own the land. We are inaugurating a system of surveys here which will cost more than all the revenue which the land will bring in. I am in hopes this whole section will go out.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: The committee the other day adopted this proposition, that cultivated and uncultivated land of the same quality and similarly located, should be assessed at the same value. Here is a man who has six hundred and forty acres under a high state of cultivation, improved with buildings, etc., and immediately joining it is a Spanish grant, or tract of land, with the title clear, fifty thousand to one hundred thousand acres, all in one body. A great deal of it is of the same quality as the six hundred and forty acres, and a good deal of it is not. How are you going to carry out this provision which we have already adopted? It cannot be done. There has to be a subdivision of this land into small tracts. I can see no objection to taking out that part of section four included in this amendment. But it seems to me section three will be rendered nugatory unless we adopt at least a part of section four. For myself I regard it as a mere matter of legislation, entirely unnecessary to be put into the Constitution. But a majority of the committee thought it ought to be incorporated into the organic law. That was the view they entertained. By subdividing these immense tracts of land the Assessor gets the benefit of comparisons, as he steps from one section to another.

MR. REED. Mr. Chairman: I have prepared a substitute which I will read:

"Every tract of land containing within its boundaries more than one government section, shall be assessed and valued, for the purposes of taxation, by sections or fractions of sections, in such manner as the Legislature may by law provide."

I will offer that when it is in order.

MR. EDGERTON. In behalf of the committee, I believe that will be satisfactory.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I hope the amendment offered by the gentleman from Yolo will prevail. I had occasion to be in the Surveyor-General's office yesterday, and I made some inquiries in regard to this matter, and I found that Government pays six dollars per mile for sectionizing land. That would come to thirty-six dollars for surveying each section, and there would be a tremendous job in it. Let the Legislature arrange this matter as they may see fit.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: While I think it very advisable that these large tracts of land should be divided so as to be assessed according to their value in different localities, still, I think this section devised by the committee, as well as the amendments, are bad. We have a very large number of these tracts, and sometimes portions of them are entirely worthless, while there are many choice spots. Now, it would be very desirable to have the tract disposed of in some way so that we could get at the choice spots without surveying all the comparatively worthless land. But this section four, as well as the amendments before the Convention, contemplates that these large tracts shall be, where there is no Government section line run, that Government section lines shall be run. That is, if a man has a ranch of eleven leagues, and the Government lines have not been run, that the only mode of subdivision is by Government survey. Now, I know of my own personal knowledge of several instances in this State where large tracts of land have been divided without any reference to Government lines. I know a large ranch in San Bernardino County that is divided up in this way. The Government lines have not been run, yet it is divided up into eighty-acre tracts, so that the Assessor has no difficulty in assessing it. A great portion of it is still owned by one man, and amounts to more than one Government section, still it is divided so that the Assessor can assess it in eighty-acre pieces if he wishes to. I know of several such instances. They are laid off in tracts of twenty, forty, and one hundred acres, according as is most convenient. In such cases it is entirely unnecessary for the State of California to require that these lands should be surveyed off in Government sections. Gentlemen tell me they know of large ranches which have been subdivided in the same way. Sometimes they are divided and bounded by running streams, in order to make more convenient farms. Where a man already has his land subdivided in that way, there is no need of requiring anything more.

MR. AYERS. Would not fractional sections cover that point?

MR. ROLFE. I think the amendment suggested by the gentleman from Yolo, Mr. Reed, will cover that point, "in such manner as the Legislature may provide." There is another thing, Government sections are not recognized except where Government runs the lines. This State undertook to survey off the sixteenth and thirty-sixth sections, for the purpose of obtaining title, and the Supreme Court has decided, in a case in the Twenty-seventh California, and also in the thirtieth volume, that until the Government lines are run by the Government of the United States, no such things exist as sixteenth and thirty-sixth sections. This section says the County Surveyor shall establish Government section lines. It would be useless, for the Supreme Court would not hold it valid. The amendment of the gentleman from Yolo will probably cover the ground. I hope the others will be voted down, and something like this adopted.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: The gentleman at whose solicitation this provision was adopted by the committee, is absent from the Convention to-day. The reasons which he gave have some weight in them: I will try and reproduce them as near as I can. Judge Fawcett was the man who advocated this amendment—the theory was this: that if a man has a tract of forty acres, or one hundred and sixty acres, it is assessed at its value, or very near its value, for the reason that a small tract of land is salable at a reasonable price at any time, but a large tract of land, say fifty thousand acres, or one hundred thousand acres, or two hundred thousand acres, would be much more difficult to sell in a body, and that the means by which the owners of the large tracts of land shirk a reasonable assessment, is to say that the tract will only bring so much if offered at forced sale in a body. Under that pretense these large tracts of land have been assessed at a mere nominal figure. If these lands were required to be sectionized, and each piece assessed by itself, then these men will have no opportunity to avoid a reasonable assessment. But it seems to me the provision is in very bad shape. For instance, "every tract of land containing within its boundaries more than one Government section."

MR. EDGERTON. I will ask leave to present an amendment which will meet that suggestion, "owned or held in one body."

MR. CROSS. I think that would improve it some. However, no such amendment is before the committee, and we come to the next proposition. That they shall be divided into sections, or fractions of sections. The remarks of Judge Rolfe were to the point. I know a tract of land in Yuba County, perhaps, of forty thousand acres, the Johnson grant. That was all surveyed, and the government exterior boundary lines run when the land was patented. He afterwards sold off tracts, of which the lines ran diagonally. It has been divided off and is occupied in small tracts. Now, if the latter part of the provision is adopted, that immense tract of land would have to be resurveyed, so as to be able to assess it. And what benefit will it be? Why, none at all. It is now divided into small tracts. These tracts can be assessed. The improvements are not hard to find. It seems to me to adopt the latter part of this section would be an absurdity. If these large tracts of land be divided into quarter sections, without reference to government lines, the Assessor will be able to assess it at its actual value. The latter part of the section is objectionable; also, where it says each section and fractional section shall be assessed separately. This refers to the previous part of the section, where it says they must be according to government survey, so that a man who owns twenty acres may have it assessed in three different parcels. Now, if you lay down an iron rule like this it will be a good job for the surveyor. I am therefore in favor of the Reed amendment.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Joaquin, Judge Terry.

Lost.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Diego, Mr. Blackmer.

MR. REED. Mr. Chairman: I now offer this as a substitute.

THE SECRETARY read:

"Every tract of land containing within its boundaries more than one government section shall be assessed and valued for the purpose of taxation by sections or fractions of sections in such manner as the Legislature may by law provide."

The amendment offered by Mr. Blackmer was lost.

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

MR. STEELE. I offer the following amendment, to be added:

"Provided, that all land in this State included within the boundaries of Spanish grants, which have been subdivided by private survey, though the lines of said subdivision do not conform to the lines established by the United States in this State, shall be assessed in subdivisions or tracts not exceeding six hundred and forty acres."

MR. ROLFE. I will inform the gentleman that there is but few Spanish grants in this State. There are a great many Mexican grants, but they are different.

THE PREVIOUS QUESTION.

MR. STUART. Mr. Chairman: I call for the previous question.

Seconded by Messrs. Ayers, Evey, West, and Wilson.

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

Carried.

THE CHAIRMAN. The question is on the adoption of the amendment offered by Mr. Steele.

Lost.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Yolo, Mr. Reed.

Adopted.

THE CHAIRMAN. The Secretary will read section five.

THE SECRETARY read:

SEC. 5. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, respectively, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof.

MR. EVEY. Mr. Chairman: I offer a substitute for the section.

THE SECRETARY read:

"SEC. 5. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall be assessed and taxed to the holder of such security, and be deducted from the value of the individual piece or parcel of property affected by such security, and the value of such security shall be assessed and taxed to the owner thereof, and in the county in which the property affected thereby is situated. The taxes so levied shall be a lien upon the property and security, respectively, and may be paid by either party to such security. If paid by the owner of such security the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof."

REMARKS OF MR. EDGERTON.

MR. EDGERTON. I ask the author if he supported the Johnson amendment? There is a direct conflict between the section proposed by the gentleman, and the Johnson amendment. The Johnson amendment provided that there should be no deductions at all upon credit secured by mortgages. The gentleman had better refer to that section as adopted, which says that the Legislature may authorize such deductions, except in the case of mortgages and trust deeds. There can be no doubt about that. It allows no deductions from this class of debts whatever. "The Legislature may authorize, except in the case of credits secured by mortgage or trust deed," etc. That is to say, the Legislature may authorize the deduction of debts from credits, except in the case of mortgages or trust deeds, in which case no such deductions shall be made.

MR. BEERSTECHER. It seems to me there is no trouble about this at all. It simply means that you may set off any indebtedness as against any credit, except a credit secured by mortgage. There is no confusion at all.

MR. EDGERTON. It means just what it says. Let us see. If I should owe my friend Ayers five hundred dollars, and he should owe me two hundred dollars, and there is no mortgage, the Legislature may authorize a set-off; but if my claim is secured by mortgage, there can be no set-off.

MR. HOWARD, of Los Angeles. I don't agree with the gentleman at all. This is a mere question of power. Surely, the author, the gentleman from Sonoma, did not so understand it, because he stated that he was in favor of the fifth section. I think these two provisions should stand together and be construed together.

MR. EDGERTON. It is a mere question of power as to debts not secured by mortgage, because the Legislature has power to authorize a set-off in that regard. But the Legislature is prohibited in the case of credits secured by mortgages.

MR. AYERS. The Legislature is inhibited from making offsets in these things, because they are made in the Constitution itself.

MR. TERRY. There is no conflict between the sections here. They are intended to stand together. It is not intended to have an offset in favor of a mortgage, because the mortgage is treated as an interest in the land.

MR. EDGERTON. I am not talking about section five. I am talking about the substitute offered by Mr. Evey.

MR. DUDLEY, of Solano. The difference between the section reported by the committee and the substitute is, that the latter provides an exception: "except as to railroads and other quasi-public corporations." It seems to me the exception is a very important one.

MR. BARRY. I think the committee can act more intelligently after lunch, and I move the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

RECESS.

The hour for recess having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

BOX RENT.

MR. EDGERTON. Mr. President: I have here a bill handed me by the Sergeant-at-Arms for box rent at the Post Office. I send it up, with the request that it go to the Committee on Contingent Expenses.

So referred.

NOTICE TO AMEND RULE FORTY-THREE.

MR. NOEL. Mr. President: I desire to give notice that, to-morrow, I shall move to amend Rule Forty-three so as to read as follows:

"RULE FORTY-THREE.

"No member shall speak more than once on one question, nor more than ten minutes at a time, except the Chairman of a standing committee, who may speak twice on the same question, and shall be allowed thirty minutes each time. This rule shall not be suspended except by unanimous consent."

Laid over for one day.

LEAVE OF ABSENCE.

Three days' leave of absence was granted to Mr. Lindow.

PROPOSITION—TRADEMARKS.

MR. WELLIN. Mr. President: I ask leave to introduce a proposition out of order.

THE PRESIDENT. There being no objection, the gentleman will have leave.

THE SECRETARY read the proposition as follows:

"Trademarks shall be deemed property."

Referred to Committee on Miscellaneous Provisions.

TAXING SOLVENT DEBTS.

MR. EDGERTON. Mr. President: I move that the Convention do now resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Revenue and Taxation.

So ordered.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section five and the substitute, offered by Mr. Evey, are before the committee.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I was not on this Committee on Revenue and Taxation, but it does occur to me that this section is in as good shape as it can be. The theory is this: we all know that a mortgage is not an interest in the land under the present law, though in some States it is. But under our law it is not an interest in the land. It is merely security, that is all. It is simply a security to the extent of the debt. Now, the committee say, for the purpose of adjusting this matter, a mortgage shall be treated as an interest in the real estate, which alters our rule. For the purposes of taxation, the mortgage shall be treated as real estate. Then there are two interests in the real estate. One interest is the mortgage, which is held by the mortgagor, and the other is the interest of the holder and owner of the property. There are two interests. Now it is proposed to apportion those two interests so that the tax on each interest shall be according to the value of the interest. The land being the visible, tangible object, according to the theories of taxation, simply bring about this adjustment so that each interest shall pay in proportion to its value. So there is no occasion to rebate. That is the reason that in the amendment I proposed there is an exception, as far as legislative control is concerned, in regard to rebates on mortgage debts. There is the mortgage, and there is the land, and there is nothing to deduct, because the two interests constitute the entire property. That is the reason the exception was made, that the Legislature shall not have power to deduct debts from credits of that character.

The only difference between section five and the amendment is this: that the words "contract or other obligation" are used. In Convention I shall move to insert these words, if this passes, as I hope it will. In other words, besides the debt being secured by mortgage or deed of trust, I will move to insert the words, "or other obligation." That will bring the two sections into entire conformity, except there is an exception as to railroad and other corporations. Those corporations are governed by sections sixteen and seventeen, and that is the reason the exception was made by the committee. It will be premature to discuss these sections now, but I think no better section could be gotten up than this section five. Indeed, I attributed the paternity to the distinguished gentleman from Sacramento, until I heard otherwise. But I gave him a good deal of credit, but he ignores the paternity, and I suppose it must be given to some other member of that committee. I would suggest to gentlemen that it is impossible to get everything in one section. One gentleman suggests that this may involve double taxation. When it comes to that we will try and see if we cannot prevent it. We are going along in the right direction. This section five is in entire harmony with the other, with the exception of these words, "contract or other obligation," which will bring them into entire harmony. Now, the amendment, as I understand it, leaves out these explanatory words, that a mortgage is an interest in the real estate. We all know that under the present law a

mortgage is not an interest in the real estate. It is simply security. If the note should be transferred it carries the mortgage along with it. It is not an interest in the real estate. This section says it shall be an interest in the real estate. No system of rebates can apply to this property, because there is nothing to deduct. Section five is gotten up with a great deal of care.

MR. EDGERTON. I fixed it up. [Laughter.] I am afraid they will beat it now. [Laughter.]

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: We see how we get into difficulties when we depart from solid ground. Since the passage of the amendment of the gentleman from Sonoma, I have conversed with about a dozen gentlemen who voted for it, and each one of them asked me what it meant. I told them I did not know. I have asked others what it meant, and not a man has been able to tell me. The gentleman who offered the amendment says he will move an amendment to it in Convention, and he explains and explains and explains, and tells us that it will be further necessary to explain when it comes to section sixteen, and still further necessary to explain when it comes to section seventeen, and I am very much afraid that explanations will be in order from this on till the end of the session. And explanations will be in order before the people, when this Constitution comes to be voted on. Explanations will be in order when the Legislature meets; explanations will be in order when the Assessors go to work, and explanations will be in order when the Supreme Court comes to interpret this language. All this shows what difficulties we encounter when we undertake to tax things that are not property. Now I suppose the members are nervous already for fear that I shall talk my full fifteen minutes. I shall do no such thing. I only rise to say that I am opposed to this amendment. I have stated that I do not understand section two. I have not addressed a man yet who does understand it, or pretends to understand it. I defy any one to explain what it means. If it means anything at all, if it can be made to mean anything, it is that by adopting this scheme of taxation we have offered a premium to the citizens of California to vote against the Constitution. It is as villainous a scheme as the old United States income tax. That is admitted to be wrong.

MR. HOWARD, of Los Angeles. The explanations of the gentleman from San Francisco have made this thing as clear as mud, and I move the previous question.

MR. EDGERTON. If the gentleman will withdraw a moment I will renew the motion. I have been asked by three or four gentlemen, since the Convention took a recess, what was the meaning of this exception, "except as to railroad and other quasi-public corporations." Why these corporations are exempted. It was made to appear to the Committee on Revenue and Taxation that the railroad companies were in debt in very large sums, in the form of bonds, and that those bonds were held in Europe, New York, and other places outside of this State. Now, sir, under a decision of the Supreme Court of the United States—the decision referred to by the gentleman from Los Angeles the other day—it has been held that these bonds are not within the jurisdiction of the State, and cannot be taxed. So, unless this exception is made, the railroad companies will have a good thing of it. When the Assessor came to assess them they would deduct the amount of these bonds from the value of their property here, and the bonds being out of reach of the State the State would get very little tax.

THE PREVIOUS QUESTION.

MR. EDGERTON. I renew the motion for the previous question.

The call for the previous question was seconded by Messrs. Howard, Ayers, Evey, and Stuart.

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

Carried, by a vote of 63 ayes to 25 noes.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Los Angeles, Mr. Evey.

Lost.

MR. HEISKELL. I move to strike out section five.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I am opposed to section five in toto, because I believe it would entirely destroy the object for which this Convention was called, and that is to equalize taxation. Section five, as it now stands, makes a preference in the way of taxation in favor of persons owing secured debts on mortgages. If my friend over there owes me five hundred dollars and I have his note for it, the Assessor comes along and assesses me on my property and on the note also. That makes a discrimination in favor of the party who has his money loaned on mortgage securities, so that you entirely destroy the equality of taxation. I am opposed to the section. It will destroy the equality of the whole thing if debts secured by mortgage are not required to pay just as much taxes as the unsecured. I want the whole thing taxed.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I do not understand how the gentleman talks of equal taxation, and at the same time talks about taxing a man for more than he is worth. If I see a piece of land worth twenty thousand dollars that I wish to buy, and I have only ten thousand dollars, I go to the man and tell him, and he gives it to me and takes a mortgage for the balance. Now, I am only worth ten thousand dollars, and he is worth ten thousand dollars. Now, I would like to have the gentleman explain why I should pay taxes on twenty thousand dollars, and the man who owns a half interest in that land pays nothing. I want to pay taxes on what I am worth, and I want every other man to pay taxes on what he is worth. We are not here for the purpose of putting a still heavier burden upon the poor than they already have to bear. We are unanimous for the taxation of mortgages. There is no doubt about that. But we are also unanimous that if a man is only worth ten thousand dollars, he shall not pay taxes on twenty thousand dollars. I do not ask any man to come here and pay taxes on what he is not worth. It is an inequality that we have been trying to get changed. This Convention was called for that purpose. The poor men and the farmers have been paying four times as much as they are worth, and the rich monopolists have not paid anything. The burden of taxation has been upon the producer and the laboring man. We must try and equalize this thing. This section does it. I trust the amendment will be adopted as it comes from the committee, and there will be rejoicing all over the State, except by the money lenders.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I did not approve of section two as adopted. Having adopted section two, this Convention has effectually opened the door for the escape of all unsecured debts in this State. The man who owns a note need not pay taxes on it, because he can cover it up. But as section two has been adopted I hope section five will be adopted.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I hope section five will be stricken out. There is nothing good in it, and there is a good deal in it that is bad, very bad. Some days since, when this section was considered, I called attention to the monstrous absurdity of it. As it appears to have escaped the attention of the committee, I will again call attention to it. It says the taxes so levied shall be a lien upon the property, and may be paid by either party to such security. If paid by the owner of the security, it shall become a part of the debt so secured, and if the owner of the property shall pay the tax it shall constitute a payment on the debt. Now, that language amounts to this: that if the mortgage holder gets to the office of the Tax Collector first and pays the taxes, he saddles it upon the debtor. But if the debtor should be swifter of foot and gets there first, he saddles it upon the creditor.

MR. DUDLEY. The gentleman is certainly laboring under a hallucination. It makes no difference who pays the taxes; the one who pays the taxes has a lien upon the other for his share of the taxes.

MR. CAPLES. The language is not susceptible of any such interpretation. It applies only to that part which is covered by the mortgage, and it amounts simply to this, that whoever gets to the office first saddles the tax upon the other. It is a provision in favor of the mortgage holder, because he generally lives near the towns. He is supposed to have ready money to pay with. The poor man labors under the disadvantage of being short of ready money, and cannot take advantage of this provision. He is deprived of the advantage that is given to the mortgage holder. If the gentleman can explain the language in any other way, I would be glad to hear it.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I hope the section will be adopted as it is. I think it is very strange, indeed, that the gentleman from Sacramento, Dr. Caples, cannot understand the last clause of this section. That clause simply treats the mortgagor and the mortgagee as tenants in common, as far as the payment of the tax is concerned: that the debtor shall only be held accountable for his pro rata of the tax accruing on that part of the real estate. That if I have a mortgage on Mr. Caples' homestead, it is supposed that I own that amount in his homestead, and that I shall be held responsible for the tax on the interest which I hold, and that the land shall be responsible primarily for the tax. This whole matter is clearly explained in the section, and I hope it will be adopted.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: It seems to me the gentleman from Sacramento, Dr. Caples, who is usually very clear, has become very much confused as to the intention of section five. The intention of section five is clearly to tax mortgages, trust deeds, or other obligation. Any Court construing section five would construe it that the tax upon the mortgage, or the money secured by mortgage, may be paid by the party owning the mortgage, and the residue by the party owning the land, and it cannot be otherwise construed.

MR. CAPLES. Does it not provide that, in the event that the creditor pays it, it shall become a part of the debt?

MR. BEERSTECHER. Yes, sir.

MR. CAPLES. And if the debtor pays it, it shall be a discharge of so much of the debt?

MR. BEERSTECHER. Yes, sir. It says the tax so levied shall become a lien upon the property secured, and may be paid by either party to such security. If paid by the owner of the security, the tax so paid shall become a part of the debt. Of course the Court would construe it as being a part of the debt only to the extent of the amount which the debtor was obliged to pay, because it is especially provided that the owner of the property shall have a set-off for the amount of the tax on the mortgage. It seems to me very clear.

Now, I would call the attention of the Workingmen to section twenty-four of the Workingmen's platform, which says that no person shall be taxed for more than he is worth. If we adopt section five, we will be carrying out that part of the platform. Section two, as adopted, clearly says that there may be a deduction provided for by law, as to all unsecured debts. That answers the argument of Mr. Tinnin, that there is a discrimination in favor of secured debts. Section two expressly says that the Legislature can by law provide for deductions of debts from credits. The purpose of section five is to oblige the man holding liens upon real estate to pay taxes on the amount they hold, and to have the owner of the land pay taxes only on the amount of his interest in the real estate. We all understand the theory to be to make the owner of property pay the taxes. Men who have vast landed possessions and

vast amounts of personal property that require the protection of the State, should be compelled to contribute to the support of the State. For them Government is established. The individual who has nothing but the clothes upon his back pays but little tax, and requires but little protection. The man who owns much should pay much, and the man who owns little should pay little, because he receives little or nothing. Property should pay the taxes, and in order to encourage men who have a little to invest that little, we must tax them only on the amount of their investment. If a man buys a tract of land worth twenty thousand dollars, and pays ten thousand dollars on it of his own, and borrows ten thousand dollars, he should pay taxes only on the amount of his interest in the land, which is ten thousand dollars; and the man who loans him the ten thousand dollars should pay his share of the tax, or half of it. Unless we adopt section five, having adopted section two, mortgages will absolutely escape taxation.

MR. STUART. I move the previous question.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: It seems to me there is a great deal of obscurity in this section, unless I am mistaken in my reading of it. Certainly I understand it so. As the gentleman who has just taken his seat said, the intention is to get at and tax money represented by mortgages, trust deeds, and other contracts; that is the intention of the section, but I do not think that result will be arrived at. It is simply a roundabout way of taxing the land; it distributes the payment between the owner of the land and the owner of the mortgage on the land. Now, if A buys a piece of land worth ten thousand dollars, and mortgages it for five thousand dollars, the two men have an interest in that land. Now, A takes that five thousand dollars and puts it in bonds, or county warrants, or United States bonds; now he has fifteen thousand dollars' worth of property and only ten thousand dollars are taxed. If the owner of the mortgage pays his share of the tax, the owner of the land only pays on five thousand dollars. Now, if we are going to get at this matter let us do it, and not play with words for the purpose of taxing the land in a roundabout way. There is a great deal of ambiguity and obscurity in this section. Now, the amendment to section two, proposed by the gentleman from Sonoma, is not clearly understood. If I had it before me, and had time to study it, I might possibly be able to understand it, and vote for this section five. It may be that gentlemen may be able to make these things clear. I do not understand it, and I do not think the members of this Convention understand it, and I do not think we can vote intelligently upon this section until we do understand it; therefore I hope we will not be called upon to vote on this section until we see the section as passed.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I intend to be one of that number who are in favor of taxing mortgages; and, above all things, I am in favor of compelling the mortgagee to pay the tax. I want the person who is taxed for the interest that he is supposed to have acquired by reason of his security, to pay that tax, and nobody else. And how does this section accomplish that result? I am sorry to say (and perhaps I ought not to say it), but it does occur to me that there are a lot of figureheads who jump up and move the previous question when men are laboring with all their faculties to arrive at just conclusions as to what the Convention ought to do. When a proposition is presented that is so crude that we are not able to understand it, these men seem desirous of rushing it through the Convention without regard to whether it is digested or not. Many of the provisions already adopted have had to be taken on trust, on account of the ill-considered action of gentlemen who spring this previous question upon the committee. Now, let us see who pays and who does not pay, under this provision that is presented here. "The tax so levied shall be a lien upon the property and security respectively." That is to say, the tax levied against the security shall be a lien against the security, and the tax levied upon the land (which constitutes the security, for that matter) is assessed to the owner of the property. Now, what does this "respectively" mean? The tax, so far as the loan is concerned, is only a lien upon the security. What is the security? Will gentlemen say it is the interest in the land? And will gentlemen contend that it will be paid out of the land, which is supposed to constitute the security? If that be the understanding, it could have been expressed in plain terms, so that there would be no doubt as to who should pay the tax. Now, it is the duty of this Convention to express its intentions in language that cannot be misunderstood. I am willing to stay here until we do adopt something that will meet the wants of the people—something that will be understood, emphatic, and plain. Under these circumstances, I do not want this previous question sprung upon the Convention. We want to tax mortgages, and we want the man who owns the mortgage to pay the tax. It is not in the form we want it in. We want to add some provision at the bottom of this section whereby the person who owns the land or other property may pay the whole tax, and retain it when he comes to pay his debt, before the tax is due. That is the proposition we want to cover. We want to fasten it upon this section, because we may not be able to do it afterwards. Now, it is not a very hard matter to put this matter in such a shape as to accomplish the results we seek to accomplish. It takes time to do this, and these gentlemen who know nothing but to move the previous question had better keep their seats.

MR. AYERS. Will striking out the word "respectively" cure the defect?

MR. HERRINGTON. No, sir, not altogether. It will cure one defect, but not the whole defect. We want some provision which will allow the mortgagor, or person giving the security, the right to retain the amount of the tax when he comes to pay his debt.

MR. AYERS. That is just what this section does now.

MR. CROSS. Will the gentleman read the last clause of the section and see if that does not cover it.

MR. HERRINGTON. "If the owner of the property shall pay the tax, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof." Now, sir, if he pays the debt before the tax is due, he cannot have an offset. I say when the mortgagor comes to pay that debt before the taxes are due and payable, and after the tax levy, he should have the right to deduct the amount from the debt. I am for making the mortgagee pay the tax. That is the man you are looking for. The borrowers have been ground down and under the heels of the money lenders too long already, and I want to afford them relief.

MR. AYERS. Have you read the last clause of this section?

MR. HERRINGTON. Yes, sir; I have.

MR. AYERS. Could the English language make it more clear or explicit—"if the owner shall pay the tax it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof?"

MR. HERRINGTON. If the debt is paid before the tax is due and payable, the man will have no recourse. He cannot pay the tax, because no one will receive it; yet it is levied, and stands against the property. You cannot collect the tax upon the real estate until it is due. There is no one to collect it or take charge of it. Hence, he can have no offset against the debt.

MR. AYERS. These are very exceptional cases.

MR. HERRINGTON. Yes, sir; and there would be exceptional cases all the time.

MR. AYERS. Will the gentleman offer an amendment that will cure this defect?

MR. HERRINGTON. Yes, sir; I will do it if you will wait. I have been fighting off this previous question.

MR. AYERS. I thought the argument was exhausted upon some of these sections.

MR. HERRINGTON. You find it is not.

MR. WEST. Did you not inform us the other day that this section had more sense in it than the whole report?

MR. HERRINGTON. Yes, sir.

MR. WEST. That there was not an omission of a single dot?

MR. HERRINGTON. Yes, sir; I will admit all that. But that was on first reading. I have given the subject a good deal of thought and reflection since that time. It is only the man who has not a great deal of comprehension that does not change his mind. [Laughter.]

MR. WEST. The gentleman explained it so clearly the other day that I changed my mind in favor of it.

MR. TINNIN. The fifteen minutes are up; I object.

THE CHAIRMAN. Shall the gentleman have leave to proceed?

Leave was granted.

MR. HERRINGTON. I wonder at the gentleman objecting. He has only made about four different speeches, and I have made none. I was proceeding to say, when the gavel knocked my arm down, that until the tax was actually paid it could not be pleaded as an offset, under the provisions of this section. It is the man who owns the mortgage that I want to see pay the tax. I want to protect the mortgagor by providing for his reimbursement for the tax which has been levied, when the debt is paid before the tax is payable. I propose to offer an amendment, to add to the section the following: "Provided further, that if any such indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year."

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: It seems to me that of all the work of this committee, none has been more efficient, more serviceable, than this particular section. Now, sir, it has been claimed here that the mortgagee has an interest in the property mortgaged. Of course the amount of that interest is measured by the amount of the mortgage. There is nothing in this section which is difficult to understand, or doubtful in its meaning. The wording is clear and precise, and shows plainly the meaning.

Now, sir, a good deal has been said on this floor about keeping pledges. Now, those who support this section will exactly comply with the pledges they made to their constituents. The platform of the Workingmen's party says that mortgages shall be taxed. This section says that mortgages shall be taxed as plainly as words can say it. Now, section twenty-four of that platform says that a man shall pay taxes on what he is worth, after deducting indebtedness. This section clearly carries out that idea. The provision of the platform which says that mortgages shall be taxed is here fully complied with, and that part of the platform which says that a man shall pay taxes only on what he is worth, is also fully complied with. The mortgagor has the amount of the mortgage deducted from the value of his land, and pays taxes on the balance. I understand also that the platforms adopted by the Non-partisan Conventions contain also substantially the same provision.

MR. SMITH, of Fourth District. Suppose a man owns a piece of land worth ten thousand dollars, and borrows five thousand dollars, according to this does he pay taxes on any more than five thousand dollars?

MR. CROSS. He has to pay on the five thousand dollars, his interest in the land, and on the money which he borrowed.

MR. SMITH. Suppose he invests it in government bonds.

MR. CROSS. He has a right to escape taxation if he does, under the laws of the United States. There is nothing in that objection. It is said that this provision is obscure. Let us take it up, line by line, and see if it is. "A mortgage, deed of trust, contract, or other obligation,"—anybody can understand that—"by which a debt is secured"—no difficulty about that—"shall, for the purposes of assessment and taxation,"—

who cannot understand that—"be deemed and treated as an interest in the property affected thereby." "Except as to railroad and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property;" that is, if I have a farm worth twenty thousand dollars, and there is a mortgage on it for ten thousand dollars, I am assessed for ten thousand dollars, and the owner of the mortgage for ten thousand dollars. "And the value of such security shall be assessed and taxed to the owner thereof, in the county in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, respectively, and may be paid by either party to such security." If the mortgagee pays the tax to protect his mortgage, he is entitled to add the amount to the mortgage debt. There is no obscurity about that. It is as plain as the nose on a man's face. The owner of the property may pay the tax if he chooses, and the amount which he paid for the mortgagee he may deduct from the debt when he comes to pay it. There is no absurdity in that; there is no obscurity in that. There is no conflict between this section and section two. They are perfectly harmonious. This exception in case of unsecured debts was necessary. There can be no conflict, and there is no obscurity in this section.

MR. WINANS. Mr. Chairman; I have an amendment to the section.

THE CHAIRMAN. The motion is to strike out the section.

MR. WINANS. I wish to offer an amendment to strike out the word "respectively."

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: To my mind, sir, there is a defect in this section, and I think the objection made by the gentleman from Santa Clara is well taken. It seems to me, sir, that under the peculiar phraseology of this section, that if the mortgagor were to pay the mortgagee the debt after the assessment lien had accrued, and before the tax was collectable, there would exist no lien for the payment of the mortgagor. I believe that the owners of mortgages will find a way of evading the payment of taxes in any form. I believe there will be methods found, and a way invented, to circumvent its objects, but it is our duty to prevent it if we can. I hope the Johnson amendment will be adopted, and that in addition there will be other means devised to compel the mortgagee to pay the tax; something that will afford them no means of evasion.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: This matter was before the committee, and it was understood and disposed of upon this theory, and the amendment of the gentleman from Santa Clara is not necessary, because it is the State tax, and everybody knows what it is. It is levied and stands for two years. And I think it is generally understood what the county tax will be in the several counties. My judgment is that it would be better, after all, to adopt some such provision as that in the Boggs amendment, offered by Judge Hale, "providing that if such indebtedness shall be paid by the debtor after assessment and before the tax levy, the amount of such levy may be retained by the debtor," etc.

MR. HERRINGTON. If the gentleman will give way I will offer that amendment now.

THE SECRETARY read:

"Add to the section: 'Provided further, that if any such indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.'"

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I hope this section will be stricken out. I believe that it ought to be stricken out, because I believe it is inconsistent with section two. The Non-partisan platform read by the gentleman from Nevada, is inconsistent with this section. The reason I am in favor of striking out this section is that, by the action of this committee in adopting section two, we have looked upon solvent credits as property. The resolution in the platform read by the gentleman from Nevada says such credits are property. And it is for the reason that this section provides that they are not property that I am in favor of striking it out, because it is inconsistent with section two as already adopted. Why, sir, should we, in our organic law, offer a premium on mortgages? If a debt unsecured is property, why is not a note secured by a lien upon real estate just as much property? I say, sir, that when we incorporate such a provision as this into our organic law, we are indorsing a glaring inconsistency. If a solvent debt unsecured is property, as we say it is, a solvent debt secured by mortgage is property, and ought to be taxed as any other solvent debt. I believe in meeting this question squarely, and I hope the section will be stricken out.

REMARKS OF MR. BIGGS.

MR. BIGGS. I did not intend to say anything, but the gentleman made some allusion that solvent debts should be taxed as property. If the gentleman had paid a little attention to the argument of Mr. Cross he would have understood this question better. We propose to make them property. If the debtor pays the tax, he is entitled to have the amount taken off of his debt. If the creditor pays the tax he can add it on to the debt.

MR. WHITE. I call for the previous question.

REMARKS OF MR. PROUTY.

MR. PROUTY. Mr. Chairman: I was surprised at the gentleman when he favored taxing the land and taxing the mortgage also. Now, you will all admit that land is not taxed at more than two thirds of its actual value. I know of cases where the mortgage on the land amounts to more than the valuation put upon it by the Assessor. I know a case where a man has property worth six thousand dollars, and it is only assessed at four thousand dollars. Now, that man has a mortgage on the land for four thousand dollars. The Assessor puts down the mortgage, but when he comes to the farm there is no land left to tax.

MR. BIGGS. It is a well known fact that bankers never loan more than half or two thirds of the value of the security. If there is an occasional case of the kind mentioned by the gentleman, I do not think we should enact a special clause for his benefit.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I am very sorry to see these mortgage men disagree. Brethren should dwell together in peace.

MR. MORELAND. So should the Workingmen.

MR. REYNOLDS. Never mind the Workingmen. You have got into the difficulty which you will always have to meet when you depart from solid ground. And now, to save time, just imagine that I have made my other speech over again: I will not repeat it here. Whenever you undertake to make property out of that which is not property, you are bound to get into difficulties. But there is one comfort I have, and that is this quarrel among the mortgage men; they have been trying to shove through this Convention a provision by which they can tax the debtor class doubly and trebly, while those who do not owe anything get the benefit of the double taxation. When you go home to your constituency they will villify you——

MR. MCCALLUM. I understood the gentleman to say that he was not going to repeat his speech over again.

MR. REYNOLDS. I give you notice that you cannot sneer these facts out of existence. When you have taxed a man's homestead for six thousand dollars, directly and indirectly, when it is only worth two thousand dollars, I give you due notice that you will not be able to sneer these facts out of the minds of the people.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Winans, to strike out the word "respectively."

Adopted.

THE CHAIRMAN. The question is on the amendment of the gentleman from Santa Clara, Mr. Herrington.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: It seems to me that this section had better stand, in that respect, as it was originally formed. You had provided for assessing two parties. This amendment provides for allowing one of them to retain the tax which the other should pay, but makes no provision either for his paying the tax into the county treasury, or doing anything with it to discharge the tax lien which is already resting upon the mortgage. When the property is assessed the mortgage is assessed to the mortgagee. He is the person responsible for the tax. Now, if this provision is passed, the amount of that tax is retained by somebody in certain cases, with no obligation on his part to devote it to the payment of taxes.

THE CHAIRMAN. The question is on the adoption of the amendment.

Division was called, and the amendment was adopted: ayes, 58; noes, 34.

THE CHAIRMAN. The question is on the motion to strike out the section.

Division was called, and the motion was lost by a vote of 31 ayes to 50 noes.

MR. EDGERTON. I move the committee rise, report progress, and ask leave to sit again.

Lost.

MR. FREEMAN. I offer an amendment to section five.

THE SECRETARY read:

"Insert after the word 'county,' in line eight, the words 'city or district.'"

MR. FREEMAN. There are city taxes to be levied, and district taxes to be levied, and it seems to me that in order to carry out this idea clearly through the whole system, that this amendment should be adopted.

MR. EDGERTON. I have no doubt the amendment is a very proper one.

The amendment was adopted.

THE CHAIRMAN. The Secretary will read section six.

THE SECRETARY read:

SEC. 6. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

MR. MCCOMAS. I offer a substitute for the section.

THE SECRETARY read:

"No contract or obligation hereafter made or entered into in this State for the payment of any money or other thing of value, shall have any validity or be enforced in any of the Courts of this State, or be entitled to record in any county thereof, that provides for or obligates the obligor or payor, directly or indirectly, to pay or cause to be paid any of the taxes assessed to or against the owner of such debt or obligation upon the same obligation or debt."

THE CHAIRMAN. The question is on the substitute.

Lost.

MR. WYATT. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Add after the word 'lien,' the words, 'or attorney fee for enforcing such lien or contract.'"

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: The amendment simply adds to the prohibition attorney's fees for enforcing such lien. One of the greatest

oppressions imposed upon the borrowing class, upon those who are unable to pay, is to provide for most enormous attorney fees in cases of foreclosure.

MR. EDGERTON. I would call the attention of the gentleman that, notwithstanding this inhibition, it is a matter of discretion with the Court.

MR. WYATT. As I understand it now, notwithstanding an attorney fee may be contracted for, the Court may fix the fee. The Court can lessen the amount notwithstanding the contract.

MR. EDGERTON. The whole question lies in the discretion of the Court. There are many cases where it is eminently just that these fees should be paid. Every lawyer knows that oftentimes the debtor postpones the payment of the debt until the last possible moment, and puts the creditor to the expense of going into Court and enforcing the mortgage, and I say in such cases it is unjust that his debt should be depreciated and reduced to the extent of the attorney fee which he has paid. I think it is right, and the discretion should be left with the Court.

MR. WINANS. It is perfectly right the way it is now. The Courts have the power to fix these fees according to the exigencies of the case, and there is where the matter should be left. It ought not to be put in the Constitution, where it might work a hardship in many cases.

THE CHAIRMAN. The question is on the amendment.

Division was called, and the amendment was lost, by a vote of 37 ayes to 40 noes.

MR. HALL. Mr. Chairman: I move to amend section six.

THE SECRETARY read:

"Insert after the word 'therein' the words 'other than the rate of interest prescribed by law.'"

MR. EDGERTON. I second the amendment, so as to get it before the Convention. I will state that the same proposition was discussed before the committee, and they solved the problem by adopting it as it now stands.

MR. HALL. As I understand it, the creditor will be enabled to avoid these provisions, not by an agreement whereby the debtor agrees to pay the tax, but an agreement whereby the debtor agrees to pay a higher rate of interest, which shall indemnify the creditor for the taxes he shall pay on the security. The object of this amendment is to prevent that. The same result would be accomplished by the creditor by charging a rate of interest which shall indemnify him for the taxes paid on his security.

MR. EDGERTON. Many of these mortgages already stipulate that the mortgagor shall pay all taxes upon property, and all assessments levied. This provision not only provides that all such stipulations shall be void, but void as to all interest.

MR. PULLIAM. I ask the gentleman if he knows of any man who would put such a thing in a mortgage after this thing is passed. No man would be fool enough to do that.

MR. HALL. It has this objection to it, that the contract is rendered a nullity as to any rate of interest, any rate of interest whatever, though that should be the rate of interest established by law. That idea is not a good one. The contract should be at least good to the extent of the interest which the law authorizes to be paid.

MR. EDGERTON. The amendment is simply to modify the penalty, to modify the punishment. As the section now stands, the mortgagee or grantee would be deprived of the entire interest. By this amendment he would be deprived simply of the interest in excess of the rate fixed by law. That would be saved to him.

MR. HERRINGTON. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Strike out the word 'other' and insert the word 'greater.'"

THE CHAIRMAN. The question is on the amendment to the amendment.

MR. HERRINGTON. Mr. Chairman: The way the amendment now reads it would at least imply that if a person make a loan at a less interest than that prescribed by law, it would be void. I am satisfied that the author did not intend to produce that result. I propose to insert the word "greater" in place of the word "other."

MR. HALL. I accept the amendment.

THE CHAIRMAN. The question is, then, on the adoption of the amendment of the gentleman from San Joaquin.

The amendment was lost.

THE CHAIRMAN. Are there any further amendments to section six?

MR. ROLFE. There being a slim house, I move the committee rise, report progress, and ask leave to sit again.

No second.

THE CHAIRMAN. The Secretary will read section seven.

FEES FROM CORPORATIONS.

THE SECRETARY read:

SEC. 7. No corporation, except for benevolent, religious, scientific, or educational purposes, shall be hereafter formed under the laws of this State, unless the persons named as corporators shall, at or before filing the articles of incorporation, pay into the State treasury one hundred dollars for the first fifty thousand dollars or less of capital stock, and a further sum of twenty dollars for every additional ten thousand dollars of such stock; and no such corporation shall hereafter increase its capital stock without first paying into the State treasury twenty dollars for every ten thousand dollars of increase.

MR. REDDY. Mr. Chairman: I move to strike out section seven.

THE CHAIRMAN. The question is on the motion to strike out section seven.

SPEECH OF MR. REDDY.

MR. REDDY. Mr. Chairman: I cannot see any good purpose that this section can serve. I do not see why you should desire to impose a tax of this sort upon corporations. It is pretty well settled in the minds of all mining men that mining can only be carried on, and the mineral resources of the country developed, through corporations. Now, if we impose a tax of this sort upon companies desiring to incorporate, you are taking away the incentive to develop the resources of the country. Under this section, taking the usual number of shares—fifty thousand—it would cost ten thousand dollars to incorporate. Fifty thousand shares, at the par value of one hundred dollars per share, as is the custom in this State, would cost ten thousand dollars to incorporate. Now, that is the penalty you put on an incorporation at the start. Who is going to pay to this State ten thousand dollars for the privilege of incorporating? Incorporating for the purpose of what? To develop the wealth of the State. Why is this desired? Why levy this enormous tax upon them? Why impose such a tax as this upon men who desire to come here from the East to invest their money in such enterprises? What madness to compel them to pay to this State ten thousand dollars for the privilege of investing one hundred thousand dollars in the development of the resources of the State. What civilized government has ever done such a thing? They even pay a premium on such enterprises. But here parties seek to tax the corporations ten thousand dollars for the privilege of investing their money in the development of the resources of the State. The farmers have set up a wail here and described the difficulties they have had down in these valleys in establishing homes. The miners themselves, many of them, have sailed clear around the horn, and many of them have been balanced upon the point of a horn ever since, in an honest endeavor all the time to find something that would add to the wealth of the State, and certainly they have succeeded, because I see that during the year eighteen hundred and seventy-seven they have produced nearly nineteen million of dollars; and yet these learned statesmen want to go to work and impose this onerous tax upon the men who are endeavoring to bring this wealth to the surface. It is the only industry to-day in this State which pays to laboring men three dollars and four dollars a day. In my county the ruling rate is four dollars a day for miners. Now the laboring men cut up so about wages down in San Francisco that they have got the wages down to nothing. The only men who pay them full wages in this State are the miners, and yet the Workingmen stand up here and vote to tax them out of existence, and prevent the organization of companies which will pay them better wages than they can get in any other place. Nor does this apply to mining corporations alone. If men desire to invest their money in manufacturing enterprises, they are met at the very outset by the fact that they must pay ten thousand dollars into the State treasury before they can be privileged to incorporate under the general laws of this State. If you do this thing in preference to paying these enormous sums to the State, these capitalists will go into some other State and incorporate there, and then this State will be deprived of the business. It is impossible to get money to-day to develop, and explore, and prospect the mining ground of the State. Where is the capital to come from? Already they are organizing mining boards in New York, and there is a desire throughout the eastern States to invest in mining property in this State. Now, suppose the prospector goes out and finds what appears to be a valuable mine, as far as surface indications go. The indications all point to a good prospect. He wants money to open a mine; how will he get it? The capital must come from the eastern States to develop this mine. If there was nothing in the way, it would come, but we levy this enormous tax upon them for the privilege of incorporating under our laws. As soon as the eastern capitalist finds that he must pay ten thousand dollars for the privilege of incorporating, that is the end of it. This provision will tend to prevent the investment of money in enterprises in this State. Before a man can stick a pick in the ground he must pay ten thousand dollars into the State treasury. It would be far better for the State to pay a premium for the investment of money in the development of our resources, than to compel them to pay a tax. Ten thousand dollars is more capital than many of the mining companies have to start in with. If gentlemen desire to prevent mining they could not adopt a more effectual plan than this. This will do more, it will prevent companies from incorporating in this State at all, not only for the purpose of mining, but for all other purposes.

Now, is it desirable to have corporations at all? If it is, then wipe out this section. If you do not want them, let the section stand as it is, and you will soon accomplish that result. Now take Bodie, in Mono County. To my knowledge they never could have developed the mining property there had it not been for the capitalists of San Francisco, who came there and invested their money. They thought the prospects were good, and they were willing to invest their money and take the chances, and put in a given amount of money. They purchased from these miners who had been struggling for so long. So these men incorporated with less money than would be paid to this State if this section is adopted, and proceeded to develop the mines. These men had been laboring there for years, but had not the necessary amount of capital to open up these same mines, and only raised it by incorporating.

Gentlemen say they want to crush out the wildcats. Now, would it be advisable to crush out these very corporations that are developing our mines in order to reach a few wildcats? Hadn't we better allow a few mining swindles than to crush out all corporations, and prevent incorporations in future? It may be but a few years until other industries will be found for which it will be necessary to raise money in this manner. Are you going to enact a clause in the organic law which will forever debar them? It is the wildest legislation ever heard of under the sun. Gentlemen may get up here and howl about poor people being swindled by wildcat mining operations. I don't know anything about these swindles that they have down in San Francisco—I am speaking about mines—I am not talking about swindles, but about the mining industry, and I say it is a legitimate, honest industry, and one to be encouraged in this State, and because some foolish persons have allowed themselves to be swindled, that is no reason why we should crush out

the mining industry. Is it desired to load down that interest and hamper it with taxes, over and above all the taxes imposed upon other property?

MR. CROSS. I think there ought to be some guarantee, so that if there are wild schemes there would be some place of responsibility.

MR. REDDY. I do not see how this tax is going to protect the individual. Individuals must rely upon their own common sense to protect them against swindles. Men who invest their money must ascertain what kind of an investment it is for themselves. The State cannot protect each individual against his own folly.

The gentlemen have not yet answered my question. Is it desirable to load down this interest and hamper it by taxes far in excess of taxes imposed upon other property? If so, why? Are all the swindles perpetrated in San Francisco based on mining operations?

MR. TULLY. Mostly wildcat swindles.

MR. REDDY. If the gentleman can suggest any provision which will prevent wildcat schemes, so as not to injure the honest ones, I will agree to support it. But if you propose to crush out the honest industry, in order to reach the wildcats, that is one thing. You must do one of two things—you must take the bitter with the sweet, or crush the whole thing.

Another thing, let me say. Suppose a bank had to pay ten thousand dollars into the State treasury; would that help the people any? It strikes me it would be of no benefit to the people at all. You have made directors of corporations responsible, and if you are satisfied with one you ought to be with the other. There is speculation in everything. Why, men in this State get up enormous speculations in wheat, and break up at it. Is that any reason why you should prevent the raising of wheat? It is so with many industries. There is speculation in everything, but that is no reason why any honest industry should be made to pay the penalty. But there seems to be a wild desire here, without reference to reason, without reference to any rule of political economy, to make war on corporations. If corporations commit a wrong I am perfectly willing to punish them. I am perfectly willing to throw around the people all the safeguards possible, by adopting such measures as will protect them. But how do the mining corporations injure the people of this State? I have heard it stated that farmers have invested in mining stocks, and have been brought to the brink of ruin. What stocks? Why, in the stock of the mines of the State of Nevada. They have never been brought to the brink of ruin by any California mining stocks, because there are no mines in California which purport to be speculative mines. Perhaps if these farmers had considered the interest of their own State a little more, and their own selfish interests a little less, and invested their money in California mines, they would have been better off to-day. If the poor of San Francisco have been swindled out of their earnings, it has been through these Nevada mines, and not through California mines. I do not call it robbery. The Government cannot take care of the private interests of every individual. They must take care of their own interests, for Government has too much else to do to descend to that kind of business. If a few laboring men and washerwomen have been robbed in San Francisco, by reason of investments in mining stocks, will gentlemen take into consideration the number of poor women that have been maintained; take into consideration the number of poor men employed in the mines of this State, and see if there is not ample compensation? The payroll of these corporations in Mono County alone, amounted to not less than one million dollars last year. Is that an injury to the State? Does not the State derive revenue from the investment of all this money? And are there not thousands of people employed by these corporations who would otherwise hang around your cities, working for one dollar a day? Instead of being well paid, they would be hunting around for a hay stack to sleep in. We do not make them furnish their own blankets, but pay them so they can sleep in a house.

Now, when this subject was up before, under another section of this report, I spoke upon it, not for the purpose of arraying one interest against another, as gentlemen seem to persistently claim. I could have no interest in making war between the mining interest and the farming interest. As I understand it we are in the minority here, and why should we make war on the majority. But I come before you representing this interest, and ask my fellow delegates to do what is just and right, to tax our property as you tax all other property, and don't impose a tax of ten thousand dollars upon us for the privilege of carrying on the mining business. Ten thousand dollars for the privilege of sinking a shaft in ground which may not be worth ten cents, and which, if it does prove valuable will be of immense value to the State, as well as to some of her citizens. Why should the State want to crush out an industry which is giving employment to thousands of her people and increasing her wealth year by year? We are willing to bear our just burden of taxes like all other industries.

Now, sir, gentlemen seem to understand that we want to introduce war between the two interests, and I took special exceptions to the language of the gentleman from San Francisco, Mr. Winans, the other day, when he said that parties who came here with special interests to advocate, and who tried to inaugurate war between different interests, were acting in a spirit of demagogism. Now, sir, I happen to be one of those who rose here to protest against this injustice to mining corporations. What I have said here I said because I believed it. The gentleman may have been laboring under excitement when he said it, but if he had reference to me, there is not one word of truth in it. I have not charged any gentleman with improper motives on this floor, nor do I intend to do so, and when the gentleman made the statement he did, he made a statement that is utterly lacking in truth. I speak for myself and for the other gentlemen who have spoken on this side of the question, when I say the language was unjust, unwarranted, and unnecessary.

MR. STEELE. I move that the committee rise——

MR. REDDY. I move the gentleman do sit down until I get through. [Laughter.]

MR. WINANS. I did not hear what you said. I am told you said I had reflected upon the mining interest, and upon those who represent them.

MR. REDDY. That is what you said yesterday.

MR. WINANS. I said yesterday that I did not come here to represent any class exclusively. I did not mean the mining men at all, or any other interest in particular. I said I was desirous of protecting the State at large. The gentleman must be very thin-skinned, because there was no malice in my heart. The gentleman is utterly mistaken.

MR. HOWARD, of Los Angeles. I move the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress therein, and ask leave to sit again.

ADJOURNMENT.

MR. TINNIN. I move we now adjourn.

Carried.

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

ONE HUNDRED AND FIRST DAY.

SACRAMENTO, Monday, January 6th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Herold,	Ringgold,
Ayers,	Holmes,	Rolfe,
Barbour,	Howard, of Los Angeles,	Shafter,
Barry,	Howard, of Mariposa,	Shoemaker,
Barton,	Huestis,	Shurtleff,
Beerstecher,	Hughey,	Smith, of Santa Clara.
Bell,	Hunter,	Smith, of 4th District,
Biggs,	Inman,	Smith, of San Francisco,
Blackmer,	Johnson,	Soule,
Boggs,	Jones,	Steele,
Brown,	Joyce,	Stevenson,
Burt,	Kelley,	Stuart,
Campbell,	Kenny,	Sweasey,
Caples,	Laine,	Swenson,
Chapman,	Lampson,	Swing,
Condon,	Larkin,	Terry,
Crouch,	Larue,	Thompson,
Davis,	Lavigne,	Tinnin,
Dowling,	Lewis,	Townsend,
Dudley, of San Joaquin,	Mansfield,	Tully,
Dudley, of Solano,	Martin, of Santa Cruz,	Turner,
Dunlap,	McCallum,	Tuttle,
Eagon,	McComas,	Vacquerel,
Edgerton,	McConnell,	Van Voorhies,
Estee,	McCoy,	Walker, of Marin,
Estey,	McFarland,	Walker, of Tuolumne,
Evey,	McNutt,	Waters,
Farrell,	Moffat,	Webster,
Filcher,	Moreland,	Weller,
Finney,	Morse,	Wellin,
Freeman,	Nason,	West,
Freud,	Nelson.	Wickes,
Garvey,	Noel,	White,
Gorman,	Ohleyer,	Wilson, of Tehama,
Grace,	Overton,	Wilson, of 1st District,
Graves,	Prouty,	Winans,
Gregg,	Pulliam,	Wyatt,
Hale,	Reddy,	Mr. President.
Harrison,	Reynolds,	
Heiskell,	Rhodes,	

ABSENT.

Barnes,	Hager,	Murphy,
Belcher,	Hall,	Neunaber,
Berry,	Harvey,	O'Donnell,
Boucher,	Herrington,	O'Sullivan,
Casserly,	Hilborn,	Porter,
Charles,	Hitchcock,	Reed,
Cowden,	Keyes,	Schell,
Cross,	Kleine,	Schomp,
Dean,	Lindow,	Stedman,
Doyle,	Martin, of Alameda,	Van Dyke.
Fawcett,	Miller,	
Glascock,	Mills,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted to Mr. Wilson, of Tehama.

Three days' leave of absence was granted Messrs. Schomp, Boucher, Charles, and Cross.

Leave of absence for one week was granted Mr. Harvey, on account of sickness.

Two days' leave of absence was granted Mr. Herrington.

THE JOURNAL.

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

Carried.

QUESTION OF PRIVILEGE.

MR. TULLY. Mr. President: I arise to a question of privilege. On Saturday a resolution was introduced, that when this Convention adjourns on the sixth day of January, it stands adjourned until the first Monday in September, A. D. eighteen hundred and eighty. I find that I am reported in the Record-Union as having voted "aye" on that proposition. I voted "no," and I prefer that the matter should be so understood, and I hope that the matter will be so understood.

AMENDMENTS TO RULES.

MR. NOEL. Mr. President: I desire to call up my motion to amend Rule Forty-three.

THE SECRETARY read:

"No member shall speak more than once on one question, nor more than ten minutes at a time, except the Chairman of a standing committee, who may speak twice on the same question, and shall be allowed thirty minutes each time. This rule shall not be suspended except by unanimous consent."

MR. McCALLUM. Mr. President: I move to strike out "by unanimous consent," and insert "by a two-thirds vote."

MR. GRACE. Mr. President: I am opposed to this thing, and I claim that one man has just as good a right to occupy time on this floor as another. There are certain gentlemen who get their time extended and there are others who do not. One man has as good a right to half an hour's time as another. There are men on this floor, not Chairmen of committees, who can enlighten this Convention as well as those who are, and they have the same right to occupy the time of the Convention; if they are not allowed to then certain counties are not as fairly represented as others. There are a great many things that we do not speak enough on. I therefore move the whole matter be laid on the table.

The motion prevailed, on a division, by a vote of 45 ayes to 43 noes.

MR. McCOMAS. Mr. President: I send up a notice.

THE SECRETARY read:

"Mr. President: I hereby give notice that, on to-morrow, I shall move to change Rule Two so that the Convention shall hereafter hold evening sessions, commencing at seven o'clock P. M."

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. A motion to strike out section seven is before the committee, and the gentleman from Inyo has the floor.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: In the course of my remarks on Saturday last, I took exceptions to a portion of the speech made by Mr. Winans when the Moreland amendment was under consideration, and I find since, that I was so unfortunate as to totally misunderstand the gentleman's intentions, and perhaps his language, and I regret very much that I should have criticized it as I did. If I have said anything which has at all wounded the gentleman's feelings I sincerely regret it. I am conscious of the indulgence that the committee has conferred upon me heretofore, and I will not detain it but a few moments on this question. The idea of this section is to prevent wildcat mining companies circulating their stock in this State. The section will not effect that object. They may incorporate in Nevada, put their stock in the San Francisco Board, and no one will inquire whether it is a California or Nevada corporation, and it will sell as freely as if it was incorporated in this State; hence this section can do no good. It will drive legitimate enterprises into that State for the purpose of incorporation. Our citizens will be compelled to go abroad in order to incorporate. I do not think that gentlemen understand the value of the mining interest in this State, nor do they seem to understand the wants of the mining districts. Commencing at the Nevada line in Mono County, and in Inyo, there are two ranges of mountains already partially explored. These ranges are four hundred miles in length and upward, and besides these two ranges there is range after range of mountains filled with minerals already ascertained. We are only waiting for capital to develop these resources. Capital must come from abroad; home capital has all gone into the Comstock, hence the California mines must go farther for capital to develop them. Suppose a gentleman should go to the eastern States for the purpose of raising capital; everything is arranged; he obtains the capital desired, and that being done, the next query is, "Where shall we incorporate?" "Why, of course, in the State where we are carrying on our business." "How many shares of stock?" "Well, a hundred thousand shares is the usual number; we want that number of shares to circulate in this eastern market." But the gentleman from California has got to confess that this State will require parties to first pay to the State the sum of twenty thousand dollars before they will be permitted to bring the amount of capital required into the State. That certainly would be bad policy.

Now, aside from the miner, what other corporations will be affected? A large number. We have oil companies, and that interest will become a valuable one in this State; but if so it will be through the instrumentality of corporations. We have companies for mining quicksilver, for ship building, for flumes to bring lumber from the Sierra Nevadas down to the valleys, for warehouses, for iron foundries, and for swamp land reclamation. We have companies for irrigation, and here is, perhaps, the most imorptant subject for which companies will be formed. There are many valuable streams in this State, which certainly the farmers all well know could be utilized in the valleys and make homes and farms for the people; but individuals have not been able, for the want of capital, to make these streams of water valuable. How will it be done? Every man must know that it will be necessary to incorporate as the first step in order to raise the capital. But here is a complete embargo. Here is a complete prohibition of any irrigation at all, for the first step is to pay in ten or twenty thousand dollars. Now, sir, no one wants to discourage corporations for this purpose. The State will not deal with the subject, and it will have to be dealt with by corporations. I will give you another instance, going back to the mines for a moment. There are many districts in the State where there are ores enough taken out to supply a mill or a furnace, but no capital to put one up. Now, if parties go there with capital enough to put up a mill or a furnace, it will give employment to these miners and enable them to develop their claims. Now it would cost, say, twenty thousand dollars, to put up a mill and furnish facilities for the reduction of the ores of the district. But it is necessary to incorporate, and before you can do so you have got to pay just the cost of the mill to incorporate. So that it would seem to me very bad policy to impose upon a company desiring to incorporate for this purpose such a tax. It is retarding the development of the State. Now I will go back to irrigation again. There are valleys in this State—I have one in my mind now, over eighty miles in length, which could be irrigated from one end to the other, at a cost of about one hundred thousand dollars. It will be done surely, and done through an incorporation; but if they have to pay ten or twenty thousand dollars to the State out of the capital, it may be retarded for years. It seems to me that any further argument is entirely unnecessary, and I feel that the committee are pretty well satisfied that this proposition ought to be stricken out. I believe I have taken up the time of the committee as long as it is necessary, but I will give one more instance where corporations are useful. That is, in the construction of wagon roads. In a new mining district a wagon road is the first thing to be built to make it valuable. It is generally done by incorporating, so that every step you take in the development of a new country the corporation is essential; and in most cases the capital required for a particular purpose would not exceed the amount of money demanded by the State for the privilege.

REMARKS OF MR. MARTIN.

MR. MARTIN, of Santa Cruz. Mr. Chairman: At the risk of being expelled from the silent members club of this Convention, I desire to say a few words on section seven. I am in favor of striking it out entirely, for the reason that I do not wish to cripple legitimate enterprises by imposing a special tax, or rather by compelling them to pay for the privilege of doing business. In my immediate section of the country are lumber, lime, powder, sugar beet industries, quicksilver mines giving employment to a large number of men, some of them perhaps incorporated; whether they are or not, I do not wish to impair their usefulness or put a damper on their industry by a special clause in the Constitution we are trying to adopt. The farmers in that part of the State which I have the honor to represent, and from whom I received a very flattering vote, are, as a general rule, well to do, and need no class legislation. Neither do the other interests need any class legislation, especially such oppressive measures contemplated by this section. I do not propose by my vote to impair the usefulness of honest industry in order to protect a few men by unjust discrimination. While there may be a small class in my section clamoring for a tax on mortgages, still there is also a demand for more capital to be employed, and by a singular coincidence the cry is uttered by the same people. My colleague, Mr. White, would have you believe that the farming interest is suffering for want of some special constitutional enactment; that they are mortgaged to death, and expect this Convention to keep people from the wiles of bunko sharps or wildcat mining corporations. The idea has always prevailed that an American citizen could take care of himself. Of late years the parental idea of government has entered somewhat into our State machinery. The people have been able to work out their own destiny in spite of legislation, and I am certain we do not need such an extravagant enactment as section seven in our organic law—hence, sir, I shall vote to strike it out.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I am aware that most of the points at issue have been covered by those who have preceded me, but owing to the importance of this subject, and as affecting the interests of the people with whom I have lived for many years, I desire to add a few words in addition to what has been already said. I am fully aware, Mr. Chairman, that the object of the committee in bringing forth this section seven, and asking its adoption here by this Convention, was in a laudable spirit, and was for a good object, as they thought. That was to destroy the speculations in wildcat mines in this State. But, sir, I am confident that the object of the committee will not be fulfilled in adopting this section, for the reason that it proposes to levy a license, or a tax, whichever you may call it, to prevent these parties from carrying on their schemes. It is a settled fact that you cannot stop crime by compeling them to pay money. Crime will never submit, for the reason that they will pay the money, and it will virtually license them to carry on their nefarious operations, and under this very system the wildcat mines would pay the tax and sell their stock the same as ever. It would be an untold evil to the prospecting and improving of the mines in this State. How is that done? Any one who is conversant with the system of mining knows that it is done by the hardy, restless, energetic men who endure all manner of hardships. They find what they deem a prospect,

or a quartz ledge. They have no money to develop the mine. They go to their neighbor, who may be a successful miner, and ask assistance. The answer is that he will give five hundred dollars or one thousand dollars, and others are willing to do the same thing. The next thing is, you must incorporate, because under a system of partnerships it is developed to the satisfaction of every practical man you cannot enforce assessments. If one gets contrary, and refuses to pay, you are compelled to go into the District Court, and are hampered with a long lawsuit. Under a corporation you can sell the stock. What is the condition? As soon as the money is made up it is necessary to pay one hundred dollars. For what? For the privilege of mining. Suppose you were to charge one hundred dollars for farming, what would be the result in this Convention? Why there would be a howl against it as loud as the Pacific Ocean. You cannot regard it in any other light. In the next section you provide that "no license tax shall be imposed by this State, or any municipality thereof, upon any trade, calling, occupation, or business, except the manufacture and sale of wine, spirituous and malt liquors, shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal control."

Now, sir, if this is not a license, what is it? I contend that it can be nothing else but a license; and if you enforce that it will be necessary to strike out section eight, for they would certainly be inconsistent with each other.

MR. MCCALLUM. I notice in the report of the Committee on Revenue and Taxation, that as to section seven, Messrs. Cross and Turner dissent. I wish to inquire if all the rest of the committee were in favor of it?

MR. EDGERTON. Ten to two.

MR. HUNTER. I was opposed to it, but was not there when the report was signed.

MR. EDGERTON. Mr. Hunter was the thirteenth juror, and he was not there.

MR. MCCALLUM. Mr. Chairman: I proposed to say something upon this subject, but as the speaking has all been on our side, I propose to wait until I hear the reasons on the other side.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I should like to hear from the Chairman of the committee, or from some member of it, some reasons for which the committee have reported this section seven. It may be that reasons exist which are not perceptible to many members on this floor, but to my mind the section is objectionable at all points. Thus far—so far as I recollect—no member of the Convention has explained or given a reason for its adoption. We have simply the fact that the report of the committee contains this section. For the reasons that were given by the gentleman from Inyo, Mr. Reddy, and which others have suggested, it seems to me that this should be unanimously rejected. Now, if it be true, as many think, and I am one of them, that our corporation laws are by far too broad for legitimate purposes, the remedy does not lie in imposing a tax upon the legitimate use of corporate power, but it lies in the sound exercise of legislative discretion—in placing proper restrictions upon the exercise of that right. Properly and fairly considered, the province of corporations, as understood at this day, throughout the civilized world, is only the power of associating capital for the promotion of private and public enterprises. We realize, at this day, Mr. Chairman, that there are many enterprises, private as well as public, which require an aggregation of more capital than one individual can command. A million dollars cannot be commanded or combined by individuals without the protective forms of corporations. It may be said that if partnerships or ordinary associations are formed, that you may equally aggregate capital. In one sense you can. The difficulty lies, however, largely in this: that enterprises of large magnitude require not only large capital to carry them on, but they require a long period of time for the consummation of their schemes. Difficulties such as cited by the gentleman from Trinity, arise in partnerships and associations, and are obviated under the corporation laws. Now, sir, it is not to the point that our law has been made so broad as to allow corporations to be formed for illegitimate purposes, nor that they have been so loosely drawn as not to contain the proper safeguards. That is a question that directs itself to the discretion of the Legislature, and so it is left to the article on corporations.

What does this section seven propose? It is to lay a direct tax of one hundred dollars upon the formation of a corporation with a capital stock of fifty thousand dollars, and a further tax of twenty dollars for every increase over the sum of ten thousand dollars. Now, it will be observed, if you figure it out, that the ordinary corporation would be required to pay one thousand dollars into the treasury. Now, I beg of any gentleman of the committee, who have formulated this section, to tell us why this burden should be imposed. Assume that our laws were properly formed, and permitted corporations to be formed only for legitimate purposes, and then if there be an enterprise, public or private, which involves the aggregation of capital to a large amount, why should this exaction be made? Our mining operations are necessarily conducted under the forms of corporations. And while, sir, if I were a member of a legislative body, as I am of this body, I should aim to interpose some restrictions, some safeguards, which our laws do not now contain, yet I recognize the scheme to be wise, the system to be a necessary one. I say, therefore, that it is wise that these enterprises should be permitted to be organized and conducted like all other organizations for the management of business without restriction.

I see no useful office for this section. It will array against the Constitution ten thousand votes in this State; it will work its defeat, although I would not urge it for that reason. We ought to reject nothing because of what may be said, and we ought to adopt nothing for a like reason, but we should have this thing in view. You will find that all the interests in the State that realize the necessity of aggregating capital in the form of corporations, will say that this is a fatal blow at their enterprises, and will exercise themselves to the utmost to defeat it. I trust that this section will be rejected entirely.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I am delighted to see, even at this late day, that these gentlemen who have been assailing corporations have had their bowels of compassion finally moved in behalf of the poor corporations. I do not stand here particularly as the special advocate of this section. The section was incorporated into this report from the Constitution that was drafted by Mr. Laine, of Santa Clara. It has a twofold purpose—and, as suggested by my friend, Major Biggs—who will undoubtedly commend it further. Mr. Laine took it from the Constitution of Missouri.

MR. TINNIN. Is Missouri a mineral State?

MR. EDGERTON. Why, it is one of the greatest mineral States in the world. [Laughter.] You come from Missouri and do not know that? [Laughter.] They have mining corporations there, and it would take you a week to count them.

MR. HOWARD. I would ask the Chairman of the committee if it would not be well to except mining corporations.

MR. EDGERTON. Those are the very ones we are after.

MR. TERRY. Out of fifty-four companies fifty-three are mining corporations.

MR. EDGERTON. Mr. Chairman: This section was adopted after a very mature deliberation and protracted discussion, by a vote of ten to two. Its special advocates were Judge Overton, Mr. Casserly, and Mr Shafter, and those gentlemen are not here now to sustain it. It has a double purpose: one for revenue and one to cut up, root and branch, perhaps, nine tenths of these mining corporations that have been referred to. I think my friend from Inyo, Mr. Reddy, is in error as to the cost of incorporating. It would only cost two hundred dollars on a capital stock of one hundred thousand dollars. The section provides that the company shall pay into the treasury one hundred dollars for the first fifty thousand dollars, and twenty dollars for each ten thousand dollars after that.

MR. REDDY. I say that where the capital stock is divided into fifty thousand shares at one hundred dollars a share the cost would be ten thousand dollars.

MR. EDGERTON. With a capital stock of one hundred thousand dollars it would cost two hundred dollars to incorporate; three hundred thousand dollars, it would cost three hundred dollars, and so on. With a capital stock of one million dollars, it would cost two thousand dollars; ten million dollars capital stock, would cost twenty thousand dollars. I believe that most of these mines nowadays have a capital stock of at least ten million dollars. Ten million dollars is the standard, as suggested by the gentleman.

MR. MCCOY. Are you not mistaken in your figures?

MR. EDGERTON. I understand that the Consolidated Virginia, the California, and all these companies, are incorporated in the City of San Francisco. Many of them are incorporated in this county. It would be a very strange thing if there is a county in this State that has not got a greater or less number of the incorporated sores. The committee had no intention of aiming any blow at any mining corporation, or any other corporation formed for a legitimate business. If I thought the section would strike a blow against any legitimate enterprise I would vote against it. I have yet to be convinced of that fact. As to putting an obstacle in the way of the development of the mines, I do not see that my friend from Inyo has given any satisfactory showing tending to that result. He says that if a man comes here from the State of New York with a hundred thousand dollars to invest in mines that this would prevent an incorporation. Now, sir, if anybody has got one hundred thousand dollars, or fifty thousand dollars, or any other sum of money that they honestly intend to devote to the development of a mine, what necessity is there for incorporating at all? I do not see. As I understand the history of these incorporations a very large majority of them do not incorporate for the purpose of developing anything. They incorporate for the purpose of getting out fifty thousand, or one hundred thousand of those beautiful pictures, in script, with the name of the company elegantly printed thereon, like the Garrison Mining Company, or the Ralston Mining Company—very attractive—capital, ten million dollars.

MR. EAGON. Do you know of a California mine in the market to-day?

MR. MCCALLUM. There are two or three, four or five.

MR. EDGERTON. That makes no difference with the proposition. I know a certain instance where there was no mine in existence at all. Some years ago, I know from my personal knowledge, a mine was incorporated as the Garrison mine. The trustees were appointed, and some very respectable gentleman were connected with it. They went in upon the representations of others. Stock was issued to a large amount, and a great many people bought the stock. It was not long before in the local columns of a certain journal it appeared that this mine gave most flattering prospects of success; it would undoubtedly in a short time go into bonanza. It was not long after that when there was published a very horrifying and terrible accident that occurred in the mine. There had been a premature explosion of a blast, and several miners were killed or injured. Numerous notices appeared in this newspaper to attract public attention toward the mine, and a good deal of stock was sold. Finally it occurred to somebody that they would go and visit the mine. They never could find it. The whole thing was a fiction from beginning to end. I am told, and I believe, that this is the history of a great many of these corporations. It was made to appear to the committee that by far the greatest majority of these corporations were

formed for no other purpose in the world than to prey upon the credulity and the cupidity of the public, and that the poor people of the State were drawn into these speculations, and the rich people too, and that they tended to the demoralization and corruption of public and private morals, and that there could be no better or more exalted field for the reformer than to cut off in some manner or other this evil.

MR. HALE. Admitting all that you say, does not your argument go too far? Does not this remedy, which you say will cut off, by proper legislation, these fraudulent operations, go to the extent of prohibiting incorporation for legitimate purposes.

MR. EDGERTON. We will take the case of a mine where they have got a good prospect; they think they have got a good thing. Now, sir, I want to know what necessity there is for incorporating upon that mine with a capital stock of ten million dollars or one hundred thousand shares at one hundred dollars each. I want to know why that should be done if their object is simply the development of that mine? The object is to speculate with the shares; if not, what is the necessity of having so many shares?

MR. HALE. It is this. Take the case you have supposed. Here is a prospect of a good mine. Whether it will be valuable or not depends upon development. Suppose it needs fifty thousand dollars to develop it. There is no ascertained value to commence upon. The basis of corporation is that a certain number of men of means and responsibility will associate themselves together and become subscribers to the stock covering the probable outlay, and not putting in the capital stock at the start, but paying in by installments. Therefore an assessment upon the capital stock is sufficient to cover the probable expenditure in a development of the mine.

MR. EDGERTON. The case presented is one where responsible gentlemen are willing to put in that money—fifty thousand dollars. If they put in that money they propose to own it, and that represents the whole thing—the whole stock in trade absolutely. Why not put that into shares of one thousand dollars each? Why go to San Francisco and put it into one hundred thousand shares at one hundred dollars each, unless it is for the purpose of bringing everybody else into the concern that know nothing about it?

MR. HALE. Those of us who are opposing this section are not the advocates of the San Francisco wildcat schemes; we are from the mountains, and know whereof we speak. We have mines that are not swindles, and the prosperity of the State rests largely upon them. We are as much opposed as the gentleman from Sacramento to the wildcat schemes in San Francisco, yet we recognize the necessity of being protected in this our honest industry.

MR. EDGERTON. Why do not the gentlemen who put their fifty thousand dollars in Placer County put it in there and limit the number of their shares. It does not make any difference to a man who pays in ten thousand dollars whether it is represented by ten shares or one hundred shares; he proposes to invest his money, and why divide it up into so many shares unless it is for purely speculative purposes?

MR. REDDY. You are in favor, then, of compelling these corporations to limit the number of shares of capital stock, say five shares.

MR. EDGERTON. That is not what I am in favor of.

MR. REDDY. We will bring them down to five shares. Now, as I understand the provision, for anything less than fifty thousand dollars you will have to pay so much; if they have five shares you tax them twenty dollars a share right on the start. If you limit the number of shares why the tax becomes heavier upon each share.

MR. EDGERTON. I think the idea of the section is a proper one, even if it would not allow anybody to incorporate at all for the development of a mine, and for the very reason that we ought to reach this great evil that exists in this State. If gentlemen have money that they want to develope a mine with why do they not apply it to that purpose? What necessity is there for a corporation?

THE CHAIRMAN. The gentleman's time has expired under the rule.

[Cries of "Leave!" "Leave!"]

MR. EDGERTON. I do not care to take up the time of the committee. I have been asked the reasons why the committee incorporated this section in their report, and I have given them as I understand them. It was believed that it would strike a fatal blow at the evil which I have attempted to describe, and that it would not work an injustice or injury to any interest. I do not believe that if there had been such a section in existence at any time in the last twenty-five years it would have obstructed the development of any interest.

MR. WEST. Mr. Chairman: I have been in favor of bridling corporations and protecting the people against——

MR. EDGERTON. I have now in my hand the Constitution of the State of Missouri, adopted in eighteen hundred and seventy-five, where substantially the same provision is found which is offered by the committee:

"SEC. 21. No corporation, company, or association, other than those formed for benevolent, religious, scientific, or educational purposes, shall be created or organized under the laws of this State, unless the persons named as corporators shall, at or before the filing of the articles of association or incorporation, pay into the State treasury fifty dollars for the first fifty thousand dollars, or less, of capital stock, and a further sum of five dollars for every additional ten thousand dollars of its capital stock. And no such corporation, company, or association shall increase its capital stock without first paying into the treasury five dollars for every ten thousand dollars of increase; *provided*, that nothing contained in this section shall be construed to prohibit the general assembly from levying a further tax on the franchises of such corporation."

That last proviso is not in our report.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I am one of those who believe, and have acted upon that opinion, that corporations should be bridled and controlled by specific laws; that the people should be protected against any abuse of power that may grow out of corporations. But, believing that this State is rich; rich in her undeveloped mines; rich in her varied mineral resources, not only in the precious metals, but in other minerals; that our mountains lie undeveloped; that her wealth is buried deeply in her own bowels; and that in order to develop the industries of the State it is necessary that risks should be assumed; that experiments should be tried; that corporations should be formed, so that men with even moderate means might have an opportunity of engaging in this business of developing the resources and wealth of this State—I believe we would do the State a service by striking out this section entirely, and leave it to a future Legislature to provide by law for whatever may be necessary to protect the people, and yet permit the different corporations to be organized in this State for the development of its resources. Not only are they a source of revenue, but they are a source of wealth in this State. It is no time for us to discourage these developments. The labor market is crowded. The workmen and the laborers of the country are asking for employment. Let us encourage a diversity of employment, and a circulation of the money of the country that lies in the banks and the coffers of the rich. Let us encourage this surplus money to go into corporations and enhance the future growth of the State and its prosperity. Now, if the last clause of the eighth section is adopted, I think it will be all that is necessary in this direction. It says: "But the Legislature may by law impose any license, or other tax, on persons or corporations owning or using franchises or corporate privileges." Now, I think that the Legislature will have ample power to enact such laws as in their wisdom the exigencies of the case may require, and therefore I hope that the seventh section will be stricken out.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope that the seventh section will be stricken out. Those of the members who have in a measure voted against corporations, have nevertheless recognized that corporations have rights as well as duties. The seventh section would not only affect wildcat corporations, but would affect every legitimate enterprise directly in the channel of the corporation. It seems to me that the adoption of the seventh section would be loading down the Constitution, and the State does not desire to raise revenue in any such way. It is of no good. The Legislature can provide what the advantages of incorporation and the increase of capital stock shall be, and in my opinion the seventh section ought to be stricken out.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I think the section ought to be stricken out for two reasons; first, because it does not confine itself to mining corporations, but will include every kind of manufacturing interest that is started here, if it is done by corporations. If men wish to come in here and establish an interest that is to grow in the near future into large proportions, in this State, they cannot incorporate for the purpose without being taxed for the privilege, in the first place, by paying this tax upon incorporations. Another reason is, that the tax upon the corporation is a tax for a privilege which is the franchise of the corporation. Now, we have already provided in the section that we have adopted, that the franchises for these corporations shall be taxed. Furthermore, it will leave it in the power of the Legislature, especially if we adopt the section following this, the eighth section, as has been said by the gentleman from Los Angeles, to impose in the shape of a license any other tax that it may deem necessary for any of these purposes. As we have already provided for taxing the franchise, which is the privilege, and this, if it is put upon them, will be nothing but taxing the privilege, which is the franchise, we will be virtually taxing the franchise twice, and I hope that the section will be stricken out.

MR. LARKIN. I move the previous question.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I have no doubt that every gentleman upon this floor admits the evil arising from these wildcat mining speculations, but gentlemen seem to forget altogether that we have not sustained this loss from the mines of California. The hardships complained of come from the Comstock. The corporations, it is true, have been in California. But, if we adopt this section seven, the result will be that any business of this kind will simply incorporate in the State of Nevada and carry on the business, and we will have all the evils without any of the gains whatever. We are perfectly willing for that committee or any other committee of this Convention to adopt some plan by which corporations can be managed honestly, and the people saved from robbery. We are perfectly willing and anxious that some plan be devised to break up the system of robbery carried on by the San Francisco Stock Board. But I don't see that the seventh section will accomplish that result. It forces us to yield up all the rights and privileges granted by the system of incorporation. It drives legitimate business outside of the State unless it can be carried on by individuals or partnerships. It gives us no relief whatever and I see no use of it. The reasons offered by the Chairman of the committee were certainly not very strong. It was entirely beyond his depth. Why, so far as the mines in California are concerned, I only know of two before the people, there may be others, on the San Francisco Stock Board, and I do not know that the people have complained of these two. The cause of our complaint is the management of the Comstock mines and the drain has been upon the people of California. Give us some remedy for that.

MR. EDGERTON. Under this section it does not make any difference where the property is situated. The corporations are all formed here.

MR. WELLIN. They can just incorporate in Nevada and open an office in San Francisco.

MR. KLEINE. Don't you deal in stocks yourself?

MR. WELLIN. That is my business. I suppose because the gentleman once in awhile wins a dollar or two, he considers it all right. I maintain that the San Francisco Stock Board has been the cause of more poverty, and of the concentration of more wealth into a few hands, than any other system of business carried on in the State of California. I have no doubt but what I can prove it. But this section seven does not prevent that kind of business. They can incorporate in Nevada and open an office in San Francisco, and do their business, as they have done before. Instead of remedying this evil, you shut off every legitimate business in the State of California. They have some good mines over there; but they have many worthless ones. Do not ask us to suspend all our corporation business in order to reach these swindles.

MR. McCALLUM. It will be unnecessary to extend this discussion, but if the gentleman wishes to speak, I will withhold my motion.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I thank the gentleman, and will not detain the committee long. Mr. Chairman, I am in favor of this section, because I believe it will tend to discourage one of the most nefarious practices that was ever indulged in by a civilized community in the name of business. I do not believe that it will discourage legitimate enterprises of any kind whatever. It certainly will not discourage legitimate mining enterprise. It has been well said by the Chairman of the committee, that if any man or association of men desire to open a mine and conduct their mining enterprise, they can do it with their own money. They can do it if they have it. They can do it without incorporating, with five or ten millions of capital stock. They can do it with fifty or one hundred thousand dollars, or two hundred thousand dollars of capital stock, as well as ten million. But that does not suit the game. That means to pay. Then they will have to represent their capital stock. But that is not their game. When they have represented every share of stock for about what it is worth in property, or in a mine for the purpose of development, why, the hostlers and the chambermaids cannot buy that stock. They cannot pay a hundred dollars a share for five or ten shares of the stock. No; it must be watered. It must be thinned out, so that there can be a raid made on the chambermaids; a raid made on the hostlers; a raid made upon the lawyers; and a raid made on these good old honest grangers; a raid on the preachers; and a raid on everybody. That is the true inwardness of this little business of watering capital stock and floating shares in such enormous sums of money. It has been well said by one of the San Francisco newspapers, that it is to make a raid on the savings banks. Now, sir, it will cripple and discourage no legitimate enterprise, because legitimate enterprises can be represented by men and by money. There is no use in their having paper for any legitimate purpose. There must be a diabolical scheme to rob the community put up, and it can be done by this means, and not otherwise.

MR. REDDY. You think that these corporations are put up for a swindle on the public. Then according to this section the State is perfectly willing to allow the swindle to go on if the State has a dividend. The State wants part of the stealing.

MR. TERRY. Just as they license gambling.

MR. REYNOLDS. No, sir; it is not for the purpose of licensing them, but it is for the purpose of prohibiting and preventing them, and I can tell you how. I will have to describe just for a moment the manner in which these schemes are put up in San Francisco. Gentlemen have been telling that they come from the mountains. I come from the mountains too, and have lived about as long in the mountains as any gentleman on this floor, and I know how the thing is done. A number of curbstone brokers—and perhaps, curbstone brokers that have lost all their money in some speculation—they put up a scheme, get a parcel of them together, and incorporate. How do they incorporate? They select some good business man, some merchant, with whom one of them has had a personal acquaintance. In better days he may have bought a bill of goods of him. He goes to him and tells him a fine story, and finally tells him: We want to put you in as one of the corporators. They go and print their stock on credit. They struggle around and raise the fifteen dollars necessary to pay the officers' fees for filing the certificate. By and by when the printer wants his pay they go and strike this gentleman whom they have put in as one of the corporators for fifty dollars, or one hundred dollars, for the expense of printing their stock and for office rent, where they have out their sign and commence selling this stock, and so they ring in one after another. This is the kind of corporation that we desire to discourage. Now, if they have to pay one hundred dollars down, instead of fifteen, they could not incorporate at all, because they could not get this gentleman whom they afterwards strike to put up for one hundred dollars to begin with—not a bit of it. Now, a gentleman has just handed me one of these certificates as an example, and it is stated to me as a fact—"capital stock, one hundred thousand dollars." This is an old one; they do things better now, they make it ten million dollars. This one hundred thousand dollars they sell, and it is just such a scheme as I have described you, there never was a scratch in the ground, and there never was a claim staked off.

MR. AYERS. What company?

MR. REYNOLDS. This is only one of hundreds and hundreds of them. The newspapers give you every morning two or three of these things that are started, and there is not a dollar, or a mine, or anything at all. You say that people have no business to invest their money in that kind of a swindle.

MR. REDDY. How many swindles do you know in connection with irrigating companies?

MR. REYNOLDS. I am not in the watering business. I am in favor of squeezing the water out of them.

MR. REDDY. How many swindles are there among the companies formed for swamp land reclamation?

MR. REYNOLDS. All that catechism is aside from this argument. This committee well know that this is a blow at the wildcat schemes put up in California street.

MR. GREGG. Cannot these corporations be formed out of the State?

MR. REYNOLDS. They can be formed elsewhere, but not here. There is a law on the statute books that no foreign corporation shall enjoy any of the privileges of the law of this State concerning corporations, without first complying with the law relating to domestic corporations. Now, sir, there is scarcely a corporation on the Pacific Coast that is not incorporated in San Francisco. There is a reason for this. What is the reason? Why do they come to San Francisco? Because San Francisco is the field for them to pluck. It is their harvest field. It is the place where they must go in order that they can get hold of that great community of three hundred thousand people, and through them the other six hundred thousand people of the Pacific Coast. Talk about incorporating a mine in Inyo County, or in El Dorado County, and then undertaking to float it on the stock market in San Francisco! Why, you never would hear of it. The result is, that where there is a legitimate enterprise on foot, and they desire to incorporate in San Francisco, they will incorporate there, and they will pay this one hundred dollars fee for doing so, if there is anything in their business. But if it is a wildcat scheme, and there is nothing in it, and they have got to put up one hundred dollars before they can start, it never will be put up. So that there is never going to be any harm done to legitimate enterprises. It is easy to see that, because nineteen twentieths of the incorporations of the Pacific Coast are filed in San Francisco, there must be some good reason for it. I tell you, it commends itself to the intelligence of every member of this committee, that if there is a good reason for it, and if the company desire to incorporate a legitimate enterprise, a hundred dollar fee, or a two hundred, or a three hundred dollar fee, for that matter, would never discourage them. But I tell you I know whereof I speak, when I say that two or three hundred dollars, or one hundred dollars, will discourage the best part of these wonderful corporations which you read about in the newspapers that are constantly being filed on the list in the office of the Secretary of State.

SPEECH OF MR. KLEINE.

MR. KLEINE. Mr. Chairman: I have heard considerable about mines here among gentlemen, and about wildcats, and about swindling. The gentleman that just sat down, he exhibited a certificate. I have no doubt that is the way he lost all his money. Well, Mr. Chairman, I have heard considerable about the cause of the many men that have committed suicides about mining stocks, but not one of these gentlemen have told us about the blessings from these mines. I will tell you, gentlemen, some of the blessings now, some of the benefits which the Comstock has produced upon the State of California and Nevada. In the first place, I know whereof I speak. I lived on the Comstock eleven years, and I know something about it. The Comstock pays up over one hundred and seven millions in dividends. The mines in the State of Nevada employ over twenty thousand men; they support their families: men, women, and children, depending on the mines; and do they work for a dollar a day? No, sir! They get four dollars a day for eight hours' work—thanks to the Miners' Union for that. In Virginia City alone we have about twenty or twenty-five great mines—what I call mines—that have produced—and every man has been buying mines. And these gentlemen who are members of this Convention are crying against these mines; why? I tell you why. They have been the victims. They have dealt in mining stocks and they have lost their money, and they are cursing the mines. They bought mining stocks with the intention of getting the best of these men and these men got the best of them, and now they are cursing them.

Now you cut away the mining interest in this State and I tell you it is only to help the Mongolian to stay. And I predict that property on California, Pine, and Montgomery streets, and all property in San Francisco, will depreciate fifty per cent., and the Chinamen would occupy that part of the city, and the City of San Francisco would pray for the stock board again. I am no stock gambler; I am a working man. I work with my hands and I intend to do so as long as I live. I have done it and I expect to do it till my life has an end. But I say mining stocks and mines in this State are a blessing to the country.

Now I know—I heard a gentleman say—a great many blow their brains out. Gentlemen, I know business men sometimes blow their brains out. The man that would blow his brains out because he loses a little money in mining stocks, that same man will blow his brains out when he loses in business or anything else. I say that a man that will blow his brains out because he loses money, I don't think that man is of sound mind.

Now, gentleman, as I have said, remember that there are between twenty-five thousand and thirty thousand families depending upon the mining interest of Nevada, and if you put this down, you put down the best interest in the State. There are many men that go down to the stock market to buy stocks. For what pursose? For the purpose of getting the best of these men. And some men are so foolish. They buy this mining stock—they never will use their judgment as they use it in other business, but they will buy the very lowest wildcat stock, and they are so foolish they never will buy real good stock, where they expect to develop ore. They always buy up some old wildcat.

Now, gentlemen, I ask you, in the name of common sense, what is a wildcat? [Laughter.] I remember eight years ago—I recollect the California mine and the Consolidated Virginia mine was a wildcat. So it was. They had nothing in there, and it was sold for one dollar and fifty cents a share. Well, it was considered a wildcat. What did it prove to be? It proved to be a mine—the richest mine that ever was discovered. They paid over fifty million dollars to its shareholders. What did they do? When they went down to prospect that mine they could not prospect that mine except it was an incorporated company

for private individuals could never have developed the Comstock lode. You must remember that there is a difference between a silver mine and a gold mine in California. These mines in San Francisco cost millions and millions of dollars; it costs millions of dollars to sink a shaft. It costs millions of dollars to erect the machinery, and therefore it requires assessments in order to develop these mines: and I say that the man that finds fault with them, all he has to do is to let him stay away from them. No man compels you to buy mining stock if you don't see fit to do so. Therefore let us go for the land grabbers! [Laughter.] Let us go for these men that hold five or six hundred thousand acres of land. They pay no taxes. Go for them, and then you will have accomplished everything. And I say to you delegates from San Francisco, if you want to make yourselves conspicuous, go for those men, and not make people believe that you want to do something by going for the mining interest. No, you won't do it! Not a bit of it.

Let mining prospecting go on, and not discourage it, and encourage it all you can. But I say these mines, or this wildcat stock—which some of the gentlemen declare wildcat stock—I warn you keep out of them; don't buy them. I know that men want to buy them if they think they can double their money on them. That is what all these men are after that purchase mining stocks. Now, gentlemen, for my own part I am not a mining stock gambler, although I purchase mining stock once in awhile—I always use my judgment. I never purchase wildcat stock. [Laughter.]

MR. MCFARLAND. I would like to ask the gentleman what stock to buy?

MR. KLEINE. Yes, I will tell you what to buy if you want to make money. You buy the stock when it is low and sell them when they go up, and when you purchase, then don't you buy them on a margin. [Laughter.]

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: It seems to me that this section should be stricken out. I believe that the only reason the committee had was that they aimed to strike at a great evil—that of dealing in the class of mines to which the gentleman from San Francisco, Mr. Reynolds, has referred, and which, perhaps, the gentleman himself has dealt in. But it has nothing whatever to do with the honest legitimate mining of this State. It has nothing to do with the incorporations and those that form incorporations for the purpose of developing the resources of the State; not for the purpose of taking the money from the chambermaids and those who are in the humblest walks of life; those who may be hostlers. But this section aims a direct blow at the legitimate mining interests of this State, and if not a death blow, certainly one that would work a serious injury, if not an irreparable one. In every mining county in this state mining corporations are formed for the purpose of developing the hidden resources of the hills. It requires a large expenditure of money, in many instances hundreds of thousands of dollars, to develop a mine. In many instances they prove very valuable, not only to those who are interested, but to the county and the State at large. It has been admitted that these mining interests are of great benefit to the State. There is no man who is aware of the great good that is done in legitimate mining enterprises but who would admit that to incorporate this section into the Constitution of this State would be dealing a very serious blow, to say the least of it, to legitimate mining. It would arrest the golden stream which is flowing continuously into the lap of commerce, which has helped to build up the State and make it the pride and admiration of every Californian. How can any man wish to destroy this interest for the sake of reaching the evil which the gentleman from San Francisco has pointed out, and which we all admit to exist? But I say that the result desired will not be accomplished by this section. These men who form these companies for the ostensible purpose of developing mines in Nevada, when it is really only a mine upon paper, will not be arrested in their work by this section. They will still continue to incorporate because they are able to pay the amount required by this section, because they know that they can fleece those who may be gulled by their operations. If we would encourage this great industry, if we would not thwart the honest purposes of miners to help themselves and to build up the mining resources of the county in which they incorporate, and in which they do their business, to the benefit of the whole State, then I say that this section should be stricken out.

It would also do injury in other cases. There may be corporations formed for manufacturing purposes, and for many other classes of business which would be discouraged, and in many cases they would be wholly prevented from forming themselves into corporations, for not only their own good, but for the interest of the people. I trust that the good sense of this committee will determine that this section would do more harm than it would do good; that it would strike a very serious blow at our legitimate enterprises. If these gentlemen desire to correct a great evil, and I must say that we are all with them in that, let them adopt another mode. Let them provide another section to strike at these great evils, and I say that we from the mountains and from the interior generally, will be with them heart and soul.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I would like to see this discussion closed. But these gentlemen seem to desire a direct tax to be raised upon incorporations to be formed in the future. Under the last clause of section eight, the Legislature may impose any license or other tax on persons or corporations owning or using franchises or corporate privileges. Under that provision the twenty thousand corporations may be licensed, and should be licensed. In that way a revenue can be obtained, and those corporations holding property and not doing business may be compelled to disincorporate. There should be a license of that class of corporations to show whether they have any vitality, and if they do not pay their license they should be wiped out. But this proposition is only for a direct tax upon incorporations filed in the future. This is not the way to arrive at this question. I desire to license all corporations doing business in this State. It makes no difference whether they are incorporated under the laws of this State or not. I think that the section should be stricken out, and allow the Legislature to license all corporations incorporated under the laws of the State, or doing business in the State. I think that would be much better.

MR. LAMPSON. Mr. Chairman: I am in favor of striking out the section, but I think there has been sufficient discussion, and therefore I move the previous question.

The main question was ordered.

THE CHAIRMAN. The question is on the motion to strike out section seven.

The motion prevailed.

LICENSES.

THE CHAIRMAN. The Secretary will read section eight.

THE SECRETARY read:

SEC. 8. No license tax shall be imposed by this State, or any municipality thereof, upon any trade, calling, occupation, or business, except the manufacture and sale of wine, spirituous, and malt liquors, shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal control. But the Legislature may by law impose any license, or other tax, on persons or corporations owning or using franchises or corporate privileges.

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

THE SECRETARY read:

"Insert after the word 'liquors,' in the fourth line, the words 'by other than the grower of the product from which they, or any of them, are manufactured.'"

MR. STUART. Mr. Chairman: This is only to relieve the producers of wine, or the growers of grapes, from being classified with the retailers, and the theaters and managers of other institutions to be licensed. I think, sir, that it is not proper that they should be placed there. I think that our interest is sufficiently taxed to warrant us to claim exemption from the ordinary retail dealers' license. I therefore offer this amendment to the section as being only just to ourselves, and think the Chairman will probably accept it as an amendment.

MR. CAPLES. Mr. Chairman: I move to strike out section eight.

MR. AYERS. I second the motion.

MR. CAPLES. Mr. Chairman: It is wholly unnecessary. It is an attempt to do that which should not be done in a Constitution. It is proposed here to do a certain thing, and then it empowers the Legislature to do it. It is a species of attempt to legislate upon every trivial matter—matters that should be left wholly to the Legislature; and the section itself does leave it to the Legislature. Therefore, why put it into the Constitution at all. I do earnestly desire that it be stricken out. There is no necessity for the section at all.

MR. FREEMAN. Mr. Chairman: I hope that the motion made by the gentleman from Sacramento, Mr. Caples, to strike out this section, will prevail. The matters treated of are matters purely of legislative discretion. It ought not to be expected that this Convention should designate what matters should be taxed in this respect. These are not fundamental matters. These are matters upon which the Legislature can safely be trusted. These are matters upon which we ought not to provide by the higher rule of the Constitution. I know that hitherto the policy of the State, and of all the States, has been, to a great extent, to provide a considerable portion of its revenue by licenses upon various occupations. Whether that is a correct or an incorrect policy, I think it is at least safe to leave it as a question of legislative discretion, and not undertake to perpetuate an error which we may fall into in this Constitution.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the motion of the gentleman from Sacramento, Mr. Caples, to strike out section eight.

The motion prevailed.

POLL TAX.

THE CHAIRMAN. The Secretary will read section nine.

THE SECRETARY read:

SEC. 9. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars, for school purposes, on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

MR. MCCALLUM. Mr. Chairman: I move to strike out section nine.

MR. CAPLES. Mr. Chairman: I wish to move to amend the section so as to make the tax payable into the county Hospital Fund of the county in which it is collected.

THE CHAIRMAN. The gentleman's motion is not in order at present.

MR. EDGERTON. Mr. Chairman: There was a division in the Committee on Revenue and Taxation on this section. I opposed it altogether, with Messrs. Dudley, Overton, Tully, and Turner. I see that Major Biggs is here. He offered it in committee, and I call upon him to state to the committee the reasons upon which he based his support.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I will state in a few words why I offered this amendment in the committee, and I was very much surprised to find a dissenting voice in the committee. I am more surprised to see gentlemen on this floor opposing it who have repeatedly announced

that one great cause of complaint against Mongolian immigration was that the Chinamen were no benefit to the State. Sir, when I was elected to a seat upon this floor I promised my constituents that I would do everything in my power to get rid of this Mongolian element that is here. Almost all of the other gentlemen came here under similar promises, and I am surprised to find that they do not want to tax them one dollar for school purposes, or for any other purpose. They want them to stay here and live under the protection of the Government, free.

MR. EDGERTON. They have been taxed by the Legislature, always; ever since the State was organized.

MR. BIGGS. We propose to tax them in our organic law, and we propose to do it annually, in the sum of two dollars per head. And I want to know if there is a man here, or a good citizen anywhere in the State, who is not willing to pay two dollars a year for the common schools of this State. I want it paid into the General School Fund of the State. And if there is a gentleman here within the sound of my voice who would not pay two dollars a year to educate the youth of this State, why I say he is made of different material from what I am. There is no road tax—only a poll tax of two dollars on the head, and that for school purposes. Let gentlemen think what amount San Francisco would receive from Chinamen alone. In San Francisco the Chinamen number—how many Mr. Barbour?

MR. BARBOUR. About thirty thousand—permanent.

MR. BIGGS. Yes; thirty thousand permanent, and perhaps ten thousand more floating. That would make eighty thousand dollars you can collect from the Chinamen alone in San Francisco for school purposes. I want to tax every man over twenty-one and under sixty years of age, and I want it paid into the General School Fund. The rest of the people are willing to pay this tax so that we can get it from the Chinamen too. You who are really opposed to Chinese immigration ought to join me, and let us tax them in every way, shape, and form, until we get rid of them.

MR. TULLY. When we get rid of them we don't want this in the Constitution.

MR. BIGGS. First catch your hare.

MR. STUART. Are there any children of Mongolians that go to the schools?

MR. BIGGS. There are.

MR. STUART. The public schools?

MR. BIGGS. I do not know, but I want to make them pay. Our prisons are filled with them, and our hospitals are filled with them. Let us do it. They will not tax you. You are too old——

MR. STUART. I am not too old to be taxed, or drafted into the army. Does not the gentleman know that there is a law that prohibits the Mongolian children receiving any of the benefits of our School Fund; that the negro and the Indian have a right to education, but that the children of the Mongolian have none?

MR. BIGGS. I propose to tax them.

MR. STUART. Do you not know that the Mongolian now pays his tax more freely and more punctually than the white man that travels the country. The gentleman knows these things and so do these other gentlemen, and when he comes to talk on that subject I am going to have a talk on it.

MR. BIGGS. I am not as fortunate as to employ such help as he does. I employ the Anglo-Saxon race. I do not employ one Chinaman—except a cook. [Laughter.] The gentlemen may laugh. I would not give one old fashioned negro for a dozen of them.

MR. STUART. In olden times I would not.

MR. BIGGS. I would tax every man under sixty years of age, and I want to make it a general fund.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I hope this section will not be stricken out, as I wish to introduce an amendment prohibiting any poll tax or capitation tax.

MR. EDGERTON. That would not be an amendment—to prohibit what the section provides for.

MR. SMITH. It seems to me that this kind of a tax should not be allowed. Now, so far as my experience and knowledge of collecting taxes of this kind is concerned, it seems to me to be one of the most fruitful sources of swindling, and taking money by the Tax Collectors. There being no assessment of poll taxes, the Tax Collector can put into his pockets thousands of dollars and nobody know anything about it. The idea that we have established, so far as we have gone, is to tax all property. The idea is that the poor man, who has no property, pays no tax. He pays more taxes in proportion to his ability than the richest man in the country. Taxation shifts itself. Every man who pays a tax shifts it upon somebody else. A tax is shifted from one to the other until it goes down to the bottom, where it can be shifted no longer. Those men who have property shift it upon those who rent property from them, and it rests finally upon the shoulders of the poor man. The tax is taken from the poor man before he gets his pay. It is taken from the amount that he earns. And then you are going to pile on more taxes by taxing him for his head. It is against principle; it is against policy; it is against the theory of taxation, and I hope that the section will not be stricken out, but that we will amend it so as to prohibit the tax. If we strike it out the Legislature will have the power to levy a poll tax. If we say nothing about it we give the Legislature that power. I say that it should be prohibited in this section.

MR. EDGERTON. Mr. Chairman: I voted against the section in the committee for the reason that I do not believe it is a fit place for it in the Constitution of the State. I think it may be very properly left to the discretion of the Legislature, and for the same reason I shall vote to strike it out here.

MR. TULLY. For the same reasons assigned by the Chairman of the committee I hope that it will be stricken out.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I shall not be content with the mere striking out of this section. I want a distinct and positive declaration here that this oppressive tax, which is not justified by any proper principle of taxation at all, that the Legislature shall be forever prohibited from imposing any tax upon the poll. I propose to offer a section exactly the same as it is in the Ohio Constitution. I believe it contains the correct expression of the doctrine. It is as follows:

"The levying of taxes, by the poll, is grievous and oppressive; therefore the General Assembly shall never levy a poll tax for county or State purposes."

According to all the tenor of all the debates in this Convention, it seems to me that gentlemen cannot consistently oppose the insertion in the Constitution of a proposition like that. All have contended that taxation should be upon property, and upon property alone. Now, sir, has a head any value? I can prove by the Sacramento Record-Union that two thirds of the heads in this Convention have no value. What better authority do you want than that?

MR. BIGGS. Those men pay no taxes, but they receive protection.

MR. BARBOUR. Is that your principle of taxation—protection?

MR. BIGGS. Yes.

MR. BARBOUR. Are you in favor of equal taxation? The gentleman declines to answer. It is not equal. It does not work equally. The tax is made to fall—all taxes are made to fall—upon the laborer. It is a demonstrable fact that the taxation of the country must necessarily fall upon the labor of the country. All writers on political economy admit and state the truth of that proposition. Ultimately the whole burden of taxation falls upon the laborer. The labor constitutes the wealth of the country, and pays the taxes. It is not merely the man who takes the sack of corn up to the counter. He is from the producing community.

MR. TULLY. Does not the laborer escape taxation on that?

MR. BARBOUR. No. He pays the tax. Every man who is laboring constantly produces wealth, and he pays the tax. Now, you propose to stick an extra tax upon his poll and all he has produced during the year. It is unjust and oppressive, and I hope the Convention will not be content with striking it out, but will put in a positive declaration that such a tax shall not be levied.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I have no objection to striking out the whole matter and leaving it to the Legislature, but if that is not done I shall certainly insist upon my amendment. In answer to the gentleman from San Francisco, Mr. Barbour, I have something to say. I do not know how I can illustrate better than to give a little of my own experience. I, Mr. Chairman, have been a large employer for the last twenty-nine years; have had in my employ thousands of men; and I make the assertion here that ninety-five per cent., or more than ninety-five per cent. of the men that I have had in my employ, spent their money as fast as they earned it—it goes to the saloons; this is true as regards seventy-five per cent. I have often, actuated by a feeling of charity, remonstrated, more particularly with men advanced in years, who were in my service, on the folly of abusing themselves in that way, and have reasoned with them in this way: "Now," said I, "you are getting old, and after awhile you will be sick and unable to work, and you will come to want." "No, no, by no means; there is a county hospital. No danger of us coming to want, there is a county hospital provided for us." Now, I ask, in all common reason, if those men live and squander their money in this way, should they not be compelled to contribute a little mite to the common fund, I do not say to the School Fund, but to the County Hospital Fund, to provide them with the refuge that they rely upon, when you tax every economical, industrious man upon everything he acquires from his earnings? I say that the proposition is founded in wisdom, in justice, in equity, and that no man can complain. Therefore, if the motion to strike out fails, I shall insist upon my amendment.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: The argument of the gentleman from Sacramento, Mr. Caples, is a strange one. Just suppose that the laboring class of this State; the men that do the work; the producers; the men that pack the hod, that plow the sod; supposing that they never save a red cent—and I recognize the fact that they don't save a great deal—is there any justice, any logic, any reason to be given why the State should say: "These boys are going to work for a week, and they will be discharged as soon as they are through." Now, we can steal two, or three, or four dollars from them. This State can catch them now, and take the money out of their wages before they are paid. It is not right to take it, but then they give it to the saloons, and we only take it for a hospital fund. They can die in the poorhouse." This is a brilliant idea to bring here before an intelligent body of men. I tell you that the comforts are not very great in a poorhouse. I tell you that the working men that produce all the wealth of the world have little themselves, and it is robbery to impose a poll tax upon them. I have seen the injustice of it. I have felt it. I have been a tramp. I have tramped through fourteen States of the Union, all the Territories, and elsewhere. I have traveled fifteen hundred miles in a line, working at almost everything. I am a carpenter. I have packed my tools upon my shoulder through every street in San Francisco. I can shove a jack plane, and I can come and talk constitutional law with the lawyers. [Laughter.] I say that the man who has no property ought not to pay taxes, and I am opposed to this section, and hope that it will be stricken out and Mr. Barbour's amendment put in.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: My friend Mr. Barbour is just beginning to get his eyes open. I used, the other day, the very argument

which he uses now, that the poor man has to pay the taxes. It results in that. I am opposed to this section. I am opposed to levying any poll tax. A poll tax is an odious thing. It is odious because it is levied indiscriminately against those who are able to pay and those who are not. I would like to see the scheme of my friend Barbour carried out even where this tax is collected. The poll tax man puts a large quantity of it into his pocket. The public never get the benefit of it. I hope there will be an absolute prohibition against any poll tax whatever, for when the farmer pays the property tax he will see where the money goes.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope that the section will be stricken out, and the amendment of Mr. Barbour adopted. A man who has nothing pays plenty of tax in the exactions that are made upon him for living. The man who has nothing but his head to protect, gives more protection to the community, in my view, than any other man in the community, as regards his relationship to the community in his individual capacity. What would the property in this State be worth if it was not for the two or three hundred thousand men who are comparatively propertyless? Who could defend you in war or make you strong in peace? Who can carry forward the great works that are necessary to be carried forward in order to maintain the State in all its relationships to itself and to society, but this vast army of men who own comparatively no property? They are a security to you who do own the property. They are the men who make property valuable to you, and without them you could not own property. You could not stand here as a little handful of capitalists and land owners. In connection with owning these fields, you have also to bring with you the laboring man, the poor man—he who fills up society; he who is the army; he who is that substratum upon which society is founded, rests, and exists. His presence alone is worth more than the presence of anybody else, as compared with his relationship to the State. Therefore I am in favor of striking out the section, as reported by the committee, and inserting the one proposed by Mr. Barbour.

MR. WICKES. Mr. Chairman: I am in favor of striking out this section. I will not say that it is not right to impose a poll tax, but I think it is impolitic. If I was a tramp I would take some pride in saying that I had done something to the support of the Government, but I think a poll tax is impolitic; therefore, I am in favor of inserting a provision that would prohibit one. I am, of course, interested in the support of education. I believe that I can appreciate the benefits of the common school system, but I am in favor of levying the tax for the support of the common schools upon property, and upon that alone. In that way we will have a sure foundation.

MR. BARBOUR. Mr. Chairman: I rise for the purpose of inquiring what will be the effect of striking out the section.

THE CHAIRMAN. The question is on the motion to strike out section nine.

The motion prevailed.

MR. BARBOUR. Mr. Chairman: I offer this in place of section nine.

THE CHAIRMAN. It can be offered afterwards. The Secretary will read section ten.

SUSPENSION OF TAXATION.

THE SECRETARY read:

SEC. 10. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

THE CHAIRMAN. If there be no amendment to section ten the Secretary will read section eleven.

TAXES BY INSTALLMENTS.

THE SECRETARY read:

SEC. 11. The Legislature shall provide by law for the payment of all taxes on real property by installments.

MR. MCCALLUM. Mr. Chairman: I move to strike out section eleven.

MR. EDGERTON. I have no objection to that section.

MR. AYERS. I have a strong objection to striking that out.

MR. BIGGS. Mr. Chairman: I would like to state why that was inserted. I will state that the reason for it was simply this: This is a twofold proposition. It is well known that by the present system, at the first of the year we pay into the State and county treasuries about fifteen million dollars. That money is collected up and not disbursed for twelve months. The object of this section is to keep the money in circulation. Let the Legislature provide that half can be paid on the first of January and half on the first of July. It would be a benefit to every person that owes a dollar. They could have the privilege of paying all at once, or they can pay half each time, in some manner to be prescribed by the Legislature.

MR. WALKER, of Tuolumne. If the money is not used, why not make it all the first of July?

MR. BIGGS. Because we must have some. The object is that a man can pay one installment on the first of January, and another on the first of July. I am no stickler for it personally, but I favor it at the suggestion of a great number of persons. Instead of this large amount of money being hoarded up in the treasury, it gives the taxpayer the use of it. Nobody is benefited by it in the treasury. I think it would be a good thing.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: As I introduced the proposition, which was referred to the Committee on Revenue and Taxation, on which this section is founded, I deem it but right to say that I consider this as important a section as could be adopted in this Constitution. As Mr. Biggs has very justly said, it will keep in circulation the tax money of this State and allow it to remain with the people instead of being locked up altogether at one season of the year. It is cramping business and creating commercial difficulties which should not occur. The custom of collecting taxes in installments prevails in a number of the countries of Europe. In France it has proved a very successful system. There, at least in Paris, they are divided into twelve parts. These parts are represented by coupons and can be paid monthly. The result of that system is that the money is constantly flowing in and flowing out to the relief of the finances of the State. We have found by experience that at that season of the year when the taxes are collected, that a vast amount of money is withdrawn from circulation and locked up in the county and State treasuries, and that it is almost impossible to find enough money to carry on the ordinary business; and, further than this, if even this were a fictitious case, if even it were a fiction that money was scarce, lenders take the advantage of the withdrawal of this money for taxes for the purpose of imposing more usurious conditions upon business borrowers.

Now I assert, and I believe, that if the Legislature, under this authority, shall enact a judicious mode of collecting the taxes by installments that it will prove a relief to the business people throughout this State, and that it will be a measure for which the people will thank us.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I hope this section will be retained. I know, sir, that in the State of Pennsylvania a system of this kind has been in vogue for years. It has worked well. It has left a very large amount of money, in the aggregate, in the hands of the people. The money has been paid into the different treasuries of the State, as it has been needed. Now, we all know, as has been very well expressed by my colleague, Mr. Ayers, that the first of January, the time when our taxes become delinquent, is a very cramped time. Under our present system every one wants money to pay taxes at the same time, and that fact is taken advantage of. That money, or the greater portion of it, lies idle for the greater part of the year. I do believe that the Legislature could provide for a semi-annual system of taxation on real property by installments, which would be a vast advantage to the taxpayers of this State, and the business of the State would not suffer thereby. I hope that this section will be retained, and that the business and producing portions of this State will have the benefit of one half of the taxes for a half year at least.

MR. HUESTIS. Mr. Chairman: I believe that the principles involved in this section are correct, and, out of respect to public opinion in my section of the country, I hope the section will not be stricken out.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I have had some little occasion to examine this proposition, and I think there is merit in it; and, to emphasize what the gentleman from Los Angeles has stated, which certainly amounts to very cogent reasons for the adoption of this section, I will merely add that I have made some inquiry and investigation, and so far as I can ascertain, it will add nothing to the expense of the collection of the revenue. At first thought, when the subject was first presented to me, I was under the impression that it would involve some additional labor and cost in the collection of the revenue, but from what investigation I have been able to make, I am satisfied that it will not, and that it will be, in the first place, an advantage and benefit, and a relief in a measure to the taxpayers; and in the second place, that it will operate beneficially in keeping the money in circulation, and prevent the accumulation of idle money in the State and county treasuries, to the detriment of general trade, and the stringency of the money market. I therefore hope that the section will be retained, for while I see many advantages that may grow out of it, I have been utterly unable to find any disadvantages that would attend the adoption of that principle for the collection of the revenue.

REMARKS OF MR. LARUE.

MR. LARUE. Mr. Chairman: I hope that the motion to strike out will not prevail. I am satisfied that this is one of the most important questions before the people to-day. I see, from the report of the Controller, that the whole amount of the taxable property is five hundred and eighty-four million five hundred and eighty-three thousand dollars. At the rate of two per cent., which is about the State and county rate, it produces in round numbers the sum of about twelve million dollars; that money has been paid into the State and county treasuries within the last twelve days—to-day is the last day. I, for one, do not think it is easier to pay twelve million dollars than it is to pay six million dollars or three million dollars. We have one million dollars now lying in the treasury that has been there for three quarters of a year. I have been figuring a little. Taking the State, county, and municipal taxes of this State, and the difference paid in quarterly installments will pay the expenses of the Sheriff's office, County Recorder's office, and County Treasurer's office of this county, to say nothing of the convenience to the people in having the money in circulation. I say that the people will save that in interest, besides the great convenience of having the money. We all know how difficult it is to raise money when twelve million dollars is tied up in the different treasuries. The people find it a great hardship to raise all this money at once, and I ask why we should not collect this money as we need it?

MR. GREGG. Is it not the custom of the people to put off paying their taxes until the last minute? And will not the result be that all your tax will be paid at the July call?

MR. LARUE. The Legislature could provide for that by making a penalty. Would it not be easier to pay one hundred dollars now than two hundred dollars?

MR. WEST. In the State of Pennsylvania their system provides that each person pay one half on the first of January, or at the time the tax becomes due for the fiscal year, and by paying then he is allowed to let the other half stand for six months. Those who fail to do are compelled to pay just the same as if there was no such law in existence.

MR. GREGG. Have not the taxpayers now from the first of August to the first of January? And if they have until the succeeding first of July, is there any means of forcing them to pay before that?

MR. LARUE. They are now compelled to pay annually. They can just as easily be compelled to pay semi-annually, or quarterly.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: The attention of the public has been repeatedly called to that fact, if it be a fact, by the public press, especially in the large money centers, that under the present system, very large sums of money, running into the hundreds of thousands of dollars, are paid into the public treasury, and moulder in the vaults there for months. I am opposed to striking out this section, because it is not merely declaratory of a principle. It is not mandatory upon the Legislature to devise and perfect some scheme by which the exigencies of the public service can be met by the payment of these taxes from time to time, as the public needs the money. Now, sir, I do not see why one hundred thousand dollars should lie in the county treasury for five, ten, or twelve months; I do not see why large sums should lie there without any benefit to the Government or the individual. It seems to me to be entirely practicable for the Legislature to devise a system by which these taxes may be paid into the treasury by installments.

MR. REYNOLDS. Is it not a well known fact that the public funds are usually in arrears for many months preceding the time that taxes become delinquent?

MR. EDGERTON. There may be some instances of that kind. I am merely stating the facts as they appeared before the committee. I saw a statement that there was some several hundred thousand dollars lying in the San Francisco treasury, that had been there for a long time. I have heard a great deal of suggestions as to the propriety of providing for a call loan of that money, with proper security, at two or three per cent. I do not see any reason why these large sums of money should lie in these vaults and moulder away.

MR. AYERS. It is deposited in some of the banks in some of the counties.

MR. LARUE. The great responsibility of the County Treasurer is another argument in favor of it.

MR. REYNOLDS. I would like to know if the taxpayer has not had an opportunity to pay in his taxes from the first of August to the first of January, in installments, or the whole of it.

MR. BIGGS. No, sir, not the first of August.

MR. EDGERTON. Perhaps it is not improbable that the exigencies of the Government would be met if there was a provision that these taxes should be paid in once in three months, or two months, or once a month. The public school teachers are paid once a month. I do not see why a financial system might not be devised that would cover that.

MR. MCCALLUM. Has not the Legislature the power to make this provision without any constitutional provision?

MR. EDGERTON. Undoubtedly. I consider it a proposition which might with great propriety be left to the Legislature.

MR. TULLY. Do you think the Legislature would be compelled to adopt that plan under this section?

MR. EDGERTON. The phraseology is that "the Legislature *shall* provide by law for the payment of all taxes on real property by installments."

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: The evils arising from this system of having the collection made at one arbitrary period of the year are just beginning to manifest themselves throughout the State, and they are very serious in their character. It happens either that there is an excess of money in the treasury, that lies there undisposed of, bearing no interest, conferring no benefit upon the people, where there is not a demand upon it, or by the converse of the rule, it happens that where the State demands, or demands upon municipalities exceed that, there is no money to meet them, and they must remain unpaid until the period of the annual return of taxes. This evil exists, not only in the State Department, but in the counties. In the State Department I have known it to manifest itself in an inability to pay money due to the University for the maintenance of that institution. It also manifests itself in the city departments; there the evil is very severe and aggravated; there there is oftentimes a pressure for money, and no money to pay, and the creditors are compelled to wait until the annual collection can be made, because no man will pay until compelled. The payment of taxes is always made with reluctance, and will never be made voluntarily without the absolute legal demands enforced by penalty. Now, sir, to meet this difficulty, and keep the treasury of the State and the municipalities supplied with money from taxes at the proper time, so that it can be used when it comes in, there is no system that can be adopted other than that of having payments made by installments, and its enforcement guaranteed by the same penalties that exist in reference to the payment of taxes now. There is great merit in the proposition, and there is great necessity for the adoption of the section. The effects of it, not only in San Francisco, but in the entire State, will be realized in the form of pecuniary blessings to the community. But, as there is an objection to putting a mandatory provision in the Constitution, which might result in hardships in the future, I offer the following amendment.

THE SECRETARY read:

"Insert in section eleven, after the word 'shall,' the words 'have the power to.'"

MR. WINANS. It is said by some gentlemen that they have the power already; but a question might arise as to whether that power existed or not. They have never assumed the right to exercise that power. It is proper that the Constitution should give them the right to act.

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

Seconded by Messrs. Brown, Larkin, McComas, and Morse.

The main question was ordered.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from San Francisco, Mr. Winans.

The amendment was adopted, on a division, by a vote of 44 ayes to 36 noes.

MR. EDGERTON. I see no reason why it should not be stricken out now.

MR. HALE. I favor striking it out now.

THE CHAIRMAN. The question is on the motion to strike out the section.

The motion was lost, on a division, by a vote of 28 ayes to 50 noes.

MR. SMITH, of Santa Clara. I move to add that the taxes may be paid in the lawful money of the United States.

MR. HUESTIS. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have directed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

The Convention then took the usual recess, until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

LEAVE OF ABSENCE.

Mr. Schell was granted two days' leave of absence.

REPORT OF THE COMMITTEE APPOINTED TO INVESTIGATE THE CHARGES AGAINST C. C. O'DONNELL.

MR. BARBOUR. Mr. President: I ask leave to make a report out of order.

THE PRESIDENT. If there are no objections, leave will be granted.

THE SECRETARY read the report, as follows:

To J. P. Hoge, Esq., President Constitutional Convention:

Your committee to whom was referred the case of a member of this Convention, Charles C. O'Donnell, charged with grave crimes, have considered the same, and submit the following report:

The history of the events leading up to the appointment of this committee is matter of public notoriety. In the discussion, in this Convention, of what is known as the Fawcett amendment to the provision concerning libel, the member, O'Donnell, made remarks derogatory to the San Francisco Chronicle, a newspaper published in the City of San Francisco. The next issue of that paper assailed O'Donnell as a quack, imposter, abortionist, etc. Some time afterward O'Donnell entered criminal prosecutions for libel, in San Francisco and Sacramento, against the publishers of the Chronicle. A trial has been had of the case in San Francisco, in which the defendants admitted the publication, and based their defense on the truth of the alleged libel, and that it was published from good motives and for justifiable ends. The result of that trial was disastrous to the member, O'Donnell. In order to establish their innocence of the alleged libel, it became necessary for the defendants to prove the guilt of the complainant, O'Donnell. At the close of the trial they were promptly discharged by the Court, and we have seen no reason, after an examination of the reported testimony, to question the correctness of the decision of the Court.

The case entered in Sacramento, which is for the same cause, has not yet been tried.

Pursuant to the resolution creating it, your committee entered at once upon the examination of the subject-matter of the above described proceedings. They procured a copy of the reported testimony of the case in San Francisco, verified as correct by the affidavits of three witnesses. They notified the member, O'Donnell, of a time and place at which they would hear him. He appeared before us according to the notice, and was duly informed of the nature of the investigation and the testimony already in the hands of the committee, *i. e.*, the report of the trial contained in the San Francisco Chronicle of December twenty-second and twenty-fourth, eighteen hundred and seventy eight, with the affidavits of the witnesses referred to thereto attached, all of which is hereby referred to and hereto annexed, marked "Exhibit A," and made a part of this report.

He furnished us with no additional legal proof to rebut the showing made against him on the trial, but claimed that if time and opportunity were given him to procure counsel and produce witnesses before us, he could satisfy us and the Convention of his innocence of the charges made against him. He stated to us that the testimony given against him upon the trial was suborned and perjured testimony; that he was taken by surprise; that he was unprepared, either with counsel or witnesses, to meet the case made against him, and asked for delay to allow him to procure counsel and produce witnesses before us. Your committee did not feel authorized to constitute itself a Court of appeal from the decision of the Courts. The state of the funds at the disposal of this Convention did not warrant us in launching into any wild expenditure for persons and papers. We were not satisfied with the excuses made by the accused member, and we were not convinced of the relevancy of the testimony he claimed to be able to produce. In a country teeming with lawyers, it would seem that one month was time enough in which to procure counsel, especially by one having the financial ability to remunerate them, as appears to be the case with the member O'Donnell. It would also seem to be time enough for a party complainant in a criminal prosecution to prepare therefor. But inasmuch as the accused member had publicly declared that he would vindicate his character, by prosecuting the witnesses who appeared against him for perjury, and inasmuch as a complaint had been filed and was pending in Sacramento involving the identical issue with the one tried in San Francisco, your committee offered to delay action, provided he would assure them of his determination to go ahead before the legal tribunals of the country. He stated that he would consult counsel and give us an answer. We agreed to await three days for such answer. At the expiration of the time he appeared before us and stated that he had not consulted counsel, and asked for more time.

Your committee have come to the conclusion that the accused member has been attempting to delude them with frivolous pretenses and shallow excuses. They observe that the Grand Jury of San Francisco has adjourned, and nothing appears to have been done there by the accused member. They have also ascertained that the case pending in Sacramento has been abandoned. We are driven to the conclusion that the accused member never made the complaints in good faith; that he never really intended to put his character in issue in law; that he was unable to postpone the trials beyond the session of this Convention, and that is the only surprise by which he has been taken. For the purposes of this inquiry, the testimony herewith appended sufficiently attests the guilt of the accused member of the crimes charged against him to warrant this committee in submitting to the Convention whether such a man is worthy to retain his seat in this honorable body.

Of the power of this Convention to deal with this subject, your committee enter-

tains no doubt. An examination of the authorities and precedents has satisfied us of the correctness of this position. Wherefore, your committee report the following resolution, and recommend its adoption:

Resolved, That Charles C. O'Donnell, a member of this Convention, be and he is hereby expelled therefrom.

All of which is respectfully submitted.

CLITUS BARBOUR,
BENJ. SHURTLEFF,
J. A. FILCHER,
Committee.

State of California, City and County of San Francisco—ss. On the twenty-sixth day of December, A. D. one thousand eight hundred and seventy-eight, personally appeared before me, L. D. Craig, a Notary Public in and for the city and county aforesaid, duly commissioned and sworn, Chester H. Hull, Fred. H. Hackett, and H. B. Standerwick, who, having been by me duly sworn, deposes and says, each for himself, that they heard the testimony in the case of C. C. O'Donnell against Charles de Young and M. H. de Young for alleged libel, as is set forth in the printed matter or slips hereto attached and annexed, marked respectively Exhibits "A" and "B," and that the testimony and evidence as set forth and appears in said printed matter or slips hereto annexed and attached, and marked Exhibits "A" and "B," as aforesaid, is true and correct, and justly and correctly reported

(Signed) CHESTER H. HULL,
FRED. H. HACKETT,
H. B. STANDERWICK.

Subscribed and sworn to the day and year first above written.

[SEAL.] L. D. CRAIG, Notary Public.

MR. BARBOUR. Mr. President: I move that the report and accompanying resolution be made the special order for to-morrow afternoon, at two o'clock.

MR. ESTEE. I would suggest to the gentleman to fix it at a time when notice can be given to the defendant, who is away. It is the usual rule to give the defendant a chance to be heard. I would suggest day after to-morrow. I think the dignity of this body requires that he should have a chance to be heard on this floor if he so desires.

Mr. EDGERTON. I presume the sitting member is entitled to his seat. It is presumable that he is acquainted with the proceedings here, but he has a right to be notified officially through the Secretary, and I move, as an amendment, that this report be made the special order for Thursday afternoon, at two o'clock.

MR. BARBOUR. I accept the amendment.

MR. EDGERTON. And that the defendant be notified by the Secretary of the Convention.

So ordered.

TIME OF ASSESSING PROPERTY.

MR. EDGERTON. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section twelve.

THE SECRETARY read:

SEC. 12. The Legislature shall by law require each taxpayer in the State to make and deliver to the County Assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March.

THE CHAIRMAN. There being no amendment, the Secretary will read section thirteen.

ASSESSORS—HOW ELECTED.

THE SECRETARY read:

SEC. 13. Assessors and Collectors of State, county, city and county, town, or district taxes, shall be elected by the qualified electors of the county, city and county, town, or district in which the property taxed for State, county, city and county, town, or district purposes is situated; provided that vacancies may be filled by appointment, according to general laws.

MR. EDGERTON. I offer an amendment.

THE SECRETARY read:

"Strike out section thirteen, and insert the following: 'Section thirteen—Assessors and Collectors of taxes shall be elected in the manner provided by law.'"

MR. HALE. Mr. Chairman: I wish to offer a substitute to the amendment.

THE SECRETARY read:

"Assessors and Collectors of State, county, city, and district taxes, shall be elected or appointed in manner to be prescribed by law."

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: It is said that the assessment and collection of taxes in the State of California is attended with more expense than in any other State in the Union; and the cause of that fact, to a very great extent, is the necessity of electing Assessors in every district, and also a Collector for the collection of taxes. Now, in this county the County Assessor makes an assessment—a very thorough one—of all the property in the city and in the county. Now, on this the tax for the purposes of revenue could be extended just as well as not. But whenever in any school district you have to raise a tax to build a school house; whenever, in this State, you have to raise a tax for any purpose whatever, the same assessment has to be made over again by the local Assessors. Here is another example: Some years ago a bill passed the Legislature providing for the construction of a wagon road from some point in Napa Valley over into Lake County. Provision was made for the issuance of bonds, and the bonds had to be paid by a tax levied upon the property of the district. In that case they had to elect a special Assessor and Collector. And so it goes, under the present condition of things. The object of the amendment I have offered is to preclude that difficulty, and leave the whole matter to the Legislature; that the Legislature shall provide the manner in which Assessors and Collectors shall be elected. I see no reason why, upon the county assessment roll, taxes for every purpose cannot be extended, and thus avoid the necessity and expense of another assessment. I am informed that in one of the small counties in this State they desired to build a school house costing six hundred dollars, and that the expense of levying and collecting that amount was greater than the cost of the school house. This is a very good illustration of the difficulties encountered.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I not only agree with the gentleman, but go one step farther. He has correctly pointed out one of the evils which has grown up and exists under the provisions of the present Constitution, providing, first, that in each district all Assessors must be elected; and second, providing that they must be elected for each particular district. An inspection of the decisions of the Supreme Court on this question will show that the question has been many times considered. The evil has been, first, requiring their election, and second, the evil of requiring their election by the electors of a particular district or subdivision of the State. Now, the amendment which I offer as a substitute for this section provides that Assessors and Collectors shall be elected or appointed in such manner as the Legislature may prescribe. I am not able to see why this is not precisely where the matter should be left. Leave it to the discretion of the Legislature to provide for their election in such cases as they may deem necessary, and to dispense with elections and provide for filling the places by appointment, in cases where they may find such a course expedient. It will be found in many cases that the place can be filled better by appointment, and with more satisfactory results. I believe the actual experience of the people of this State has demonstrated that fact.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: I hope this section will be entirely stricken out. Section two, as amended, provides that property shall be taxed in proportion to its value, to be ascertained as directed by law. That is entirely sufficient. We have had trouble before because Assessors were provided for in the Constitution, hence they were constitutional officers. It will then be a question as to whether these values can be fixed by the Boards of Equalization. That was the trouble. The second section already adopted, says you may tax property in proportion to its value, to be determined in the manner prescribed by law. If your Legislature provides laws saying that the Assessors shall fix values, and the Boards of Equalization may then equalize it, that is all right. The Boards can fix the valuation, can increase the valuation above even that fixed by the Assessor. The other section already provides all that is necessary. That is all we want. If you put the word "Assessor" in there, that makes him a constitutional officer, and you are liable to have the same trouble as before. It would be better, therefore, to strike out the whole section.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope that the section will be stricken out, and the matter left as it is in section two, for the Legislature to prescribe a rule by which to ascertain the value of property. Under the present Constitution, the matter of assessing taxes has been thrown into confusion by two decisions of the Supreme Court, one of which assumes that certain values are not property within the meaning of the Constitution, and the other which says that property can only be assessed by the Assessor provided for in the Constitution, and if he put land, or any other kind of property at a certain price, that was the end of that question. No question could be made as to the valuation. It must be taken at that valuation, and that alone. It is for the purpose of obtaining relief from this straight-jacket, iron-clad rule, that I favor striking out this section and leaving the whole matter in the hands of the Legislature. I want it left elastic and flexible, so we can make a law to meet the emergencies that may arise. I am therefore in favor of striking out the section, and saying that the values shall be ascertained as in section two, as prescribed by law. Then I am in favor of section fifteen, which says that the Boards of Equalization shall have power, for county and State purposes, to raise or lower assessments made by the Assessor. Thus we can prevent the Assessor from becoming the complete tool of the large landholders in certain counties. It is useless now to go before the Board of Equalization, for the answer is that the Board has no power to increase an assessment. The Assessor has things absolutely in his own hands.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I hope the amendment of the gentleman from Sacramento will prevail, and be substituted for the section. As I read and understand section two as amended, it does not provide for this matter. It is silent. Now, I am in favor of leaving it to the Legislature, that they may be able to create a system for the assessment and collection of taxes, which will work uniformly in the State, and create machinery that can be more cheaply operated. Section fifteen is intimately connected with this, and I want a system whereby the county Boards shall equalize assessments as between citizens of the counties, and the State Board shall equalize as between the counties, as in their judgment they may deem proper. I hope this amendment will be adopted.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I am ready to strike out section thirteen. I am in favor of striking out the section, because section two covers the same ground. Now, if we pass another section, requiring Assessors and Collectors to be elected or appointed, it is simply a repetition. Therefore, I ask if a motion is in order now to strike out the section.

MR. EDGERTON. I ask the gentleman if that section does not go to the power of the Legislature, as to imposing taxes, as to what shall be taxed. It does not go to the mode of arriving at that result. It does

not affect the mode of assessment, or the mode or manner of collecting taxes.

MR. ROLFE. In the absence of any constitutional prohibition, the Legislature has full power to levy and collect taxes, to designate the mode and manner of assessing, and the manner of collecting. I think this section is unnecessary. If it is not stricken out I shall favor the amendment proposed by the gentleman from Placer, which says that Assessors shall be elected or appointed in the manner prescribed by law, because it may be necessary to have them appointed in some cases.

MR. EDGERTON. I am not tenacious in retaining this amendment. I think, perhaps, it is well enough to have the whole of it go out. I do object to the amendment of Judge Hale, because it seems to imply that there must be an Assessor for each of these subdivisions, and that they must be elected or appointed in the manner provided by law. I think the gentleman is right when he says that section two does incidentally give power, but whether it does or not, I think the last amendment much better. If the gentleman will withdraw his amendment I will mine.

MR. HALE. Yes, sir.

MR. ROLFE. Now I move that the section be stricken out.

Carried.

LIMITING TAXATION.

THE SECRETARY read section fourteen:

SEC. 14. The State tax on property, exclusive of such tax as may be necessary to pay the existing State debt, shall not exceed forty cents on each one hundred dollars for any one year.

MR. EDGERTON. I move to strike out the section. I do not think it is wise to put a limitation of that kind upon the Legislature. As to the limitation prescribed, I have taken pains to consult the Governor and Controller, and they say that it will not do to fix the limit at forty cents. The State rate is now fifty-five cents; between twenty-seven and twenty-eight cents of that goes to the School Fund, and if this limit is put in, the remainder will not be adequate to meet the expenses of the Government, and I think it would be very unwise to insert this provision. There is this difference between this State and those whose institutions are permanently established: they can tell exactly what it will cost to support their State Prisons and other institutions. I have heard it predicted that there will be an immense influx into our asylums; whether it is based upon the proceedings of this Convention or not I cannot say, but that prediction is made. Under the present Constitution the State tax has been as high as one dollar and five cents, which was during the war. I do not believe the time has yet come for this State to limit the rate of taxation in the Constitution. That ought to be left to the Legislature.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I trust this limitation will remain at forty cents. I will ask the gentleman whether that fifty-five cents does not cover the public debt too?

MR. EDGERTON. Yes, sir. I do not know how well the gentleman is informed. I do not profess to have any personal knowledge about it, but the Governor and the State Controller have told me that this would not do. It is dangerous to put it in there.

MR. WHITE. I have made some inquiries in regard to this matter. This is to be exclusive of the public debt. It is high enough, and it is necessary to have some limitation in the interest of economy; it is absolutely necessary that there should be some limit to the amount of money that can be spent. We had better cramp a little than to have the treasury so full as to merit speculation.

MR. EDGERTON. Has the gentleman ever got any money on speculation?

MR. WHITE. No, sir.

MR. EDGERTON. Does he know anybody who has?

MR. WHITE. No, sir; but there is a great deal of extravagance. The money is squandered here on this building, and for insane asylums, in ornaments that are of no use whatever. This building here is an absurdity. It took more money than all the money we have got in coin to build this very building. Look at this building. Forty thousand dollars appropriated to improve these grounds. Under these circumstances I think it is highly necessary that we should put in this limit. There are not a million people in this State, yet, and we are going on as though we had ten times the wealth we have. I was in favor of cutting it down to thirty cents, but I made some inquiries, and they told me they didn't think we could get along under forty cents. I think this is a very useful amendment.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: I hope the section will be stricken out, sir. The State has incurred a large expense on account of this Convention, and the people may see fit, perhaps, to reject the work of this Convention, and to order another differently constituted. And it is right, if the people of this State desire to change the organic law, if the changes we shall make should not prove satisfactory to the State, it is right that they should have the power to make the necessary appropriations, and it is not right to prevent them by constitutional provision from doing so. There are various contingencies which may arise. When we consider the steps we have already taken here, we may find ourselves ere long at war with the Empire of China, and, indeed, I don't know but we may expect to find ourselves at war with the government of the United States also. If we are going into that sort of business we will need more than forty cents tax to carry us through. I think the people should have the right once in two years to prescribe the rate of taxation, and it is not necessary that this Convention should take it out of the power of the Legislature to exercise that reasonable discretion. The members of the Legislature are as capable of doing what is right as we are. They are elected in the same way and by the same people, and are just as honest, perhaps, as we are. I therefore hope, in view of these facts, that this section will be stricken out, and let this matter remain with the Legislature.

MR. WHITE. Do you approve of all the extravagant ornaments on this extravagant building?

MR. JONES. I disapprove of the miserable accoustic properties of this hall. I do not disapprove of the images which you refer to: I do not suppose they cost a great deal. But as to having a large and commodious building for a State Capitol, I approve of that. If it be constructed in an honest, economical, and satisfactory manner, I approve of that. I do not go in for parsimony in those things. I am opposed to this section on principle, because I do not believe in tying the Legislature hand and foot. I believe in allowing them some discretion. How are we going to tell what revenue will be needed. We have adopted an entirely new system of taxation, and no man can tell how much revenue will be produced. These appropriations necessarily depend upon exigencies, as in case of war, and various other contingencies. The whole matter ought to be left with the Legislature.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I am in favor of extending the limit to cities, counties, and towns. This Constitution is to be a limit upon the power of the Legislature. There is nothing more important than to limit the amount of money which the Legislature may appropriate. The article on taxation which we have adopted will increase the assessment roll of the State one third at least, so that there will be a larger revenue derived than now. If forty cents is not enough, put it at fifty cents. We want some limitation in the Constitution.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I desire to call the attention of the committee to one fact, and that is the impossibility of acting intelligently upon this matter. We have not as yet determined upon the basis of assessment, and therefore we lack the data to base an estimate upon, and what rate of assessment will be necessary to sustain the government. It is true that we have adopted the second section and the fifth section; but we have not yet had time to calculate the effect, or to agree upon anything like an estimate of what the assessment would amount to under this complex provision provided for. Now, to illustrate: If the amendment of the gentleman from Sonoma had prevailed, the assessable property probably would have been, under a fair estimate, twelve hundred millions; at present it is six hundred millions. Now every one can see that under the operation of that provision, an assessment of twelve hundred millions would have made a great reduction in the rate, and might have brought it down to twenty-five or thirty cents. But we didn't adopt that amendment. We did adopt an amendment that means perhaps a good deal, and possibly nothing at all. For my part I have not been able to form even an impression of what the assessable property will amount to. Therefore, I contend that this committee is without data to pass an iron rule of this kind. We have no means of getting data upon which to act. To do so blindly would be unwise, certainly. After we have settled upon a basis of assessment, we will then be in a condition to fix a limit beyond which the Legislature shall not go in levying taxes. Now I venture the assertion that not one third of the members of this Convention are satisfied with what they have done in regard to the basis of assessment, and when we come to act upon it in Convention I have no doubt there will be some radical changes. After we have done that then we may be able to establish a rate. I will say to my friend Larkin that I am as much in favor of economy, and as much opposed to extravagance, as he or anybody else. I am in favor of the strictest economy in the government, but we must run the government. We must have a certain amount of money, and it would be most unwise to go on blindly and fix the rate.

MR. LARKIN. When we come in Convention will do.

MR. CAPLES. That will be satisfactory to me. I am inclined to favor a limit, because I know our Legislatures are a little too liberal, and I am strongly inclined to pass a limit. But I do not desire to bind them down below what will be necessary for carrying on the government, because to do so would be to clog the wheels of government. We can let the section pass until after we have determined upon the basis of assessment, and thus we can fix the limit.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: Fifty-five cents is the amount of the State tax, and the portion of that which goes for the State debt, including all the State debt, is six and one tenth cents on the one hundred dollars. Those are the figures. That leaves forty-eight and nine tenths cents on the one hundred dollars for other purposes. Therefore, section fourteen, as presented here, limiting the amount to forty cents, is eight and nine tenths cents less than the present rate of taxation. Now, sir, I am in favor of economy, but any attempt to economize by saying what the rate of taxation shall be, for State purposes, is something like resolving that we will only pay so much of whatever our expenses may be. It would be like a person resolving at the beginning of the year, among other resolutions generally passed about that time, that for the coming year, he will not pay any more than a given amount for expenses, no matter what the actual expenses, may be. It is substantially a resolution that if our expenses should be greater than the limit, we will go in debt for the balance.

MR. WHITE. Isn't it rather a resolution that we will not go beyond that?

MR. MCCALLUM. No, sir; the way to get at it is to place a limit upon legislative appropriations, by saying that no appropriations shall be made except for the legitimate expenses of government, and then there will be no necessity for this absurd proposition that we will only

pay so much. Article eight of the Constitution provides that the State indebtedness shall not be increased over three hundred thousand dollars, unless an Act making such appropriation shall be submitted to the people. I have uniformly, in my limited experience in public life, attempted to vote against all extravagancies of all kinds, but neither in public life nor in private life will I ever resolve not to pay expenses, whatever they may be. The way to arrive at that is by a provision in relation to appropriations, prohibiting the Legislature from making appropriations except for specified purposes, and that those purposes shall be strictly legitimate. But this proposition can be evaded. If the limit is too low, the Legislature will go in debt. Bonds will be issued and interest will have to be paid upon the bonds. I am opposed to the whole idea. There ought to be a limit, but I am not going to assume that all the wisdom and honesty of the State is monopolized by this Convention. Now, in case of war, or famine, or pestilence, or great floods, it might make a higher rate than forty cents absolutely necessary.

MR. ESTEE. I send up an amendment.

THE SECRETARY read:

"Add to the end of section fourteen, 'except in case of war, insurrection, or great public danger.'"

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I offer this because I think it will be necessary to perfect the section. I remember very well in this State, at the time of the floods, in eighteen hundred and sixty-one, it became a question of self-preservation with the people of this city to levy a large tax for the purpose of guarding against floods, by encircling the city with a levee. I believe this city is an exception to the rule, but we cannot tell when the necessity will arise. Marysville also is another example. Now, sir, I do not believe in any such iron rule, such a limitation in case of great public danger, where the State could not come in and assist her citizens. Should there be a great famine, or a great flood, sweeping over the Sacramento Valley, or war, or pestilence, or internal commotion, I believe the State should have the power to levy a much higher tax than forty cents on the one hundred dollars, as the exigencies of the case may demand. I see some of the Eastern Constitutions have limited the amount to twenty cents on the one hundred dollars. I do not object to a limit placed here, provided you put some such amendment as this in. These emergencies have occurred and may occur again, and we ought to provide against them.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I think the report ought to call for something. This was reported almost unanimous. I hope the amendment offered by the gentleman from San Francisco, Mr. Estee, will be adopted. I think it is necessary to perfect the section. I am well aware that many of the States have adopted such provisions as this. We have set a limit of forty cents. The State is in debt now. That would make it forty-nine cents. Our assessable property is nearly six hundred millions of dollars, and we propose to increase that to about nine hundred millions. The Controller and Governor have said that they thought it would not be sufficient. Everybody knows they have been running in the old groove, and every person knows that when this money is in the State treasury the Legislature will make extravagant appropriations, and this section commends itself to every member on this floor. Unless we place some safeguards around the Legislature I tell you it is very dangerous to have money piled up in there. If we make our minds to run the government on forty cents, we can do it. I hope the amendment and the section will be adopted.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. Chairman: I hope section fourteen, as reported by the committee, will not be stricken out. I hope the amendment of the gentleman from San Francisco, Mr. Estee, will be adopted. It is a good principle in human concerns, and one which in my opinion will apply equally to the concerns of the State. Men as well as nations will live according to their means. Place a limit upon them and they will strive to live within that limit. Place a limit upon the extravagance of the Legislature and it will live, and perhaps live better, than it otherwise would do. Therefore I hope this section will be retained.

MR. SMITH, of Santa Clara. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"And all taxes may be paid in the lawful money of the United States."

MR. EDGERTON. What is the use of that? We have resumed.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I do not see any objection to the adoption of this section, with the amendment of the gentleman from San Francisco. The effect is, all tangible property in this State will be taxed under section two, which has been taxed heretofore, and besides that there will be an additional income from debts and credits, until the Legislature permits the deduction of debts from credits. Until that is done by the Legislature, all unsecured credits will be added to the assessment roll of personal property, which is taxed already. That will make, as a matter of course, the rate of State tax considerably less. As I understood from the gentleman from Alameda, he made out, after counting the tax necessary to pay the interest on the State debt, made the amount forty-nine cents, I think. Now, if there is an additional income added to the tax levy of all the unsecured credits in the State—if the Legislature does not make deductions—why, the rate, of course, will be considerably less than forty cents. So I can see no objections to it.

MR. McCALLUM. I call your attention to section five, which provides that in all cases where mortgages are taxed, the amount shall be deducted from the value of the land. Will that make any difference with the tax rate?

MR. JOHNSON. It is an easy thing to understand section two. In the first place, all tangible property will be taxed as heretofore. But as far as tangible property and mortgages are concerned, there are two interests. There is the interest of the mortgagor and the interest of the mortgagee. But these two interests constitute only one property. Therefore it will be just the same as the tax on land heretofore, because the mortgage, being an interest in the land, is deducted from the value of the land, so that the two interests constitute the one property.

MR. McCALLUM. My point is this: That although you tax mortgages, still, as you deduct it from the value of the land, there is no increase on that account in the aggregate property assessed.

MR. JOHNSON. Certainly not. There is no increase whatever; but there is an increase otherwise, by taxing unsecured credits, and that was what I was speaking about. I said that the same property would be taxed as heretofore, and, in addition, these unsecured credits would be added, which will swell the roll and reduce the rate, unless the Legislature sees fit to authorize offsets of debts against credits.

MR. ESTEE. Is it not a fact that under our new Constitution, with the reductions we have made in salaries, etc., that the expenses of the State will be one quarter less than they have been?

MR. JOHNSON. Yes, sir. So upon any hypothesis, it seems to me this section is a perfectly proper one to adopt. I have understood that some gentlemen—most of whom voted in the negative, however—do not understand section two as adopted. It is the simplest and most easy thing to understand in the world. Section five says, in effect, that only land shall be taxed; but there are two interests in that land—the interest of the mortgagor and the interest of the mortgagee. Those two interests constitute the land. Then, besides, there are credits unsecured. These credits, of course, will be added to the visible, tangible property. The taxpayers will have to make a statement, under oath, of the amount of their credits. If the Legislature shall provide that debts due to bona fide residents of this State may be a set-off against credits, they will provide for statements to be made under oath. It will be hard to say, with any certainty, what the effect of this will be on the rate of taxation. But I think I can see that the tax is not going to exceed forty cents. As suggested by the gentleman, the salaries of all State officers have been reduced, which will make the amount necessary just that much less.

MR. AYERS. I wish to ask the gentleman who offered the amendment whether that amendment would cover such a case as a famine, or flood, in this State? He uses a new term there, "danger."

MR. ESTEE. I suppose you could use the words "great public calamity." I had in my mind fire and flood, more than famine. I don't apprehend that California will ever have a famine.

MR. AYERS. Probably the word "danger" would imply something impending, flood or famine, or great calamity.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope this section will be stricken out. It is very evident from the arguments here that there is a very great misunderstanding as to the amount of property upon which taxes are to be levied. It is claimed that we have already provided for a great reduction in the expenses of the State government, by reducing the salaries of State officers. But gentlemen seem to forget entirely that we have created other offices, whose salaries must be provided for out of the State apportionment, and by the very report now before us we are asked to provide for another Board, that must, of course, entail a great expense upon the State, and it seems to me we are going upon uncertain ground. We are likely to tie the Legislature down so that it cannot do what the interests of the State demand. It is better to leave it as it is. I do not think they have abused this power in the past. I do not think there is any demand for this thing. Let us leave it to the Legislature. Let them determine what the rate shall be. It is safe in their hands, and then there will be no need of this exception in regard to great public danger and calamity, or anything of that kind.

MR. McCALLUM. I would like to know if war is not a calamity. I would like to know if famine is not a calamity. If we are going to doctor it up, it strikes me we had better do it in a little better shape. If we propose to use the word calamity, let us use that word, and not use any surplus words. I am not going to attempt to doctor it myself, but I suggest it to the gentleman who offered the amendment.

MR. ESTEE. I will add the words "or other calamity." I don't want it to apply to any member of this Convention.

MR. GREGG. Mr. Chairman: I think the section had better be stricken out. The limitation would only cause the State Board of Equalization to increase the valuation of property throughout the State, in order to get the necessary amount of revenue. The Board has that power, and they will certainly use it, when the State falls short of money. The section ought to be stricken out.

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

Division was called for, the committee divided, and the amendment was adopted by a vote of 44 ayes to 42 noes.

THE CHAIRMAN. The question is now on the motion to strike out the section.

MR. BLACKMER. We have already stricken out the section in regard to poll taxes, and it is proposed by some to put a clause in there which shall prohibit the Legislature from ever levying a poll tax.

MR. LARKIN. I don't understand that this Convention decided anything upon that question except to leave it to the Legislature. I hope the gentleman will not use it as an argument.

MR. TERRY. Mr. Chairman: If we put the proper restrictions upon the power of the Legislature to appropriate money, that is all that is required. The restriction should go to the power to appropriate money, and not upon their power to raise money. They must have power to pay the expenses of the State Government. They must pay salaries

and other expenses, if they have to go in debt to do it. This section should certainly be stricken out.

Division being called for, the committee divided, and the motion to strike out the section prevailed, by a vote of 48 ayes to 38 noes.

STATE BOARD OF EQUALIZATION.

THE CHAIRMAN. The Secretary will read section fifteen.

THE SECRETARY read:

SEC. 15. A State Board of Equalization, consisting of two members from each Congressional district in this State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year eighteen hundred and seventy-nine, and every four years thereafter, whose duty it shall be to equalize the valuation of the taxable property in the State for purposes of State taxation. The Boards of Supervisors of the several counties in the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of county taxation.

MR. BARBOUR. Mr. Chairman: I move an amendment to section fifteen.

THE SECRETARY read:

"Amend section fifteen by striking out the words, 'two members,' in line one, and insert instead the words, 'one member.'"

THE CHAIRMAN. The question is on the amendment of the gentleman from San Francisco, Mr. Barbour, to strike out the word "two," and insert "one."

MR. FREEMAN. Mr. Chairman: I desire to offer an amendment.

THE SECRETARY read:

"Amend section fifteen by striking out the words, 'two members from each Congressional district,' and inserting in place thereof the words, 'three members, no two of whom shall be residents of the same Congressional district.'"

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I think three members are sufficient to constitute a State Board of Equalization. The Board which existed some years ago had, I believe, only three members, and there was no dissatisfaction. The objection to having four members is this: that there is very likely to be a tie vote on every important question which will come before the Board. It will always require a vote of three to one. Now, I do not propose that the Board shall be elected by Congressional districts, only that no two of them shall come from the same Congressional district. It will always leave out one of the Congressional districts, but that is a very immaterial matter. It is not so material that there shall be one from each district as it is that the Board shall be of a number and size which will enable it to act successfully. If there are four members, it will require three to pass any proposition. Three members, therefore, will make a more efficient Board than four.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: This section reported by the Committee on Revenue and Taxation is the section introduced and prepared by the gentleman from Yuba, Judge Belcher. The question as to the number that should constitute the Board was considered at some length by the committee, and it was urged there that there ought to be at least two members from each Congressional district, for this reason, that in one, at least, of the Congressional districts there is a large amount of mining property, and also a large amount of property, agricultural in its character; and that if the people of the district elect a man from the agricultural portion of the district, he would not be likely to be informed as to the value of mining property, and vice versa. Therefore it was argued that there ought to be one representative acquainted with the value of mining property, and one to represent the agricultural portion of the district. That is the reason the committee settled upon this number, so as to make it a thoroughly representative Board, and we retained the section as prepared and offered by Judge Belcher.

Now, it may be well enough, inasmuch as this is a new subject, to refer to other States. It is true we had a Board some years ago, consisting of three members; but under the decision of the Supreme Court of this State its powers were held to be very limited, and its functions were such as to attract very little attention. I have investigated this question somewhat extensively, to ascertain how these Boards are constituted in other States, and if the Convention desires the experience of those States I will submit the result of my investigations. Now, the State of New York has a Board that is partially ex officio, and partially an appointed Board, consisting of thirteen, embracing the Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Controller, Treasurer, Attorney-General, and State Engineer. In addition to these officers, the Governor appoints a Board of State Assessors, composed of three; so that the Board consists of thirteen members.

In the State of Nebraska, the State Board consists of the Governor, State Auditor, and Treasurer. There is an executive Board of three members. In Ohio, which is a large State, the Board consists of one member elected from each Senatorial District. It is a very large, representative Board, as the State has thirty-two Senators, I believe. The State Board equalizes property once in ten years, and that constitutes the basis of assessment for all real property in the State. In the State of Missouri, the State Senate constitutes the State Board of Equalization, consisting, I think, of thirty-three members—a very thoroughly representative Board. They do this business during the session of the Legislature. In the State of Wisconsin, the State Board consists of the State Senate, with the Secretary of State sitting as an ex officio member, and the Senate, I believe, numbers some twenty-five.

I suppose this is as important a branch of this subject as this Convention will have to deal with. In my judgment there will be no danger of getting the Board too large, and that Board should be sufficiently representative in its character. I do not think, in view of the diversified interests in this State, that there should be less than two members from each Congressional district. One man is not apt to be familiar with both mining and agricultural property. That is the reason the committee settled down upon two members from each district. There are now four Congressional districts, which gives the Board eight members.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I can see no necessity for so large a number as provided for in the report of the committee. As I understand it, the principal duty of equalizing values falls to the County Boards. And to equalize the assessments among the counties is the principal duty of the State Board, to be composed of representatives from each district. Estimating the population in these districts, and comparing the population of San Francisco, it will be found that the representation is about the same, according to population. As to the objection of the gentleman from Sacramento, Mr. Freeman, in my opinion that is clearly obviated in the next sentence, because I have no doubt that California will gain an additional representative, making five districts.

MR. BLACKMER. At the proper time I propose to offer an amendment, making the Controller of State ex officio a member of the Board.

MR. BARBOUR. He could decide in case of a tie vote.

MR. EDGERTON. In reply to the gentleman from San Francisco, Mr. Barbour, I would say that there is a provision at the end of this report requiring the Legislature to pass all laws necessary to carry out the provisions, and it will be entirely competent for the Legislature to provide for this contingency.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: The argument, or suggestion about increasing the Congressional districts, appears to me a conclusive objection to the proposition presented by the committee, and also the proposition of the gentleman from San Francisco, Mr. Barbour. The indications are that there will be an increase of two Congressional districts in this State, which will make six in all. In the committee's report it provides for two from each district, which would make twelve. According to the proposition of Mr. Barbour, we would have six. I believe it will be generally conceded that when we had three members of the Board that was enough. I think the amendment of the gentleman from Sacramento is the proper amendment, and avoids all difficulty about an increase in the number of Congressional districts. The amendment, as I heard it read, is that there shall be three elected, and in no case more than one from one Congressional district. Therefore, no matter how many districts there may be, there will be no increase in the number of members of the Board. I desire to offer an amendment, to strike out all the words between "of" and "at" in line three, and insert "of this State," so as to read, the "qualified electors of this State," instead of "of their respective districts." I think the officers who are to serve the State at large should be elected by the State at large.

MR. FREEMAN. I accept that amendment.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I am in favor of the amendment of the gentleman from Sacramento, Mr. Freeman. I see no necessity for the adoption of a method by which this State Board is to be accumulated. They are to be accumulated according to population, while their entire province is in reference to matters of the State. I do not think, therefore, that the accumulation of their number, according to the growth of the State, is at all consistent. We considered that three were enough to determine all railroad interests in the State, and they are quite as ponderous as those which concern the assessment of property in this State. All the data required can be had by hearing evidence. This will be their especial duty, and they will make themselves familiar with all classes of land values in the State. And if, sir, thirteen men, shifting as some of them are, are sufficient to determine the value of the landed interest in the great State of New York, three will surely be enough in California. For these reasons I shall support the amendment of the gentleman from Sacramento.

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope the amendment of the gentleman from Sacramento will not prevail. I desire to have this State Board a representative body of the interests of the State. And in order that they may be so they ought to be elected by the electors of different parts of the State, so that these varied interests may be represented. We have the agricultural interest and the mining interest, and the only way that they can be represented in the State Board of Equalization will be to have the members of that Board elected by a constituency who are interested in these things. I do not believe that the Board provided for will be too large. There is an immense amount of labor for the Board to attend to. It has not only to equalize taxation upon the landed interest, as has been incidentally mentioned, but it must also, if we look at the next section, assess all railroad property within the State, and then divide the taxes upon that property between the different divisions and subdivisions of the State. And it is an essential thing that there should be members enough to do the work quickly; and, as I said, it is necessary to have a representative Board. In order to avoid trouble which might arise in a Board consisting of an equal number of members, I propose to offer an amendment. Insert in the sixth line, after the word "taxation," the words: "The Controller of State shall be ex officio a member of said Board." At the proper time I shall offer this amendment, so as to avoid the difficulty arising from a tie vote.

MR. HOWARD, of Los Angeles. Mr. Chairman: I am opposed to the election by the State at large, because the result of it will be to give

the commercial centers the entire control of the Board. Now, I am in favor of electing one from each Congressional district, and to avoid the difficulty of a tie vote, to add the Controller, by virtue of his office. And there is another reason for it; the Controller has, perhaps, more accurate knowledge of the affairs of the State than any other officer, and that is a good reason for his being a member of the Board.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I trust the Convention will adhere to the report of the committee. There are other questions here which will have to be decided also. By whom is the assessment to be made, and how is it to be equalized? These are questions yet to be solved by this Convention. Whether we are to have Township Assessors, or County Assessors, is not yet decided. But whether we have Township Assessors or not, the county officers will make the assessments and will report to the Boards of Supervisors, who will have to equalize the assessments between the citizens of the county. Now, what has this State Board to do? Is it to go back to the primary assessments and undertake to equalize between man and man? No, sir; it is to do no such thing. Is it to go back and take a dollar off of Smith's assessment and add it to that of Jones? Is that what the State Board is to do? No, sir. It will equalize between the counties, and have authority over the County Boards. It will be impossible for them to go into every county, on to every man's farm, on to every man's mining claim, and equalize the value of the property. Of course economy is a thing to be taken into consideration, but this must be a Board large enough to do its work. Take the Third Congressional District, which comprises the northern part of the State. That district extends for hundreds of miles, and what can one man know as to the value of the property in different portions of that district? Two men would be better than one. A man living in the mining counties would know nothing of the value of property in the agricultural districts. It is all the more difficult here because values change so often. In my native State it is referred back to the Legislature, and they equalize between the townships throughout the State. It is easily done there once in five years. But here it is different. There the land is of the same character. It is not so here. The larger the number on this Board the more likely we shall be to get correct information from these several districts, and especially in those counties where there are railroad interests, as this Board is to assess all railroad property. You will be more apt to get at the truth of the matter if you have two men from a district, than by having only one.

With regard to the liability of a tie in the Board, that is very simple. Some man will be sick; some man will always be away, so that there is likely to be an odd number there. You can, however, provide for that by simply adding the Controller. He is here, the records are here, and he has the conveniences for keeping these records. It is true, we ought to study economy in all we do, but not to such an extent as to cripple or impair the efficiency of a Board charged with such an important duty as this. All our troubles about taxation have arisen for want of this Board. I am in favor of electing them by districts. It is true that the men coming from the different districts are apt to be zealous in defending their own interests, but it is as fair for one as for the other. I trust that for once the Convention will adhere to the report of a committee.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: A small Board will be much more likely to agree than a large one, as is well illustrated by this Convention. The larger the number of men the more difficult it is to arrive at conclusions. In the matter of equalizing assessments all over the State, the more you add the less likely they will be to agree. I am opposed to the proposition of a big Board. One or two good accountants can do the whole thing. The amendment of the gentleman from Sacramento is open to two objections, both of which are fatal. In the first place, I would like to know how the gentleman is going to provide a representative Board when one of the districts is entirely unrepresented in the Board. He asserts the principle of district representation, and thus provides a Board of three when there are four districts. One district must necessarily be left out, since these candidates must be residents of their respective districts. The other objection is that he provides that these men shall be voted for by the State at large. And I was surprised at the position taken by the gentleman from San Francisco, Mr. Winans, when he asserted that he was contending for the same principle advocated and adopted by the Committee on Corporations, in reference to the Railroad Commissioners. The Commission, it is true, has but three members, but they come from districts. The State is divided into districts for that purpose, and no district is unrepresented. If the gentleman had proposed that this Board be elected in the same manner, it would have been a proper argument.

MR. WINANS. I merely referred to the size of the two Commissions, not as to the manner of their election. As far as this matter is concerned, I do not see why these Commissioners could not be elected from the same districts as the Railroad Commissioners.

MR. BARBOUR. Well, if you propose to take the division prescribed for the Railroad Commission, that is one way. If you propose to prescribe it here in this section, that is all right. But that is not the proposition before the committee.

SPEECH OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I hope the report of the committee will be adhered to, unless it should be to add the Controller. Now, while it is true that objections can be urged against every large Board, still a Board composed of two members from each district is not so large as to be objectionable. Now, if that Board is going to act at all, it must act upon information. A Board composed of three members, elected from the central portions of the State, will have very little knowledge of the actual values of property in other parts of the State, and it will be difficult to get a Board with the requisite knowledge, comprised of a less number than two from each district. As to being elected by the State at large, I think the reasons assigned by other gentlemen on this floor are sufficient against it. They ought to be elected by districts, and two is not too large a number. Perhaps it would be well enough to elect one at one election, and another in two years, so as to make a continuous Board. There is no objection to that. But I hope the committee will vote down these amendments, and permit us to have a Board of at least two from each district. The difficulty arising from a tie vote is not very great and can be easily obviated.

MR. MCCALLUM. If the Congressional districts shall be extended after eighteen hundred and eighty to six districts, the gentleman will be in favor of having twelve members of the Board.

MR. DUDLEY. I am, most assuredly.

MR. MCCALLUM. It will be a great additional expense on the people of this State.

MR. DUDLEY. I do not understand that the expense of this Board of Equalization amounts to anything, whether it shall consist of twelve or twenty members, if they accomplish the purposes for which they are intended. It will be a very little additional expense when spread out over the State, compared with the loss of millions of dollars which are not now upon the assessment rolls. If this Board can succeed in equalizing the assessments upon property, the expense will not be felt in the slightest. Three men will not have the requisite knowledge to do this. Gentlemen speak of three men equalizing values. They may not know any more about the value of property in some parts of the State than the man in the moon. I do not know as it is necessary for this Board to travel. They might travel for information—I do not know that they will. It is not expected that this Board shall travel round over the State, and look at every piece of land in the State. Every part of the State ought to be represented in the Board, otherwise it will have no accurate knowledge of the value of property in the various parts of the State.

SPEECH OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: If the argument of the gentleman be true, this Board of Equalization ought to consist of about three hundred members, one from each township, perhaps one thousand members. It is not to be expected that a Board can be created so large that each individual will have an exact knowledge of the value of the property in the district which he represents. The best and most that can be expected of this Board is that it will use its official time to make such inquiries as will be necessary to enable it to determine the questions brought before it. A small Board of Equalization, a Board consisting of three members, can travel about the State, as the other Board of Equalization did; they can make inquiries in respect to the various counties. We do not want to create a legislative body, which shall sit here in session, which shall make that kind of an equalization which the members individually want for their respective districts. If we make it twelve or fifteen, or any other large number, they will meet here as a kind of a legislative body, and about all that will be done will be to ask the members from each district whether he is satisfied with the assessment from that district.

Now, with regard to State representation, and local representation, I take issue with the gentleman. The great bad act of the old Constitution was that it provided for a number of Assessors to be elected by districts, or rather counties. The result was the election of a number of persons from the various counties, and their popularity at home depended upon the reduction of the county assessments to the lowest mark. The result of that was low assessments all over the State. And when this State Board, consisting of three members, began to act, they raised the assessments up three hundred or four hundred per cent. over the local assessments, and not an individual dared complain, because they knew it was right. I say the members of this Board should not be considered as merely the representatives of the local districts. Such a policy tends to make them the champions of the localities from which they are elected. This amendment which I have offered provides that no two of them shall be elected from the same district, but they are not to be officers of the districts, but officers of the State. Elect three or four gentlemen who consider their duty simply to be to represent the interests of their parts of the State, and the result will probably be that by a kind of general consent between them each district would be let alone. None of them will be very anxious to tread upon the corns of the others.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: If the Board is to consist of three members, elected by the State at large, you might just as well abandon it, or hand it over to the City of San Francisco, where my friend Winans lives. As to the suggestion that no two should be elected from the same district, I believe all the districts corner at San Francisco.

MR. MCCALLUM. Our State officers have to be elected by the State at large. Did you ever know of all the State officers being elected from that corner?

MR. EDGERTON. There are some sixteen or seventeen State officers—Controller, Attorney-General, Superintendent, etc.—and those interests are entirely different; that is a different consideration entirely. The interests here are of very great magnitude, and I believe that this Board should be a representative body, and elected by districts, and not by the State at large. As to there being but one from each district—the farmers in the district will want a farmer elected to the Board, and the miners will want a miner. You cannot have both. I would like to know what a gentleman who has lived in the mines for twenty-five years knows about the values of farming property. I would like to know what a farmer, who has never been in the mines, knows about the value of mining property. It is all important that these two great interests, which together constitute the basis of our prosperity, should

be represented on this Board, and I think two from each Congressional district will not be too many. Now, about this matter of expense. I would like to know by what rule gentlemen compute the expense. Somebody says five thousand dollars a year. I see no necessity for paying these gentlemen any such salary. I suppose they will be paid a reasonable compensation for their services. But certain gentlemen overlook this consideration, that the adjustment of values in this State, increasing the values of property in this State to somewhere near their cash value, would be of such benefit that the salaries of these gentlemen would be a mere bagatelle, as compared with the increased revenue. Now, I find that in the State of Illinois they elect one from each Congressional district, and I believe they have fourteen districts in that State. Nobody complains of the number there, and they travel about the State. In the State of New York the Assessors are compelled to visit every county in the State. These States have representative Boards, which are satisfactory to the people, and a vast increase in the amount of taxable property brought out is the result, and that will be the result here.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I deem it essential that these men should be selected by districts. As the gentleman has just said, we have different interests in this State, and those interests should be represented on this Board. They can be represented by having one from each Congressional district. I am in favor of the amendment of the member from San Francisco. I believe one member from each district will be sufficient, by adding the State Controller.

MR. EDGERTON. Take this district. Does the gentleman know of a man who has been engaged in mining, who is familiar with farm values in the agricultural counties?

MR. LARKIN. There are a great many men who are connected with farming and mining interests both, and have been. In our county the interests are about equally divided at present. And these four men, with the addition of the Controller, who is selected with reference to his fitness, will be qualified to do this work.

MR. EDGERTON. The Controller of State has nothing whatever to do with the values of property in this State. You might elect a merchant, or a sailor, or a lawyer, as Controller, and they might make excellent officers.

MR. LARKIN. The men we have elected would have made good members of such a Board. The history of the State shows it. Judging from what I have seen of the office, the Controller ought to be a member of the Board. He would be a valuable member of the Board when it comes to assessing railroad property. I believe we ought to have four members. If this Convention cannot agree upon one from each district, then I would prefer two from each district.

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

Division being called for, the amendment was lost by a vote of 44 ayes to 55 noes.

THE CHAIRMAN. The next question is on the amendment proposed by the gentleman from Sacramento, Mr. Freeman.

Lost.

THE CHAIRMAN. The next question is on the amendment of the gentleman from Alameda, Mr. McCallum.

MR. MCCALLUM. I rise to a point of order.

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

MR. MCCALLUM. The amendment offered by myself was accepted.

THE CHAIRMAN. The gentleman had no power to accept it. It was no part of the amendment. The question is on the amendment of the gentleman from Alameda, Mr. McCallum.

Lost.

MR. EDGERTON. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Insert after the word 'property,' in line six, the following: 'of the several counties.'"

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento, Mr. Edgerton.

MR. EDGERTON. It will then read: "whose duty it shall be to equalize the valuation of the taxable property of the several counties in the State for purposes of State taxation," etc. This will remove some of the objections made by the gentleman from Marin, that we propose to equalize the property of individuals.

THE CHAIRMAN. The question is on the amendment.

Adopted.

MR. HEISKELL. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"A State Board of Equalization, consisting of five members, and no more, four of whom shall be elected by the qualified electors of the State at the general election to be held in the year eighteen hundred and seventy-nine, and every four years thereafter; and the Controller of State shall be ex officio a member of the Board; and no two members shall be elected from the same Congressional district."

THE CHAIRMAN. The question is on the amendment.

MR. HEISKELL. Mr. Chairman: I propose to follow this amendment up. There seems to be some disposition to have a large Board. I think this will be ample for all time. This is a kind of a compromise between the two sets of opinions. I do not offer it as a compromise, but simply because I consider it best.

MR. LARKIN. I ask the gentleman whether that don't provide for the election by the State at large?

MR. BLACKMER. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Insert after the word 'taxation,' in the sixth line, the following: 'The Controller of State shall be ex officio a member of said Board.'"

MR. BLACKMER. Mr. Chairman: I believe this Convention has determined, by the votes just taken, that this Board shall consist of two members from each district. Now, it seems to me if we provide that the Controller shall be a member of the Board, we will have done all that it is advisable to do.

MR. ROLFE. Would the Controller be allowed any additional compensation for such services? There might be some objection raised upon that.

MR. EDGERTON. That matter can be settled in another place.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Diego, Mr. Blackmer.

Adopted.

THE CHAIRMAN. The question is on the amendment of the gentleman from Stanislaus, Mr. Heiskell, as a substitute for the section.

MR. EDGERTON. Practically it seems to be the same as the amendment of the gentleman from Sacramento, Mr. Freeman.

MR. BROWN. Mr. Chairman: I will simply say that the difference, as I understand it, in this case, between this and Mr. Freeman's amendment is, that this clearly states that no two members of the Board shall be from the same district. And this makes it very different from the amendment the gentleman speaks of. That did not define it, but left them to be elected at large, but that no two of them should be from the same Congressional district. This defines it, makes it distinct, and prevents centralization.

THE CHAIRMAN. The question is on the amendment of the gentleman from Stanislaus, Mr. Heiskell.

Lost.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I offer an amendment to section fifteen, so as to define the powers of the Board. And as I have it written out in the printed section, I ask leave to read it:

"Add to section fifteen: 'Provided, that said State and County Boards of Equalization shall be and they are hereby authorized and empowered to increase or lower the entire assessment roll, or the assessments contained therein, so as to equalize the assessment of the property contained in said assessment roll, so as to make said assessments conform to the true money value of the property assessed."

I wish to add that to the section. The reason I propose this amendment is that we now have County Boards of Equalization, and they have run counter to the Supreme Court. It is hedged about by decisions of the Supreme Court, which says that the County Board has no power to interfere with the assessment of the Assessors. Now, in order to make it effective, it is necessary to give them power that is concurrent with the powers of the Assessors, so that if they see whole sections of country, or if they see property assessed for twenty-five thousand dollars, which is mortgaged for fifty thousand dollars, like some of the assessments in my county, it can be rectified. It is for the Board to equalize upon their own motion, and raise these assessments, without compelling A. to go before the Board and make personal application. He is denied the privilege of having school houses, because these landholders are there to intimidate, there to hire men to vote against levying taxes for a school house. If you expect these Boards to accomplish any good, you must give them more power. They must have the power to increase or lower these assessments on their own motion.

MR. EDGERTON. I would suggest to the gentleman from Monterey that the word "equalize" comprises all that is contained in his proposed amendment. That means that they can increase or decrease. I see no necessity for the amendment at all.

MR. WYATT. This amendment reads: "Provided, that said State and County Boards of Equalization shall be and they are hereby authorized and empowered to increase or lower the entire assessment roll, or the assessments contained therein, so as to equalize the assessment of the property contained in said assessment roll, so as to make said assessments conform to the true money value of the property assessed."

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I was about to introduce an amendment covering the same point. The Supreme Court has decided that on account of the Assessor being provided for by the Constitution, that Boards of Equalization, in attempting to equalize the assessments, by raising or lowering values, were doing the duties of constitutional officers. And on that account it was decided that the powers of Boards of Equalization were limited. Now, that section has been stricken out, and one similar to it proposed by the committee. Before I left my county I was often reminded of the necessity of giving to Boards of Equalization full power to review assessments. Now, it seems to me that the amendment proposed does not fully cover the point. He gives it power to raise or lower the assessments made by the Assessor. But he does not give power to the Board to put on the assessment roll property that might be omitted by the Assessor. We had a case in our county. Lands belonging to the railroad company were omitted from the assessment roll, and under the law, when the matter came up before the Board, it was held that the Board had no power. Now, the amendment I was about to propose covers the whole matter, and I will read it: "And the State Board of Equalization, for State purposes, and the County Board, for county purposes, shall have full power to review and reform State and county assessments." Now, I have been somewhat timid about offering amendments here. It seems to me that resolutions coming from certain members of this Convention are taken notice of more than those coming from others. There seem to be certain undercurrents here that have interfered with the business long enough. It has a depressing effect, and I am tired of it. I came here to represent my constituents, not for the purpose of gaining prestige here. I am tired of this thing of members taking advantage to introduce amendments. Now, I am in favor of the Wyatt amendment, as far as it goes; but it does not seem to me to cover the ground. I want the Boards to have

full power to review, and full power to reform assessments made by the Assessors of the State. I offer this as an amendment: "And the State Board of Equalization, for State purposes, and the county Boards, for county purposes, shall have full power to review and reform State and county assessments."

MR. EDGERTON. The amendments are utterly unnecessary, and it is only piling a lot of surface matter into the Constitution which ought not to be inserted. The section, as it stands, provides that the State Board shall equalize the property between the counties, and the county Boards shall equalize the property in the counties—that is, between individuals—and the word "equalize" means that they may raise or decrease the value—that is what it means. The amendment of the gentleman from Kern makes them act together.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I believe the amendment offered by the gentleman does not meet the difficulty under which we are laboring. We have now a County Board of Equalization, and the law says they are authorized to equalize the assessment roll. When the assessment roll is returned to them they find they are without the power to do that, except to increase the per cent., and lowering all the assessments that are reasonable down to those which are too low, so as to make them conform to the lowest assessments upon the list. But if they undertake to raise any assessment the law informs them that a complaint must be filed; you have got to serve notice. A has to institute a lawsuit against B to make him pay taxes in which A has no interest. A has to go to the Clerk and to the Sheriff and ask for subpœnas, the Clerk wants money for issuing the subpœnas, and I am speaking now from the records.

MR. ESTEE. Do you understand that there is no law permitting a citizen to complain to the County Board of Equalization to have the assessments raised up?

MR. WYATT. I am giving you the details. You have to go and file a complaint, and describe the land. Then you have to say it was assessed at a certain price. Then you have to say the price is too low, and that it should have been assessed at such a price. Then you have to call your witnesses and prove it. And you have to serve notice and papers upon the party. Then to get your witnesses you must take out a subpœna. The Clerk wants money. The Sheriff must serve them, and he wants money for his services. The witnesses, who, perhaps, live under the shadow of some big landed estate, do not voluntarily come unless they are legally subpœnaed. And all this process requires time and money. And this time and money must be spent by a man who has no interest beyond the general interest of the county. That is a kind of process we went through in our county. We served notice on the party, and who do you suppose we brought before the Board? Well, sir, we brought there Miller & Lux. They brought witnesses there, and we had to fight an immense array of capital. That is the kind of a hornet's nest you stir up, when you undertake to proceed under the present law. That is the kind of stumbling blocks thrown in your way when you undertake to proceed now.

MR. TOWNSEND. Do you mean that the Board shall have arbitrary power to raise any party's taxes, without giving him the right to produce testimony, and without notice? If you do I am opposed to it.

MR. WYATT. I wish to authorize the Board to act upon their own motion. I wish to give them the power to act upon their own motion, without the necessity of the circumlocution which exists now. And this amendment does it. Our Supreme Court has decided that nobody can assess but the Assessor. You have to institute a regular lawsuit now. It gives the Board of Supervisors something to hide behind. It gives the officials something to hide behind. You must give this power to the Board directly, so that they can be held directly responsible.

MR. SMITH, of Fourth District. I wish to ask a question——

MR. LARKIN. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. SHOEMAKER. Mr. President: I move the Convention do now adjourn.

Carried.

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

ONE HUNDRED AND SECOND DAY.

SACRAMENTO, Tuesday, January 7th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Bell,	Chapman,
Ayers,	Biggs,	Condon,
Barbour,	Blackmer,	Cross,
Barry,	Brown,	Crouch,
Barton,	Burt,	Davis,
Beerstecher,	Caples,	Dowling,
Belcher,	Casserly,	Dudley, of San Joaquin,
Dudley, of Solano,	Kleine,	Smith, of Santa Clara,
Dunlap,	Lampson,	Smith, of 4th District,
Eagon,	Larkin,	Smith, of San Francisco,
Edgerton,	Larue,	Soule,
Estee,	Lavigne,	Stedman,
Estey,	Lewis,	Steele,
Evey,	Mansfield,	Stevenson,
Farrell,	Martin, of Santa Cruz,	Stuart,
Filcher,	McCallum,	Sweasey,
Finney,	McComas,	Swenson,
Freeman,	McConnell,	Swing,
Freud,	McCoy,	Terry,
Garvey,	McFarland,	Thompson,
Gorman,	McNutt,	Tinnin,
Grace,	Mills,	Townsend,
Graves,	Moffat,	Tully,
Hager,	Moreland,	Turner,
Hale,	Morse,	Tuttle,
Hall,	Nason,	Vacquerel,
Harrison,	Nelson,	Van Dyke,
Heiskell,	Noel,	Van Voorhies,
Herold,	Ohleyer,	Walker, of Marin,
Herrington,	Overton,	Walker, of Tuolumne,
Hilborn,	Prouty,	Waters.
Hitchcock,	Pulliam,	Webster,
Holmes,	Reddy,	Weller,
Howard, of Los Angeles,	Reed,	Wellin,
Howard, of Mariposa,	Reynolds,	West,
Huestis,	Rhodes,	Wickes,
Hughey,	Ringgold,	White,
Hunter,	Rolfe,	Wilson, of Tehama,
Inman,	Schell,	Winans,
Johnson,	Shafter,	Wyatt,
Joyce,	Shoemaker,	Mr. President.
Kelley,	Shurtleff,	

ABSENT.

Barnes,	Fawcett,	Martin, of Alameda,
Berry,	Glascock,	Miller,
Boggs,	Gregg,	Murphy,
Boucher,	Harvey,	Neunaber,
Campbell,	Jones,	O'Donnell,
Charles,	Kenny,	O'Sullivan,
Cowden,	Keyes,	Porter,
Dean,	Laine,	Schomp,
Doyle,	Lindow,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence for two days was granted Mr. Kenny.

Leave of absence for seven days was granted Mr. Gregg.

Indefinite leave of absence was granted Mr. Boggs, on account of sickness.

THE JOURNAL.

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

Carried.

AMENDMENTS TO RULES

MR. McCOMAS. Mr. President: On yesterday I gave notice of a motion to amend Rule Two. I now desire to call up that motion.

THE SECRETARY read:

"Amend Rule Two so as to read as follows: 'The Convention shall take a recess each day from half-past twelve o'clock to two o'clock P. M., and from five o'clock to seven o'clock P. M.'"

MR. STEDMAN. Mr. President: I second the motion.

MR. GRACE. Mr. President: I desire to offer an amendment:

"*Resolved*, That Rule Two be amended to read as follows: 'The Convention shall meet at two o'clock A. M. on the day succeeding the passage of this rule, and shall remain thereafter in continuous session until the completion of its labors; and, for the purpose of providing for such continuous session, a committee of three shall be appointed to divide the members into two separate watches, one of which shall serve from twelve o'clock M. to twelve o'clock P. M., and the other to serve from twelve o'clock P. M. until twelve o'clock M.'"

The object of this rule is, that the time is growing short.

MR. WYATT. Mr. President: I rise to a point of order. The resolution is out of order.

THE PRESIDENT. Undoubtedly so.

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

Messrs. Wellin, White, Grace, and Estee seconded the call for the ayes and noes.

MR. McCALLUM. Mr. President: I understand it requires a two-thirds vote to change this rule. Then, in that case, if we adopt this rule, we cannot avoid a night session, except by a two-thirds vote. I am in favor of having some night sessions, but we can do that as the rules now stand, by a majority vote, therefore I think we had better not have this.

The roll was called, with the following result:

AYES.

Andrews,	Brown,	Farrell,
Ayers,	Caples,	Filcher,
Barbour,	Davis,	Finney,
Barry,	Dowling,	Freud,
Barton,	Dudley, of Solano,	Gorman,
Bell,	Estee,	Graves,
Biggs,	Evey,	Harrison,

Heiskell,	McCoy,	Tinnin,
Herold,	McNutt,	Tully,
Howard, of Los Angeles,	Moreland,	Tuttle,
Howard, of Mariposa,	Nason,	Vacquerel,
Hunter,	Nelson,	Waters,
Inman,	Noel,	Webster,
Joyce,	Ohleyer,	Weller,
Kleine,	Prouty,	Wellin,
Larkin,	Rhodes,	West,
Lavigne,	Ringgold,	Wickes,
Mansfield,	Smith, of Santa Clara,	White,
Martin, of Santa Cruz,	Stedman,	Wilson, of Tehama,
McComas,	Stevenson,	Wyatt—62.
McConnell,	Swing,	

NOES.

Blackmer,	Kelley,	Smith, of 4th District,
Condon,	Larue,	Smith, of San Francisco,
Crouch,	Lewis,	Soule,
Dudley, of San Joaquin,	McCallum,	Steele,
Eagon,	McFarland,	Stuart,
Edgerton,	Mills,	Sweasey,
Estey,	Moffat,	Terry,
Garvey,	Morse,	Thompson,
Grace,	Overton,	Townsend,
Hale,	Pulliam,	Turner,
Herrington,	Reed,	Van Dyke,
Holmes,	Reynolds,	Van Voorhies,
Huestis,	Rolfe,	Walker, of Tuolumne,
Hughey,	Shafter,	Winans,
Johnson,	Shurtleff,	Mr. President—45.

THE PRESIDENT. Two thirds not having voted in the affirmative, the amendment is lost.

MR. TINNIN. Mr. President: I move to take from the table the resolution offered by Mr. Noel, to amend Rule Forty-three.

Carried.

THE SECRETARY read:

"RULE XLIII. No member shall speak more than once on one question, nor more than ten minutes at a time, except the Chairman of a standing committee, who may speak twice on the same question, and shall be allowed thirty minutes each time. This rule shall not be suspended except by unanimous consent."

MR. TINNIN. Mr. President: The Convention has just decided, by a vote, not to hold night sessions, and it is evident to every member here that unless some curtailment is had of the long-set speeches that are being made here, that we will stay here until the time to ratify the Constitution, if we do make one. It is evident that these speeches have no effect on this body and are of little use to the people outside of it. I hope that this Convention will now establish some system by which the labors of this body may be completed, as the time of the sitting of the Convention is limited.

MR. GRACE. Mr. President: I am in favor of getting along with the work of this Convention, and any rule that will be fair and equal I am in favor of; but I do not want to give the man that offers a resolution an hour, when no other man has more than ten minutes. If the amendment was to allow the Chairman to speak fifteen minutes, I should not oppose it, but I do not propose to give him ten times the amount of time that any other gentleman has.

MR. HUESTIS. Mr. President: I move to amend by striking out "ten" and inserting "five," and striking out "thirty" and inserting "fifteen."

MR. ROLFE. Mr. President: That amendment is susceptible of division, and I call for a division of it. I call for a separate vote upon that last part, which requires unanimous consent.

THE PRESIDENT. It is not capable of that division.

MR. GRACE. Mr. President: I move to lay the whole matter on the table.

Lost.

MR. ANDREWS. Mr. President: I call for a division of the question. There are two points embraced in the proposition; one is to strike out "ten" and insert "five," and the other is to strike out "thirty" and insert "fifteen." I demand a division of the question.

THE PRESIDENT. The first question is on the amendment to strike out "ten" and insert "five."

The amendment was rejected, on a division, by a vote of 33 ayes to 61 noes.

THE PRESIDENT. The question recurs on the motion to strike out "thirty" and insert "fifteen."

MR. EDGERTON. Mr. Chairman: I hope that the motion will be voted down. So far as I am personally concerned, I am perfectly willing that the Convention should put a padlock on my mouth from this time out, but it may happen that when the report of the Committee on Judiciary and Judicial Department, and other committees, shall be taken up, the Chairmen of those committees should have more than fifteen minutes, if necessary, to explain these reports. I believe, so far as I am concerned, that I have but once transcended the fifteen-minute rule, and that by unanimous consent. My friend from El Dorado, Mr. Larkin, wants to get people on the record, and he wastes more at the spigot calling for the ayes and noes than this Convention has wasted at the bung this whole session.

MR. ANDREWS. Mr. Chairman: I think this amendment ought to be adopted. The Chairmen of the committees will really have thirty minutes on each proposition, where no other member has more than ten, giving the Chairman, on every motion that may be pending, three times the time that any other member may have. I would not wish to cut off the Chairmen of the committees from fair and ample time, but I think it is getting late in the day for long speeches.

MR. EDGERTON. Mr. President: I do not ask any such favor of this Convention for myself. It is only for the benefit of the Convention, that the Convention may be advised as to the contents of the report. I concede that the gentleman can say more in five minutes than I can in thirty. Probably if he was the Chairman of each committee it would be well to limit this to fifteen minutes.

MR. ANDREWS. I wish to amend, if the gentleman will allow me.

MR. EDGERTON. I accept it before you state it.

MR. TOWNSEND. I think it will take most of them more than an hour to explain any report they have made here. [Laughter.]

MR. HOWARD. Mr. President: Is the proposition open to amendment now? I move to amend by inserting "after the previous question has been ordered." The President will remember that this is the process at Washington. The Chairman of every committee is allowed an hour after the previous question is ordered, in which to explain and defend his measure, and thirty minutes is little enough time here; other business is done under the five minute rule. Five minutes, after the debate we have had here, is plenty of time, and ten minutes is ample. I am in hopes that the thirty minutes will be accorded to every Chairman of a committee after the previous question has been ordered.

MR. GRACE. Mr. President: I am not opposed to allowing the Chairman thirty minutes, or an hour. I think we should analyze these things and see if we can come to the right principle; in order to do so we must exchange ideas. Now, when the land question is just coming up, and the question of suffrage, the most important question that has or will come before this body, we ought not to adopt this rule. I tell you that there is no gentleman on this floor that concentrates his ideas sufficiently to give the land grabbers justice in ten minutes. I regard it in the interest of land grabbing thieves in California, and I am in hopes that the Convention will vote it down.

MR. RINGGOLD. Mr. President: I am in favor of giving the Chairmen as much time as they choose, with the exception of the Chairman of the Committee on Privileges and Elections.

THE PRESIDENT. The question is on the adoption of the amendment to strike out "thirty" and insert "fifteen."

The amendment was rejected.

MR. DUDLEY, of San Joaquin. Mr. President: I move to amend by adding, "Provided, that the advocates of woman suffrage shall have one hour each to forward the claims of the suffering women to the ballot."

THE PRESIDENT. Out of order.

MR. HOWARD. I withdraw my amendment.

MR. REYNOLDS. Mr. President: I move to strike out all after the word "time," in line three, and add as follows: "The previous question shall not be moved in Committee of the Whole." [Laughter.]

THE PRESIDENT. Out of order. The question is on the adoption of the amendment.

MR. McFARLAND. Mr. President——

MR. REYNOLDS. Mr. President——

THE PRESIDENT. The gentleman from Sacramento, Mr. McFarland, has the floor.

MR. McFARLAND. Mr. President: It does seem to me that this action at this time——

MR. REYNOLDS. I would like to know——

THE PRESIDENT. The gentleman from San Francisco is out of order and will take his seat.

MR. REYNOLDS. Mr. President: I——

THE PRESIDENT. The gentleman will take his seat.

MR. McFARLAND. Mr. President: It seems to me that this proposed action at this time is very much like the course that has been pursued by some gentlemen here. After a certain number of speeches have been made they are in favor of the previous question. Now, sir, it does seem to me wrong and unjust that after certain gentlemen on this floor have occupied hours and hours in the discussion of the matters that were interesting to them, that before we have got half through with business, this rule should be adopted so that no man shall speak more than ten minutes, except by unanimous consent. It is a very strange thing to me that the majority of this Convention, or even two thirds, cannot hear gentlemen discuss a question, but that any one obstreperous gentleman can prevent a discussion of any matter more than ten minutes. I do not believe that is right. I say that the history of the Convention will show that there has not been a solitary report sent into this Convention which has been adopted in the form in which it was presented, and there has not been a solitary question that a majority of this Convention were prepared to vote upon at all here until after full discussion. Take your report on corporations; take your report on revenue and taxation; there is not one of these wiseacres knew how to vote upon them. They had no idea.

MR. TINNIN. How do you come to that conclusion?

MR. McFARLAND. I come to the conclusion that the gentleman from Trinity seems enlightened——

MR. TINNIN. I generally vote against the gentleman from Sacramento, and I think I am invariably right.

MR. McFARLAND. That perhaps may be true. That was said by some one about forty years ago, and has been repeated a number of times by my friend from El Dorado. It is worn out. [Laughter.] On the question of revenue and taxation this Convention was in a hubbub until the last minute. They did not know how to vote until after full discussion, and when the gentleman from Sonoma presented his amendment it was adopted because the Convention had come to some conclusion. I should be very much disappointed if some gentlemen were stopped here at the end of ten minutes by some one member of this Convention. I would like to know how many gentlemen here are prepared to vote on the question of judiciary. How many gentlemen are there

here who know whether they wish to adopt the report as it is, whether they shall amend it, or whether they shall reject it altogether? Some gentleman takes the floor to discuss it, and the Convention desire to listen to him, but at the end of ten minutes he is stopped by one man, and this whole Convention are excluded from that privilege, because one man wants to stop it. If you grant the privilege to the first gentleman you must do it to the next. I am satisfied that this Convention would like to hear a number of gentlemen upon a number of questions that will come before it, and, therefore, I am opposed to this amendment.

MR. KLEINE. If our business is to be done without this rule it will take us nine months longer.

MR. McCALLUM. Mr. President: I move to strike out the words, "by unanimous consent," and insert "by consent of two thirds."

MR. ESTEE. I understand that the rules expressly provide that a rule may be suspended by a two-third vote.

MR. McCALLUM. This amendment provides that this rule shall not be suspended except by unanimous consent. The point the gentleman makes is that this rule may be suspended by a two-thirds vote. I would like to ask the Chair for a construction of that.

THE PRESIDENT. Rule Forty-three provides that the Convention may give leave, which, of course, means a majority. If this amendment is adopted it will require unanimous consent. Under the present rule, the Convention, by a majority vote, may give leave.

MR. McCALLUM. Then the gentleman from San Francisco is in error. This amendment of mine would be necessary. I am in favor of this because it seems to me that no one member should have a right to object, when all the rest of the Convention may desire to hear a member.

THE PRESIDENT. The gentleman will send up his amendment in writing.

THE SECRETARY read:

"Strike out the words 'by unanimous consent,' in the last line, and insert 'by consent of two thirds.'"

MR. TINNIN. Mr. President: I hope the rule will not be loaded down with any such amendment; and, furthermore, if this amendment were adopted, it would save no time, because the parties would insist on the vote by division every time, and the time would be taken up in that manner. I hope that the unanimous consent clause will be retained.

MR. McCALLUM. It has always been decided immediately, without debate.

MR. TINNIN. I will answer in this way. It takes time. The time occupied would be as long as the gentleman would speak.

MR. GRACE. How do you propose to make up the time wasted in the discussion of this matter this morning?

MR. ESTEE. I move the previous question.

MR. GRACE. I move to lay the whole subject-matter on the table.

THE PRESIDENT. The motion is out of order.

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

Messrs. Larkin, Larue, McComas, and Smith, of Santa Clara, seconded the demand for the previous question.

The main question was ordered.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. McCallum.

The amendment was rejected, on a division, by a vote of 51 ayes to 51 noes.

THE PRESIDENT. The question recurs on the amendment to the rule as offered by the gentleman from Lake, Mr. Noel.

The amendment was adopted, on a division, by a vote of 71 ayes to 35 noes.

MR. McCALLUM. Mr. President: I desire to call attention to a mistake made on the adoption of my amendment. I learn from one of the Secretaries, as also from delegates around me, that this amendment was adopted by a majority vote, and that there was a mistake in the count at the desk. I learn that from an Assistant Secretary.

THE PRESIDENT. It is too late now. It has been announced as reported by the Secretary.

STATE BOARD OF EQUALIZATION.

MR. EDGERTON. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the article on revenue and taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section fifteen and pending amendments are before the committee. The Secretary will read the amendments.

THE SECRETARY read:

"By Mr. Wyatt: Add to section fifteen: 'Provided, said State and County Boards of Equalization are hereby authorized and empowered to increase or lower the entire assessment roll, or the assessments contained therein, so as to equalize the assessment of the property contained in said assessment roll, so as to make said assessments conform to the true money value of the property assessed.'"

"By Mr. Smith, of Fourth District: 'And the State Board of Equalization, for State purposes, and the county Board, for county purposes, shall have full power to review and reform State and county assessments.'"

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I urge my amendment this morning, and I will briefly state the reasons why I do so. It seems to me, after looking over the matter further, that the amendment introduced by Mr. Wyatt does not cover the ground. It does not touch the matter. The Supreme Court of this State has decided that the Board of Equalization has the power to raise and lower. I have the decision before me, and the trouble about this matter is just this: that in the Constitution there is no general provision as to the powers of the Boards of Equalization or as to Assessors, and the Legislature at various times have defined their powers, and these Acts have been passed upon by the Supreme Court, and in various ways the power attempted to be given has been crippled. It seems to me that it is necessary to give the Board of Equalization here a general power in the Constitution; give them full power, not only to raise and lower, but to add to property, and not only to correct the assessment roll at the time, but after the time. Now, the amendment I have offered gives general power, so that it will not be necessary for the Legislature to define their powers and be subject to be overturned by the Supreme Court.

MR. EDGERTON. Mr. Chairman: I have examined the amendment offered by the gentleman from Kern, and it seems to me that it is nothing but repetition. It gives the Board power to do just precisely what the section gives the Board power to do—to equalize. The amendment of Mr. Wyatt I will say something about when we come to it.

THE CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Kern, Mr. Smith.

The amendment was rejected.

THE PRESIDENT. The question recurs on the amendment to section fifteen, offered by Mr. Wyatt.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I hope this amendment will not be adopted. The gentleman on the right yesterday stated, what to my mind are insuperable objections to it. There is no requirement on the Board of Supervisors, or the Equalization Board of the county, whoever they may happen to be, to give any notice to the party to whom the assessment is raised. It simply declares their power and creates the duty in them to raise and lower the assessment as they think fit. The law will give the Assessor the right to fix the value of the property. What is the reason why a man has not a right to rely upon that valuation remaining, unless he is notified that it is likely to be changed? There can be no harm in informing him, and giving him a chance to be heard. Objection is made on the ground of expense. Is that a reason why a man's property should be taken from him without a hearing? Certainly notice is essential to the administration of justice, not only there, but elsewhere. For that reason I do not think that the Supervisors, or the State Board either, should have the right to change an assessment, upon which a man has a right to rely, without giving the man notice. There is no more reason for allowing the Board to raise a man's assessment without giving him notice, than for taking away his property without giving him an opportunity to defend his title to it. I think that no provision should be adopted giving any Board the power to pass upon these things without giving notice to the parties. There are other reasons that were stated yesterday, and I am sorry to say that I forget them at the present moment, but that one reason alone is sufficient to cover the case. It has been stated here, that the decisions of the Supreme Court now declare that the finding of the Assessor was ultimate and final upon this question.

Well, now, I say that an amendment has been adopted by which the election of Assessors has been stricken out of the article. That is to be left to legislation. But the difficulty hitherto has been that notwithstanding the statute allowed the Boards of Supervisors to equalize, the trouble was that the Constitution forbid it. The Assessor had the sole power to administer upon it. I hold that the word "equalize" covers the whole ground. What is equalization, unless it is to cut off or enlarge, to increase or diminish? The very word itself signifies that. You cannot equalize except by raising it or lowering it. Equalizing covers the whole ground, and is just as effective as this statement in the amendment offered by the gentleman from Monterey, Mr. Wyatt. Why should we depart from that? If you want to say in express terms that these Boards shall go forward on their own motion, without notice to the parties affected by it, and raise assessments, this will accomplish it, but in so doing it seems to me you will violate the most absolute principles upon which justice is administered among men. The trouble before was that the Assessor had all the power. Now he is deprived of it, and it is given to the State or county Boards, as the case may be.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: It was with a view to meeting the difficulties that have been stated that I introduced this amendment. Under the old Constitution the Assessor was supreme in the valuation of property, and great abuses have grown up in consequence of it, and the Supreme Court by its decisions has hedged in these officers until the Legislature has become incompetent to give a remedy in the case. Now, what I desire is not to leave it simply a question as to whether these present decisions shall be continued as the decisions of the Supreme Court, but whether we intend by the expression that we make here that they are contrary to the policy which we desire continued in the future, and that is exactly what I want to say in this Constitution. I want to say that the Boards of Supervisors of the counties shall have power to correct, upon their own motion, and without the necessity of a long lawsuit, the errors or wrongs—in many instances the willful wrongs—of the assessment of property. It is impossible to raise the assessment roll up to an equalization, and at present the only power the Board of Supervisors have is that they can lower property. We should provide now so that everybody shall pay an equal proportion of taxes. The only remedy is to give the Board of Supervisors plenary power, so that they can of their own motion say that the assessment of A is too low; that it is not correct, and that they raise it ten, twenty, one hundred, or one hundred and fifty per cent., as the case may be; and if the Legislature sees proper to say that the Board of Supervisors may drop a letter into the Post Office to that effect, of course it is all right. I have no objection to that, but I want them to have the power, notice or no notice. A time is appointed for this Board to meet. It is known to all of the citi-

zens, and they can attend and see whether their property has been lowered or increased.

Suppose the Congress of the United States this Winter should pass a law requiring the lands of the railroads in this State to be certified to the railroads. Then there would be from five to ten millions of dollars worth of land certified over, that would be taxable, running through several counties, overriding all other properties in those counties. Suppose that it is found that they are assessed ten, fifteen, or thirty per cent. below the true value on these lands, and that the county Board is not strong enough to handle them, then I want the State Board strong enough to handle that particular property and put it at their own valuation. Take the property of the Almaden mine, in Santa Clara. If it is too big for the county Board to handle it, then I want the State Board to handle it. You do not want to double the taxation of all the property in the County of Santa Clara, but you want to be able to reach a particular property, and say, as Nathan did to David, "Thou art the man."

REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. Chairman: If it was parliamentary, I would call this the most infamous proposition I ever heard of in my life. They could confiscate a man's property without a man having the time to defend himself. The gentleman saw fit to cite the case of Lux & Miller, for what purpose, I know not. I have yet to learn that it is a crime for a man to be frugal, and industrious, and to acquire property, in this or any other country; but it seems to be so in this body, by a certain class of men. If a Board so constituted should meet together and wish to confiscate a man's property, all they would have to do, under his proposition, would be to assess his taxes to an enormous or unreasonable amount, and he would not be permitted to produce witnesses to defend himself. I think it is a thing so monstrous and ridiculous that this Convention ought not to entertain it for a moment. I am satisfied that it will not. It is creating a Commission with more powers than any Board that ever existed in this republican government. I hope it will not be adopted.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I hope that this amendment will be adopted. The Courts hold that the Assessor has arbitrary power; has sole power. This amendment proposes to give that power to the Board; to provide that any abuses or mistakes that the Assessor may make can be corrected by the Board—the county Board. Now, I know that the working of the present system is such that if any particular gentleman in the county, any property owner, feels that he is aggrieved, that his rights have been infringed, he can appear before the Board and get his assessment reduced; but if it becomes absolutely necessary, in order that the ends of justice and equality should be served, that this assessment should be raised, they must institute a regular process, and the process will not expire until four or five days after the limited time; and the present system is a nullity. I hope that the amendment will be adopted. We do not expect that the Board of Supervisors will be a secret conclave to pull against any citizen or confiscate his property; but that they may have an opportunity, within a reasonable time, to correct mistakes and to raise the assessment as well as to lower it.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I hope this amendment will prevail. I do not think the gentleman need be alarmed about property being confiscated. I do not believe that this Convention are going to steal Lux & Miller's land. I do not believe that any county Board are likely to pocket any of the proceeds of the land of Lux & Miller, or of the railroad company, or of the gentleman, or of any gentleman who gives in an honest assessment. The same objection that is urged by the gentleman to the Equalization Boards may with equal propriety be urged against the Courts. Why do you give the Courts such ample power of review, of construction, with reference to any matter that is pending before them? You simply desire them to hear and determine. You give these Boards no more power. They simply have the right to hear and determine with reference to the equalization of the taxes on the assessment roll, and they have power to raise and lower these assessments when they are not in conformity with the true cash value of the property. What objection can the gentleman have to having the assessment at the true cash value?

MR. TOWNSEND. Does not the author of this amendment expressly state that he wants the assessment raised by the Board without notice to the parties; without their being permitted to come in and defend themselves and show reason why it should not be raised? Is not that the express words of the author of that amendment?

MR. WYATT. I have expressed it this way: that I want the Board of Equalization empowered to act upon their own motion while equalizing the assessments, if they deem it necessary to do so, and without notifying the parties, or with notice if they see proper to give it.

MR. TOWNSEND. That is the language of the author of the amendment, and that is his object.

MR. HERRINGTON. I don't care anything about the gentleman's argument, or what he said. I am addressing myself to the amendment as it reads, and I call upon the Secretary to read the amendment as it now reads.

MR. TOWNSEND. What is the object of this amendment?

MR. HERRINGTON. The object is to give the Board the power to determine the question of the value.

MR. TOWNSEND. Don't the section as reported by the committee give the Board the power?

MR. HERRINGTON. Not upon the same basis.

MR. TOWNSEND. Isn't the object of this amendment to give them the power to act without giving notice?

MR. HERRINGTON. The object is to get at a certain basis, and that is to its true cash value. That is the purpose of it, and it subserves that purpose admirably. It may be, in consequence of its connection with the amendment as reported by the committee, it might possibly be shortened some, but that does not alter the merits of the provision as it now stands. I am in favor of the amendment.

MR. SMITH, of Fourth District. I would like to refer to the decision of the Supreme Court, to show that the Board has this power——

THE CHAIRMAN. The gentleman has once addressed the Convention on this amendment.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I desire to call the attention of the committee to the amendment, and I think it should not be adopted. It confers a concurrent power upon the State and upon the county Board. It gives the county Board the power to raise or lower the entire assessment roll of any county by one act, whereas, the office of the county Board of Equalization is to operate upon individual assessments and equalize them, to increase or decrease the valuation of the property of individuals. It does more than that. It gives the State Board and the county Board power to act upon individual assessments. Now, I never have understood the theory of a State Board of Equalization to be that they were to act upon the individual assessments. I know of no State in the Union where any such rule prevails; and if the State Board is to traverse this State, and to get up original assessments of their own upon the assessments of this State, you will have to get up some new kind of almanac in order for them to do it in the course of a single year. It is declared in the section that the State Board shall equalize the valuation of the taxable property in the State for the purposes of State taxation, and that the county Boards shall equalize the valuation of the taxable property in the county for the purposes of county taxation. That is, the county Boards equalize between individuals. Now, I submit that the process of arriving at the results should be left entirely to the Legislature, and that it is not only unwise, but it might be dangerous, for us to fix any rule of procedure here in the premises. I am opposed to conferring this concurrent power on these two Boards to act in the premises. Now, sir, suppose the State Board, acting on the assessment, increases or decreases it, and then the county Board does the same thing, and they disagree, how are you going to get out of the difficulty? I think it is a dangerous amendment. The gentleman from Monterey undoubtedly desires that there shall be a just valuation; that property should be valued at its cash value, as nearly as may be. Now, sir, there is no danger in leaving it to be provided by law. The Code makes it a duty to do so. It is the duty of the county Boards to equalize between individuals, and it will be the duty of the State Board to equalize for State purposes. That power is represented by the word "equalize." It means to increase and decrease, for the purpose of getting at the standard of value. I do not believe that the author intended to confer any such concurrent power on these two Boards, but the amendment does do it. I think the section should be left as it stands.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I am in favor of the amendment offered by the gentleman from Monterey. I think the way the section stands now the Legislature could not authorize, or could not empower the Boards to equalize taxes upon their own motion. The amendment is to authorize and empower these Boards of Equalization to act upon their own motion. Gentlemen seem to be very much alarmed that the Boards will, without notice, act upon individuals. But why should the gentleman from Mendocino fear that Boards will act in these matters arbitrarily and without notice? Is that the history of Boards of Equalization? But the history has been that these Boards had not the power, that they were surrounded by so many legal quibbles, by so many technicalities, so much red tape, that they could not reach equalization, that they could not reach those who are not paying their just proportion.

MR. TOWNSEND. Why could they not?

MR. ANDREWS. Because they were surrounded by so many technicalities.

MR. EDGERTON. If you will allow me to state it, the reason they could not do it was because of the obstacle in the Constitution as it now exists.

MR. ANDREWS. I have but ten minutes left and do not like to be interrupted. The gentleman knows that, as this now stands, with the amendment he introduced yesterday, it would prevent the State Board from equalizing taxation. The gentleman from Mendocino has asked if it is a crime to acquire property? And here let me say that when I feel a thing I feel it ardently. I have felt the outrage of this system. It is not that men should not have the right to acquire property, but it is this outrage: that men of wealth and corporations have not been obliged to pay anything like their equal proportion of the taxes, and that is what we want to get at; we want to prevent the wealthy men of the land from escaping their equal share of taxation upon the property they own, and therefore, in order to accomplish this, we have got to give these Boards power to act upon their own motion.

MR. TOWNSEND. What objection would you have, if it is no crime or misdemeanor, to giving notice?

MR. ANDREWS. Do you suppose that any Board would refuse to give notice?

MR. TOWNSEND. Why do you want to give them that power?

MR. ANDREWS. I want them to have the power to do something.

MR. TOWNSEND. The author of the amendment says that the only objection was that men come in with their witnesses and their attorneys and defend themselves.

MR. ANDREWS. I do not understand that the gentleman from Monterey has said that he did not believe that they should give notice, if, under the circumstances of the case, notice could properly be given.

That is not the intention of the gentleman from Monterey. The intention was this—that they should have power to do it upon their own motion.

MR. TOWNSEND. Without notice.

MR. ANDREWS. I do not understand that the gentleman from Monterey is in favor of any such thing——

MR. TOWNSEND. He said so.

MR. ANDREWS. But that the Board should have power, of its own motion, to act.

MR. TOWNSEND. Without notice.

MR. EDGERTON. I would ask the gentleman from Shasta if he is aware that this amendment gives the same power to two Boards, and suppose one exercises it in one direction, and the other in the other, what are you going to do?

MR. ANDREWS. There is no proposition that an ingenious gentleman, like the gentleman from Sacramento, could not find some objection to.

MR. EDGERTON. It gives the same power to the two Boards, and they may be in conflict all the time, and there is no way out of the difficulty.

MR. ANDREWS. Mr. Chairman: I have not noticed the language particularly, but I believe that this will be what will be accomplished by the amendment of the gentleman from Monterey. In the first place—and I will come right down to facts—in some counties in this State four or five men own one half or more than one half of the real estate in the county, if that real estate owned by these four or five men was properly assessed. There is a case where these men not only have the Assessor, but they have the County Board of Equalization. Then why should not the State Board have power to come down on these individual assessments and thus reach these fellows. If the State Board has no power to reach individual assessments then, on real estate, in such a county as that, they would have to raise all the real estate in the county, when the majority of the property had been assessed up to its value, while these four or five men had not been assessed at more than one tenth, one fifth, or one third of the value of their property. That has been the history of some of the counties of this State; that these few large holders of real estate not only had the Assessor, but they had the County Boards of Equalization. That has got much to do with this question, as we are proposing to reach equalization. Without this we could only reach equalization in the State by coming down on all the taxpayers in the county, when their real estate, with the exception of these few men, had already been appraised at all it was worth.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I am in favor of the amendment proposed by the gentleman from Monterey, and especially the idea aimed at. I have seen instances where, if the law was as he proposes, it would be to the advantage of the whole tax-paying community. The Board of Equalization, the local Board particularly, often in reviewing the assessment roll, sees assessments that are obviously unjust, and yet they have no power, without a petition, to change it. I say that they should have that power when, on the face of the assessment, it appears unjust. More than that, it is very inconvenient. For instance: I discover that a certain assessment is too low, or mine is too high. It is a disagreeable matter to impose upon me to compel me to go in there and make a complaint against my neighbor or my neighbor's property. Therefore we elect officers for that particular purpose, officers to equalize assessments, and I say that when they come to a certain piece of property and find that it is a little too high, or another is a little too low, they should put it on a basis of equality, and if their powers are not sufficient to do this then their powers are not what they should be. While I recognize the importance of this amendment, yet I also recognize the objections urged by the gentleman from Mendocino, Mr. Townsend, that this power might be exercised arbitrarily and unjustly, might be exercised in such a manner as to run to the other extreme. I have an amendment which I would propose to add on to the amendment offered by the gentleman from Monterey, and which, I believe, will meet the objection raised, and which, I believe, is only objectionable because it goes into legislation, or is of a legislative character. It seems to me that the amendment itself is such that it partakes of statutory law, to the details, rather than to the fundamental principle laid down in the first part of the section. I propose the following amendment to the amendment offered by the gentleman from Monterey, Mr. Wyatt:

"Provided further, that when either of said Boards propose to act on their own motion, in a manner affecting the taxation of property, it shall be their duty to give due notice of their proposed action to the party or parties interested, and of the time set for the consideration of the matter."

There can certainly be no objection to that. I, for one, would oppose the amendment if it embraces the idea that it would exclude parties from defending themselves. I do not believe in any injustice. I do not believe in adopting an unjust provision for the sake of remedying an evil. I do not believe that the gentleman from Monterey will admit, or will assert, that he himself would deny to any taxpayer the opportunity of appearing before the Board and making the best defense possible. We do not know the motives which produced or gave rise to the assessment as it appears on the roll. It may be just. There may be a cause for it. If so, the parties should be allowed to appear and show cause. It becomes the duty of the Board to do justice to the taxpayer. I hope that the gentleman from Monterey will accept this amendment. I will offer it as an amendment to the amendment.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. Chairman: The amendment of the gentleman from Monterey proposes that the Board of Equalization may, upon its own motion, and without notice, equalize taxation. He states that to be, distinctly, his measure. The friends of the measure—those besides him—say that it does not mean any such thing. Now I, for one, am willing to vote that the Board of Equalization, upon its own motion, may do what the gentleman claims that he desires it to do, if he will insert a clause providing that they shall give notice to the parties. But the idea of dealing with this question on their own motion, without notice, is simply, to my mind, a monstrous proposition; and there is no better evidence of its monstrosity than the speech of the gentleman yesterday, when he paraded a number of prominent men's names before this Convention who had come before these Boards with their witnesses and produced evidence so that the Board could do nothing. If that Board were imbued with the feelings and sentiments which the gentleman exhibits on this floor, with reference to men of property and men of land, I think you could say good bye to land, or any other kind of property, if taxes could be raised or lowered without notice. I certainly have never heard, or read, in any civilized country, where a man could be deprived, or where the proposition was made to deprive a man of life, liberty, or property, without notice—due notice. Now, I am willing to vote for the taxation of lands; that large estates shall be taxed at their cash value, the same as little estates. I am in favor of taxing all property in the State. I will vote for any measure that will have that effect, either real or personal property, but I am not willing to vote for measures that will rob men of the fruits of their labor and their enterprise.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: It seems to me that this amendment before the committee is unnecessary and uncalled for. The purpose in framing this article of the Constitution is to make taxation equal—to equalize the burdens of taxation. Now, when we are framing laws the mischief that is to be overcome, and that we are trying to remedy, is what we are to look at. Now, what has it been? Under the Constitution as we have it now, Assessors must be elected by the people in the districts which they are to assess. Because the Assessors are to be elected in the districts, in the townships, and in the counties, it has been held that no Board—no State Board—can equalize taxes, because that would be exercising the powers of Assessors. Now, you have stricken that out from this Constitution, and you are going to have your Assessors elected as other officers are elected or appointed. Now then, he is properly elected an Assessor, without his necessarily having been elected in the particular district in which he is to make the assessment. That is the element that comes into the present Constitution, which is to be eliminated from the new one. Now, then, what more have you to do? Your Assessors have the fullest powers to assess that the Legislature can give them. Now, you must, as a matter of necessity, have an Assessor. There must be somebody in these counties who is to go around and consult all the people for that purpose and estimate the values of the property first. Now, it is undoubtedly true that the Assessors sometimes fail to assess equally. One man's property is placed higher than another, in proportion. Why, if everybody's property was assessed at the same per cent., it would be all right for county purposes, because each man there would bear his just proportion for county purposes. Having then the Assessor, it is important that there be a Board capable of reviewing his actions, and determining whether or not he has assessed all men at the same rate, and to that end you must have a County Board of Equalization. Having then a county Board, exercising the power in the counties, it is of the same importance that all the men in the State, and the counties, should bear their equal share of the State burdens. Now, it may happen that the Assessors of the different counties may assess, and the different county Boards may equalize at a different rate. That is all right for the county purposes, but it is wrong when it comes to the State. Now, you want one for State purposes that there shall be equality between the counties. Now, then, this provision is for a Board to equalize county taxes, and another Board to equalize the State taxes. It seems to me that it is as complete as it can be. Here is the machine to be set in motion to work out this result. How? Why, the Legislature must prescribe the details. The Legislature must come in and determine how property shall be assessed. The law now says it shall be assessed at its full cash value. The Legislature must provide how the Boards shall proceed; upon what notice and how they shall act; where they shall meet and how long remain in session. The law must come in and prescribe the method of their action. The Constitution simply provides the instrumentality, but the Legislature must prescribe the time of action and the notice upon which the Board shall act. Now, I say that you cannot do anything to this that will add any force or effect to it. It is as complete now as it can be. Gentlemen have spoken about the notice to be given. We are here simply framing the groundwork of the law, the groundwork of this superstructure, and when we frame that the Legislature must come in and provide the method of carrying it out. It has been said many times, and it is true, that Constitutions are not self-executing. They declare the principles upon which rest the framework of the government. After that you must have legislation to carry out those principles. The section as reported gives the Boards the power to equalize. Does it give them any power by adding this amendment? It seems to me that it does not add anything to it. I believe it is better to leave this as it is; leave it to the Legislature to prescribe the means and manner of carrying it out. Leave simply the power to do the thing in the manner the Legislature shall prescribe. What more can there be needed. The gentleman from Monterey says that he wants a Board with power to act without notice. I do not want any such Board. I do not believe the Legislature wants any such Board. You first prescribe that a man shall give a statement under oath of all the property he has. He is assessed and he knows what his assessment is. I do not want any Board that can come in and say, arbitrarily, and without any notice to anybody, this man's taxes shall be raised five, ten, or fifteen per cent. He has been assessed by one officer, and it would not be right to act otherwise than to let him

know when they are going to act upon it again. The law has always prescribed that, and it will prescribe that. But I say that these provisions of the Constitution do not want to go into that. We are not making a code of laws. We are not prescribing the method of this action. We are simply making the Board and leaving it then for the Legislature to provide the method of its action.

REMARKS OF MR. INMAN.

MR. INMAN. Mr. Chairman: I hope that the amendment offered by the gentleman from Monterey will be accepted. This Convention has already decided that three men are fully capable of equalizing freights and fares on that great property of the Central Pacific Railroad Company, and if three men are competent for that work, I think certainly nine are for this. I am a little afraid injustice may be done, and I certainly see no harm that can befall any one by this matter of notice being inserted. I am not afraid of it. I hope this discussion will stop here and that we will proceed with the business. Time is precious, talking amounts to but little, and I hope we will proceed to a vote.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I hope this amendment will not be adopted. I agree with Judge Belcher, that it is unnecessary. The idea of getting up here and saying that a man should not have his day in Court! Why, you will arrive at such a state of things in California that you will try a man for his life or take his property without any notice or without due process of law! Such a thing is unheard of; and that is the substance of the amendment of the gentleman from Monterey. If you adopt that amendment it is for the purpose of cutting men off from protecting their property and their rights. Now, sir, such a thing is outrageous. I hope this Convention will not disgrace themselves by adopting any such amendment. I hope they will not be guilty of such a fraud as to provide that a Board could take away what little property I have worked for and got. The Board of Supervisors may levy a tax that will amount to confiscation. Notwithstanding I may give in the property at its full value, they may raise it five hundred or one thousand per cent. and confiscate the property I may own. I ought to be allowed to bring my neighbors to prove that I have been assessed to the full value already. Let every man protect his rights. I hope the amendment will be voted down and that we will take the report of the committee.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: It seems to me that there is a misapprehension in regard to the amendment offered by the gentleman from Monterey. I do not find any provision in this amendment to confiscate property. It provides that they shall equalize assessments and may raise and lower them, and it is supposed they will use discretion. It is not to be presumed that the Boards of Supervisors are going to constitute themselves a band of robbers for the purpose of swindling anybody, but that in every case where notice is necessary they will give notice. But in case that the Supervisors should know of their own knowledge that the assessment upon a particular piece of property was very far below its value, I do not suppose they would think it necessary to give notice. If I know a fact no amount of evidence would satisfy me that it was not so. I presume that the Supervisors know, and where they do not know that the assessment is not proper they are not going to raise it unless upon complaint, and after complaint is made, then, of course, notice would be given. I object to any requirement for notice, for then there would always be a question as to whether the notice had been properly served. A man can know when the Board of Equalization is going to meet, and he can go and look after it.

MR. BIGGS. He might have to go two hundred miles.

MR. TERRY. Yes; but he can be there by himself or his agent.

MR. TULLY. What good would it do him to be there if they are empowered to do it without any hearing?

MR. TERRY. I do not suppose they are going to do it without they know it themselves. If I know that there is a certain piece of land worth twenty dollars an acre, for which I am willing to give that amount, what do I want to hear evidence for as to its value. I know it myself, and no amount of evidence would change my opinion.

MR. TOWNSEND. Suppose you know that a man is killed, and know that a certain man killed him, do you propose to have him brought to bar and condemned without trial?

MR. TERRY. I do not see the parallel. The Assessor goes round and he puts his own valuation upon it. The man knows what that valuation is, and he knows whether it is just or not. If it is not just it ought not to be allowed to stand. I take it that these Boards are not public robbers. They certainly will have no personal interest in increasing a man's assessment, unless it be done by a sense of public duty, and if there is any doubt about it ample notice will be given in their own manner, and the party will have the right to appear and be heard.

MR. TULLY. Why not provide that it shall be given?

MR. TERRY. Because I do not want questions to rise whether it was properly served.

MR. EDGERTON. That amendment gives a concurrent power to the State Board and to the county Board.

MR. TERRY. I do not understand it so.

MR. EDGERTON. It provides that the State and county Boards may do the same thing. Suppose the State Board puts one figure on the property and the county Board another?

MR. TERRY. I suppose that the State Board will meet after the county Board, and if the county Board has not done its duty the State Board will supervise it.

MR. EDGERTON. There is no limitation to the power.

MR. TERRY. You can amend it so that it will not.

MR. TULLY. The Assessor can give you a list.

MR. TERRY. But you do not know what value he places upon the property.

MR. TOWNSEND. You sign the list.

MR. TERRY. He may ask you what the furniture, and what this and that are worth, but he does not ask you how much the land is worth an acre. He puts his own valuation upon it himself.

MR. TULLY. After the Assessor makes his return, is not the assessment open then to any citizen of the county? You can always go and see it. But this Board of Equalization meets the day after and raises your taxes, and you never hear of it.

MR. TERRY. And then you go before the State Board, if you are improperly treated. They are elected because they are supposed to be proper men. They may do honest things; men do not steal for the benefit of the public.

MR. TOWNSEND. I would like now to understand your position. Your object is to clothe the Board with power to raise an assessment without notice to the parties.

MR. TERRY. To raise the assessment with or without notice. I take it for granted that, if it is necessary, they will give the notice. I do not want any question raised as to whether notice has been properly served.

MR. WILSON, of Tehama. Do you not think that if this Board was elected by a sectional party that they might be liable to do wrong?

MR. TERRY. I think if a man commits robbery it is for his own good.

MR. EDGERTON. I have raised an objection to this amendment which the gentleman has not answered, and I challenge him to answer. This amendment says——

MR. BARBOUR. Mr. Chairman: This is the third time the gentleman has spoken on this question.

THE PRESIDENT. The gentleman has spoken once, and he has a right to speak a second time.

MR. BARBOUR. Is that the rule, that a gentleman can speak on each amendment?

MR. EDGERTON. Mr. Chairman: This amendment says: "Provided, said State and County Boards of Equalization are hereby authorized and empowered to increase or lower the entire assessment roll, and the assessments contained therein, so as to equalize the assessment of property contained in said assessment roll, so as to make said assessments conform to the true money value of the property assessed." Both of these Boards have power to increase or lower the entire assessment roll of any county. Then each of these Boards, the State and the county Board, have the power to increase or lower any individual assessment. Now then, suppose the county Board does one thing and the State Board does another, what are you going to do?

MR. HOWARD. Suppose the District Court does one thing and the Supreme Court does another?

MR. TERRY. If you will read the first part of the section you will see that it provides that the State Board shall equalize the valuation of the taxable property in the State, for the purpose of State taxation. It gives the State Board only the power of equalization on the property which belongs to the county.

MR. EDGERTON. Mr. Chairman: I do not think the gentleman understands the history of Boards of Equalization, and I challenge him to point out an instance where a State Board of Equalization does anything but equalize the valuation between counties. Now, in our State the Legislature, in the case of the first Board of Equalization and the second, conferred that power upon the Board and no other. They never have acted upon the individual assessments at all.

MR. TERRY. It means, then, as it is in the section, that they have only the right as regards the property of the county—the County Court House, the jail, etc.

MR. EDGERTON. The State Board of Equalization is to equalize between the counties. Now, I say that this amendment creates this conflict between these two Boards. And, as to the rest of it, it is but an amplification of the original section. Now, one word as to this action of the Board, even if it could be done, to affect the property of individuals without any notice at all. It strikes me simply as monstrous, and the gentleman might as well say that the Judge of a District Court should declare a man guilty of a felony, or any other crime, simply because, in his own breast, he carried the knowledge of his guilt. Why, sir, is there anything that affects a man more closely than this question of taxation? Why should there be any star chamber proceeding about this matter? Men assuming that they know the value of property, and refusing to hear evidence on the subject. Such a question ought to be heard and determined upon evidence, and there ought to be no secret decision. A man ought to be heard upon this, to him, all important question, which affects his property and taxes.

MR. ESTEE. This amendment of the gentleman from Monterey ought not to be adopted as it reads at present. It says that the State and County Boards of Equalization shall be "authorized and empowered to increase or lower the entire assessment roll, or the assessments contained therein, so as to equalize the assessment of the property contained in said assessment roll, so as to make said assessment roll conform to the true money value of the property assessed." That is, the assessment of John Doe, in Los Angeles, is too low. Where are the books? Why, in Los Angeles. And if the Board should invite him to appear, where would they invite him to? Would they invite him to come to Sacramento to show why the assessment should not be raised from three dollars to ten dollars? It is ridiculous. The State Board of Equalization ought to have power to control assessments, and in some cases change assessments, even in individual cases; that is, they may change it, and notify the local Board of Equalization to notify John Doe to appear before that local Board to show cause why it should not be done. I suggest that that is the only way that it would be fair. I understand it would be in the New York law.

MR. EDGERTON. There they assessed the railroads by the State, and we propose to do it here. The New York law says:

"SEC. 76. The Board of Equalization shall meet in the City of Albany on the first Tuesday in September in each year, for the purpose of examining and revising the valuations of the real and personal estate of the several counties, as returned to the office of the Comptroller, and fixing the aggregate amount of assessment for each county, on which the Comptroller shall compute the State tax. The Board of Equalization may increase or diminish the aggregate valuation of real estate in any county, by adding or deducting such sum as, in their opinion, may be just and necessary to produce a just relation between all the valuation of real estate in the State; but they shall in no instance reduce the aggregate valuation of all the counties below the aggregate valuation thereof, as returned by the Boards of Supervisors to the Controller's office."

There is no State in the Union where the State Board touches individual assessments.

MR. ESTEE. Whether it be so or not, if it is right it should be done. But can the Board of Equalization do it under this section? I maintain that it would be wrong to change the assessment of a man's property in Los Angeles, or San Bernardino, or San Francisco, by the State Board here. After the local Board in that county have heard the objections to the assessment, and then to have the State Board of Equalization, in some individual case, here at the State Capitol, without notice to the party, change that assessment, would be extraordinary, and I claim that there is no example for it anywhere. The best way to do would be this: If they find that there is a large tract of land in a certain county that is not assessed proportionately with the other lands, they notify the local Boards to have a hearing before their own Boards, where both the people of the county and the State and the owner of the land can be heard. I maintain that no other rule would be just. Without notice there can be no hearing, there can be no trial; it is a one-sided proposition; it is conviction before trial, and it results in wrong. How can you learn the value of property unless both sides are heard—without hearing the witnesses, and without allowing them to cross-examine the witnesses? Such a provision would be extraordinary.

REMARKS OF MR. WILSON, OF TEHAMA.

MR. WILSON, of Tehama. Mr. Chairman: I don't know what us old farmers have done to be the subject of this discussion. We went up here to the foot of the mountains and we got a little land and worked, and when we got a little more money we bought some more land; and it seems as though these people here have got a great prejudice against us because some of us have got a thousand, some five thousand, and some ten thousand acres of land. I have known but very few men but what have paid the full value for their lands. There are very few in our county. Where the wrong comes in is here: there has been men that have legislated to themselves one half of our domain, from here to the Missouri River. These men now want to divert attention from the true cause of this great wrong to the men who have got their property legitimately. You can see it in these papers here every day. Here is the Record-Union here; it never says anything about these lands that are gobbled up by corporations, but is all the time pointing to the large land grabbers. What do they mean? It seems as though these old farmers that went out and took up lands and worked them ought to have some credit. When they got a little more money they bought more land; but that is the trouble. They want to divert the attention of the people from the true cause of this great evil. The true cause is in incorporated companies. I believe that associated capital is oppressive enough any way. I would not more than allow men to go into partnership if I had my way. We were old Mexican soldiers, and we come here and hunted for homes. We all come here, and the land was free, and the water was free, and everything was free. But these chartered monopolies and corporations went into our county and legislated themselves these lands. Every acre of land I have got I bought and paid for it, and I defy any man to go and show where I have not given every dollar that it was worth. We hear talk here every day about us from men that I know would not have gone out there amongst the Indians and taken up that land. But they want to get farms. They seem to want our improved farms, you know. Now, they want to get up a separate Board—a separate Board from the Supervisors—and I don't think it is right, and not even allow us a hearing. I am surprised at some men here that would advise such a thing. When Mr. Wyatt first offered it I did not exactly understand it, but now I see through it, and I don't think it is right.

THE CHAIRMAN. The Secretary will read the amendment offered by the gentleman from Placer, Mr. Filcher:

THE SECRETARY read:

"Provided further, That when either of said Boards propose to act on their own motion, in a manner affecting the taxation of property, it shall be their duty to give due notice of their proposed action to the party or parties interested, and of the time set for the consideration of the matter."

MR. EDGERTON. Mr. Chairman: I want to suggest to the gentleman from Placer, Mr. Filcher, and the author of the amendment, that perhaps the whole difficulty could be avoided by adding to the section as it now stands, the following: "Said Board shall have such further powers and perform such further duties as may be prescribed by law."

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: Evidently the design of this amendment is to correct evils which have existed, without any doubt, and it has been principally in regard to the personal service of these notices. I wish to state one case that fully illustrates the point. Last Fall, in Alameda County, a number of persons and corporations were cited to appear before the Board of Equalization and show cause why their assessments should not be raised. Among them were several prominent companies, Mr. Adams, and some others. Mr. Brown appeared for Mr. Adams, and he claimed that the Board had no right to raise the assessment, for the reason that the personal service was not legal, or rather that there had not been any service at all; and the minutes show that Mr. Harvey Brown, appearing for the parties, and declaring that there had been no notice served, the subject was dismissed from the Board; and it being near the end of the term for which the Board had provided, there not being time to give ten days' notice, the whole matter was dismissed. Now, sir, in cases like that, where it is a mistake or oversight, I think that the State Board of Equalization should have the right to control. I think that, so far, at least, the State Board ought to control. So far as the notice is concerned, the Legislature can provide for that; but that a personal notice should be served in a certain way, and because it is not, that these cases should be defeated, I think it is not right.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I shall move, when it is in order, to amend the proposition of the gentleman from Monterey, by inserting after the word "empowered" the words "under such rules of notice as the county Boards may prescribe as to county assessments, and such rules of notice as the State Board may prescribe as to the action of the State Board." Now, sir, I admit that it is proper that some notice should be given when an assessment is to be raised, because, otherwise, as has been suggested, you practically take a man's property from him without any notice, and that is contrary to all rules. But if you undertake to prescribe that there shall be due notice, then the Courts will be full of questions about what is "due notice." But if you leave it to the Board to fix the rules, they will fix practical rules which can be enforced without great bills of expense in relation to the equalization of taxation. Therefore it is that the county Boards should have the right to fix their own rules of notice, and the State Board should have the right to fix its own rules of notice; because they will fix rules which can be enforced. The presumption is that they would not undertake to raise an assessment without some sort of notice; but I think the matter should be provided for in the Constitution, and that we should say that they shall give notice according to rules which they may prescribe.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Placer, Mr. Filcher.

The amendment was lost.

MR. HOWARD. Mr. Chairman: I now offer the following: "Provided, said State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the county Boards may prescribe as to the county assessments, and under such rules of notice as the State Board may prescribe as to the action of the State Board, to increase or lower the entire assessment roll," etc. My part of the amendment comes right in after the word "empowered."

MR. MCCALLUM. Mr. Chairman: I do not see what necessity there is for it in the case of the State Board. I do not understand that they raise the tax in the case of individuals.

MR. HOWARD. Mr. Chairman: It seems to me that the report of the committee gives that power. Suppose the railroad is assessed, and the State Board should raise it; then I think the railroad should have some kind of notice.

MR. MCCALLUM. I am in favor of the principle, but I would like to hear it read.

THE SECRETARY read:

"After the word 'empowered': 'Under such rules of notice as the County Boards may prescribe as to the county assessments, and under such rules of notice as the State Board may prescribe as to the action of the State Board.'"

MR. EDGERTON. I have merely to suggest that it don't mean anything at all. There never was a constitutional provision drawn as loosely as that. Rules of notice! What does it mean? Notice to whom? Notice how? It don't mean anything. The Legislature, in providing for service of summons in a civil action, provides that that summons shall be served personally on the defendant.

MR. HOWARD. We are not compelled in this Constitution to go into a code of practice. This amendment gives to the State and county Boards the right to prescribe the rules, and therefore they will prescribe what sort of notice is necessary. It seems to me that our friend is getting rather sharp—I do not like to say hypercritical—but entirely too sharp for me.

MR. BROWN. Mr. Chairman: It appears to me in this case, when the matter is thoroughly understood before these Boards of Equalization, and they are given the right to serve just such notices as they choose, that there is sufficient power given them, and the matter will be sufficiently understood; and when there is sufficient power given them what they serve will be legal and constitutional. I cannot see that there will be any great deficiency in that respect, because the laws heretofore made by the Legislature of this State are intended to conform to the great constitutional law, and be dovetailed in, if such an expression may be used; therefore there will be no deficiency in this respect. There has been much study in this instance in order to have the matter work rightly and equally, and nobody to be injured by the Board of Equalization; and it is very important, in this instance, to have the man whose property is to be affected by their decisions in these cases before them. They must undoubtedly lay down the law correctly, and all the minutiæ, which is only referred to in the Constitution, can be carried out, and it is expected that it will be carried out. The question appears to be clear before this body, and I am in hopes that the amendment will pass.

MR. MCCALLUM. Mr. Chairman: As to the amendment offered by the gentleman from Los Angeles, I see nothing in the objection of the Chairman of the committee——

MR. EDGERTON. I take it all back, after the copious notes and illustrations of the gentleman from Tulare.

MR. McCALLUM. Perhaps you will take it back still more after you have heard me a little further.

MR. EDGERTON. I shall insist upon it then. [Laughter.]

MR. McCALLUM. Mr. Chairman: I have listened to this discussion, and I have been thoroughly convinced that there ought to be notice, but I saw the difficulty as to how that notice should be given. I think the gentleman from Los Angeles has aptly solved the difficulty in leaving that to the appropriate Board—the Supervisors in the one case and the State Board of Equalization in the other. The only——

MR. EDGERTON. My opinion is now changed. [Laughter.]

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was adopted, on a division, by a vote of 60 ayes to 28 noes.

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

THE SECRETARY read:

"Amend section fifteen as amended, by adding thereto the following: 'The members of said Board, except the Controller of State, shall, at their first meeting after their election, so arrange, by lot, that one of their number from each Congressional district shall go out of office at the end of two years, and their successors shall be elected at the next general election thereafter to be holden by the qualified electors of each of said districts.'"

MR. HALE. Mr. Chairman: The purpose of this amendment is, I think, obvious on the face of it, to retain always on the State Board of Equalization one half of the members, whose experience will be a guide to the new members who are elected. The policy is the same in regard to that which is provided by the report of the Committee on Judiciary for the organization of the Supreme Court, and also by the Committee on Legislative Department for the Senate. The purpose is to retain always in office a portion of the Board, whose experience for the preceding two years, or more, will enable them to conduct the business better than a full Board of new members without experience. Other States have pursued this policy, and found it to be very valuable. I apprehend that it will be found wise and expedient, and I hope it will be adopted.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Placer.

The amendment was adopted, on a division, by a vote of 70 ayes to 11 noes.

MR. WELLER. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Add to section fifteen, after the word 'taxation,' in line six, 'provided, that the Legislature shall have power to reduce the number to one from each Congressional district, when said districts shall be increased in number.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was adopted, on a division, by a vote of 55 ayes to 32 noes.

MR. LARUE. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend section fifteen by inserting after the word 'taxation,' in line six, as follows: 'and whose compensation shall not exceed the sum of two thousand dollars each, per annum.'"

MR. EDGERTON. That is too much! You ought not to allow that!

MR. WHITE. Mr. Chairman: I trust that that will not be adopted. It is understood that they will not sit over two months in the year, and that is altogether beyond what the people would like to see paid to these men for that service. I should think twenty dollars a day would be ample. The former Board got two thousand five hundred dollars a year, and everybody was speaking of it as a piece of extravagance, for they were only in session four weeks in the year.

MR. EDGERTON. I would like to ask the gentleman what authority he has for stating that the old Board was not in session more than four weeks in the year?

MR. WHITE. I do not need any authority. Doesn't the gentleman suppose I lived in the State then?

MR. EDGERTON. That Board was in actual session more than six months of the year, and engaged in the work nearly nine months.

MR. WHITE. I knew one of the Board and I never went to his house without finding him at home all that time. Here is nine of them, and we are to pay these men each two thousand dollars for two months' services. I say that fifteen dollars a day is enough for these men.

MR. EDGERTON. Five dollars is enough.

MR. WHITE. No. I say ten dollars is enough. Why can't you leave it to the Legislature? I am perfectly willing to do that.

MR. HOWARD. That is the place for it.

MR. EDGERTON. That is right.

MR. ESTEE. Mr. Chairman: This amendment ought to be put in a separate section. Let us leave something in the Constitution that is not attached to the fifteenth section of this report. We have got the powers of the State Board of Equalization, the powers of the county Boards, the way of equalizing property, and the character of notice to be given, when they are to meet, the number of members, and from what districts, and that they are to draw lots as to which shall hold long terms and short terms in one section, and the whole thing is ridiculous. I hope we will not do any more to section fifteen. I think the amendment is a good one in its place.

MR. LARUE. I thought that would make the section complete.

MR. ESTEE. I do not see anything that we could possibly add to it, except what the gentleman proposes; but I would suggest that we have another section. I hope that this section will be sent to the committee to be straightened out, and I shall move that it be referred to the committee for the purpose of reformulating the section.

MR. HOWARD. I object to that.

MR. EDGERTON. So do I.

MR. BLACKMER. Mr. Chairman: We adopted an amendment yesterday to follow the word "taxation." To-day we have added another amendment to follow the word "taxation," in line six, the one proposed by the gentleman from Santa Clara. Now, here is another amendment proposed to go into the section after the word "taxation," in the sixth line. Now, it occurs to me that it will be necessary, not only for the members of the Board of Equalization to draw lots to see who shall go out and who shall stay in, but that the amendments themselves will have to draw lots to see which shall have precedence.

MR. STEELE. Mr. Chairman: I hope this amendment will prevail. I think this section needs to be completed. It is entirely too short. Let us lengthen it out a little more.

MR. TOWNSEND. Read it.

THE SECRETARY read:

"Amend section fifteen by inserting, after the word 'taxation,' in line six, as follows: 'And whose compensation shall not exceed the sum of two thousand dollars each per annum.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was lost.

MR. TURNER. I move to amend by adding: "Everything that has been forgotten by the Convention may be added by the Legislature."

THE CHAIRMAN. The gentleman is out of order.

MR. ESTEE. Mr. Chairman: I move that the committee rise and recommend that section fifteen be rereferred to the Committee on Revenue and Taxation, for the purpose of formulating the section.

MR. EDGERTON. Mr. Chairman: I hope not. It is all right as it stands. It cannot be helped any.

MR. ESTEE. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again.

The hour having arrived, the Convention will take a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

STATE BOARD OF EQUALIZATION.

MR. EDGERTON. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section sixteen.

THE SECRETARY read:

SEC. 16. The State Board of Equalization shall assess the value of all the property of all railroad corporations in this State. For the purpose of taxation, the value of all lands, workshops, depots, and other buildings belonging to or under the control of each railroad corporation, shall be apportioned by said Board to the counties, cities and counties, cities, townships, and districts in which such lands, workshops, depots, and other buildings are situate; and the aggregate value of all other property of such railroad corporation shall be apportioned by said Board to each county, city and county, city, town, or district in which its road shall be located, according to the ratio which the number of miles of such road completed in such county, city and county, city, town, or district, shall bear to the whole length of such railroad.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: In several of the other States—Missouri, Illinois, and some others, I do not remember which ones now—the power to assess all railroad property is lodged in a central Board of this kind. The idea is to treat that property as a unit. In this State, the objection is raised that railroad property is assessed at one valuation in one county, and at a different valuation in others. Now, the idea of this section is to treat that property as a unit, and to have it assessed together by this central Board. All the lands, workshops, and buildings, which are permanent property, will be given to the localities where they are situated. But when it comes to the other property—rolling stock, engines, cars, etc.—they are in one county one day, and in another at another time. All this property, with the franchises and capital stock, is assessed and apportioned according to the ratio of mileage to the political subdivisions along the whole length of the road. That is the theory of the section.

MR. VAN DYKE. I would ask if the amendment to section fifteen does not obviate the necessity for this section?

MR. EDGERTON. I think that is a very unjust, very unfair question to ask of me, for if ever there was a Philadelphia lawyer who could understand section fifteen I have not heard of him. I think not.

MR. VAN DYKE. From the wording of it, I understand that it gives the State Board power to equalize individual assessments in the counties.

MR. EDGERTON. If the gentleman will examine section fifteen, he

will find that it gives merely the power to equalize. It has the power to increase or decrease the valuation as fixed by these local Assessors and local Boards, and applies to the whole mass of property in the county. This section sixteen applies to special kinds of property—the railroad property of the State. The County Boards and local Assessors will have nothing to do with it whatever. Now, as I understand section fifteen, it contemplates the assessment of all the property referred to in that section by the local Assessors first; and second, equalization of that property by the county Boards. Section sixteen exempts from the general mass of property this railroad property, and leaves the State Board to act upon it, as Assessors in the first instance.

MR. NOEL. For what purpose are they exempt?

MR. EDGERTON. It was deemed by the committee, following the example of other States, wise to have this railroad property treated as a unit; to have the State Board examine it as it runs through all the counties, in order to have uniformity, instead of having the roadbed taxed at one thing in one county, and another in another county. Instead of that, have one central Board to fix a uniform valuation upon it.

MR. NOEL. I ask if the assessment was permitted to be made by the local Assessors, and the Board had a right to equalize it, would it not be correctly done by the power of the Board to equalize the assessments of the various counties?

MR. EDGERTON. I have stated that one object is to have this property treated as a unit. They would be much more likely to arrive at correct conclusions. That has been the experience in other States.

MR. VAN DYKE. I do not see the necessity of the sixteenth section, as the fifteenth section has been amended. Now, sir, the shops, buildings, and other property, aside from the track, is, of course, of different value in the different counties, according to the character of the property. You cannot have a unit between the shops and buildings in Oakland and those in Sacramento. I can see no necessity for this section. I do not see any reason why the property of railroads should not be subject to the same rules as the property of others.

MR. EDGERTON. How are you going to assess the franchise of a railroad company, unless done under such a system? How are you going to assess its capital stock?

MR. VAN DYKE. It must be assessed where the corporation has its headquarters.

MR. EDGERTON. Then the one county gets the whole benefit of that tax, unless we distribute it over the State.

MR. VAN DYKE. How are you going to manage it for county purposes?

MR. BARTON. It is debarring the local Assessors from their right to assess, and the State Board afterwards to equalize the assessment.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: This system of taxation has been in operation in several States, especially in the western States. They have adopted it, after trying different modes of assessment. They have adopted this system, and it has given universal satisfaction. The entire length of the road belonging to one company in the State, with all the property belonging thereto, whether shops or rolling stock, used in operating the road, is assessed as an entirety, and the pro rata assessment per mile is distributed by the Board on the statement of the Auditor of each county in the State. In the State of Iowa it is made the duty of the County Auditor to distribute the same by townships, so that the county and townships receive their share for road purposes, and schoolhouse purposes, and every other purpose for which a tax may be required. In every particular railroad property is placed upon an equality with all other property, and taxed just the same way, and for the same purposes as all other property in the State. I believe the present system is entirely incompetent. The local Assessors elected thus were entirely incompetent to judge of all the articles used by the company in operating their road. I believe this section is well and carefully drawn. I believe it covers the entire ground. I know from experience when I say it is a system that will give entire satisfaction and do justice to all concerned, giving a practical apportionment of the taxes to the localities, better than any other system that can be adopted. I hope the section will be adopted.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I do not know that I have any particular objection to this, as far as assessing the roadbed and rolling stock is concerned, but as far as the depots, workshops, and such things are concerned, which are local in their nature, located in the different counties, I would like to ask the gentlemen of that committee what reason there is why that property should not be assessed just the same as any other local property. I can see a very good reason why the roadbed, rolling stock, and everything movable should be assessed in this way. But the same reasons do not apply to the depots, workshops, and other stationary property belonging to the railroad company. But as we have stricken out section thirteen, in regard to the mode of assessing and collecting taxes, I would like to ask the Chairman of the committee if he does not think it would be advisable to strike this out also. Then it would be left to the Legislature to provide for. Let them provide this system if they wish to.

MR. EDGERTON. The gentleman has asked me a question which I thought I had answered at least twenty-five times. I am opposed to this sort of legislation in the Constitution. If I had the power I would provide for a State Board of Equalization, declare the general principles of taxation, and there leave it. But it seems to be the disposition of the Convention to proceed to legislate, and to carry out all the details in the Constitution, and I am in favor of the principle declared in section sixteen. I think there will be a far more efficient assessment of the railroad property in this State if it is done by one central Board, assessing it as a totality, than there has been by the local Assessors. That is my judgment.

MR. ROLFE. I do not see but I agree with the gentleman also. I approve of this mode as far as I know anything about such things. I have had some little experience in collecting taxes.

MR. TERRY. I rise to a point of order. There is nothing before the committee, as no amendment has been offered.

THE CHAIRMAN. Does the gentleman propose an amendment to the section?

MR. ROLFE. No, sir; I have no amendment. I was talking at random, like all the rest here.

MR. HOWARD, of Los Angeles. I offer an amendment.

THE SECRETARY read:

"Amend by inserting in line two, after the word 'State,' the words 'including gross receipts.'"

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: This section provides that "the State Board of Equalization shall assess the value of all the property of all railroad corporations in this State." If the gentleman will allow me to explain that the purposes and objects the committee had in view was to make it so that the Legislature could establish such a rule as was recognized by the Supreme Court in the Railroad Tax cases, which arose in the State of Illinois, where the State Board of Illinois, having the power, assessed the railroad property in this way: First came the railroad track, which included the right of way one hundred feet wide. Then another assessment for rolling stock, which embraced cars, engines, etc., and all movable property. Then they have another assessment for personal property, which includes tools, horses, carts, and all that kind of property. And then they have still another assessment upon lands lying outside of the railroad track. Now, then, when they assessed the value of the franchises and capital stock, they arrived at it in this way: they took the market value, or fair cash value of the indebtedness of the company, and the market or cash value of the shares of stock of the company, and add them up. From that aggregate deduct the value of the tangible property, and the excess, if any, is treated as the franchise or stock, and taxed.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I do not think that would include gross receipts. Now, it has been declared by the Supreme Court that taxation of gross receipts is proper and legitimate. I think it is the only way this State can reach the property of railroad companies. I propose, therefore, to amend by inserting the words "including gross receipts."

MR. EDGERTON. Probably the case my friend refers to was a case where they taxed the gross receipts of the corporation, and nothing else.

MR. HOWARD. No, sir; you are mistaken.

MR. EDGERTON. I should like to know why you should tax the gross receipts, when they go to pay the expenses of the road. You have already taxed all the tangible property, and, in addition to that, the excess over and above that property that the franchise is worth. These gross receipts go, first, to the payment of the expenses of the road; second, to the payment of interest on the debt of the road; next, to the payment of dividends to the stockholders. If you tax the gross receipts, certainly you ought not to tax the capital stock and franchise.

MR. HOWARD. The gentleman will recollect that the Supreme Court held that it was competent to tax the property, the capital stock, and the gross receipts. It might possibly come in under this section, but I want to make it perfectly clear.

MR. EDGERTON. I ask the gentleman: if you tax this indebtedness, tax its interest that is paid on the debt, and tax these dividends that are paid upon the capital stock, does not that come out of the gross receipts?

MR. HOWARD. It might and it might not come out of the gross receipts. Unless you do reach the gross receipts you do not reach all the property of the railroad company, For instance, the gross receipts of the Central Pacific Railroad Company is ten millions, or nearly that. The only way you can reach that property is by assessing the gross receipts. You must either do that or provide an income tax. You must do one thing or the other, in order to reach the property.

MR. EDGERTON. You have taxed the capital stock.

MR. HOWARD. The capital stock is all paid up. The profits are another thing entirely. There is as much sense in taxing the profits of a railroad as there is in taxing the profits of a mine.

MR. EDGERTON. I have only to say that it seems to me after you have taxed the roadbed and the rolling stock, after you have taxed all the personal property, and after you have taxed the capital stock, and after you have taxed the franchise, you ought to quit.

MR. HOWARD. I have handed me the Constitution of Missouri. There they tax all the property, the franchise and capital stock, and the gross earnings and net earnings.

MR. EDGERTON. Take, for instance, a poor road, struggling along for a living, and suppose the gross receipts amount to a million dollars; suppose the net receipts are two hundred and fifty thousand dollars. Now, the seven hundred and fifty thousand dollars are used how? Used in paying the interest on the debt; used to pay the running expenses of the road. Now, I submit it would be an act of rank injustice to tax the gross receipts of such a concern as that.

MR. HOWARD. If they were as poor as that they would have no gross receipts. I do not propose to go for these little narrow gauge roads, I propose to go for the big corporations whose profits run up in the millions.

MR. EDGERTON. If the gentleman will send up an amendment taxing the gross receipts of the Central Pacific Railroad Company I will vote for it.

MR. HOWARD. I don't want to injure the gentleman's feelings by doing anything of the sort.

MR. MORELAND. I move to insert between the word "property" and the word "all," in the second line, the words, "except lands other than roadbeds," and also strike out "all lands," in the third line, and insert the word "roadbeds." Also insert the word "roadbeds" in the sixth line.

MR. EDGERTON. That would leave other lands to be assessed by the local Assessors.

MR. DUNLAP. I offer a substitute for the whole section.

THE SECRETARY read:

"All property of railroad corporations shall be assessed in the manner provided by law."

THE CHAIRMAN. The first question is on the amendment of the gentleman from Los Angeles, General Howard.

MR. EDGERTON. As far as the amendment of Mr. Dunlap is concerned, you might as well strike out the whole section and leave it to the Legislature. That is all it means.

Division being called for on the amendment offered by Mr. Howard, the vote stood: ayes, 26; noes, 50.

THE CHAIRMAN. No quorum voting. I will put the question again.

The amendment was lost, on division, by a vote of 27 ayes to 65 noes.

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

Adopted.

THE CHAIRMAN. The question is on the substitute of the gentleman from Sacramento, Mr. Dunlap.

MR. HALE. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Strike out all after the word 'State,' in the second line, down to the end of the sixth line, ending with the word 'situate,' and substitute the following: 'For the purpose of taxation, the value of all lands, workshops, depots, or other buildings, and all movable personal property, except rolling stock belonging to or under the control of such railroad corporation, shall be apportioned by said Board to the counties, cities and counties, cities, townships, and districts in which such lands, workshops, depots, and other property are situate.'"

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I offer this substitute so as to include in it all personal property other than rolling stock. The reason is this: for instance, in the County of Placer, there are about one hundred and twenty miles of railroad, and there are probably at any month of the year over five hundred thousand cords of wood in the county belonging to the railroad company, and which, by the terms of this section as it now stands, would be taxed, and the tax distributed to all the counties in the State. Now, for the same reason that you include workshops, roadbeds, etc., you ought to include this other personal property. The purpose of this amendment is to cover that point.

MR. EDGERTON. If I understand your amendment, it modifies the section, it substitutes rolling stock and movable property for rolling stock.

MR. HALE. It includes all movable personal property except rolling stock. It includes in the list of property belonging to the county all movable personal property except the rolling stock, and leaves that subject to the rule in the last clause. Is not that the intention of the committee?

MR. EDGERTON. The committee intended to include all movable property. That is the rule in some of the other States.

MR. HALE. Is it the intention to subject all personal property, say wood, for instance, where there is a large amount of wood in a county—that is movable property.

MR. EDGERTON. I think the amendment of the gentleman is a very proper one, and I am in favor of it.

MR. HALE. It seems to me this is a very important item. I know it is a large item in my county, and in many other counties of the State.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: Although a member of the committee which reported this section, I opposed it in committee, and I shall oppose certain things in the section here, for reasons which I will state, and which I hope will commend themselves to members. The property of a railroad corporation consists of roadbed, structure of the road, rolling stock, certain buildings occupied for the purpose of business, as well as town lots, freight buildings, workshops, and the like. Now I do not understand by what rule the State Board should assess the workshops of a railroad company in the town of Oakland, while the local Assessors will there assess the workshops of other corporations and private individuals. I do not understand why the State Board will be more competent to place a value upon a lot here in the City of Sacramento than the local Assessor will. If the local Assessor is competent to put a value on a lot on the east side of Front street in this city, I do not see why he is not the proper person to assess the value of a lot which belongs to the railroad company on the west side of the street. Now, the object in selecting a local Assessor is to get a man who has some knowledge of the value of property in the locality, and who has at his command the means of getting the necessary information. Now, sir, if the State Board is to assess the value of a depot up in Nevada County, and to say what value shall be placed upon it, then, sir, I pretend to say before the Board can place any proper assessment upon that building, they must go to that building and see it. They must not only see the building, but they must see the lot upon which it stands, and they must examine the lot with reference to its value as a business property. And not until it has made such an examination, and inquires the value of similar property in that locality, can it properly assess that lot. Now, I want to know why, when the local Assessors are permitted to assess valuable lots belonging to individuals, they should not also be permitted to assess lots belonging to the railroad company. It seems to me it is making a great mistake when we try to establish a different rule for the assessment of that kind of property used by a railroad corporation. I believe we should have laws that are practical in this matter, and not make different rules for assessing the property of corporations. As soon as we adopt any measure which may be construed as doing an injustice to these corporations, then they will have some excuse for saying they are compelled to fight. The railroad company has a depot building in this town. There is no reason why the local Assessor should not be just as competent to assess the value of these buildings, situated there on the west side of Front street, as he is to assess the value of Booth's store on the other side of the street.

There is another proposition here which says the value of property shall be divided among the several counties according to the number of miles of road they contain. Now, according to that a mile of road in a county where the right of way is worth nothing is to be valued at just as much as a mile of right of way in the City of San Francisco. A mile of road in Nevada County will be valued at just as much as a mile in the County of San Francisco. I do not understand that to be a reasonable proposition. It seems to me a very unreasonable one. I think this railroad property, as far as it possibly can be done, ought to be assessed by the local Assessors of the counties where the property is situated. If the man makes a mistake from any cause, it can be corrected by the State Board of Equalization, according to the provisions already adopted. If the assessment is erroneous, the Board can raise or lower it, and I see no reason why any man should want to have railroad property assessed by a different mode from what other property is assessed, unless he hopes by a different rule to gain an advantage either for or against it. In regard to the franchises and rolling stock, I can see that that property can be more properly assessed by the State Board, for the reason that the franchise is not local; the rolling stock is not local. The rolling stock might be assessed by assessing it on a particular day; and yet they might run all the rolling stock into a county where taxes are the lowest, and thereby evade their just share of taxation. For that reason it seems to me that the rolling stock and franchises, also, should be assessed by the State Board. For these reasons I hope we may get this section into better shape. I shall, when the proper opportunity presents itself, offer an amendment as substitute for this provision, that the State Board of Equalization shall assess the value of all franchises and rolling stock of all railroad corporations in this State, and the aggregate value of such franchises and rolling stock of such railroad corporations shall be apportioned by said Board among the various counties in which the property is situate. In order to build a school house, or in order to make any other local improvement, they would have to call on the State Board of Equalization to assess some building, or some land, or something belonging to the railroad company.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: All the authorities have to do is to extend the tax upon the assessment, or upon the list, as made by the State Board, and in such cases it will not be necessary to invoke the assistance of the State Board at all. The State Board makes one assessment of all the property for the entire year, and that is at the command of the local authorities. It is a matter of record. That has been the habit in the State of Iowa, and it can be done here. There is no difficulty at all. In the State of Ohio the State Board lists the entire real estate of the State, and taxes are extended on the assessment for a period of ten years, and there is no annual assessment at all. It is the rule in many of the States, and will be the rule in this State, no doubt, when property has assumed some degree of permanence in its character.

My friend from Nevada admits that the franchise of a railroad corporation and its capital stock should be assessed by this central Board, because it is difficult or impossible for the local Assessors to do it. How are you going to assess this intangible, invisible thing called a franchise? I know of no practical rule, except that which I have alluded to; that is, to add the value of the capital stock and the value of the debts, and from that aggregate deduct the value of the tangible, visible wealth of the corporation. I submit that the same authority that is to assess the franchise and the capital stock should have power to assess and estimate the value of this property, that they may arrive at a better result than they could to take the multiform assessments of these local Assessors, because they will vary in each parallel of latitude throughout the State. It will be four thousand dollars a mile in one place, and six thousand dollars in another, and so on. There is no justice in it, and the object of this provision is to get a just tax upon this property.

MR. CROSS. Will not the same inequalities arise in other cases? Is not that the reason why we have provided a State Board of Equalization?

MR. EDGERTON. It is entirely different from any other property. It is not connected with any consideration bearing upon capital stock, upon considerations affecting the franchise. There are no deductions to be made, there are no additions to be made, or other complex considerations to affect the assessment of the property.

MR. CROSS. Would it not be of the same value, whether it be railroad property or the property of private individuals?

MR. ESTEE. If section fifteen remains as it is, I can see no reason why the State Board should have any further powers.

MR. EDGERTON. Allow me to ask you a question.

MR. ESTEE. Certainly.

MR. EDGERTON. How are you going to assess the value of a franchise?

MR. ESTEE. I don't believe I know, or that the gentleman, or anybody else knows.

MR. EDGERTON. The Supreme Court have already established a rule in the State tax cases in Illinois.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I know what it is. They take the market value of the stock, and the amount of the debts, and so on, as you have said. You take all the property first, which is something visible; the stock, which represents the probable future value, as well as the present value, and then the total debt, and you have the three factors in working out the problem. But it is not that feature of the report I base my objections upon. Section fifteen says the State Board shall equalize the assessments as between counties, and also the assessments as between individuals. Now, if that be so, we will suppose that in Sacramento County the local authorities assess the railroad at five thousand dollars per mile. In San Joaquin they assess it at twenty thousand dollars per mile. The State Board will certainly see that there are inequalities in those assessments, and will equalize, as it is their duty to do, as between those counties and the whole State; and they will say, for instance, that the assessment shall be twelve thousand dollars per mile in all the counties in the State through which the railroad passes. That is made the duty of the State Board by section fifteen. Why say that they shall have another duty to perform with regard to railroad companies in section sixteen, because section sixteen says the State Board shall have the assessment of all railroad property in the State. Now, the State Board will meet here, in Sacramento, say. Suppose they meet on the first day of August. They remain in session, say thirty days. All the Assessors from the different sections of the State report to them. They will have some system whereby they will have a report from the County Assessors in relation to the railroad property, because it will have to be assessed for county purposes as well as for State purposes. Section fifteen expressly provides that the State Board shall equalize the valuation of the taxable property of the State for purposes of State taxation. Then the county Boards will have to assess it for county purposes. Under section fifteen the State Board will make the assessment over the entire State.

Again, section sixteen provides that the State Board shall assess this property, and apportion it to the different counties interested. They can do that without making any assessment at all. It is their duty to do it under section fifteen. The State can give them further power at least, by which they can do it. I do not see how they are going to apportion the rolling stock correctly. They might find one thousand cars in San Francisco, and they might find five miles of railroad in San Francisco, and twenty-five miles of railroad in some little county, and they propose to apportion the value of all this rolling stock among the counties according to the number of miles of track, and San Francisco, with all her rolling stock, would only get one fifth as much as the little obscure county with twenty-five miles of track. Why, it is ridiculous. In San Francisco the company has buildings worth a quarter of a million dollars, which San Francisco protects from fire, and protects in every way——

MR. EDGERTON. We do not propose to apportion that at all. You do not read it right.

MR. ESTEE. That may be true; it may not be open to that construction. I am in favor of striking out the section; I do not believe it will meet the evil complained of. I think section fifteen will answer the same purpose that this is intended for. And more than that, if we are going to tax franchises why not apply it to all corporations? Some of the most valuable franchises in this State are franchises other than railroad franchises. Why not say that the Board shall assess the value of all franchises in the State? Give them full power. Now, I think the argument of the gentleman from Nevada simply unanswerable. The State Board, coming here from different parts of the State, would have a very poor chance of knowing the value of railroad property in different counties of the State. The local Assessors of Sacramento, San Francisco, and Placer, and Nevada Counties have far better opportunities for knowing the value of the local property of those railroad companies than any State Board can have. The State Board have all the powers they should have in matters of this kind.

MR. HERRINGTON. I offer an amendment to the amendment.

THE SECRETARY read:

"Add to section sixteen, 'provided, that for purposes of local assessment and taxation, the valuation and apportionment made by said Board next before making such local assessments, shall constitute the basis for such local assessment and taxation.'"

THE CHAIRMAN. It is not in order just at present.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I offer that as a precautionary measure, to protect the rights of different localities in the State where local assessments are desirable. I don't know but I may be in favor of striking out the section, but for fear it may not be stricken out I propose that amendment, so that when there is any apportionment made by the State Board, it will stand as the basis for any local assessment required for local purposes. I understand that when this provision is put into the Constitution there can be no local assessments upon railroad property, because it was exclusively confined to the State Board, and there was no provision made for local assessments. And that is the reason why I have offered this amendment, in order to secure to these various localities, for local purposes, such as school house, and other town and district purposes, their share of taxation on the railroad property. If the section is not amended, the railroad property will escape taxation altogether for local purposes, because it confines this matter exclusively to the State Board.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: The discussion has terminated on the idea of striking out the section. Now, sir, I hope the section will be allowed to stand. I don't know exactly what idea the committee had in view when they formulated the section, but I know it struck me as a good section, and one which ought to be adopted for that reason. There is no doubt but the railroad companies exercise more political influence in the State of California than any other institution. In the matter of taxation, as in all other matters, they are brought face to face with the strongest political power in the State, and in this respect there is an advantage which this gives to the people over these corporations; it affords them a better opportunity to obtain justice than if we were forced to meet them single-handed. I know what the experience has been in Placer County. We assess them for what in our judgment the property is worth; and it is often the case that they persistently refuse to pay taxes on the assessments that we impose upon them. Year after year we have fought them at great expense. Other counties in the State have had exactly the same experience. But while some of us were spending our time and money in this way, others who were equally interested in the result stood back and reaped the benefit of our exertions. Every citizen in the State has an interest at the rate of sixty cents on the one hundred dollars, and yet they took no part in the fight; took no part in the contest against the corporations, and yet they have the same interest that we have. And, sir, other counties, which also took no part, were equally interested with us. And, sir, in view of the immensity of this power concentrated in these corporations, there is no power so able to cope with it as the State itself. No county has been able to do it, and therefore it seems to me a wise provision, a wise exception for the purpose of assessing the railroad property of the State, that the whole power of the State should be brought to bear to compel them to pay their taxes. In regard to the distribution of the taxes, I agree somewhat with the exceptions of the gentleman from San Francisco in relation to the distribution of the taxes per mile of road. An amendment could easily be made covering that proposition. I believe this system can be adjusted and made to work well, and that by its provisions these corporations can be made to pay their taxes.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I believe the railroads of the State ought to be assessed by the State Board of Equalization on their roadbeds and rolling stock, and the tax apportioned to the several counties, and I believe all their property outside of this, throughout the State, should be left to the local authorities to make the assessments. That property belongs to the counties, and should be assessed by them; and when the proper time comes, I shall offer an amendment that will cover this view of the case:

"Add to the end of section sixteen: 'The franchise, roadway, roadbed, and rolling stock of all railroads in this State, operated in more than one county, shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties; and all other property of railroads shall be assessed by the counties in which such property is situated.'"

I think a provision of that character will cover the entire ground. It will do justice to the counties, and it will enable the State Board to take in the whole scope of continuous property of the railroads and assess it at its fair value.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: One word in reply to the remarks of the gentleman from San Francisco, Mr. Estee. I read a paragraph from the State Tax Cases, in the Ninety-second United States Reports:

"It is obvious, however, that while a fair assessment under these two descriptions of property will include all the visible or tangible property of the corporation, it may or may not include all its wealth. There may be other property of a class not visible or tangible which ought to respond to taxation, and which the State has a right to subject to taxation. Thus it may occur, as in fact is claimed by one of these companies, that being insolvent, and its earnings not being sufficient to pay anything beyond its necessary expenses for operating the road and its repairs, this tangible property represents more than the real wealth of the company and its property. While on the other hand, another one of these companies is so rich that after paying its expenses and interest on a large amount of debt, it declares large dividends; and this interest and these dividends, when looked to in reference to what is called the tangible property, show that there is here another element of wealth which ought to pay its share of the taxes. This element the State of Illinois calls the value of the franchise and capital stock of the corporation, the value of the right to use this tangible property in a special manner for purposes of gain."

Now, sir, they treated the franchise or privilege as an element of wealth, and they arrive at its value as I have repeatedly explained to this committee.

MR. ESTEE. Is not that measured by the value of the stock itself, and the probable income from the property?

MR. EDGERTON. No, sir. As I have already stated, it is not arrived at by the deduction of the debts from anything. They add up the value of all its tangible property—all the real estate, rolling stock, everything you can see and handle—and that constitutes one sum. That constitutes the sum total of the property. Then they take the fair cash or market value of the capital stock, or shares of stock, and then take the indebtedness of the company and add these sums together, and from that aggregate they deduct the sum total of the tangible property, and the excess is treated as the franchise, as the value of the franchise. Does the gentleman understand?

MR. ESTEE. Yes, sir.

MR. EDGERTON. That is the way they arrive at the franchise and capital stock of a railroad company. Now, sir, it is urged by Col. Ayers

that it ought to be left to the local Assessors to assess the value of all the local tangible property of these companies. I say not. What is assessed at one price in one county by one Assessor is put down at an entirely different price in another county.

MR. AYERS. Is it possible that in any two counties the same kind of property would be actually of the same value?

MR. EDGERTON. Of course, I don't pretend to speak from personal knowledge, but it is my opinion that in some counties the property is assessed at half its value, while in others it is assessed far in excess of its value. There is absolutely no uniformity in the assessment of railroad property, and the idea of the committee was to have all this property assessed by one central Board, and by that means get at a just, and fair, and uniform valuation of all the tangible property, and by the means I have indicated arrive at the value of the franchise. Now, I say this State Board has got to examine all this property critically and carefully, in order to arrive at the value of the franchise and capital stock, according to the rule that has been adopted in Illinois and other States. And inasmuch as they have to do that, it seems to me that it is better to surrender the whole question into their hands of assessing the railroad property of the State. There is no difficulty at all, as somebody has suggested. Of course, the Legislature will expand on this section and provide that the State Board shall communicate with the local authorities, in order to acquire the necessary information.

MR. ESTEE. My objection is that I am opposed to this centralization. I am in favor of the local authorities making the original assessments. There would be a conflict of jurisdiction, which might lead to serious results, and cause the loss of the entire tax on the railroad property of the State. We had better leave it as it is. Let the local Assessors make the assessments, and the local Boards equalize them, and then let the State Board correct them.

MR. EDGERTON. If that be so then there is no power to tax these franchises, because the local Assessors cannot do it. They have to be assessed by some central power.

MR. ESTEE. Not at all; for the stock is something which has a market value in the commercial world, and it is easy to obtain the value of the franchise. There is nothing invisible about it. The value appears in the stock itself.

MR. LARKIN. I think the gentleman's argument from Sacramento makes it perfectly clear that this section ought to be stricken out. I don't like to see a rule whereby the railroad property of the State is to be assessed differently from anybody else's. I don't like to see this oppressive fight that the gentleman from Sacramento is making. He proposes to discover values that no one else has discovered, and I move to strike out the section so as to assess them as they are now assessed.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: The result will be the same, and I am in favor of the report as it stands. The railroad property of the State ought to be assessed as an entirety. It is the only means by which we can arrive at the real value, and secure the assessment of all the property belonging to the corporations. It cannot be done under the present system. I have seen it tried and it has failed. They were assessed upon the basis of the value of the iron and ties, if they were torn up and piled up in a pile, to be sold for old iron and fire wood. That has been the system, and it is wrong in principle. Under this system it is proposed to assess the roads at what they are worth for railroad uses; and for the purpose of running a railroad track, land for right of way in San Francisco is worth no more than land in Placer County. It is to be assessed at what it is worth for railroad uses, and the other property used by the corporations is valuable because it is used for this purpose, and it is valuable for no other reason. Its value bears a relation to the value of the road. The value of these depots and workshops depends upon the uses to which they are put. They are valuable because the railroads have use for them.

MR. MCFARLAND. Have we not already adopted the principle that all lands shall be assessed at the same price. I would ask if the gentleman is not violating the principle for which he voted?

MR. DUDLEY. There is a vast difference in the two propositions. A piece of land is not alone valuable because it is being used in raising wheat. It is valuable because it is at any time capable of being used for that purpose, hence the land that is not being used is intrinsically as valuable as the land alongside of it, which is in use. But the value of this railroad property is in its use. The land for railroad tracks is valuable because it is used for that purpose. I believe if there is a good provision in this report, certainly this is, and the committee will make a very great mistake if they strike it out. As far as the Hale amendment is concerned, I have no objection to it. As far as the amendment offered by the gentleman from Santa Clara is concerned, I desire to say that I do not think it is necessary at all. The report of the committee reads as follows:

"The State Board of Equalization shall assess the value of all the property of all railroad corporations in this State. For the purpose of taxation, the value of all lands, workshops, depots, and other buildings belonging to or under the control of each railroad corporation, shall be apportioned by said Board to the counties, cities and counties, cities, townships, and districts in which such lands, workshops, depots, and other buildings are situate; and the aggregate value of all other property of such railroad corporation shall be apportioned by said Board to each county, city and county, city, town, or district in which its road shall be located, according to the ratio which the number of miles of such road completed in such county, city and county, city, town, or district, shall bear to the whole length of such railroad."

I do not see the value of the amendment suggested by the gentleman from Los Angeles, Colonel Ayers.

MR. HERRINGTON. I wish to call your attention to section fifteen, which says that the sole power of the State Board of Equalization is to equalize for State purposes:

"SEC. 15. A State Board of Equalization, consisting of two members from each Congressional district in this State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and seventy-nine, and every four years thereafter, whose duty it shall be to equalize the valuation of the taxable property in the State for purposes of State taxation."

That confines their power to that purpose.

MR. DUDLEY. It is a separate grant of power. Considering the difficulties arising from collecting revenue from these companies, and the quibbles they resort to in order to avoid the payment of taxes—considering all these things, I certainly think this committee is prepared to say that these railroad companies shall be considered and valued as a whole, and not in parts. There is no difficulty whatever in it.

THE PREVIOUS QUESTION.

MR. LARKIN. I move the previous question.

Seconded by Messrs. Pulliam, Howard, of Los Angeles, and West.

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

Carried.

THE CHAIRMAN. The first question is on the amendment of the gentleman from Placer, Judge Hale.

Lost, on division—ayes, 19.

THE CHAIRMAN. The next question is on the amendment of the gentleman from Santa Clara, Mr. Herrington.

Lost.

THE CHAIRMAN. The question is on the motion of the gentleman from El Dorado, Mr. Larkin, to strike out the section.

Lost.

THE CHAIRMAN. The next question is on the substitute proposed by the gentleman from Sacramento, Mr. Dunlap.

Division being called, the committee divided, and the substitute was rejected, by a vote of 37 ayes to 57 noes.

MR. AYERS. Mr. Chairman: I wish to offer an amendment.

THE SECRETARY read:

"Insert after 'section sixteen,' in the first line, the following: 'The franchise, roadway, roadbed, and rolling stock of all railroads in this State, operated in more than one county, shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, and all other property of railroads shall be assessed by the counties in which such property is situate.'"

MR. CROSS. I offer a substitute for the section.

THE CHAIRMAN. It is not in order.

MR. CROSS. An amendment to the amendment, then.

THE SECRETARY read:

"The State Board of Equalization shall assess the value of all franchises, roads, and roadbeds, and rolling stock of all railroad corporations in this State, and the aggregate value of such franchises and rolling stock of such railroad corporations shall be apportioned by said Board to the counties, cities and counties, cities, towns, or districts in which such railroad shall be located, according to the ratio which the number of miles of such road completed in said county, city and county, town, or district, shall bear to the whole length of such railroad."

MR. EDGERTON. That leads to the same difficulty which I mentioned awhile ago. The Board will have to take the multiform assessments of all these local Assessors. One Assessor will assess the value of the property at half what another Assessor will; the State Board will be bound by it, and will have to arrive at the value of the franchise by the figures so taken, whereas, if it is left to them, they will probably assess it nearer to one standard of value.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: It seems to me that, aside from the roadbed and rolling stock, the State Board will necessarily be obliged to depend upon the local Assessors for their information. How else will the Board ascertain the value of depots, lots, shops, etc., in Los Angeles County?

MR. EDGERTON. By going and making an examination. They will have to travel all over the State.

MR. VAN DYKE. The company owns lots and blocks in San Francisco which have no connection with the road, and the same is true in Alameda County, and it may be the same thing is true in this and other counties. Now, the local Assessor, or whatever officer shall be constituted Assessor, will better know what property these railroad companies own, outside of the roadbeds and rolling stock, in the county, than this State Board can possibly know. Take this county, for instance. The Assessor, of course, has a list of all the property before him, with maps and diagrams. He assesses along a certain street, or along a certain road outside of the city, and knows all the property that belongs to the railroad companies. The State Board cannot possibly know this. They must necessarily ascertain these facts from the local authorities. Now, my objection to this section is that it attempts too much. As far as the local property is concerned, it ought to be arrived at by the local Assessors first, with this power of equalizing which has already been placed in the State Board. Again, I object to it for another reason. There are many railroads in this State, and gentlemen seem to forget, in their efforts, to drive at the main railroad, that in some counties there are short lines of railroad for local purposes, and which will come within the provisions of this section as it now stands. Now, why take a local railroad in Humboldt County, that runs but a few miles, and throw the assessment of that property upon the State Board? It is not the office of the Board. It ought to be assessed by the County Assessor, the same

as all other property in Humboldt County, or Mendocino County. Why not allow the local Board to review that assessment, and then the State Board to adjust it? For that reason I am in favor of the amendment proposed by the gentleman from Los Angeles.

MR. EDGERTON. The gentleman voted to allow this State Board to change any individual assessment in this State—practically to make any individual assessment in this State. Why did you not allow the local Assessors to do that?

MR. VAN DYKE. There are a great many cases where the local Assessors have refused to assess certain individuals and corporations as they should be assessed, and I am in favor of allowing the State Board power to reform these assessments.

MR. EDGERTON. I ask the gentleman if the local Assessors have not assessed railroad property at widely varying figures, all through the State? In that event, the State Board has to act upon it, and why not give them power to assess it in the first instance?

MR. VAN DYKE. You allow the local Assessors to describe the property and assess it. The State Board, with the power they already possess, can equalize the assessments, if they assess the property too low or too high. There is no danger, if you provide a State Board with ample powers to equalize assessments. That has been the growing evil. They have lacked the power to equalize. We have seen instances of unjust and unequal assessments in this State without any power to remedy the evil. That is the main evil, and if this Convention were simply to provide a Board with power to equalize these assessments, and stop right there, in my opinion it would be an act of wisdom, because, by these complicated provisions, we may find ourselves tied up so that nothing can be done.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I am in favor of the amendment offered by the gentleman from Los Angeles, Mr. Ayers, not because I think it just the thing, but because I think it will help the matter some. Now, I oppose, and I believe when they come to examine this matter, three fourths of the Convention will oppose, any proposition which interferes with the uniformity of assessments. Everywhere, in every State, almost, you will find that the established rule for raising money for the support of the government. Here you are violating the very first rule. You are violating the very first rule which we laid down, by providing one rule for the taxation of railroads, and another rule for the taxation of other property. Whenever you do that you are laying the foundation for trouble, and opening a loophole through which these corporations will escape taxation. We ought to adopt uniform rules of taxation, and tax railroads as all other property is taxed—at its full cash value. Let the local Assessors assess it, and let the local Boards equalize it, and then to remedy the evils spoken of by the gentleman, let the State Board of Equalization see that this property is assessed alike in all the counties of the State, and in that way you will accomplish the object aimed at. Now, for one, I protest against this, because it is contrary to the true principles of taxation; because the very fundamental doctrines of taxation rest upon the proposition that every dollar shall be taxed by a rule which shall be uniform throughout the State. Tax railroads in each county like other property, and let the same officers do it, and then see that the Assessors do their duty. I am in favor of one universal rule, and the motion to amend by striking out ought to prevail. The amendment offered by the gentleman from Los Angeles will relieve it of a portion of the objectionable features.

MR. BIGGS. Has there been any uniformity in the assessment of railroads heretofore?

MR. ESTEE. No, sir, because there has been no State Board of Equalization. But we have now provided for a Board with full power to act in the matter, and equalize the assessments in the various counties. The State Board will not know anything relative to the value of the property in the several counties. What do they know about the value of property in Napa County; what do they know of the value of property in Chico? They would have to inquire of people who know about it.

MR. DUDLEY, of Solano. Does the gentleman know a single instance where the value placed by the local Assessors upon railroads approximated anywhere near the true value?

MR. ESTEE. No, sir; and that is what the State Board is for. There will be no influence behind them; but allow the Assessor to assess the property as he assesses others; let the local Boards equalize it, and then let the State Board come in with the information of the local Assessors and local Boards and equalize as between counties and individuals, and then you will have a uniform system which will stand criticism.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I fully agree with the gentleman, that we should adopt a rule that will be uniform in its operation. But certainly I disagree with him when he says we cannot have the railroad property in this State assessed by a State Board of Equalization. In that particular it would be a State Board of Assessors. Now, it is well known that the railroad property is peculiar property in itself. It does not bear any particular relation to the localities, as other property does. It is considered as an entirety. The rolling stock and all belong to the road as a whole, and ought to be assessed as a part of the entire line. All the property used is a part of the road, and the value can much better be ascertained by assessing it all together. Now, there appears to be a mistake here on the part of some gentlemen who have argued this question. They seem to suppose that this State Board is to levy the tax. They are not. They simply certify to the County Boards, or the Supervisors, as to the amount allotted to the several counties.

MR. BARTON. It says the Board shall assess.

MR. WEST. That is right; they assess it, not tax it. They assess the entire road, then they certify to the Board of Supervisors of each county the number of miles, and fractions of miles, and they pro rata the value of the road, including the rolling stock and all the property used. I have a substitute which I believe will fully meet the objections urged by Mr. Van Dyke. It is that, on the first Monday in March, in each year, the State Board of Equalization shall assess the value of the property of all railroad corporations in this State. It is the Illinois plan, in short, and the gentleman from San Francisco is somewhat partial to that State. I believe it will meet the objections urged by the gentleman. Now, I wish to call the attention of members to the fact that by assessing the railroad as a whole, it will not be possible to assess it simply as old iron, it will be valued as a road in full operation. There is not a county through which a railroad passes that will not be benefited by this mode of assessment.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: It is very easy to get excited and criticise a section, but it is not so easy to suggest something better. Now, the proposition submitted by the Chairman of this committee is a very plain one indeed, and a very simple one. We all agree with the principal elements of it. The object of the section is to have one assessment of this class of property instead of three or four. All the members seem to agree that a portion of this property should be assessed by the State Board. Now, sir, if that Board is the most competent authority to assess any portion of this property, why is it not competent to assess all of it? Instead of having a different assessment for each county, and each city, and town, and school district, it is proposed to have one assessment made by this State Board, and apportioned where it belongs. The school district has one Assessor to assess the property. The road district assesses it again. Then another Assessor assesses it for township purposes. The county has another, and the city another. Each in turn has jurisdiction for local purposes. Now, is this a wise plan? Is it rational to have four or five assessments by four or five Assessors? It is not. I say it is much more reasonable to let this State Board make the assessment of this property throughout the State, and then apportion the assessment among the several counties interested. Why isn't that the best and simplest way? We shall select the members comprising this Board from different parts of the State, with especial reference to their fitness. They must make themselves fully acquainted with property values in every county in the State before they will be qualified to equalize assessments. They must go and examine this property for themselves, and not, as some gentlemen have suggested, sit down in their office at the Capitol and depend on the local Assessors. They must examine the property, and place a value upon it. It is far better for them to go out through the State and see the character of the property, and draw their information in that way, than to sit here all the year round and try to gain a knowledge by hearing testimony. Now, when it comes to this railroad property, the question is whether they shall equalize or assess it. The Convention has assented to one proposition, and that is that the Board shall assess a portion of it. Then why not let them assess the whole of it? The members concede that they shall assess a portion and equalize a portion. Now what is involved in equalizing property? Why, a personal examination of the property. They have got to go and make a personal examination of the property in the several counties in order to equalize the value. Is it possible for the State Board to sit in the office here and determine the value of the railroad property in San Francisco? No; they must go down and look at it. There are local roads in several counties, sometimes running through one county, sometimes through several. They must make a personal examination in order to equalize the value, for every county in the State places a different value on railroad property, so that the information given by the local Assessors will be no guide. They cannot determine the value by hearing testimony. One man will place the value at one thousand dollars per mile, another at six thousand dollars. For every witness introduced by the State the railroad company will bring an offset. Where will they ever stop? There will be no end to it. The Board must have power to investigate this question for themselves. It is the cheapest way, and the only way. One road has new rails, another has old; one uses steel, another iron. One is a narrow gauge, another a broad gauge. There is no end to the inquiry. A man can go and look at them and decide in five minutes.

Now, in relation to assessing the franchise. The Chairman of the committee has explained this matter fully. They are the only Board that can assess franchises. To do that they must have in view the entire property. When they equalize the assessments it is equivalent to making an assessment, and why should they not be allowed to do it in the first instance? The gentleman complains that it is not a uniform system. It is uniform over the same subject-matter. It would be far less a uniform system to have the Board assess a part of the property of railroad corporations, and the local Assessors another part. It is not necessary that the same system should be adopted for assessing a horse or a church. They must be uniform over the same class of subjects. And that is just exactly what is done here.

MR. HOWARD. Mr. Chairman: I think I should rather stick to the report of the committee. I have more confidence in men elected by large districts than I have in Assessors elected by counties. For instance, in many counties the railroad company elects the Assessor, and as a result, assesses its own property, therefore I had rather trust the State Board.

THE PREVIOUS QUESTION.

MR. SHOEMAKER. I move the previous question.

Seconded by Messrs. Howard, McCallum, Terry, and Wyatt.

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

Carried.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from Nevada.

Division was called, and the amendment to the amendment rejected, by a vote of 47 ayes to 51 noes.

THE CHAIRMAN. The next question is on the amendment offered by the gentleman from Los Angeles, Mr. Ayers.

Division was called for, and the amendment was adopted, by a vote of 66 ayes to 39 noes.

ASSESSING CORPORATIONS.

THE SECRETARY read section seventeen as follows:

SEC. 17. The value of the capital stock of a corporation shall be assessed in the county in which its principal place of business is located, and separately from all other property belonging thereto; and such stock shall be assessed at its market value when the assessment is made. The real and other personal property of such corporation shall be assessed in the several counties respectively in which the same is situate. The value of such stock, over and above the aggregate value of such real and other personal property, according to such assessment, shall be taxed in the county in which the principal place of business of such corporation is located; and the value of such real and other personal property shall be taxed in the several counties respectively in which the same is situate. The shares of stock belonging to the stockholders in such corporation shall be exempt from taxation; provided that the provisions of this section shall not apply to railroad corporations.

MR. REDDY. I move to strike out section seventeen.

THE CHAIRMAN. The question is on the motion to strike out the section.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: My reasons for making this motion are as follows: We provide for ascertaining the value of property, real and personal, of corporations; now, when we find the true value of that property we do not need to inquire about the value of the stock, because that merely represents the value of the property, and if you assess both it is double taxation. There is no distinct value in them. There are no two values there. The stock simply represents the value of the real and personal property; that being ascertained, and assessed and taxed, you have all the value there is, all the property of the corporation, because it is provided that the surplus of value is to be retained by the county where the principal place of business is located. Now, all stock is to be assessed; all stock is to be taxed. What has become of the balance? All stock is to be assessed. To whom? To the corporation? Now, it is a new rule, it seems to me, to assess property to a party not the owner of the property, and not in possession of the property. The corporation does not own the corporate stock, as a rule. There must be a great portion of it out, anyway. The stock is owned by the corporators and not by the corporation, and yet it is all to be assessed to the corporation. I cannot see any reason for assessing corporations in that way. The disposition of the people of this State is to assess all property equally and fairly, and assess it to the owners, and but once, but here it is plain you assess it twice, and I think the Convention, if it adopts this provision, will be going way beyond the demands or necessities of the State. How will it work? In the southern part of the State the farmers are relying upon irrigation to raise crops, and companies must be formed for that purpose. In forming a system in this way the farmers will have to pay this tax, for certainly the corporations will add it to the price of the water. I presume the object is the same as that of section seven, to discriminate against them in every way.

Again, the value of the stock is to be ascertained by the market price. Is that fair? Men do not buy stock in many instances on account of its present value, but on account of the value which they hope it will attain in a certain length of time—speculative value. Does the State want to tax these prospective values? I suppose it does. It will be an unfair way of determining the value, even if you are going to assess the stock. I have known a large majority of stock in a corporation to be sold for two and three dollars a share. There were not, perhaps, two thousand shares in circulation, and where the stock in circulation was selling at two and three dollars a share, they were making strenuous efforts to sell seventy-five thousand shares at one dollar a share. Now, would it be fair to make the market value of the few thousand shares in circulation the criterion to go by in assessing the entire number? Every man who has ever had any experience of that kind knows that it is unfair. I think these reasons are quite sufficient for striking out the section. It can do no good. It will simply work an unjust tax upon these people.

MR. BURT. Mr. Chairman: I offer a substitute for the section.

THE CHAIRMAN. Not in order at present.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I am in favor of this section, and opposed to the motion to strike out. I conceive that the gentleman does not perceive the real character of this section. He pronounces it to be double taxation. From my understanding, it has no analogy to double taxation. To the proposition of double taxation, I am as thoroughly and entirely opposed as he. But this involves a question and a principle of an entirely different nature. The proposition here is that the capital stock of corporations shall be taxed at its market value. It is merely the difference between the value of the tangible, visible property and the market value of the capital stock as stock. In San Francisco, for instance, the Spring Valley Water Company is taxed, I think, on eight million dollars of real and personal property. When the city wishes to buy the property, it sets up a market value of some fifteen million dollars, that being the price which the aggregate stock would bring at market rates. There is a difference between the property taxed and the property quoted of seven million dollars, which is an ample illustration of the objects of this section.

MR. REDDY. I would ask you one question. I will ask you how it would operate in this case: Suppose there are one hundred thousand dollars, or one hundred thousand shares of stock, of which there are ten thousand shares out, which would be all the market would stand; perhaps would flood the market. They were sold, say at five dollars per share, and the balance of the stock, if thrown upon the market, might not be worth fifty cents a share, or you might not be able to sell it at all. Now, would it be fair to tax the ninety thousand shares at the market value of the few shares that are on the market? Would it be fair to take that as a criterion?

MR. WINANS. Certainly not; but such instances would be exceptional in their nature. The market is not flooded. It is proposed to assess the stock at its market value at the time the assessment is made, and that certainly is the highest and most reliable criterion we can go by. Now, this proposition says to assess in the different counties in which it is located, the material property of these corporations. If the property is worth more than the stock, that is all they have to pay on; but if their stock is worth more than the material property, they are compelled to pay taxes upon the difference between the value of the material property and the value of the stock. The decision of the Supreme Court referred to by the gentleman from Sacramento applies exactly to this case. There the Supreme Court say:

"It is obvious, however, that while a fair assessment under these two descriptions of property will include all the visible or tangible property of the corporation, it may or it may not include all its wealth. There may be other property of a class not visible or tangible which ought to respond to taxation, and which the State has a right to subject to taxation. Thus it may occur, as in fact is claimed by one of these companies, that, being insolvent, and its earnings not being sufficient to pay anything beyond its necessary expenses for operating the road and its repairs, this tangible property represents more than the real wealth of the company and its property. While on the other hand, another one of these companies is so rich, that after paying its expenses and interest on a large amount of debt, it declares large dividends, and this interest and these dividends, when looked to in reference to what is called the tangible property, show that there is here another element of wealth which ought to pay its share of the taxes. This element the State of Illinois calls the value of the franchise and capital stock of the corporation."

Take an insurance company, or a bank, in San Francisco, where the stock is valuable, why should it not pay its per cent. of taxation? It is the price you have to pay if you want to purchase the stock. Now, it will be observed that by this proposition, the stockholder is not taxed. The gentleman from Mono objected that we taxed the corporation, and yet not the stockholders. The stockholders comprise the corporation, and the stock comprises the corporate property, which is properly taxed against the institution. This decision says: "This element the State of Illinois calls the value of the franchise and capital stock of the corporation—the value of the right to use this tangible property in a special manner for purposes of gain." Now, sir, I say the principle involved in this section is right and just. Under it we tax the property as property. Now gentlemen have contended on this floor, that everything that has value should be taxed. Now this stock certainly has value; it has a value of millions of dollars in this State, which now escapes taxation, and which will be reached and taxed by this section. It is property which yields good profits. Some derive all their income from this source. If that is so, why not tax it? That it has a distinct value is obvious from the facts I have stated. That it should be taxed in the county where the principal place of business is located, is perfectly proper. But all the real and personal tangible property should be taxed wherever it belongs. The stock is to be taxed at the principal place of business of the corporation. Its value is to be ascertained at the time it is taxed. The ruling price of the stock in the market is taken as the criterion of value. Then the whole capital is assessed by that gauge. There is nothing in the proposition bordering on double taxation. I say if this is adopted it will reach millions of property which now is beyond the reach of the Tax Collector.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: This section seventeen is one of the great innovations which, if adopted by this committee, I have no doubt will contribute its full proportion to increase at the very outset the opposition which is being arrayed against this Constitution by certain great interests. For my part, without reference to that, I am in favor of this section seventeen, and opposed to striking it out, knowing full well that the result I have indicated will be sure to follow.

MR. HOWARD, of Los Angeles. I would ask the gentleman if he thinks we can do anything to conciliate these monopolies?

MR. MCCALLUM. I haven't the slightest idea that we shall do anything to conciliate these interests, or the newspapers which they employ. As to this proposition, with reference to the great corporations of San Francisco, the gentleman from San Francisco has illustrated the point very well. Under this particular clause the value of the stock, over and above the aggregate value of the real and personal property, shall be taxed. It is very easy to see in that one particular case, where one great corporation of that city escapes the payment of about five million dollars; that is, there is that difference between the value of the real and personal property and the market value of the stock.

Now, the gentleman from Inyo has raised a supposed case which frequently occurs. Ten thousand shares of the stock of a corporation might be put upon the market and sold, say at five dollars a share, but if you threw the balance on the market you could not get ten cents a share for it. Well, it may be said, in answer to that, that if you sold a few horses they might bring a fair price, but put all the horses on the market and the price would go down. But it comes to this, as far as mining corpo-

rations are concerned: if they are honestly assessed there will be no difference between the market value of their stock and the value of the mine. Take a celebrated mine in Bodie. If it is worth ten dollars a share, then it is selling at five hundred thousand dollars, and the mine is worth five hundred thousand dollars. If, however, you take a mine that has been worked for fifteen years, and has produced nothing, except assessments, and it is assessed at one hundred thousand dollars, while being listed on the market at one million dollars, then, in that case, if I understand the theory of this section, there are nine hundred thousand dollars which ought to be taxed. This proposition has been sustained by the highest Court in the nation. I suppose it ought to be amended in some way so as to conform to the action of the Convention upon section sixteen. I trust that the motion to strike out will not prevail. I have not the slightest degree of prejudice against corporations. They are necessary to the development of the country, and should be encouraged. Let them incorporate as they please, but let them not be exempt from taxation.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Barbour, Wyatt, Edgerton, and West.

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

Carried.

THE CHAIRMAN. The question is on the motion to strike out section seventeen.

Division was called for, and the motion to strike out was lost by a vote of 40 ayes to 58 noes.

MR. BURT. Mr. Chairman: I wish to offer a substitute for the section.

THE SECRETARY read:

"Strike out the section and insert the following: 'The capital stock of all corporations and joint stock associations, organized under the terms of this State, shall be assessed to such corporations and joint stock associations in the county, city, city and county, or district, in which their principal place of business is located, at its market value; *provided*, that all real and personal property owned or possessed by any such corporations or associations shall be assessed and taxed in the city, county, city and county, or district, in which the same is situated. The excess in value of such capital stock, over and above the aggregate value of the real and personal property within the State, according to such assessment, only shall be taxed, and shall be so taxed in the city, county, city and county, or district, in which the principal place of business is situated. For the purpose of taxation, the value of the franchises owned or enjoyed by such corporations or associations shall be included as forming part of such property. The Legislature shall provide by law for the assessment and collection of an annual tax upon the gross receipts within this State of all foreign corporations doing business in this State.'"

REMARKS OF MR. BURT.

MR. BURT. Mr. Chairman: The principal object aimed at by this amendment is to reach those corporations organized and doing business in this State whose property is entirely without the State. It is a well known fact that nearly all the corporations doing business with the San Francisco Stock Boards, have really no property in the State which the Assessor can reach, while they enjoy all the privileges and immunities of corporations existing in this State. Now, it is no more than fair that they should help contribute to the support of the government which protects them. As regards corporations doing business and having property in this State, the provisions are similar to those of the section which is before the committee. As regards the matter of double taxation, if the property is given in to the Assessor at its actual cash value, as we have already required, I am unable to see where there is any excuse for saying that it will be double taxation. There is another change of importance here. The original clause provides for the assessment and collection of taxes in each county. The amendment provides for district taxes in cases of local taxation. It also provides that in listing the property, franchises owned or enjoyed by these corporations, or associations, shall form a part of such property. It seems to me, sir, that the franchise should go with the property of the corporation, and should be taxed where the property is taxed. It provides for an annual tax upon the gross receipts of foreign corporations doing business in this State. It is the only way of reaching this class of corporations, and compelling them to pay their share of taxes.

MR. SWING. I move the committee rise.

MR. EDGERTON. I move that the committee rise, report progress, and recommend to the Convention that the amendment offered by the gentleman from Placer be printed in the Journal to-morrow morning.

Carried by a vote of 56 ayes to 40 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made progress, and ask leave to sit again. The committee also recommend that the amendment of the gentleman from Placer be printed in the Journal.

MR. BLACKMER. I move that it be printed in the Journal.

So ordered.

ADJOURNMENT.

MR. HUESTIS. I move we do now adjourn.

Carried.

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

ONE HUNDRED AND THIRD DAY.

SACRAMENTO, Wednesday, January 8th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barnes,	Graves,	Miller,
Berry,	Gregg,	Murphy,
Boggs,	Hager,	O'Sullivan,
Campbell,	Harvey,	Porter,
Charles,	Jones,	Schomp,
Cowden,	Kenny,	Terry,
Dean,	Keyes,	Van Voorhies,
Evey,	Kleine,	Walker, of Marin.
Fawcett,	Lindow,	
Glascock,	Martin, of Alameda,	

LEAVE OF ABSENCE.

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

Indefinite leave of absence was granted Messrs. Cowden, Keyes, and Graves, on account of sickness.

THE JOURNAL.

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

Carried.

REVENUE AND TAXATION.

MR. EDGERTON. Mr. President: I move that the Convention resolve itself into Committtee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Revenue and Taxation.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section seventeen, and the amendments, are before the committee. The Secretary will read the amendment offered by the gentleman from Placer, Mr. Burt.

THE SECRETARY read:

"Strike out section seventeen and insert as follows:

"'SEC. 17. The capital stock of all corporations and joint stock associations organized under the laws of this State, shall be assessed to such corporations and associations in the city, county, or city and county, or district in which their principal places of business are located, at its market value; *provided*, that the real and personal property owned or possessed by any such corporation or association shall be assessed and taxed in the several cities, counties, or cities and counties, or districts in which the same is situated. The excess in value only of the capital stock of such corporations or associations over the aggregate value of their real and personal property, within this State, according to such assessment, shall be taxed, and shall be so taxed in the city, county, or city and county, or district in which the principal place of business of such cor-

poration or association is located. For the purposes of taxation, the list and assessment of the real and personal property of persons, corporations, and associations, owning or enjoying valuable franchises, shall include such franchises as forming a part of such property. The Legislature shall provide by law for the assessment and collection of an annual tax upon the gross receipts, within this State, of all foreign corporations doing business in this State.'"

MR. EDGERTON. Mr. Chairman: I would ask the author of the amendment why he provides that "for the purposes of taxation, the list and assessment of real and personal property of persons, corporations, and associations, owning or enjoying valuable franchises, shall include such franchises as forming a part of such property?"

MR. BURT. The object——

MR. EDGERTON. What is a franchise, real or personal property?

MR. BURT. The object of having it included with the property is that it shall be taxed where their property belongs, and not at their place of business, as forming a part of their property.

MR. EDGERTON. Mr. Chairman: I do not see that that clause has any particular value there. In fact, I think it involves an inconsistency, and ought to be stricken out. Of course it should be assessed and taxed, but I think that clause should be eliminated from the amendment, from the words "for the purposes of taxation," in the tenth line, down to the word "property." If the gentleman will look at the juxtaposition of that clause, if he can take it all in at one view, he will see that there is something wrong about it.

MR. LARKIN. Mr. President: Franchises and rights connected with any corporation, whether a bridge or ferry, is a part of the value of that property, and should be considered so, and assessed where the property is located.

MR. EDGERTON. It says that it shall be assessed as forming a part of such property. Which is it, real or personal?

MR. LARKIN. It is part of the personal property. In a bridge franchise there is a right if the bridge is destroyed. The same with a ferry.

MR. EDGERTON. If it is personal property, why not say that it shall be taxed as personal property, and not as real or personal property, and that it shall be assessed in the county where it is located? A corporation may have its place of business in San Francisco, and the property belonging to this company, the ferry, or the bridge, or any other property, should be assessed in the county where the property is located.

MR. ESTEE. Will the gentleman from Sacramento, the Chairman of the Committee on Revenue and Taxation, allow me to ask him what the intention is of putting in these words "market value?" What if it has no market value? "Cash value" is the ordinary term applied. I will ask the gentleman from Placer where he got the term?

MR. BURT. From the original section.

MR. ESTEE. You may have a piece of land that has no market value and yet be very valuable. Cash value is the term I have always seen used. I move to strike out the word "market" and insert the word "cash."

MR. REYNOLDS. I would ask the gentleman why put in the word "cash," why not leave it as it is?

MR. ESTEE. "Cash value" is the term used properly. One reason I suggest that the word "market" be stricken out and the word "cash" be inserted, is that there are many corporations in San Francisco where the stock has no market value, because it has no sale. Fix it at its cash value.

MR. FILCHER. Mr. Chairman: It seems to me that there is a point against the term market value. They have established money values, so I would suggest the term "money value."

MR. ESTEE. Well, cash is money, but money is not always cash.

MR. FILCHER. "A mare is a horse, but a horse is not a mare."

MR. WINANS. Mr. Chairman: I believe that amendments are not now in order. I desire, at the proper time, to offer an amendment to this proposed section seventeen as now offered. It is to insert the word "other," after the words "real and," in the fourth line, so that it will read: "Provided, that the real and other personal property;" because the capital stock itself is property in the estimation of this Convention. I would ask the author of the substitute if he would not accept that amendment?

MR. BURT. I accept that amendment.

MR. WINANS. There is one more objection I would like to state, and that is to the use of the word "such," in the clause which has already been criticised by the gentleman from Sacramento, Mr. Edgerton. It is grammatically incorrect. In that sentence the word "persons" is introduced for the first time, meaning natural persons. All that has been said theretofore has been in reference to property of associations.

THE CHAIRMAN. The question is on the motion to strike out the word "market" and insert the word "cash."

MR. EDGERTON. I have observed that in the other States they use the phrase "market, or fair cash value."

MR. ESTEE. I do not object to putting those words in. The point I make is that there are many corporations in San Francisco whose stock have no market value. Let it be "market, or fair cash value." Probably that is an improvement. After the word "market" insert the words "or fair cash."

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

The amendment was adopted.

MR. RHODES. Mr. Chairman: I send up an amendment to the substitute.

THE SECRETARY read:

"Add to the substitute: 'The shares of stock belonging to stockholders in any of the corporations named in this section shall not be assessed to such stockholders.'"

MR. RHODES. Mr. Chairman: The object of that amendment is this: under section two, as it stands, the stock held by private persons is assessable for taxation. If this amendment prevails, as submitted by the gentleman from Placer, it makes that stock taxable not only to the corporation, but also to the stockholder, which I think cannot be the intention of the mover of that substitute.

THE CHAIRMAN. The question is on the adoption of the amendment.

A division was called for, the question was put, and the vote stood 57 ayes to 10 noes.

THE CHAIRMAN. No quorum voting.

MR. HERRINGTON. This section cannot apply to railroad corporations.

The amendment was adopted, on a division, by a vote of 63 ayes to 19 noes.

MR. VAN DYKE. Mr. Chairman: I offer an amendment to the substitute.

THE SECRETARY read:

"Amend the amendment to section seventeen as follows: Strike out all after the word 'State,' in line two, and insert 'and the gross receipts within this State, of all foreign corporations doing business in this State, shall be taxed in such manner as may be provided by law.'"

MR. HERRINGTON. I rise to a point of order. The amendment proposes to strike out what has just been inserted.

THE CHAIRMAN. No, sir.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: For one I am afraid of attempting legislation in this Constitution. I think we ought to have stricken out the other section, and I think we should strike out this for safety, but the committee have decided otherwise, and the purpose of this amendment is to simply declare the purpose of this Convention to tax this kind of property; that is, the capital stock of corporations organized in this State; in other words, domestic corporations, and the gross receipts in this State of foreign corporations doing business in this State, but to leave the machinery and the amount of taxation entirely to the Legislature. Now, I think that is altogether safer than it is for us here to attempt to devise the plan and the machinery necessary to carry out what we simply should declare; that is, our purpose to tax the capital stock of domestic corporations, and the gross receipts of foreign corporations. In other words, I think we should stop, after we have declared our purpose, and allow the Legislature, as experience may show to be just and proper, to devise the means of carrying out this declaration. I think it is dangerous to attempt legislation in the Constitution. I hope the amendment will be adopted

MR. WINANS. Mr. Chairman: I think this amendment would have the effect of destroying the operative character of the whole section, for the reason that if the matter was left to the Legislature, according to the ordinary practice of the Legislature, it would be so harassed by corporate power, and corporate influence, and corporate money, that nothing would be done in the interest of the people.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I am not sure that I fully understand the effect of the amendment of the gentleman, but if I do understand it, it amounts to this: After we have made a provision in our Constitution and adopted it, that, first, the property of corporations shall be taxed—that is, its tangible property; second, that its franchise shall be taxed, we now say by this provision that the Legislature shall provide for the taxation of the capital stock of the corporations. Now, if this provision be adopted, then the next session of the Legislature must provide for the taxation of all the capital stock of corporations. Now, if such a provision be adopted, it must further be in accordance with the provision already adopted, that all taxation must be according to the value of the property, and the necessary result will be that when the Legislature frames a law upon this subject, it will be, in effect, this, that the tax shall be levied upon the capital stock according to the value of the capital stock. If they make a law different from that it would be in opposition to sections one and two. Then by the adoption of this amendment as proposed by the gentleman from Alameda, we will be adopting a provision exactly like one which we have stricken out from previous sections. I am not in favor of taxing the property of a corporation and then taxing its capital stock, because it is taxing the same thing twice.

MR. VAN DYKE. That objection could be met by using the term "the capital stock in excess of the value of the property."

MR. CROSS. Then we have the provision of Mr. Burt.

MR. VAN DYKE. Mr. Burt's attempts to legislate, whereas this does not.

MR. CROSS. What can the Legislature do except to provide in what manner the tax shall be levied? It must be according to the value of the capital stock, because we have already made a provision that all property must be taxed according to its value; then, that stock must be taxed according to its value. If we now say that capital stock is property, for the purpose of taxation, whatever law the Legislature makes, it must be a law to tax the whole capital stock according to its value; thereby we will have taxed them on the property, and then taxed them again upon the same property by taxing the capital stock, which is only another name for the property. The capital stock is whatever is invested, that is, the shares of capital stock. It is whatever is invested. If two merchants organize a mercantile company, and put in ten thousand dollars in money, the capital stock is ten thousand dollars. If a man invests ten thousand dollars in a ranch, his capital stock is ten thousand dollars. Now, sir, this provision, in effect, will provide that in the same class of cases we shall tax the property and then we shall tax it again under another name, under the name of capital stock. The provision should be that the value of the stock above the value of the property should be

assessed; or the provision should be, that the Legislature may provide for a tax upon the capital stock of corporations, so far as the same is in excess of the value of the property which is assessed.

MR. VAN DYKE. Mr. Chairman: I wish to amend my amendment so as to meet that objection.

MR. FILCHER. I have it written out and will send it up.

THE SECRETARY read:

"Amend the amendment to section seventeen as follows: Strike out the words 'capital stock,' in line one, and insert: 'The excess of value of capital stock, over and above the value of the real and personal property of all corporations and joint stock associations organized under the laws of this State, and the gross receipts, within this State, of all foreign corporations doing business in this State, shall be subject to taxation in such manner as may be prescribed by law.'"

MR. VAN DYKE. I accept the amendment.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: If these amendments, either of them, is to be adopted, I want to know what the result is to be, and I must confess that I am a little in doubt. It is proposed that all corporations who have property in this State, the excess in value of the capital stock over and above the amount of the property shall be assessed. That I consider to be a fair proposition. There are, however, in this State many corporations organized under the laws of this State whose property is entirely outside of this State. Now the result will be that either we must allow the property owned by that corporation, although situated outside of the State, to be deducted from the capital stock, or one of two things will result: that corporation will be obliged to pay a tax upon the property in the other State, and then they will be obliged to pay a tax upon the capital stock in this State, or else we must allow them to deduct the property and simply tax them on the excess. Now that is what I want to get at. Corporations who own mines in Nevada, who are organized under the laws of this State, and have their principal place of business in San Francisco, are they to be allowed to deduct the amount of the valuation of their property in Nevada from the capital stock in this State, and be taxed on the excess of it? If so, there is no objection to it that I see, but if not, the result will be that they will be driven out of the State, every one of them. They cannot stand it.

Now, sir, I have had no experience in this matter of dealing in mining stock. I never owned a share of mining stock in my life. I do not think I am competent to judge whether it is desirable to drive all these corporations out of the State or not; but it is the question we want to meet here. We do not want to shut our eyes and say that there are corporations in this State who have worked an injury, and for that reason we will make a sweeping provision here that will drive all of them out of this State, unless that is the intention.

MR. VAN DYKE. I wish to answer the gentleman. So far as Mr. Burt's amendment goes it is only to deduct the property in this State; whereas, the other leaves it to the Legislature, as it should be, or else strike out the section.

MR. BLACKMER. I believe there is a revenue already derived by the State from them. I believe that the State collects a license tax of ten cents upon every transfer of a certificate. I am not arguing either for or against it, but I want to see the question met square in the face, whether we are determined to drive them all out, or whether we believe they will stay here and stand the double taxation, one upon the property in the other State, and the other upon the stock here. If the Burt amendment is adopted it is very evident that there is an omission. Unless there is a provision added to it, it will apply to all railroad corporations as well as corporations mentioned, because railroad corporations are included in the term "all corporations and joint stock associations, organized under the laws of this State." At the proper time I shall offer an amendment to add to that section as proposed by the member from Placer, Mr. Burt, "provided, that this section shall not apply to railroad corporations."

MR. ESTEE. Why?

MR. BLACKMER. Because we have already provided for their taxation in the other section.

MR. EDGERTON. As I understand the theory of section sixteen, as to a railroad corporation, it is that the property shall be treated as a unit, and assessed by the State Board of Equalization, and distributed "pro rata among the counties according to the ratio which the number of miles of such road completed in such county, city and county, town, or district, shall bear to the whole length of such railroad."

MR. ESTEE. That is true. But other sections also declare that every other character of property——

MR. EDGERTON. The point is here: there is a direct conflict.

MR. ESTEE. That is so, without any question. But this is not the only conflict. Here is a mine in Nevada. You go down to San Francisco and you assess the property to the owner, who does not live there. Well, under the revenue law, generally, the personal property is assessed in the county where the owner lives. In other words, I own stock in the London Mutual Insurance Company, and I live in Alameda County, for instance, and yet it is assessed in San Francisco. It would be unjust and contrary to every principle of taxation.

MR. BLACKMER. Is that an objection to the amendment I propose?

MR. ESTEE. It is an objection to the whole section.

MR. BLACKMER. If we want to drive out all these corporations, all right, adopt the provision. But if it is believed that they will stay and pay the tax, it is no reason why they should pay two or three taxes because they are here. They want to pay their just proportion.

MR. ESTEE. Suppose the principal place of business of a corporation is in Sacramento, the stockholders may be scattered all over the State. They are the owners. The corporation does not own the stock. They are the owners, and they give in their tax list. They are sworn to give in all their property. Under a sworn statement, a man says he has one hundred shares in a mutual insurance company, or in the Bank of California. It is the sworn duty of the Assessor to tax that property. Then you go to San Francisco and assess the whole number of shares, five million dollars, of capital stock. Who will you assess it to? The corporation? If you assess it to the corporation you can find an owner, but if you undertake to assess it to the real owner, where is he?

MR. LARKIN. Are there not many corporations where the stock is owned in Nevada?

MR. ESTEE. Certainly. They will say: "John Doe, in Nevada, owns fifty or one hundred shares. Can you assess the stock if the owner is not here?" Are we not trying to do an impossibility? The London Mutual in San Francisco—where are its stockholders?

MR. EDGERTON. Who proposes to tax the stockholders?

MR. ESTEE. You propose to tax the stock. Is it not the law that you may tax the stock to the corporation? But if that is done you cannot tax the shares in the possession or ownership of the owner. That has been the law for years.

MR. HOWARD. The Supreme Court has decided that you can tax the corporation with the tax.

MR. ESTEE. That is when the corporation owns it. Where you find an individual who is owner of a certain amount of the capital stock, and he does not live in the State, I apprehend that you cannot tax it to the corporation. That the Supreme Court of the United States did not decide.

MR. EDGERTON. If the gentlemen will read the State Railroad Tax case, they will be abundantly enlightened.

MR. VAN DYKE. This amendment only taxes the capital stock.

THE CHAIRMAN. The gentleman has already spoken once.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: If it is the intention of parties on this floor to enact a law in the Constitution that is going to drive every foreign corporation out of the State, then we had better adopt this section. If they feel authorized by their constituents to adopt that kind of law, then they are obeying the wishes of their constituents who sent them here, because it will have that effect. I do not think the people of this State expect us to pass a law that would in effect drive every foreign corporation out of this State; and I would here say to the gentleman from San Francisco, that if they pass this law, they will make a great many vacant offices in San Francisco, and I speak in relation to a matter that I am cognizant of. The people of my town are working a mine in Arizona. The stock of that mine is principally owned in Santa Rosa. Probably we have two hundred thousand dollars invested in that mine. That property is taxed in Arizona and their income from the bullion is taxed in that Territory. Now, you not only propose to tax them upon their capital stock, but it goes farther than that. It proposes to tax that stock in San Francisco, where the office is located. Notwithstanding our people have two hundred thousand dollars invested in that mine, living in Santa Rosa, their property is taxed in Arizona. Now, Mr. Burt's amendment proposes to enforce another tax upon them, and our county does not get the benefit of the tax, but it is taxed in San Francisco. If the stock is going to be taxed, the County of Sonoma should have it. The effect is to run every foreign corporation out of this State, and I do not believe the people desire to do that.

In the first place, there was an Act passed by the Legislature of this State, which required that each transfer of stock shall pay to the State ten cents. I know that I could not get any transfer of stock in the company that I am a member of unless I paid it, and I see by the papers that they receive about nine hundred dollars a week by reason of that ten cents. That amounts to considerable. So the State is getting, as it were, a benefit from the transfer and the business that these foreign corporations do. Now, then, if this section is passed as it is, it will in effect drive them all out of this State, because they cannot afford to pay a tax upon the property in Arizona or Nevada, and then be taxed here.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I am opposed to section seventeen. I am opposed to all the amendments that have been offered to it, for the reason that I believe it would lead to injurious legislation. If I desired to defeat the Constitution I would vote for just such amendments as these. I believe that it would result in great evil to all the corporations in this State. I object to one point particularly. Corporations are organized in the counties of this State, but their places of business are fixed in San Francisco. For what? For the convenience of those interested. Now, nine tenths of the stock of the corporation are held in the counties of this State. Now, what would be the result of this system of taxation? Why, the counties will pay to San Francisco the taxes that justly belong to the counties. Why? Because the capital stock being held in the counties they are taxed where the corporation has its principal place of business, which is San Francisco. I am opposed to such a system of taxation.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: It does seem to me that the taxation of stocks is perfectly proper. If men organize a company in Trinity or Nevada, or anywhere in the gold belt, for the purpose of mining, how is it that they have their place of business in San Francisco? If they go to San Francisco they say we will get the tax there. I tell you there is the mine in San Francisco. They have their principal place of business in San Francisco, and there is their whole field of operation. It is down there in order to get the hard-earned dollars of the population of San Francisco. There is where there is three hundred thousand inhabitants. That is where they open their business, and there is where they get their money, and not from the mines. And this money is made off the working, toiling people of San Francisco, and there is where the tax

should be. If a mine is in Arizona, and our people have their money invested in it, when we tax that stock we are just taxing that money. If a man did not have his money in that stock he would have it in something else. If he takes that same money, and, instead of buying mining stock, buys horses, or cows, or any other kind of stock—cattle, or anything—then they do not say but what we can tax it. It is just as legitimate to tax it if it is in mining stock, as if it was in horses.

MR. TINNIN. It is not the money we are taxing, it is the stock.

MR. GRACE. The stock is money.

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

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I am glad to see at least one working man that has sense enough to perceive the effect of this matter. Now, sir, why should not a corporation, foreign or domestic, pay for protection upon its money as well as a private individual? Why should a foreign corporation, which has the protection of the government to enforce the protection of its property and the collection of its dues, not pay on its property as well as anybody else? Why should not the domestic corporation pay? Sir, the section as reported by the committee is eminently correct, just, and proper, and without it, it is useless to talk of equality or uniformity of taxation.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: I hope the motion to strike out will prevail. The remarks of the gentleman from San Francisco, Mr. Grace, were in about the same line as those used when other sections were up before the committee, as regards the capital stock of corporations when they form for the purpose of doing business in this State. They get on the wildcat, and imagine if they attack them that they will be able to accomplish their point in this Convention, and directly prevent the purpose that we desire to have accomplished, and that is to prevent the taxation of the capital stock of corporations formed for the purpose of mining. The gentlemen grow perfectly wild when it comes to wildcat, and they think if they attack stocks and corporations generally that the evil will be remedied, while it is not true. This would be a blow at our legitimate mining interests. The mining interests of this State should be held sacred in this case. No blow should be aimed at them. As far as foreign corporations are concerned, it may be right and proper to compel them to pay upon their incorporations to assist the revenues of the State. But this committee, by their action on the other sections, certainly declared that so far as capital stock was concerned, it should not be taxed. The substitute for section two certainly meant that the capital stock of a corporation should not be taxed. Now we go on and declare that they shall be assessed. What is the use of declaring that they shall be assessed when we declare that they shall not be taxed? As Mr. Estee truthfully said, it would be taxing the capital stock of any corporation or association in San Francisco, and taxing their property, real and personal, in Siskiyou, or any other county where it happened to be, and it would be double taxation. But gentlemen all the time get off on the idea of aiming at wildcats, and reaching that evil. While they imagine that it has that effect, and that perhaps it might lessen it in some degree, I cannot see how it would. If they formulate any section that will remove that evil, I will gladly support it. But this section is double taxation.

MR. EDGERTON. The Supreme Court says it is not.

MR. BARRY. The gentleman says it is. I have never read that decision. It may be true. I believe that if this section is stricken out, and another section put in its place, to leave it so that the Legislature can provide for the necessary legislation in this matter, I think it would be better. If the gentlemen want to remove that great evil of wildcat mines in this State, or the speculation that these men indulge in, we will agree with them. Anything that can be done we are ready to do. But we ought to remember the mining interests, not simply on account of the miners, whose interests we are bound to protect, but we claim we are protecting the interests of this State in protecting the mining interest, which is one of its greatest resources. It should not be impaired, and the great work of development should not be prevented. Their capital stock should not be taxed, when often it has but a fictitious value. It does certainly amount to double taxation, even if the Supreme Court may hold that it does not. I hope the motion to strike out the section will prevail.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I do not know that this section is exactly what we desire. It does not seem exactly right to me, but at the same time where there is nothing better offered, I hope we will adopt it. Gentlemen, in talking of the effect on mining companies, seem to forget that we have a few corporations in San Francisco, and when the Assessor goes after them they put in probably two hundred thousand dollars, and yet we know that these companies have property worth perhaps a million or two. Take the San Francisco Gas Company, under the present management we can hardly get any taxes out of that concern at all, and yet their capital stock is worth a large sum of money, and this seems to be the only practical way for the City and County of San Francisco to get a fair tax upon that property.

We have also got a water company, a very powerful and a very rich company, and unless we get something of this kind I am satisfied that the people will see that they do not pay their just share of the taxes. But we have still another company there in San Francisco which perhaps is more powerful than either of these, and that is the Nevada Bank. It has a paid up capital of ten million dollars. We do not know what their stock is worth. They pay upon about two million five hundred thousand dollars, while they have a ten million paid up capital. Are we just simply to take an assessment upon two million five hundred thousand dollars of that corporation, and let the other seven million five hundred thousand go untaxed, simply because some one thinks a blow is aimed at them, or because some small miner is to be hurt? If they think this will injure legitimate mining enterprises, why don't they offer us a plan by which we can strike a blow at these men that escape taxation? Let them prepare such an article and we will support it. I shall certainly vote to retain this section seventeen until they give us something that will reach these rich corporations and make them bear their just share of taxation.

The ones I have mentioned are only the most glaring ones and we have a large number of other ones. All the Assessor can reach in the way of real estate will not amount to ten per cent. of the value of the capital stock. The people desire to reach this. I maintain that we want section seventeen or something else that will reach these people.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: It seems to me, sir, that the objections urged by some of my friends from the mining counties against this section, are not well founded. And more than that, I would say in this connection, that in the matter of regulation of corporations, it seems to me that a great deal depends upon whose ox is gored. We are all disposed to impose the most stringent measures upon the Central Pacific Railroad Company, because, perhaps, none of us own any stock in it; but when it comes to corporations within our own locality, the members of which are our own constituents, we feel a delicacy in regard to regulating them. For my part, I think fairness is only fair; right is only right, under any circumstances; and any corporation in this State, mining or otherwise, if it cannot stand what is right, fair, and just in the way of regulation, let it go down. There is no double taxation suggested in this section. There is no unjust proposition. The idea arrived at is this, simply: if the capital stock, at the regular market value, whatever it is worth in market, is worth more than the real and personal property of any corporation, that excess in value shall be represented on the assessment roll. There is certainly no double taxation in that.

Now a mining corporation in my county owns property there, by way of mines and appurtenances necessary for mining purposes, to the amount of five hundred thousand dollars or more, and that is the whole of it in a tangible shape, and yet the capital stock of that corporation represents two million dollars in the market. I say that that excess in value should be represented on the assessment roll, for it represents value in this State. Though I favored the substitute as submitted by my colleague, Mr. Burt, yet I believe that the one emanating from the gentleman from Alameda is preferable. It is the idea aimed at, and it is expressed in terse and plain terms: simply that the excess in value of the capital stock, over and above the value of the property, shall be assessed, but it leaves the details to the Legislature, and that is why I prefer it to this section. Here we go on in the Constitution and attempt to provide the details, and in the event that they should prove wrong, or come in conflict with some other part of the Constitution, they might prove not harmonious and be beyond reparation. We should therefore provide in the Constitution the fundamental principle and let the details go.

The next idea aimed at is getting at these foreign corporations. It has been asserted that if we adopt this we will drive all the foreign corporations out of the State. I say let us drive them out, then. If they, who bring their capital here and command the laws of this State for their protection; who receive protection from the State; if they cannot afford to pay a portion of the revenue for the support of the government, let us drive them out and get some one who can. All the regulations we have thus far made bear on our local corporations; those belonging to California; those instituted by California capital.

MR. CROSS. The objections urged in this particular part of the house against the substitute are not urged against the amendment offered by the gentleman from Alameda, Mr. Van Dyke. I ask that that provision be now read.

MR. FILCHER. Mr. Chairman: That is my reason for desiring to address the committee at this time. The discussion has wandered off as to these details, and the amendment offered by the gentleman from Alameda, immediately under consideration, seems to have been overlooked entirely. I believe my friend from Trinity cannot seriously and earnestly object to that amendment, as it stands now. There are only two points. One is, that these corporations shall be assessed to the full extent, and at the same time avoid double taxation; and the other is, that a tax shall be received from these foreign corporations doing business on this coast, and doing it under the protection of the laws of California. If there is anything in those two points that is objectionable I would like to have the objections set forth.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I rise for the purpose of offering my condolence and sympathy to the gentleman from Sierra, his neighbors of Nevada, and some other gentlemen from counties interested in mines. I am very sorry, indeed, that they are unable to direct the storm that they have helped to raise, so that it shall injure the property of everybody else except their constituents.

MR. CROSS. Don't you know that we have stood, from the first, against any kind of double taxation?

MR. EDGERTON. You have stood against anything that would tax a mine. [Laughter.]

MR. CROSS. We are all willing to have the mine and the mining franchise taxed for what it is worth.

MR. McFARLAND. Now, sir, when this Convention started, there was apparently a large majority in favor of doing what we call "cinching corporations." They said to you: "Strike a corporation on the head whenever you see it! Burst up the corporations! Drive them out of the State! They are bloated monopolies, all of them!" And, if I am not wrong in my recollection, my friends over there were among the

loudest mouths that took that position. They are beginning to find that when you start a fire it is not so easy to control it. I admit that this is the most ridiculous proposition ever heard of, to tax the property and then tax the capital stock. It seems to me that it is nonsense. It is double taxation of the worst kind. But it is very clear that this is only one of the results of the storm which these gentlemen have helped to raise, and, while I shall do what I can to prevent it, if they and their constituents go down before it I shall feel very sorry for them.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I am in favor of the amendment offered by the gentleman from Placer, Mr. Burt, as printed in to-day's Journal. There are only two objections urged to this section, and the first is that it is virtually double taxation, which is an error. The section provides for the assessment of the real and personal property of the corporation. The real and personal property shall be assessed and taxed, and the tax collected in the locality, the district, or the city in which the real and personal property is located. That is the first taxation; provided, however, that if the corporation have corporate stock, the cash value of which is above the value of the real and personal property assessed, then the excess in the value of stock shall be assessed in the place where the principal office of the company is located. Now, there is no double taxation about it at all, because a deduction is made out of the value of the stock to the amount of the value of the real and personal property which is taxed. In other words, the property taxed is taken out of the property not taxed, and the balance is taxed, if there be a balance. It is said, however, that the stock ought to be taxed where the stockholder resides. We know very well that it is the easiest thing possible for a person possessed of stock to take that stock and lock it up, and no Assessor can find it, and no Assessor will find it, and the consequence is that stocks will escape and always have escaped taxation. This is the only possible method of reaching the capital stock of corporations.

Again, the objection is urged that it is taxing the company and not taxing the stockholder. The objection is fallacious, because the company is the stockholder, and you cannot take the stockholder outside the company, because if you have no stockholders you have no company, and you have no corporation. The value of the stock consists in the value of the corporate franchise, and not only that, but also, perhaps, in speculative values. Undoubtedly in California it consists mainly in speculative values. Stock from which a dividend is received, the company at all times before that dividend is paid, takes out the amount of expenses, and the tax which the company pays upon the stock will simply be carried over to the expense account, and the stockholders will receive so much less dividend. Therefore, the stockholders virtually pay the tax, because it is one of the necessary expenses of the corporation, and the burden falls upon the stockholders, directly in proportion to the amount of stocks which they own. Therefore, both of the objections fall to the ground. First, it is not double taxation, because the deduction is made; second, it is a payment of the tax directly by the stockholder, because the amount of the tax is deducted from the amount of his dividends, and his stock is worth so much less. The taxes will form a part of the necessary expenses of every corporation, and must of necessity be paid by the stockholders in proportion to the stock which they possess or hold.

MR. OVERTON. Does it permit a deduction of the amount of the property if the mine is located out of the State? The author says it does not.

MR. BEERSTECHER. It says: "The capital stock of all corporations and joint stock associations organized under the laws of this State shall be assessed to such corporations and associations in the city, county, or city and county, or district, in which their principal places of business are located, at its market value; provided, that the real and personal property owned or possessed by any such corporation or association shall be assessed and taxed in the several cities, counties, or cities and counties, or districts, in which the same is situated. The excess in value only of the capital stock of such corporations or associations over the aggregate value of their real and personal property, within this State, according to such assessment, shall be taxed, and shall be so taxed in the city, county, or city and county, or district, in which the principal place of business of such corporation or association is located. For the purposes of taxation, the list and assessment of the real and personal property of persons, corporations, and associations owning or enjoying valuable franchises, shall include such franchises as forming a part of such property. The Legislature shall provide by law for the assessment and collection of an annual tax upon the gross receipts, within this State, of all foreign corporations doing business in this State."

The amendment would allow of a deduction of the value of the real and personal property located within this State from the value of the capital stock, and of course, the objections that have been urged by the gentleman from Nevada fall to the ground, it not being double taxation, and it not being a payment of taxes by the company outside of the stockholders.

MR. CROSS. Do you claim that any gentleman from Nevada has said that the amendment of Mr. Van Dyke, as now amended, amounts to double taxation? If you do, you do not understand what was said. The gentlemen from Nevada universally support that amendment.

MR. BEERSTECHER. In so far as my argument may clash with that of the gentleman, I claim that my arguments will stand against his assertions.

MR. WEST. Mr. Chairman: Believing that we have had sufficient discussion upon this subject I move the previous question.

The main question was ordered on a division, by a vote of 50 ayes to 29 noes.

THE CHAIRMAN. The first question is on the motion of the gentleman from Nevada, to strike out section seventeen.

The motion prevailed, on a division, by a vote of 62 ayes to 47 noes.

THE CHAIRMAN. The section is stricken out. The Secretary will read section eighteen.

THE SECRETARY read:

SEC. 18. The Legislature shall pass all laws necessary to carry out the provisions of this article.

MR. DUDLEY, of Solano. Mr. Chairman: I move to add the following section.

MR. BARBOUR. I have a substitute for section nine.

INCOME TAX.

THE SECRETARY read the additional section offered by Mr. Dudley, as follows:

"Income taxes may be assessed to and collected from persons, corporations, joint stock associations, and companies, resident or doing business in this State, or any one or more of them, in such case or amounts and in such manner as shall be prescribed by law."

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I offer this additional section to this article for the reason that I believe—as I think every other gentleman who has thoroughly considered the subject must believe—that any system of taxation that is confined entirely to raising revenue by levying a per cent. upon property values, is radically wrong; that it is wrong in theory; that it would be unjust in its operations; and that it will in the future, as in the past, prove very decidedly unsatisfactory in results. It is well known to every gentleman here, that there are in this State a variety of corporations and associations that have in the past shirked their just proportions of taxation; and I believe that the only method in the world to reach them is to tax gross receipts or income. This proposition will not make it obligatory to levy such a tax, but it provides that the Legislature may levy a tax upon persons or corporations, or any class of corporations, and that this tax may be different in amounts in different cases, to meet the exigencies of the case. That is, the Legislature may discriminate. I have no fear that any Legislature will be unjust, and I believe that they will, in every instance, discriminate, and discriminate properly, for the very purpose of effecting justice. The first section of this article, as adopted by the committee, is in very nearly the words of the old Constitution—that is, that taxation shall be equal and uniform—if my memory serves me correctly. I believe that gentlemen are ready to acknowledge that the injustice and inequality of the present system of taxation grew out of the construction by the Courts of that very expression. If we adopt it in this new Constitution, with that expression unmodified and unchanged, and the Legislature are compelled to apply this unbending, unyielding rule, the same injustice will exist in the future that has existed in the past. I offer the amendment, and ask the serious consideration by the members of this committee of that matter. I do not believe that gentlemen are afraid to trust the Legislature in this matter. Let us see if there cannot be invented and adopted some system of taxation that will work more justly than the present one. There is nothing unjust in it, and to my mind it is very important.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope, sir, that the proposition offered by the gentleman from Solano as an independent section will be adopted by this committee, and I have very little question but it will, as all of those who stand in opposition to the views that I have usually voted for have constantly claimed that all these matters ought to be left to the Legislature. Now, upon this proposition of taxing incomes, I agree with them to leave it to the Legislature. And, sir, I do it upon the principle that the old Constitution was not found flexible enough to do justice in the collection of the revenues of this State, and that it fixed itself upon a few items of property that could not be hid, and there derived all the revenues of this State; that it ignored the more recent characters in which property has assumed large proportions in later days, in the shape of mortgages, and in the shape of intangible property that could not be taken hold of, as land or other property that could be seen or felt, and for the purpose of reaching this class of property, and that the Legislature can reach them, and reach them in the shape of foreign corporations and foreign corporations alone, or in the shape of domestic corporations and domestic corporations alone, and in the shape of an income that cannot escape taxation as land cannot escape taxation. For the purpose of making taxation according to valuations in this State, I support the proposition of the gentleman from Solano, and I hope that it will be supported by a majority of this committee, and that it will be engrafted as an article in our Constitution. It will give that elasticity and flexibility to your Constitution that it needs in order to enable the Legislature of this State to place taxes where they should be placed.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: This amendment may be considered a little new, yet I am impressed with the opinion that it is correct in principle. Now, it is evident that the article on taxation has not been matured according to the wishes of a majority of the members of this body. Something more could be done to carry out more effectually the system. This is not a clause to be placed in the Constitution by which it is imperative upon the Legislature to levy this tax, but the matter goes before the people of the State. The members of the Legislature, coming fresh from the people, will be prepared to carry out the sentiment and wishes of the people upon this subject. The matter will undergo a fair investigation, and these members, after feeling in that way the drift of public sentiment, will call the attention of the Legislature to it, and they may act accordingly. I am impressed with the opinion that it is correct, and that income should be taxed, and that the

people of this State will approve of this; but there will be a fair opportunity of investigation by the people before anything of the kind can pass. Under these impressions, it appears to me that this independent section is unobjectionable, and may be adopted by the most fastidious members of this Convention. [A sneeze and laughter.] I shall have to pronounce that one an imitation. [Laughter.]

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: I am in favor of this section as it has been read. I believe, sir, that the people of this State will accept something that is tangible, something that will offer some relief in the matter of equalization of taxation. I am of the opinion, sir, that no relief whatever will come to those who are in the most need of it, from sections one and five of this report, as adopted. In my opinion it will revert right back into the old channel of assessment with each incumbrance and with each delay, without any benefit. The principles involved in sections two and five are equitable and just in theory, especially in section five, but in my opinion it will be impracticable in its operation, and it will be found, when it is put in force, that it will turn to dust and ashes, and offer no relief whatever. This principle of an income tax is one that is equitable and just, and one by which we can reach a certain class of subjects that have always wholly escaped taxation. This has been a matter that has been discussed very seriously by some members of this body for the last month, and we have arrived at the conclusion that this will be more effective in its operation than anything which can be adopted. It is right, for the reason that the ability of an individual to pay taxes is in the exact ratio of the amount of his net income. Sir, this question of taxation has grown enormously within the last twenty years. The expenditures, both State and municipal, have grown so enormously that the burdens of taxation are beginning to bear heavily upon the whole people, and they are crying for relief. I hold, sir, that with this section much relief will be offered. But the greatest relief, sir—and I wish to impress it upon the members of this Convention—is retrenchment and reform in expenditure. Sir, it is notorious that the people of this State and the people of the nation have been piling in and piling in their revenues and their resources into the public crib, year after year, while cormorants and foxes have been taking it out at the bottom. We want to stop these holes, and we want to reduce the aggregate amount of taxes which are raised. In this State, sir, last year, twelve million dollars were required for State, county, and municipal purposes; four million dollars for the State—nearly five—and eight millions for the counties. One half of that amount, almost, for the counties, and two millions and a half for the State, would have been all sufficient, if we would reduce our system to that equity and that retrenchment and reform which is required. As to the odiousness of this tax, sir, I do not conceive that it is more odious or more inquisitorial than the personal tax. What is more inquisitorial than to have the Assessor come into your house and inquire about every piece of furniture? It does not have that objection. It will offer more relief than any section which has been placed in this report, and I hope it will be adopted.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: If it is in order, I move to amend the section as proposed, by inserting after the word "persons," in line two, the words "on money loaned, and on," so that it will read: "Income taxes may be assessed to and collected from persons on money loaned, and on corporations, joint stock associations, and companies resident or doing business in this State, on any one or more of them, in such case or amounts, and in such manner, as shall be prescribed by law." Then it will be limited to money loaned, and to corporations, joint stock associations, and companies resident or doing business in this State. Will the Secretary read the section as proposed by the gentleman from Solano, Mr. Dudley?

THE SECRETARY read:

"Income taxes may be assessed to and collected from persons, corporations, joint stock associations, and companies resident or doing business in this State, or any one or more of them, in such case or amounts, and in such manner, as shall be prescribed by law."

MR. HOWARD. Now, will the Secretary read the amendment which I send up?

THE SECRETARY read:

"Income taxes may be assessed to and collected from persons on money loaned, and on corporations, joint stock associations, and companies resident, or doing business in this State, or any one or more of them, in such case or amounts, and such manner, as shall be prescribed by law."

MR. HOWARD. Mr. Chairman: The amendment I propose takes away the objection of its being an inquisitorial tax, because any individual has to be questioned upon the subject of money loaned. Again, sir, I do not think there will be found practically any other method of reaching money loaned, and especially money loaned by corporations. The facility for concealments are notoriously so great that unless you reach it in the shape of an income tax, you cannot reach it at all. Every English writer on political economy, since Adam Smith, has advocated an income tax. There is not an exception. Mr. Leroy and Professor Walker also advocated an income tax, as being the fairest tax that can be levied. Now, how else are you to reach money loaned; and especially how are you to reach money loaned by corporations? In the last report of the State Board of Equalization they show that the return of the banks for cash on hand was two million eighty-two thousand eight hundred and thirty dollars, which everybody knows is a ridiculously low estimate, and is not a fair return at all of the money now on hand.

Now, in eighteen hundred and seventy-eight, a little less than a year ago, the Bank Commissioners while in San Francisco summoned witnesses before them in relation to the amounts of money had and loaned by the deposit banks, and it appears from that testimony—it is published in the Chronicle of that date—a paper that has published uniformly very valuable commercial and statistical information. The Savings Union, with a capital stock of four hundred thousand dollars, had on deposit eight million five hundred thousand dollars; loaned on real estate seven million five hundred thousand. German Bank, capital stock, two hundred thousand dollars; deposits, eight million six hundred thousand six hundred dollars; Hibernia Bank, no capital stock, but a guaranteed fund of one million five hundred thousand dollars; deposits, fourteen million dollars; loans on real estate and approved bonds. French Bank, no capital stock; surplus fund, two hundred and eighty thousand dollars; deposits, six million dollars; loans on real estate and county bonds. Odd Fellows Bank, no capital stock, but a surplus fund of sixty-nine thousand dollars; deposits, five million six hundred thousand dollars; money loaned on real estate and municipal bonds. Security Bank, capital stock, three hundred thousand dollars; deposits, two million five hundred thousand dollars; aggregate deposits loaned as returned by the testimony of the officers, thirty-seven million one hundred thousand dollars. And yet it is perfectly notorious that under the decision of the Supreme Court in the case of the Hibernia Bank that there was no revenue at all derived by taxation from these immense loans.

Now, then, it is perfectly immaterial whether the tax should have been paid by the banks or the depositors. It was so much money, so much property, which should have been taxed, and the failure to tax that property has added to the levy upon every other taxpayer; and therefore, I say it is, that without an income tax you never can reach these funds; you never can tax this property; because you will never ascertain with any accuracy how much they have had deposited, and how much they have loaned. It strikes me, therefore, that this amendment is a good one, especially as this matter is left to the Legislature, and they will not probably resort to it unless they find justice requires it. I see no objection to the amendment of the gentleman from Solano. On the contrary, it seems to be eminently proper and right, and a provision that should be engrafted in this Constitution.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I have only to say that I am in favor of this amendment as amended by the gentleman from Los Angeles. I think it ought to be adopted solely upon the principle that we ought to be consistent. You have provided that solvent debts shall be taxed. You have got it fixed so that you tax the poor washwoman on her passbook and you tax the banker on the same money, and now I think there should be an additional burden upon that money loaned. I think it is eminently proper. And when it is all done we will present the most inviting field for capital that can be found on the globe.

MR. BARTON. Mr. Chairman: I do not see the necessity for any burlesque in this matter. It simply gives the Legislature the power to use a drag-net, such as is required in this State. It meets the ends of justice, and that is all that can be said. I hope, therefore, that it will be adopted.

MR. EDGERTON. Mr. Chairman: That is a very convincing speech of the gentleman from Humboldt, and corroborates my view. It is merely permissive; it is merely a suggestion to the Legislature that it can do this. I protest against loading down this organic law with provisions of this kind, which are permissive in character. Everybody knows that knows anything about it, that under our form of government, the Legislature can do everything that it is not prohibited from doing by the Constitution of the State or the United States. Why this Convention should suggest a thing to be done by the Legislature when they can do it in the absence of a prohibition in the Constitution, I do not see.

MR. MCCALLUM. Mr. Chairman: I ask whether the Legislature has not this power already? I am in favor of this idea of income taxes in certain cases, but has not the Legislature that power without asserting in the Constitution that it has such power?

MR. HOWARD. Yes; but the gentleman knows, as a member of the bar, that the fact that a provision was rejected by a direct vote of the Constitutional Convention has always been an argument against its validity in construction.

MR. EDGERTON. I can see no use in lumbering up the Constitution with sections giving the Legislature permission to do something it can do without permission.

MR. HOWARD. What is the harm?

MR. MCCALLUM. I see a good deal of harm in putting in anything that is unnecessary. I would, though, be in favor of making it mandatory, which is entirely a different thing. I do not understand that this amendment is intended to do anything towards making double taxation in case of mortgages, because we have already provided for a tax on money secured by mortgages and upon other solvent debts. Now, to tax the income from money loaned as interest, as this section provides, I would like to ask the gentleman from Los Angeles if that is not double taxation to that extent? You tax the interest received from the mortgage and tax the mortgage itself.

MR. HOWARD. The gentleman is anticipating a thing that probably never will occur. It is to be done by the Legislature, and he is anticipating that the Legislature will be guilty of the absurdity of taxing the money on mortgages and then levying an income tax upon it. That is not to be presumed at all. The proposition does not present that idea at all. If they have taxed it in another form it is not to be presumed that they will tax it in the shape of an income, unless we assume that the Legislature will be guilty of an absurdity, which we have no right to assume.

MR. MCCALLUM. Strike out the other and make it mandatory, and I would like to vote for it. We have provided for taxing the solvent debt, and I object to these two provisions.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: Experience in the eastern States during and for some years after the war has shown that an income tax was obnoxious to the people of the United States, and I hope that this proposition will be promptly voted down.

MR. McCALLUM. I will ask the gentleman if he is not aware that that income tax included the income upon occupations as well as an income on property.

MR. BEERSTECHER. Mr. Chairman: There is such a thing as going too far. There is such a thing as confiscation. I believe in taxation, but I believe in stopping where taxation ends or where confiscation begins. Now, gentlemen, we have said that mortgages are to be taxed, and we have said that solvent debts are to be taxed. If you tax solvent debts, and if you tax mortgages, and they are honestly put upon the assessment roll, and the tax is scrupulously and honestly paid, if you then go to work and tax the man's income you certainly tax him twice.

MR. AYERS. I would like to ask the gentleman in what way you are to get at that vast number of people who pay no taxes, but live on the incomes from Government bonds, except by an income tax? One fifth of the values of this country are so held.

MR. BEERSTECHER. The answer is this: I have heard it repeated and reiterated a thousand times, not only through the public press of the country, but also from the stump and on the street corners, about the bloated bondholders that hold the United States bonds, but I have never seen them in the State of California. There is probably one man in ten thousand who holds any Government bonds in this State. They are held east of the Mississippi and beyond the Atlantic Ocean. We are not to tax probabilities at all.

MR. AYERS. They exist here in large numbers—hundreds of millions—and the number will be larger in the future.

MR. BEERSTECHER. The experience under the income tax during and immediately succeeding the war was this: The man of small means, the tradesman, and the small capitalist paid that income tax, but the rich man, the large capitalist, and the monopolist, escaped the income tax, as he will inevitably escape any other tax that you may see fit to levy upon him. I tell you that the big fish are going to break your net every time, and the small fish and the medium sized fish are going to be caught by it.

MR. AYERS. We wish to reverse the rule.

MR. BEERSTECHER. You will not succeed in doing anything except loading down the Constitution. I believe in taxing the mortgages. I believe in taxing solvent debts. I believe in taxing the stock of corporations; I believe in taxing the property of corporations, but I do not believe in an income tax. An income tax is obnoxious to the people, and whether that income tax be levied upon the people by the way of a legislative enactment, or whether it be placed upon them by the Constitution, it is equally obnoxious and a stench in the nostrils of the community.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. Chairman: I hope that the amendment, or rather the section, as proposed by the gentleman from Solano, will be adopted. There are two principles involved in taxation recognized by all the writers on political economy, and when we can combine these two principles, that taxation is the best. First, taxation should be in proportion to protection; and second, taxation should be in proportion to ability to pay. Now, sir, the words, as coming from my young friend from San Francisco, do not come with good grace. We have been levying taxes upon the producer; we have been levying taxes upon the business men; we have been levying taxes upon all the walks of life; but this income tax is intended to affect professional men. Now, sir, if the gentleman from San Francisco has an income of ten thousand dollars a year which he derives from his profession by his ability, by the capacity of his brain, then, sir, I say, if the Government gives him protection for that ten thousand dollars, he should be compelled to pay some ratio of it back to the Government for that protection. I know this income tax is obnoxious in some ways, but there is no tax that is not obnoxious. I know that it is inquisitorial; but, sir, other taxes necessarily involve inquisitorial measures also. I know that it has derived a great deal of its obnoxious character from the days of the war; but that was merely a temporary expedient. Furthermore, the principle involved prevails in the taxes that are levied in England and in France. I cannot understand how any gentleman can oppose this income tax. It is levied on the principle of ability to pay. Let the Legislature exempt all incomes below two thousand dollars, or some such similar measure, and it will only affect those who can well afford to pay a fair pro rata to the Government for its protection.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I hope this proposition will not prevail. In the first place, I think every man will concede that the Legislature will have the power, if it sees proper, to levy an income tax. I see no necessity for loading down this Constitution with a direct proposition for an income tax, which, wherever it has prevailed, has been considered an odious tax, and which is more odious in the United States than anywhere else, and more odious in California than in any other part of the United States. Now, this tax, I believe, was introduced in England by Sir Robert Peel, in eighteen hundred and sixteen, and he then declared that it ought not to be a permanent tax, but could only be justified by the necessities of war.

MR. DUDLEY, of Solano. Has it not since become a permanent source of income in England?

MR. FREEMAN. As far as my information extends, it has not.

MR. DUDLEY. It has, for years.

MR. HOWARD. I will correct the gentleman in regard to Sir Robert Peel being the author of the original income tax. The first income tax was levied in seventeen hundred and ninety-eight, and after it had been suspended was reintroduced by Sir Robert Peel.

MR. FREEMAN. I have in my hand a book published in eighteen hundred and sixty-three, by an eminent author, in which he speaks of Sir Robert Peel's scheme, and in that debate Sir Robert Peel declares that it was an obnoxious tax; that it should be reserved to time of war; that nothing but an emergency would justify its imposition. And he did not deny that it was an inquisitorial tax. He admitted that it would fall with peculiar severity on those who were determined to act honestly, and that a good deal of inconvenience must arise from inquiries that must be instituted. Up to the time of the publication of this work, an income tax had been renewed in England, but not up to that time as a permanent tax. Just before the publication of this book, it had been increased for the purpose of bearing the expenses of the great war with Russia; but as then proposed, it was only to have an existence for a period of seven years. Now, the reason I think this tax is more objectionable in California than elsewhere, is that it is a tax upon production; it is a tax upon industry; it is a tax upon enterprise; and a relief to that kind of speculation which holds property solely for the sake of a rise. We have men in this country that hold large tracts of land that are adding nothing to its industry, nothing to its enterprise, nothing to its wealth. Under this system, that class of men having no income are not taxed, and it is simply adding an additional burden to those who are active, enterprising, and industrious.

REMARKS OF MR. HUESTIS.

MR. HUESTIS. Mr. Chairman: I am in favor of the adoption of this section. It will be remembered that, pending the consideration of the question of taxation of mortgages, it was argued that in case mortgages were taxed, or money secured by mortgage, that there would be no money loaned upon mortgage, and as the object of the taxation of mortgages was to secure the tax upon money, and if the arguments be true that were then urged, how, I ask, would that tax be secured in any other way than through a medium of this character? I submit that it is a question among lawyers whether the Legislature would have the power to levy an income tax unless that power was especially delegated through this Constitution.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I hope that this committee, or the Convention, will not fail to give the power to the Legislature at any future time to impose an income tax. It is a question among the lawyers of this Convention whether, if it is not declared in this Constitution, that the Legislature has power to impose such tax—whether it would have such a power. The reasons given are that the various taxes will be enumerated in this Constitution which the Legislature shall impose, and this being left out, the argument will be that they have no right to impose any other taxes than those enumerated in the Constitution. It is necessary in this State, as well as in other States, to reach these vast incomes by taxation, which now escape. The people complain that none but the producing and the enterprising classes are paying taxes, while those who have vast incomes are not furnishing their just quota to the support of the Government. It is not fair, it is not equal, and it is not uniform. As to the obloquy which is said to have attached to this tax when it was imposed by the Federal Government, allow me to say that it was, perhaps, more due to the character and immensity of the tax which was imposed by that law than anything else. The first two years in which that tax existed the tax was three per cent. on all over five thousand dollars, and five per cent. on all over ten thousand dollars. The law was amended so as to make it five per cent. and ten per cent. The ten per cent. was certainly a tax under which any people would groan, and which would raise cries of opposition. Its obnoxiousness arose more particularly from that than from any other reason. I paid the tax when it was in force, and I do not recollect that I felt very sore over it. I found nobody who did, except that class who have immense incomes and could stand it. These people, with their power and their influence, exercised such an influence upon the organs of public opinion that they rendered the tax odious. But there never was a tax more easy upon the poor man than the income tax. It was, indeed, the friend of the poor man. Now, I say that if we would do anything in this Constitution to reach these incomes that escape taxation altogether, let us leave the power with the Legislature to impose such a tax.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope the section, as offered by the gentleman from Solano, will be adopted. I do not see how we can reach a large amount of property and compel it to pay taxes in this State without it. I do not believe that it is wise for this committee to attempt to digest and produce a plan for the purpose, but I believe it could be left to the Legislature. I understand very well that this tax is considered and looked upon as an odious tax, but we are not to look to that. If it is just, if there is no other means by which we can obtain the revenue that this part of the community ought to pay, then we should provide that the Legislature may impose such a tax. In the State of Massachusetts they have always imposed an income tax since the year sixteen hundred and forty-six; and I read from the report of the Commissioners, relating to taxation, made in the year eighteen hundred and seventy-five, after the famous report that has been referred to here so many times, of the New York Commission, I find that in sixteen hundred and forty-six they passed an Act, in which was this:

"And for all such persons as, by the advantage of their arts and trades, are more enabled to help bear the public charge than common laborers and workmen; as butchers, bakers, brewers, victualers, smiths, carpenters, tailors, shoemakers, joiners, barbers, millers, and masons, with all other manual persons and artists, such are to be rated for returns

and gains, proportionable unto other men, for the produce of their estates."

Now, sir, it goes on to discuss this question of income tax, and I will read a very short selection here:

"However unpopular an income tax is—and we admit that it is extremely so—and however irregular and inefficient its administration—all which, in the actual fact, it would be difficult to exaggerate—it seems to us that no one can clearly understand this tax without admitting both its economy and its justice. 'The subjects of every State,' says Adam Smith, in his Wealth of Nations, 'ought to contribute to the support of the government, as nearly as possible, in proportion to their respective abilities—that is, in proportion to the revenue they enjoy under the protection of the State. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation.'"

They go on to show the result of the tax in that State; and further on, in the appendix to the report, is printed the argument that was made by Dr. A. Z. Brown, who was one of the principal Assessors of the City of Cambridge, and had been for twelve years, and the result of his experience in collecting this tax. With the permission of the committee I would like to read from it:

"The total value of personal estate and income taxed to residents of said ward is four million three hundred and sixteen thousand six hundred and fifty dollars. Of this sum, one million and sixty-five thousand dollars is for incomes, being about twenty-five per cent. of the total value of personal property taxed to residents of the ward, and between one thirteenth and one fourteenth of the total valuation of the ward. Deduct twenty-eight thousand dollars for abatements from the total value of income, and there remains the sum of one million and thirty-seven thousand dollars from which taxes are to be derived. Twenty-seven persons, nearly all of them the wealthiest residents of the ward, pay a tax on income valued at five hundred and nineteen thousand four hundred dollars—that is, twenty-seven of the three hundred and two individuals in this ward taxed on incomes, pay more than the remaining two hundred and seventy-five persons; one hundred and seventy-six of the three hundred and two are taxed on four hundred and fifty-four thousand six hundred dollars, and one hundred are taxed on seventy thousand dollars.

"The latter class is composed of the less favored as to property. Repeal the law, and distribute upon property the amount taxed as income, and the share that would fall to these twenty-seven wealthy individuals would be a little less than two hundred thousand dollars, instead of five hundred and nineteen thousand dollars, as it now is."

And he goes on at the very last of the report and says this:

"For twelve years I have enforced this law precisely as stated, and have taxed income derived from all sources, irrespective of what use has been made of it, in the same manner as other property not specially exempted by law; and my observation of its operations during that time has convinced me, more than any mere theoretical reasoning could have done, that the tax is as just and as easily borne as any, and that there is no more difficulty in applying the law taxing income, than the law taxing personal property."

I am reading from the appendix of the report of the Commissioners, relating to taxation, of Massachusetts, an argument made before a legislative committee by Dr. A. Z. Brown, one of the principal Assessors of Cambridge.

Now, sir, it is said that this tax is inquisitorial. I admit it in some respects. But I beg to know what tax there is that is not? Is not the tax on personal property? I contend that this tax is no more inquisitorial than that. This tax is levied for the purpose of making each individual pay what he is able to pay, according to his ability, for the support of the Government. If we were only to make tax laws for honest people, if there were none who would attempt to evade the law, no one would complain that it was inquisitorial. Any man who is desirous or willing to pay the amount of tax that his property should bear, does not consider it inquisitorial for the Assessor to come to him and inquire in regard to his property; and I pretend to say that any man who desires to evade his taxes will consider any tax, or any effort of the Assessor to find out what property he has, inquisitorial.

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

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Los Angeles, Mr. Howard.

The amendment was rejected, on a division, by a vote of 24 ayes to 67 noes.

THE CHAIRMAN. The question recurs on the adoption of the section as offered by the gentleman from Solano, Mr. Dudley.

The section was adopted, on a division, by a vote of 66 ayes to 39 noes.

POLL TAX.

MR. BARBOUR. Mr. Chairman: I now offer an additional section, to take the place of section nine.

THE SECRETARY read:

"No poll or capitation tax shall ever be imposed on any citizen of this State."

MR. CAPLES. Mr. Chairman: I send up a substitute for that section.

THE SECRETARY read:

"The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, insane persons, idiots, and Indians not taxed; and such taxes shall be paid into the County Hospital Fund of the county in which such taxes shall have been paid."

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: The equity, the propriety, the justice of the poll tax, it would seem, is too apparent for discussion, or argument, or serious consideration. The idea that the whole burden of government should rest exclusively on property, as suggested, is wrong in principle. Let us, Mr. Chairman, examine the philosophy of taxation. Why does the Government take from the citizen a certain amount of money annually? What for? What is the equivalent? If there is no equivalent, then it is robbery. But there is an equivalent. That equivalent is protection. Is there nothing but property protected? If not, then it would be right to say that property should bear the whole burden of government. For property is protected. But persons are protected, and things are protected, evidences of indebtedness, if you please, bonds, mortgages, and notes of any kind, and choses in action are protected in law, and therefore ought to contribute to the support of the Government for that protection which they receive. Now, this being the case, I hold that it is self-evident, that it is conclusive, that persons owe to the Government an equivalent for the protection that they receive. Why? I demand to know why should not the individual, the citizen, the mere inhabitant over twenty-one years of age contribute two dollars per annum for the protection that he receives from the Government? In the substitute I offer, Mr. Chairman, this tax of two dollars per annum is proposed to be devoted to the Hospital Fund, to provide a home for those who have not been provident in providing for themselves; a home in sickness, infirmity, and old age. I am, Mr. Chairman, utterly at a loss to grapple with the theory that persons owe nothing to the Government. It is so utterly unfounded, that I am confounded at the assertion of the theory that the men who are protected by the Government; who, in the protection of their property or persons, impose upon the Government a large proportion of its expenditure, owe nothing to that Government. Why, Mr. Chairman, it is the very climax of absurdity to assert any such thing. Is it not a fact that our Courts are largely occupied in matters and things in connection with the administration of justice, growing out of that obligation that the Government owes to the citizen for the protection of his person?

Is it not a fact, Mr. Chairman, that those who are so imprudent as not to have provided for themselves in the event of infirmity, sickness, and old age, are provided for? Is it not a fact that every county in the State has its county hospital that is supported at the expense of the thrifty, the industrious, and the energetic, and those who provided not only for themselves, but for those who were not sufficiently prudent to provide for themselves? Now, I ask, in the name of reason, in the name of justice, in the name of common sense, why these men who, while they are able to, are producing wealth, and make two, three, or five hundred dollars a year, and squandering it, why they should not contribute two dollars a year to the Hospital Fund, when they are liable to become a charge upon public charity? It seems to me there can be no objection—no real objection—raised to this, except it be based upon the legal proposition that persons, as such, owe no obligation to the Government that protects them. Now, if gentlemen will get up here and assert this proposition, we will know where to meet them; but I apprehend that no gentleman upon this floor is prepared to put himself in the position of asserting that the individual, the citizen, as such, owes nothing to the Government that protects his life, protects his person, and protects his interests. Now, Mr. Chairman, if this position is assumed, that property alone—property, as such—must of necessity bear all the burdens of Government, then it seems to me that our action has been wrong in assuming that things, that choses in action, owe a certain support to the Government, and that we have a right to treat them as property, because the Government protects them. It seems to me that if this position be assumed successfully, that property alone must sustain the Government, that then our action has been wholly wrong, and that we should go back and undo our action, and say that evidences of indebtedness, bonds, mortgages, and choses in action, not being corporal property, should not be compelled to pay anything for the support of the Government.

THE CHAIRMAN. The gentleman's ten minutes has expired.

MR. MCFARLAND. Mr. Chairman: I move that the committee now rise, and report to the Convention that they have had under consideration the report of the Committee on Revenue and Taxation, have made some amendments thereto, and ask to be discharged from further consideration of that report.

The motion prevailed, on a division, by a vote of 53 ayes to 43 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Revenue and Taxation, have made amendments thereto, and report the same back to the Convention, with the recommendation that it be adopted.

MR. EDGERTON. Mr. President: I move that four hundred and eighty copies of the report of the Committee on Revenue and Taxation, with the amendments adopted in Committee of the Whole, be printed.

MR. JOHNSON. Mr. President: I would like it if the gentleman from Sacramento would accept an amendment to his motion. It is in respect to section two, and in order that the members of this Convention may have section two, as proposed, without any ambiguity, before them, I wish to propose in the Convention, at the proper time, a slight amendment, which is covered by this proposition which I now send up. The idea is to have this printed with this report, so that it will be laid on the desks of the members, and they can have an opportunity to examine it critically and vote upon it intelligently in Convention.

THE SECRETARY read:

"Laws shall be passed taxing all moneys, credits secured by mortgage, deed of trust, contract, or other obligations affecting property, and credits not so secured, investments in bonds, franchises, and all other property, real, personal, or mixed, according to their true value in money, except as hereafter provided; but the Legislature may authorize

the deduction of debts due to bona fide residents of this State from credits, except credits secured by mortgage, deed of trust, contract, or other obligation affecting property; growing crops and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county, or municipal corporation within this State, shall be exempt from taxation."

MR. EDGERTON. I accept the amendment.

THE PRESIDENT. This amendment is not before the Convention. It must be offered at some other time. The question is on the motion of the gentleman from Sacramento, Mr. Edgerton.

The motion prevailed.

MR. HILBORN. Mr. President. I ask leave of absence for the remainder of the week for Mr. McStay, the Journal Clerk.

THE PRESIDENT. If there be no objection, leave of absence will be granted.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

THE PRESIDENT. The next report on file is the report of the Committee on Judiciary and Judicial Department.

Following is the proposed article:

ARTICLE VI.—JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated respectively Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. If the order be not made within the time above limited, the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Justices shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall elect one of their number as a presiding Justice. All sessions of the Court, whether in bank or in departments, shall be held at the capital of the State. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected; and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election; *provided*, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also in cases of forcible entry and detainer, and in all such probate matters as may be provided by law; also in all criminal cases amounting to felony on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Courts shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; also in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance; also of all matters of probate, and also of divorce and for annulment of marriage, and all such special cases and proceedings as are not otherwise provided for. And said Courts shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. Said Courts shall be always open (legal holidays and non-judicial days excepted), and their original jurisdiction shall extend to all parts of the State. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by, or on behalf of any person in actual custody, in their respective counties.

SEC. 6. There shall be in each of the organized counties, or cities and counties, of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, Los Angeles, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court, elected in the City and County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

SEC. 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court, at the same time, as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do.

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; *provided*, that no such reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both houses of the Legislature, adopted by a two-third vote of each house. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor; but no removal shall be made by virtue of this section unless the cause thereof be entered on the Journal, or unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. There shall be one Justice of the Peace elected in each township in the State, and the Legislature shall determine the number of Justices of the Peace to be elected in each incorporated city and town, or city and county, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers shall not in any

case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars.

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment by the several Superior Courts of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive from the State treasury, for their services, a compensation which shall not be increased or diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. The Superior Judges shall be divided into four classes; those of the City and County of San Francisco, and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, shall constitute the first class, and shall each receive an annual salary of five thousand dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador, Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer, Santa Cruz, Solano, Tulare, Yolo, Kern, Yuba, and San Bernardino, shall constitute the second class, and shall receive an annual salary of four thousand dollars each, payable quarterly; those of the Counties of Calaveras, Fresno, Lake, Marin, Merced, Plumas, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Sutter, Tehama, Tuolumne, and Ventura, shall constitute the third class, and receive an annual salary of three thousand dollars each, payable quarterly; and those of all other counties in the State, not above enumerated, shall constitute the fourth class, and receive an annual salary of two thousand dollars each, payable quarterly.

SEC. 18. The Justices of the Supreme Court, and the Judges of the Superior Courts, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary of twenty-five hundred dollars, payable quarterly.

SEC. 22. The Judges and Justices of the Peace shall not practice law in any Court of the State during their continuance in office.

SEC. 23. A Grand Jury shall be composed of twelve jurors, and a concurrence of nine shall be necessary to the making of a presentment, or the finding of an indictment.

SEC. 24. No one shall be eligible to the office of Justice of the Supreme Court unless he be at least thirty-five years of age, and shall have been admitted to practice before the Supreme Court of the State; and no one shall be eligible to the office of Judge of the Superior Court unless he be at least thirty years of age, and shall have been admitted to practice before the Supreme Court of the State.

MR. WILSON, of First District. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Judiciary and Judicial Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section one.

THE SECRETARY read:

SECTION 1. The judicial power of the State shall be vested in the Senate, sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

THE CHAIRMAN. If there is no amendment to section one, the Secretary will read section two.

THE SECRETARY read:

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. If the order be not made within the time above limited, the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall elect one of their number as presiding Justice. All sessions of the Court, whether in bank or in departments, shall be held at the Capital of the State. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

MR. HOWARD, of Los Angeles. Mr. Chairman: I move to amend.

THE SECRETARY read:

"In line thirty-seven, after the word 'State,' insert, 'in Los Angeles and such other places as the Legislature may provide.'"

MR. CROUCH. I move an amendment to the section, or a substitute.

THE SECRETARY read:

"Strike out section two, and insert the following:

"SEC. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices. The presence of two Justices shall be necessary for the transaction of business, except such business as may be done in Chambers, and the concurrence of two Justices shall be necessary to pronounce judgment."

MR. CROUCH. Mr. Chairman: That is a copy of the section as it now stands in the present Constitution, except that it substitutes three instead of five. I think a Court of three men is sufficient to transact all the business, therefore I hope the amendment will be adopted.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman, and gentlemen of the Convention: I desire to state briefly the reasons which have impelled the majority of the Committee on Judiciary to recommend section two for adoption by the Convention as the new judicial system, as far as the Supreme Court is concerned. The Supreme Court, as at present constituted, consists of a Chief Justice and four Associate Justices. Under section two of the old Constitution, which is covered by the amendment offered by the gentleman from Napa, the Supreme Court has been unable to fully dispatch the business before it. I have no strictures to pass upon that Court as constituted. I think it may be said, without fear of contradiction, that the Justices of that Court have worked as industriously as any body of men could have worked in their places. The business of the Supreme Court of the State of California is, I think, larger than that of any Supreme Court in the American Union; larger than the Supreme Court of any other State. The report made to the Convention by the Clerk of the Supreme Court shows that during the four years past there have been brought and filed in that Court some two thousand and sixty-seven cases, making an immense calendar for that period of time. The Supreme Court has decided, during that time, some two thousand two hundred and forty-two cases. Of course, it decided more cases than were filed during that period, the excess being caused by the old cases on file previous to their going into office. We have thus an average of five hundred and sixty-six and one half cases a year decided by the present Supreme Court during the last four years, which is an almost incredible amount of labor. I do not think it has been surpassed, or can be surpassed, anywhere. But in order to enable the Court to accomplish that work, it had to decide five hundred and fifty-nine cases without giving any opinion in writing. If it is proper and right that a Court of last resort should deliver opinions in writing, giving the reasons for its decisions, we have it demonstrated that the Court, as heretofore constituted and organized, could not possibly perform its duties, for it could not have rendered that number of decisions and have delivered written opinions upon them. The importance of requiring the Court to give written opinions cannot be overrated. They not only become the settled law of the State, and are precedents for subsequent cases, but in many causes where the litigation is not ended by the decision of the Supreme Court, and new trials are consequent upon a reversal, the decision of the Supreme Court should be given in writing, and reasons assigned, for they are instructions to the Court below, and are the controlling rule in the subsequent litigation.

Any gentleman who has practiced in the Supreme Court knows that cases have been sent back for new trial, without written opinions, and the Courts below have been unable to ascertain the full views of the appellate Court upon the case. Four or five points may be presented. The Supreme Court may reverse the case, and send it back for a new trial, upon some one of these points, but upon which point the lawyers are unable to say—whether on five points or on one. The result is that the new trial in the Court below takes place without any light from above, and the case may be appealed a second time, and again reversed upon some one of the same points, and so, ad infinitum; whereas, if a written opinion were rendered, it might end the case without a second appeal. That practice shows the inefficiency of any system where written opinions are not required, and everywhere throughout the United States the Courts are required to deliver written opinions, stating the grounds of the decision, as we have provided in this section. Undoubtedly it will insure a careful examination of the cases, and result in well considered opinions, because they must come before the jurists of the country and be subjected to the severest criticism. I think every lawyer will agree with me, that in every case there should be an opinion in writing. It tends to purity and honesty in the administration of justice. But, as the Supreme Court is now constituted, it is unable to dispose of the cases annually coming before it and render written decisions, for no five men on the face of the earth can deliberately determine five hundred and sixty cases a year, and render written opinions on them, commensurate with the importance and character of the cases brought in this Court. The object, then, of the committee, was to increase the power of the Supreme Court, not simply in point of numbers, but to increase its effective working power; and the question was simply this: How shall we enable the Court to perform its duties? how shall we increase its effective working power? Now, to increase the number of Judges does not, in itself, increase, to any great extent, the working power of the Court, because, instead of five Judges to canvass a case, and read the transcript and briefs, we would have seven men to do the same work, which would rather retard than dispatch business. We have, therefore, after mature consideration and much thought over the matter, concluded to adopt the plan of increasing the number of Judges from five to seven, and authorizing the Court to sit in two departments at the State Capital.

The State has provided Court-rooms and a library which belongs to the Court. In this way we secure a Court of almost twice the working capacity of the old Court, as the ordinary current of cases may easily be decided by a department of three Judges, and as we will have two departments sitting at the same time in different chambers, it will enable the Court to dispatch nearly twice as much business. There is also a power here enabling the Court to sit in bank in special cases. Great and important cases would, of course, be heard before the full bench. Constitutional questions would be so heard and decided. The great object has been to secure an increased working capacity in the Court. The committee, therefore, recommends this system as one which will enable the Court to dispatch the current business, and also write opinions on all of the cases. I call attention to the telegrams sent by the Associated Press to the newspapers on this coast concerning the Supreme Court of the United States. Whatever objection may be made on the score of the unreliability of such dispatches on political subjects, I suppose there is no motive for correspondents to misrepresent matters of this kind. According to this report, there are on the docket of the Supreme Court of the United States about one thousand cases, and the Court cannot dispose of more than about two hundred and sixty cases a year. The Supreme Court of the United States, composed of nine Judges—effective, active, working men—are unable to dispose of more than two hundred and sixty cases a year, while the Supreme Court of this State has disposed of five hundred and sixty cases a year. But they were only enabled to do that, as I said before, by omitting written opinions; whereas the Supreme Court of the United States universally delivers written opinions, giving the reasons in full. Nor can it be said that their cases are more important than ours. Of course, there are questions of great national importance decided there; but in the State of California some of the most important questions that have ever been considered in the United States have arisen, not only in regard to the principles involved, but from the magnitude of property in litigation. This correspondent of the Associated Press to which I have referred, goes on to say, after stating that the Court can only dispose of about two hundred and sixty cases a year, that the business of the Court is nearly three years behind, there being cases on the docket brought in eighteen hundred and seventy-six. This, he says, induced the President to make the recommendation concerning the creation of new Circuit Judges, limiting jurisdiction to cases involving an amount not less than ten thousand dollars, instead of five thousand dollars, the present limit.

This morning I went to the Clerk's office and obtained the present calendar of our Supreme Court [showing the calendar] to be held in San Francisco. Gentlemen will understand that this is merely the San Francisco calendar. As at present constituted the Supreme Court, under an Act of the Legislature, sits at Sacramento, San Francisco, and Los Angeles, and the calendars are made up with reference to the localities named, so that this book does not include the Sacramento and Los Angeles cases. Here is a volume containing three hundred cases in the San Francisco calendar alone. In most of these cases the transcripts were filed in eighteen hundred and seventy-eight, a few of them in eighteen hundred and seventy-seven, and but one, I think, in eighteen hundred and seventy-six—so there are no old cases. They are the present and current litigation. Now, if the Supreme Court of the United States, with nine Judges, can only dispose of two hundred and sixty cases a year, how is it to be expected that the Supreme Court of California will decide the cases which are on the calendar, when in this one single division, the San Francisco district, there are three hundred cases? The result, of course, is that all these cases will not be reached. The Court will sit in San Francisco and hear some of these cases, and the rest must go over to the next San Francisco term. I know by experience, and every lawyer practicing in that Court will affirm what I say, that only a part of these cases will be heard this year. The Court will then go to Los Angeles. They will hear a number of cases there, but not all on that calendar, and then come to Sacramento. In the meantime, the large majority of these cases will not be disposed of. Now, I say it is impossible for the Court to keep up with the business; it is impossible for any five men to perform the labor, under the system prevailing heretofore, and I look upon that as so fixed a fact that we are now called upon to devise a plan by which the Court will be enabled to keep pace with the business. It is very desirable that this should be done. It is in the interest of the citizens of this State. It is their right, when they are compelled to resort to the Courts, to have their cases speedily adjudicated and determined. I have known these long delays to work an absolute denial of justice. I do not believe you can accomplish any valuable reform unless you change the system, and allow the Court to sit in departments. The Chief Justice will have the general supervision of the business of the Court, and, of course, will be constantly engaged assigning cases to the departments and reviewing decisions on petitions for rehearing. By this system we have practically two Courts. The Court sitting in departments can discharge almost twice the business. I believe, under this system, the Court will be enabled to clear the calendar every year, and, at the same time, deliver written decisions in each case. Of course, there will always be some cases disposed of without written opinions. Sometimes a case goes off on some formal motion, or is dismissed on a technical question of practice. But I am speaking generally, of cases argued and submitted upon their merits, and there the decision is of little account as settling the law, unless the Court gives its reasons for the decision in writing. I would say, in addition, that this particular section has been canvassed by a great many lawyers, and, with but few exceptions, it has received the approval of everybody with whom I have conversed. In San Francisco, the bar held a meeting upon this subject, and I think some eighty of the leading members of the bar indorsed this system, and undoubtedly their opinions are entitled to some weight in such matters as this, when we take into consideration that San Francisco has about one third of the business which comes before this Court. That body of lawyers has been in constant attendance before the Supreme Court, and understands the practical working of the old system, and has a right to speak authoritatively upon this subject; and the opinions of that body, I repeat, are entitled to great respect. They could certainly have no improper or selfish motives for recommending this plan. They recommend it only because it accords with their judgment, because they well know that a Court organized upon the present basis is entirely unable to dispose of cases upon its calendar in any one year. It is hardly worth while for this Convention to go back again to the old system, under section two of the old Constitution, because it is perfectly inefficient and inadequate to our wants, and its antiquity alone recommends it.

In regard to the proposed amendment of the gentleman from Los Angeles, I will say this: that a divided Court—a Court compelled to sit in three places—will not be so efficient or dispatch as much business. It is a very pleasant thing for us in San Francisco to have a Supreme Court at our very doors. We certainly have a much greater right to sessions of the Court at San Francisco than the people of Los Angeles have to sessions in their county, for we have one third of all the business, while Los Angeles has not one third as much business as we have. We had some seven hundred and thirty cases during the period of time mentioned, while Los Angeles during that four years had only one hundred and fifty cases.

MR. HOWARD, of Los Angeles. There were eighty cases in Los Angeles and sixty here (at Sacramento), last term.

MR. WILSON. It is very convenient for me and other gentlemen in San Francisco, to sit in our offices until the Clerk informs us that our cases are about to be called, so that we lose no time in waiting, but go directly to the Court-room and argue our cases. But notwithstanding that great advantage which results to the bar of that city from the sitting in San Francisco, it has expressed a willingness to abandon and give up that advantage, and make the sacrifice for the sake of a system that will insure a more speedy dispatch of business; and the gentleman from Los Angeles should be willing to make the same sacrifice for the same purpose. By this proposed system we will have two departments, and to compel the Court to sit in San Francisco and other places, would at once destroy its efficiency, for it will consume a great deal of its time in traveling back and forth. It must keep records in two or three places; the Clerk will have to keep a Clerk's office in each place; the Court will be compelled to have deputies in one place and deputies in another. There must be several different Court-rooms, two here and two in Los Angeles, besides the Clerk's office, all of which will materially increase the expense. The Court cannot always be in session, on account of the time consumed in traveling. Besides that, the State has its own library which is in the State Capitol here, and that is a very strong argument in favor of having the Court sit in Sacramento alone. In Los Angeles they will have no such library. The Court will be compelled to depend upon the private libraries of the members of the Los Angeles bar.

MR. AYERS. We intend to give them a library.

MR. WILSON. You intend to give them a library? How much does the gentleman suppose such a library as the Supreme Court needs would cost? I think my learned friend is very competent authority on matters relating to printing, but he probably knows very little about the cost of law books.

MR. AYERS. I wanted the Seventh of Howard out of this library and was not able to get it.

MR. WILSON. I suppose you will find twenty of them here.

MR. EDGERTON. The gentleman ought to find it on the desk of his

colleague, General Howard, who used it extensively in his Chinese speech.

MR. HOWARD. The last time I saw it, Mr. Edgerton had it.

MR. WILSON. The majority of the committee were in favor of having the Court sit at the capital alone. They had in view the efficiency of the Court, the conveniences there, and the library, which is a very important matter to the Supreme Court. Now, there are railroad facilities all over this State; facilities for traveling are increasing all the time; and although some inconveniences may arise to some gentlemen, yet the holding of Court in Los Angeles will not remove these inconveniences altogether. Of course it is inconvenient for gentlemen in San Francisco, or Oakland, or San José, to come to the capital. These inconveniences affect all who do not live at the State capital. But we must endure these inconveniences in order to insure efficiency and enable the Court to dispatch the business and keep the calendar clear.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: I hope that this Convention will favorably entertain the amendment offered by my colleague, General Howard. I may not be competent to pass upon the merits of this scheme as a technical scheme, but I certainly am competent to pass upon that portion of it which takes away the sessions of the Supreme Court from Los Angeles, and places them solely at the capital. And I say, sir, that it would be an act of injustice, now that you have established sessions of the Supreme Court there, after the people there have gone to the expense of erecting a fine Court-room for the accommodation of the Court. We have intended, and do intend, as I have said, to furnish a library, so that the objection of the gentleman on that score will be removed. I believe Los Angeles is as well provided with law books as any city of its size in the State, and there will be no difficulty with regard to books of reference. Now, sir, it is not a parallel case to cite the City of San Francisco, as regards the Supreme Court sitting in the capital, and Los Angeles. Our city is over five hundred miles from this capital. It is very expensive to litigants to come here to attend to their cases. They must send a lawyer here to tend to their cases, and in many cases it works a denial of justice. They must be satisfied with the decisions of the lower Courts, unless their purses are long. Now, sir, I hold in my hand a memorial signed by all the members of the bar of Los Angeles, over forty members, in which they ask that the Supreme Court be allowed to hold its sessions in Los Angeles, as it does now. I shall hand this to the Clerk, so that members can see it.

Now, sir, at the last session of the Supreme Court at Los Angeles, there were seventy-two cases before that Court, and the gentleman from San Francisco computed that there were two hundred cases a year, so Los Angeles is an important factor in bringing business to San Francisco.

MR. WILSON. Will the gentleman allow me a question?

MR. AYERS. No, sir. My reason simply is, that I have not the time; I have some more remarks to make. It is not out of a lack of courtesy that I decline. Now, sir, I can see no good reason for the opposition to this amendment from gentlemen of the legal profession, unless it be that, in a great many cases, it is a matter of interest to them. I presume a great many country lawyers have to send their briefs to lawyers here, and they profit by that kind of business, but that is not a reason that should have any weight with this Convention. I ask it as a matter of justice, that this Convention allow the sessions of the Supreme Court to continue at Los Angeles. I have already shown on this floor that our section of the State is very inadequately represented in the Legislature. I hope you will not put a bond upon the Supreme Court, and that you will not so far forget our claims upon you as to take it away from us. Now, Mr. Wilson, I will answer your question.

MR. WILSON. The seventy-two cases you spoke of are not all from Los Angeles County; the district embraces other counties north of it?

MR. AYERS. Yes, sir, it embraces the whole district, including Kern and Inyo, and the whole number of cases was seventy-two in the seven counties, while the district of which Sacramento is the center, only had forty-three cases. We have two terms, which would give us one hundred and forty cases a year.

MR. WILSON. In San Francisco there were six hundred cases.

MR. AYERS. The discrepancy is not so great as you make it out. Now, I hope this Convention will do an act of simple justice, and allow the Supreme Court to continue to sit in Los Angeles. The change is not demanded by the people of this State I do not believe that any large number of voters would ask for the change.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: As a member of the committee which made this report, it is proper for me to say that I am in favor of the report, with the addition of the amendment proposed by the gentleman from Los Angeles, Mr. Howard. However, in considering the report, the amendment has nothing at all to do with it in the first instance. The report is here for consideration, and if we desire to amend it we can do so. But the amendment in nowise affects the report. The new system as sought to be provided by section two adds two more Judges, and provides that the Judges can sit and do business in two departments, as has already been stated by the gentleman from San Francisco, Mr. Wilson. It is virtually giving us two Supreme Courts, or doubling the capacity of the Court. Now, although the gentleman from San Francisco defends this system, and says it has met the indorsement of the committee, and the indorsement of the bar of San Francisco and of the State, he says there is an objection to the Court going to Los Angeles, because there would be difficulty about having one section sitting at Sacramento and the other at Los Angeles. It seems to me this difficulty can be easily overcome. The Court to-day sits in San Francisco, Sacramento, and Los Angeles. The Court is composed of five Judges to-day. If you add two more Judges to the number, you have a new Court as recommended by the committee. It is not necessary that one division of the Court should proceed to Los Angeles and the other remain in Sacramento. Let the whole Court go there. What is the objection to the people south of San Francisco having Court at their very doors? Delay is a denial of justice. The Legislature has seen the propriety of allowing them to have sessions of the Supreme Court, and by increasing the number you do not increase the expense but a trifle, and there is no objection at all to the Supreme Court going to Los Angeles and San Francisco, and having sessions in Sacramento. For my part, sir, I hope to see the day when neither the Legislature nor the Court will sit in Sacramento, for it is the most unhealthy spot in the State of California. I think the river will drown out this city, in spite of the gentleman from Sacramento, Mr. Edgerton.

MR. REED. Allow me to inform the gentleman that there is not a city in the world of the size, whose death rate is less than that of Sacramento.

MR. BEERSTECHER. It is a good place to leave.

MR. EDGERTON. You have only to look at the gentleman himself, to see a complete refutation of the charge he has made. He has gained fifty pounds this Winter.

MR. BEERSTECHER. I took occasion to canvass this matter with two of the present Judges of the Supreme Court. I had a conversation with one of them, and asked him to tell me whether there was any objection to having the Supreme Court of this State sit in three different places, and he said there was not only no objection, but that it was an advantage, not only to the people, but to the Court. He said the Judges of the Court, by being obliged to sit in one place, could not accomplish the amount of work they could if allowed to sit in two or three different places; that it was an advantage to the Court, and an advantage to the people of this State, were the words of Chief Justice Wallace to me, and the gentleman has no objections to the statements being made public. The amendment says, in the capital of the State, and in such other places as the Legislature may direct. There is no analogy between the State of California and other States of the Union. Other States are no larger than some of the counties of this State. The idea of asking the people of Baltimore to go to Boston to have their cases heard, would be absurd, and yet we ask these people to go five hundred miles to have their cases heard. We are not making a Constitution for to-day, or to-morrow, or next year only. If this Constitution is adopted it will continue for years, and the southern part of this State will grow, and continue to grow, until it has many times the wealth and population that it now has, and they should not be debarred, by a constitutional provision, from having a Court at their doors. They have the Court to-day—let them continue to have it. There is only a trifling additional expense, such as traveling fees, or something of that kind. I am in favor of the report submitted by the committee, with the amendment: that is, that the Court be allowed to sit in Los Angeles, and such other places as the Legislature may direct.

REMARKS OF MR. SMITH.

MR. SMITH, of Kern. Mr. Chairman: I don't see why the Legislature should not have the power to try the experiment that they have attempted in allowing the Supreme Court to meet in different places in the State. There may be some minor objections; there may be some objections in detail; it may conflict with the dispatch of business to some extent, I admit; but the difficulties that may be in the way of the proper work of the Court, seem to me cannot be so great as the difficulties and disadvantages of those who have business in that Court. Now, I know, from what little experience I have had in practicing in this State, from the distance I have resided, that it is a great disadvantage to attorneys who have to go so far, and also works in many cases a denial of justice. The expense of employing attorneys and paying their expenses to travel so far, results in many cases in a denial of justice, for many men cannot afford it. Now, why not leave this power to the Legislature? If it shall turn out to be a disadvantage, why, the Legislature can stop it. If it is left to the Legislature they can use their discretion; if it is put in the Constitution it cannot be amended. I am in favor of the Legislature having that power.

MR. EDGERTON. The amendment fixes it at Los Angeles affirmatively, so the Legislature cannot change it. It is not left to the discretion of the Legislature.

MR. SMITH. Now, several States have had this system, and seem to like it. Missouri has the system; the Supreme Court meets in four different places. Now, I believe in having justice at every man's door, as near as possible. This is the case in all large States. Some other States have intermediate Courts. We have provided for two sections, sitting at the same time, and they may sit in bank when necessary. We have one of the largest States in the Union in territory, and the Legislature should certainly have this power, in order to meet the demands of the State. As far as I am concerned, it is not of very great advantage to my county. Travel to Sacramento from Kern does not cost much more than to Los Angeles. It is some advantage to go to Los Angeles, but not a great deal. But it is nothing more than justice to a very important district of this State.

MR. WILSON. Why not have it sit in Shasta, too?

MR. SMITH. The northern portion of the State has a very small population compared to the southern portion.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I think it is very unfair in the gentleman from San Francisco to allude to the prejudices or preferences of the Supreme Judges upon this question. Now, I have no doubt Chief Justice Wallace, who is just as good a fellow as anybody else, felt as anybody else would have felt. He fell into the hospitable hands of my friend Ayers and his colleague, Gen. Howard, and we all know what delicious wines they make down there, and what orange groves they have there, and it is no wonder anybody should get a little stuck

after the city of the angels. I expect if I should go there I would want to become an angel too. But I do not think this question ought to be a question of the preference of any member of the Supreme Court. It ought to be considered as a question of public policy and public expediency alone. Now, sir, it is well known that until four or five years ago the Supreme Court was permanently located here. It was then agreed to have a term of Court in San Francisco, and San Francisco promised to bear the entire expense of the removal and maintenance of the Court. The agreement was that the State was to be exonerated from any expense on account of the change. What was the result? Last Winter the delegation from Los Angeles came here and wanted a term of the Court held there, and they notified the San Francisco delegation, and it was agreed if they would carry the bill through they would saddle upon the State the expense incurred in removing the Supreme Court to San Francisco. Of course, San Francisco having one third of the members of the Legislature, together with the southern delegations, easily carried the bill. By that one removal alone this State was put to an expense of thirty thousand dollars in hard twenty-dollar pieces, which the City and County of San Francisco had solemnly pledged to honor, as far as it could do it, to pay all this expense, and save the State from ever paying out a dollar. So that as a question of economy a Court on wheels is not a success. There was an expense of about eight thousand dollars for removing it to Los Angeles. Then there has been added to that in various forms about seven thousand two hundred dollars, making the total cost to the State thus far for keeping the Supreme Court on wheels, of thirty-seven thousand two hundred dollars. So much for the question of economy.

Now, I claim that it adds stability to the Government to have all its departments in one place. Upon this question of convenience, the gentlemen of Los Angeles have to do business in the Surveyor General's office, why not have a branch of this office in Los Angeles? If you speak of convenience, why not have the Supreme Court of the United States to sit in every State in the Union? Gentlemen on this floor have traveled three thousand miles to attend the Supreme Court of the United States. It would be much more convenient to lawyers to have the Court go around to the different States. But this does not add greatly to the convenience of litigants. The attorneys attend the Supreme Court, and the only expense is the fees for traveling. Now, I dare say, their calendar down there, is swollen with cases clear from Santa Clara.

MR. AYERS. No, sir, only as far as Santa Barbara.

MR. EDGERTON. Well, it makes no difference where they come from, they can come here very near as quick as we can go there. Lawyers in this end of the State have more or less business to do, no matter where the session is being held, and it is very inconvenient for them to have to go way down to Los Angeles in cases of habeas corpus, etc. Gentlemen talk about employing counsel in Sacramento to attend to their cases. I think, sir, that most every attorney in the State who is qualified to attend to his cases in the Supreme Court, does so himself, and does it, too, as a matter of convenience. Most all lawyers have business to attend to in the land department, or in the Secretary of State's office, or the Attorney General's office, and they manage so as to attend to that business at the same time they are before the Supreme Court; and it is not true that Sacramento attorneys get much business of that kind by having the Supreme Court here. As far as that is concerned, there is no selfishness in it. As far as health is concerned, statistics show that this is the healthiest city on the globe, Los Angeles not excepted. There are sudden cases of mortality here as everywhere else. The people who die here generally come from Los Angeles. [Laughter.] Their climate down there is very hot, and a man soon gets lazy who lives in it. [Laughter.] And it would not be very long, if you have the Supreme Court down there, before you would see the Chief Justice, and my friend, General Howard, walking arm in arm under huge Panama hats, hunting a cool place. It will not do.

Now, the gentleman from Kern stated, that some States, among others, Missouri, have a Supreme Court on wheels. Section nine, of article six, of the Constitution of Missouri, provides that the Supreme Court shall be held at the seat of government until otherwise directed by law. Now, one word about the sentiment of the lawyers of this State. I know a great many of them, and have conversed with a great many of them, from different counties, and as far as I am advised, the sentiment of the profession on this matter is unanimous, or nearly so, in favor of having the Supreme Court held at one place, and that place the capital.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. It was the boast of a famous ruler that he brought justice home to every man's door.

MR. EDGERTON. Why not have it in every county, then?

MR. HOWARD. In England they did have it in every county. Now, sir, I say it is a matter of necessity to give to the Legislature the power to fix these terms at different places. Why, you cannot tell what day this town will be drowned out. The Judges will be seen some of these days coming out of the Court-room in a boat. [Laughter.] Yet they would be obliged to stay here. I have had some little experience with this climate myself. It is the hottest place outside of—the one down below we read of. [Laughter.] If you put it in the Constitution that the Court shall sit nowhere else but here—if they have to sit here in regular session all Summer, they will have to be regular salamanders.

MR. EDGERTON. Do I look like a salamander? [Laughter.]

MR. HOWARD. You look like a fellow that has just got out of some fire. [Uproarious laughter.] Now, I advise the gentleman to be a little cautious in regard to this matter, and not demand too much, for if Benicia, or Oakland, or San José, were to offer to-morrow to furnish State buildings free of expense to the State, this capital would travel so fast that it would make the heads of your citizens swim.

MR. EDGERTON. I have no doubt they would make the State pay for it in the end, just as they did when they moved the Supreme Court to Los Angeles.

MR. HOWARD. We made no bargains. The gentleman is entirely too avaricious for Sacramento. Why, he wants everything here. If he should see a flock of wild geese flying over, I am not so certain but he would offer an amendment requiring them to light in Sacramento. [Laughter.]

MR. EDGERTON. I had not seen a flock of wild geese for a long time until this Convention met. [Laughter.]

MR. HOWARD. The gentleman himself is about the wildest goose here. [Laughter.] Now it seems to me extraordinary that the whole business of the Supreme Court has to be measured by holding sessions in Sacramento. I cannot see how it can facilitate the transaction of business, but, as the Judges have said themselves, just the reverse. And as to the members of the bar wanting it to come here, I have never seen half a dozen who wanted it here. They do want to go to San Francisco. That is the place they want to go to, for the very best of reasons. There is an excellent library there, the health is better, and the Court can work more and to better advantage in the Summer months, if the Court was in San Francisco instead of here. Everybody knows that. Now they had sixty cases here last term of the Court. They had eighty cases in Los Angeles, so one of the Judges told me. The Judges all prefer to go to Los Angeles. Whether it is because we have good wine there, I do not know; I leave that for the gentleman from Sacramento. Certain it is that we have good wine there. And it is about the only place in the State where you can get wine that is not adulterated. Statistics show that about ninety per cent. of everything we drink, except the native product, is a villainous compound, that is poisonous to the system. The best local option law that could be passed would be one providing against these adulterations. Now, sir, I cannot see why there should be any opposition to this Court traveling. There can be no good reason urged against it. On the contrary all the argument is in favor of it. And I would vote for a term somewhere in the northern part of the State, if the people wanted it. It is no disadvantage to the Judges to travel. On the contrary it is a benefit. I can see no earthly reason why this matter should not be left to the discretion of the Legislature.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: This amendment does not attempt to infringe upon the rights of any portion of the people of this State. We do not seek to deprive the people of any portion of this State of their rights under the Constitution, but we do ask the serious consideration of this committee to this fact: that in arbitrarily placing in the Constitution a bar against the Legislature providing for sittings of the Supreme Court in future, would be unwise and impolitic in the extreme. Therefore, I hope this committee will not be guilty of the foolish act of placing in the Constitution an inflexible rule that the sessions of the Supreme Court shall be always held at the City of Sacramento. Now, it is well known, sir, that the increase in wealth, the increase in population, and consequent increase of the business of the southern part of the State, makes it necessary that sessions of the Supreme Court should be held in Los Angeles, It has been said by those who are opposed to it that it would cost a great deal of money; that it is an unnecessary expense. I have here an item from the Record Union, from a writer who is well posted, and I recommend it to the consideration of the gentleman who has charged that an increased expense of twenty thousand dollars was incurred annually by moving the Court to Los Angeles. The writer says he is confident the cost to the State for two sessions of the Supreme Court in Los Angeles will not amount to six thousand dollars a year, and the cost of those in San Francisco will not exceed nine thousand dollars a year, making a total of fifteen thousand dollars a year for the two places. The total expense of the Court in Los Angeles will not exceed six thousand dollars a year, as certified by the Clerk of that Court. Now, sir, it is very well known that the business of titles, and other business, in the southern part of the State, is very unsettled, and has been, and necessarily will be for some time to come. This unsettled condition has grown out of the peculiar land grant system adopted in that part of the State. All classes of citizens are interested, and it is a very great hardship for them to have to come so far. I know that this Convention will not be so unjust as to place a barrier in the Constitution, and make it impossible for the Legislature to provide for this matter in future.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am in favor of the report of the committee myself, but I am also in favor of the amendment of the gentleman from Los Angeles, General Howard. I know it is a very great convenience to our people to have the Supreme Court in San Francisco. The difference in the expense, it strikes me, cuts a very little figure. Suppose it does cost six thousand or seven thousand dollars a year for the Court to sit in Los Angeles. I undertake to say that the expense for traveling, to bring these eighty cases to Sacramento on appeal, would cost a great deal more than that sum. Every attorney would charge one hundred dollars more fee to try a case before the Supreme Court in Sacramento, by reason of the loss of time and expenses of traveling. The State will reap just as much advantage as it would by retaining the Supreme Court here in Sacramento. For the sake of the health and good feelings of the Court they ought not to be tied up in Sacramento. Now, sir, gentlemen have spoken about a flock of wild geese flying over Sacramento. I might add that hardly a vulture could fly over the City of Sacramento without dropping dead in his flight. Now, I submit to the gentleman from Sacramento if there is any person who goes away from this place without more or less "sand in his craw." We live upon it, we drink it in.

MR. TULLY. Your looks indicate that you come from a very healthy country. [Laughter.]

MR. HERRINGTON. For about twenty-seven days I have been suffering from the effects of this remarkable climate.

MR. EDGERTON. You are a very healthy looking ghost even now.

MR. HERRINGTON. The gentleman claims that this is one of the healthiest cities in the world. If you will go out to the "city of graves," you will find it thickly populated, a city by itself, and it has only been growing for twenty-five years. Now, I do submit that this amendment ought to be adopted. There ought to be discretionary power left with the Legislature to regulate this matter as exigencies may require.

MR. BEERSTECHER. Mr. Chairman: I offer an amendment to the amendment, to read, "in San Francisco, Los Angeles, and such other places as the Legislature may provide."

MR. HOWARD, of Los Angeles. I accept the amendment.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I hope that neither of these amendments will prevail, and I have nothing to say regarding the sanitary condition of Los Angeles, San Francisco, and Sacramento. It forms no part of the consideration, in my judgment, that should enter into this question. The State Capital has been established here by law. The Supreme Court is one of the most important functions of the State government. I challenge any gentleman to give any good reason for having the legislative branch of the government at the capital, which does not apply with equal force to the judicial department. It has been discussed here as being a question of convenience to the Judges themselves, as if that were the controlling interest. Certainly it may be proper to consider the convenience of the Judges when it does not militate against the value of the public service in which they are concerned. This is the Court of last resort for the State, and the interest of litigants is of more consequence, and entitled to far more consideration at the hands of this committee, when passing upon this question, than the mere convenience of the Judges. It is not that it might be more pleasant for them to visit Los Angeles; not that they find it pleasant to spend a portion of the time in San Francisco. I know it is pleasant there. I always spend my time with great delight in San Francisco. I can well understand why the Judges might prefer to go there and spend a portion of their time, as a matter of personal preference. But, sir, the State Capital has, in the wisdom of the people, or a majority of them, been established in Sacramento, and the arguments I make do not apply to the City of Sacramento, as such, but to the capital of the State. Why should the Supreme Court sit at the capital? First, because it is the Court of last resort for all the people of the State. It is one of the most important functions of the government. Nothing concerns the interests of the people of the State at large more than a fair and efficient discharge of the duties of that Court. It has been said here that the convenience of litigants is of importance. In my judgment it is of the highest moment—more important than the matter of the convenience of the Judges. The litigants do not have to come here with their witnesses. But they do come by their attorneys, as has been remarked here, and those who are familiar with the business of this Court know that there is no State in the Union in which so large a proportion of the cases argued before the Supreme Court are argued by the attorneys who tried the cases in the Court of original jurisdiction, as in the State of California; and I speak advisedly when I make that assertion. Now, while that is true, this other fact is true also, that the attorneys of the State can avail themselves of the State Library for the purpose of preparing their briefs. True, in all the principal cities of the State you will find libraries—respectable libraries—but when you wish to exhaust a question of law, you will have recourse to the State Library, which is selected for that special purpose. That is of the highest importance. I know in San Francisco there are divers gentlemen there who have books, and they have a library there; but it is not as ample as the State Library. I am not particularly advised how it may be in Los Angeles.

MR. HOWARD. The Judges have found a very good working library there.

MR. HALE. I am not prepared to deny it. I can well understand that there may be a good working library. The gentleman himself may have a very good working library, and he may be perfectly willing to tender the use of it to the Judges of the Court, and to the attorneys. But you must have a public library. You must have it of necessity. Another objection I have is this: by holding a session at Los Angeles it amounts to making the term exclusively for cases from that portion of the State. When the Court meets in San Francisco, few other cases are tried except San Francisco cases, or cases from that district. And the practical effect is that we in this end of the State are limited to the two terms a year which are held in Sacramento. Instead of having the privilege of going before the Supreme Court four times a year, the people are limited to two terms a year. Again, it is a bad precedent. When you put the Supreme Court on wheels and cart it over the State, you may put every other department of the State government on wheels for the same reason. Let us have a Court that will have some stability. Let us have a Supreme Court in the City of Sacramento.

MR. SCHELL. Mr. Chairman: Is an amendment in order now?

THE CHAIRMAN. Yes, sir; send it up.

MR. SCHELL. I desire to offer this amendment.

THE SECRETARY read:

"Amend the section by inserting after the word 'State,' the following: 'At San Francisco and Los Angeles, at such times as the Legislature shall provide.'"

MR. SCHELL. Mr. Chairman: I desire to say that while I am not opposed to holding sessions in San Francisco, Los Angeles, and Sacramento, I am opposed to giving the Legislature power to locate the Court at any other place. That is the object of this amendment.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: The only serious objection I had to any portion of the report of the committee has been fully satisfied by the argument of the Chairman. That was in reference to the number of Judges of the Supreme Court, and having the Court sit in departments. Now, sir, with respect to the pending amendments, I submit that neither of them ought to be adopted, nor should the language of the report be allowed to remain, as to where the Court ought to be held. I would not seriously object to leaving the Constitution and laws upon this subject as they are to-day, and to strike out this sentence about the Supreme Court being held in the Capitol. Let that language be stricken out, and the entire matter left to stand as it is to-day. The present law will then stand until repealed. If I had to vote now as a legislator upon the proposition of having the Court in Los Angeles and San Francisco, I would vote no on that proposition. But as a member of a Constitutional Convention it is a different thing. Why fix a place in the Constitution where the Court shall be held? I don't see that we should change the present law. If it is fixed in the Constitution no change can ever be made without an amendment to the Constitution. If we leave it silent the Legislature can make such changes as they deem necessary. But to name two cities of the State and place them in the Constitution, is a different thing. The City of San Francisco, of course, is the great metropolis of the State, while the City of Los Angeles is the fourth city, I believe, though a growing city.

MR. AYERS. The second city. Oakland is only a portion of San Francisco.

MR. MCCALLUM. Oakland is a city with forty-five thousand inhabitants, while Los Angeles, I suppose, has about fifteen thousand.

MR. AYERS. Seventeen thousand.

MR. MCCALLUM. About one third the size of Oakland. As to the future city of the southern portion of the State, no man can tell whether Los Angeles is going to be the principal city or some other place, and to name any one place in the Constitution is entirely wrong. Now, I suppose there are some reasons in favor of having sessions there that don't exist in other places outside of Sacramento. But I am opposed to naming either San Francisco or Los Angeles in the Constitution. If the gentlemen desire to say anything upon the subject, the proper amendment would be to say that the Supreme Court shall be held in the capital of the State, and at such other places (not naming them) as the Legislature may direct. In some States they have Supreme Court in every county in the State. It is so in New Hampshire, and others. I submit that the people ought to be left to do as they see fit in these matters, and therefore I am in favor of striking out this sentence from the report. Who knows but that in ten years the capital of this State may be removed. Some gentlemen say it ought to be moved to San José: some to Oakland. It is certainly probable, and yet we would have a clause in the Constitution declaring that the Supreme Court shall be held in the places named. Of course I am not advocating removal, but the question is one to be considered. Suppose the Constitution named San Francisco as one of the places, and the capital should be moved to Oakland, right across the bay, only six or seven miles; there would be no utility in having the Court set in San Francisco.

MR. AYERS. I will say that I had such an amendment written out: "Strike out all after the word 'Justice' in line thirty-six, to the word 'State' in line thirty-seven."

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: There is nobody of any experience in such matters but must be aware of the disastrous consequences which follow, where the location of the offices of government are left open by the Constitution. All States have their contests over the location of the capital. All cities have had their contests over the location of the county seat. These contests are always productive of evil. There was a bitter contest between Vallejo and Fairfield, in Solano County. Vallejo, San José, and Benicia have been capitals of this State, and a dozen other places covet it. Oakland still keeps alive the idea that she ought to be the capital. Now, all these contests ought to be avoided. It seems to me that the place for the sessions of the Supreme Court ought to be fixed by the Constitution. It is said that in different States the Supreme Court meets in different places. In Connecticut they have two capitals. Rhode Island has two capitals. There is no building in San Francisco suitable for a Supreme Court, unless it is the City Hall. But I am content with Sacramento. The gentleman from Los Angeles rather astonishes me. He seems to intimate that there is an intimate connection or analogy between the decisions of the Supreme Court and the quality of their wine.

MR. HOWARD. If the gentleman will come down there we will explain it to him. [Laughter.]

MR. SHAFTER. A man cannot administer justice well when full of wine, and I never get full. "Wine is a mocker, strong drink is raging," and doesn't have a good effect upon the administration of justice. The question to consider here is: Which is the best place for the Supreme Court to sit? Which is the most convenient for the people of the whole State? Where can the Court sit to the best advantage? Everybody knows we have an excellent library here containing books hundreds of years old. I do not believe Los Angeles wants to pay out forty thousand dollars for a library. They have private libraries in San Francisco that cost twenty thousand dollars. I prefer to have the Supreme Court at the capital. That is where it belongs, and nowhere else. There is no saving in expense, for it simply takes it off one set of shoulders and puts it on to another. The cost of sending the Supreme Court down there is greater than the expenses of the lawyers to come here. The lawyers of Los Angeles do most of the business of the entire district. If Santa Barbara were obliged to come here, she would not send her business down to Los Angeles. I do not want to impair the business of Mr. Edgerton.

who resides here, or the business of General Howard, who resides in Los Angeles. That has nothing to do with the matter. I insist that this thing ought to be settled in the Constitution, and settled in one place, and that place the capital of the State; and I don't know but we ought to have a constitutional provision making this the capital, because we have from three to five millions of dollars invested here. Here is where the Supreme Court ought to be, here where the archives of the State, and all the other departments of government and the State Library are. The Judges are elected to tend to their business. They want to be put down in one place and made to attend to their business. Now, there is no such thing as having one section of the Court in one place and another in another.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I am convinced that there is nothing we can do but what will be attended with some evil. That is, I think, a principle we are all bound to admit to be true. Now, I am convinced that it is improper to have anything in the Constitution which would require an impossibility. It sounds very foolish to say, in the Constitution, that the Supreme Court shall be in Sacramento, or in San Francisco, or in Los Angeles. Gentlemen, of course, have their preferences in regard to localities. But we must recollect the various contingencies which happen to different cities. We know that earthquakes have shaken San Francisco from center to circumference, and that other cities where earthquakes are frequent, have been leveled to the ground. Suppose an earthquake should destroy that city, how would we comply with the requirements of the Constitution? Now, I barely speak of this to illustrate the fact of the impropriety of determining upon any one place, and fixing that place permanently in the Constitution, either San Francisco, Sacramento, or Los Angeles. Many of us have been here when this place was flooded; when it was impossible to sit here and do any kind of business whatever. I was here at one time when the waters broke through the levee, and I never saw greater excitement in my life, because they expected another tremendous flood to burst in upon the city. Now, these are contingencies that may arise again, as they have in the past. In view of these facts, why should a deliberative body say that, no matter what contingencies may arise, Sacramento shall be the seat of the Supreme Court. The Supreme Court shall sit here and no place else. I think this is one of the cases where discretion should be left with the Legislature. We should not arbitrarily say that the Court shall sit in Sacramento, or San Francisco, or Los Angeles, because contingencies may arise which will render it impossible for the Court to sit in one or another of these places. I therefore hope there will be no place designated.

MR. EDGERTON. Don't you know the entire bar of Tulare County are in favor of fixing it permanently at Sacramento?

MR. BROWN. They prefer San Francisco, because it is a healthier place.

MR. EDGERTON. The entire bar of your county prefer to have the Supreme Court fixed permanently at the capital of the State.

MR. BROWN. I know nothing about the particular desires of anybody, but I know what the general impression is. I say that the Constitution should be silent upon the question, for there may be ten thousand contingencies which will make it impossible to carry out the provision.

REMARKS OF MR. FREEMAN.

MR. CHAIRMAN. I hope this Convention will fix the place for the sessions of the Supreme Court. I should hope so, even though they did not fix it at this place. It is one of the departments and should have one place of action, in the presence of its records and in the midst of its books. It is not so material that the interest and convenience of the lawyers should be subserved as it is that the Court should be established in a permanent form. A Supreme Court on wheels is not the proper way for a Supreme Court to exist. The only instance which has been mentioned in this debate thus far where it has been done, is in the State of Missouri. As provided by the Constitution of eighteen hundred and sixty-five, in that State, there were four sessions in four districts. No doubt realizing their error, in eighteen hundred and seventy-five they fixed it in their Constitution, and said that the Supreme Court should be held at the capital. I do not now undertake to discuss the question whether the capital is the proper place for it or not, but I think it is. It stands to reason that it is. I think so long as you have this capital it is the place for State officers. As long as it is a good enough place for the Governor to stay the year round, and for other State officers to stay; so long as it is good enough place for both houses of the Legislature to meet, it is sufficiently good and sufficiently healthy for the Supreme Court. None of them have ever died since I have known that august tribunal. Now, the first evil consequence which has arisen from having this Court on wheels, is the necessary delay in the administration of justice. I believe the idea of the people of the State is that the Courts should be, as nearly as possible, in perpetual session. That the old idea of terms should be, as far as possible, abolished. Formerly we had in this State four terms of the Supreme Court, and if a person should have a case taken up from an appellate Court, he could have a reasonable expectation of having it heard in three months. Now, we have the Court so divided that the terms are six months apart in each place, so that a litigant, no matter in what district he may reside, can only expect to get a decision in six months. I say these delays in the administration of justice are gross evils which should not be allowed. This Court is to be larger than the old Court. It is to sit in two sections. Each section is to be under the direction and control of the Chief Justice. I cannot see how he can act unless the Court is kept together in one place. Neither can the convenience of lawyers be subserved by the Court meeting away from the proper libraries. In San Francisco, by the removal of a portion of the library which belongs to the Judges, they have a library. But the attorneys going there have no library, though at present, I believe, they are allowed to consult the law library. But it is not like a public library; it belongs to an association, and it is only through courtesy that they are permitted to do so. In Los Angeles there is neither a public library for the attorneys nor for the Judges. I am opposed to saying that the Court shall be held in these three places, for the two cities will throw the entire burden upon the State. We shall have to provide law libraries; we shall have to keep Clerks in each place; we shall have to rent buildings; and the result will be that the expenses of the Court will be at least double what they were before. Nor do I think the Court has been as efficient since it has been traveling about as before. For my part I know I have heard more complaints about the manner in which business is done than I ever heard before; more complaint about cases being disposed of in an unsatisfactory manner—not that mere complaint which arises from men having cases decided against them, but of cases that were decided in such a way that you could not tell how they were decided, nor upon what the decisions were based. In other words, the business of that Court has not been half done.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I see no objections to lengthening the sessions of the Supreme Court. I do see serious objections to fixing in the Constitution any place as the place of holding the sessions. I think that the amendment suggested by the gentleman from Alameda would obviate the difficulty, striking out the clause which says that the sessions shall be held at the capital of the State. I think a proviso similar to that in the Constitution of Illinois, that the State be divided into districts, so that each district can have a session of the Supreme Court once a year, would be good. Leave the Legislature to prescribe the manner and place. I have no part in the local considerations urged by the different gentlemen, which seem to me to be very small arguments to urge before a Constitutional Convention, regarding the benefits which one or another locality derives from the presence of the Supreme Court. There is nothing in the character of the business done by the Supreme Court which will give any particular advantage to any locality. In ancient times the Court used to move around and try people's cases. Now, the southern part of the State is differently situated from other portions of the State. It has grown to be a sort of an empire within itself. It has some peculiar features different from the balance of the State. We are entitled to consider the peculiar topographical features of any locality. If the State were a compact State, striking out equally in every direction, there would be no objection in locating the Court in the center of the State and leaving it there. But California is peculiarly situated. It is nearly one thousand miles long—several times its width. There would be no more proper arrangement than to cut the State in sections for the purpose of allowing Court to be held in the different districts. The State of Illinois resembles somewhat the State of California, being longer than it is wide. The State of Illinois has maintained for a long time three different places where the Supreme Court is held. They require that a term of Court shall be held in each of these divisions once every year. I think it is exactly what the State of California ought to do. With about three divisions we could get along very well. One place in San Francisco, which is the great commercial center, and another place, Los Angeles, which is the center of a great community composed of agriculturists. That is the natural and proper arrangement of the thing, and I see no objections to giving the people of the various sections of the country a chance to see and know the Supreme Court, and what sort of men they are. I believe it gives increased respect for the Court. Sacramento is not well situated. The gentleman speaks of the advantages of Sacramento. Why, there is one disadvantage that is sufficient to condemn it, and that is the tendency to make men dissipated. I have heard that wine is a mocker and strong drink raging, but men will put it into their mouths, and I would like to know what sort of a Supreme Court can exist and do business upon the water we find in Sacramento? It is enough to drive men to intoxication. And they don't even get good whisky. If we could get good whisky, I would be willing to be more lenient to Sacramento, and concede something to her; but they have the most villainous whisky of any city I have ever had occasion to be in. I am disposed to stand up for San Francisco in this matter.

MR. EDGERTON. I wish to ask you a question. Do you know that the Bar Association of San Francisco held a meeting upon this subject, and unanimously resolved in favor of having the Court permanently located in Sacramento?

MR. BARBOUR. I did not know it.

MR. WILSON. Such is the fact.

MR. BARBOUR. I will take the chances, and speak for the people who don't belong to the Bar Association. It constitutes three or four times as many lawyers as the Bar Association.

MR. TULLY. Mr. Chairman: I have conversed with many lawyers of prominence, distinguished men, and outside of the gentlemen from Los Angeles, they all seem to be in favor of a permanent Supreme Court. It ought to be located somewhere, and I think it is very proper to locate it at the capital. I claim that the leading attorneys of the State are better judges of what their clients want than they are themselves. The gentlemen can take that and make the most of it. We find a vast majority of the members of the bar of this State—distinguished men, outside of Los Angeles—who are in favor of a permanent Supreme Court. I have had occasion to vote with my distinguished friend, General Howard, on previous occasions, and I regret that I cannot go with him now. Let us say that the Supreme Court shall be held at the capital of the State, or such other place as the Legislature may direct. I think that is right. Now, my friend Judge Barbour seems to have a spite at the people of Sacramento, because the whisky and water are bad. [Laughter.] I have found them very good people here. I don't know what kind of people they have in Los Angeles.

MR. AYERS. Very nice people. [Laughter.]

MR. TULLY. I will take your word for it. Now, my colleague, Senator Herrington, he speaks of this as being a very unhealthy place; he speaks of the extensive graveyards, and of men dying here, and villifies Sacramento to an extent which I think is not warranted. I think I can account for that. The gentleman has made some effort to get into good society here, and has been barred out, because I know the people of Sacramento are a very kindly people, as I have found out, especially the ladies. I think what hurts my colleague, is the fact that the ladies of Sacramento have failed to appreciate him, and notice him. He has been left off the invitation list to some church festival, or something of that kind, and I enter my protest against charges of that kind. Seriously speaking, the people of Sacramento deserve a great deal of credit for their unbounded enterprise. They have pulled against fire and flood and came out victorious, and I for one do not propose to take the State Capital away from them. I don't think there is any danger of that being accomplished.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I am not here to defend the interest of Sacramento, or speak about it in any respect; neither am I here to defend the interest of San Francisco; but I am here for the purpose of favoring the interests of my constituency, and to speak what I believe to be in the interest of the people of the State. While I would like to accommodate my friends from Los Angeles, and my friends from San Francisco, we have started out here with a great cry of economy. We have attempted to inculcate it throughout California. We have cut down the State officials, and in various ways tried to practice and preach economy. Now, sir, I think those members who have been in favor of economy had better come back to the starting point. The taxpayers of California have provided a Supreme Court and Court-rooms, with a good library, and I do not believe it is in the interest of the taxpayers to put the Supreme Court on wheels, and pay fifteen thousand dollars extra, as illustrated by one gentleman. I do not consider it in the interest of my constituency to pay this extra fifteen thousand dollars. I do not think the interest of the lawyers ought to be considered so much as the interest of the taxpayers, and I think it is unjust to the people of this State to tax them with this extra fifteen thousand dollars to put the Supreme Court on wheels and cart it round over the State. I think the Supreme Court ought to be located and settled at the State Capital.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I do not profess to be able to argue this question from a legal standpoint. I believe, with my friend General Howard, as far as the Court being held at different places is concerned. I have nothing to say against the interests of Sacramento, or the health of the place, or anything else. I havn't tasted the whisky, but I know something about the water. I have never been able to drink it without chewing it. Now, sir, I should be inclined to support the amendment of the gentlemen from Los Angeles, if I did not believe it would be better for the Constitution to be silent upon the subject. I do not believe it is wise for us to fix such a rule in this Constitution that no matter what exigencies may arise in the future it will be impossible for the Legislature to change it. I can see no injustice to anybody in having the Supreme Court meet in different places. It is said here that the rights of the litigants ought to be respected, and that was used as an argument for keeping the Court in Sacramento. Now, sir, I know that in the southern part of this State there are great interests and questions which are peculiar to this State. They have been spoken of here before. That is the matter of land titles. Now, sir, I knew of many litigants in that portion of the State who refrained from sending cases to the Supreme Court on account of the great expense and difficulties attending the bringing of them here. And it is no argument to say that there are not many instances of that kind. Now, sir, I would be willing to leave this matter to the Legislature. This State has already taken the initiative in experimenting in the matter. It has not been tried sufficiently yet to determine fully how it will work. If it turns out to be wrong, after having been fully tried, the people, through their representatives, can change it. If the system gives satisfaction it can be continued. But suppose some other place, in future, should loom up by some unexpected influx of population and business, in some extreme portion of the State now unoccupied, and it should be found necessary to establish a branch Court there, you could not do it on account of this provision in the Constitution. I am opposed to it. If I did not think, by the temper of this Convention, from the expressions I have heard, that it would be the opinion of a majority that this clause should be entirely stricken out, I certainly should be compelled to vote for the amendment of the gentleman from Los Angeles, because I feel that the southern portion of the State has rights in this respect which ought to be respected. It is but just that they should be considered. I do not believe that anybody has been wronged by reason of the moving of the Court to Los Angeles. I had prepared, before the gentleman from Alameda suggested it, an amendment to strike out the entire phrase. I hope that will be done, and the matter left to the Legislature.

THE PREVIOUS QUESTION.

MR. STEDMAN. Mr. Chairman: I move the previous question, as I believe this matter has been sufficiently discussed.

Seconded by Messrs. Howard, Huestis, Ayers, and Van Dyke.

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

Carried.

THE CHAIRMAN. The first question is on the amendment of the gentleman from Stanislaus, Mr. Schell.

Lost.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Los Angeles, Mr. Howard.

Division being called for, the committee divided, and the amendment was lost—ayes, 24; noes, not counted.

THE CHAIRMAN. The question is on the amendment of the gentleman from Napa, Mr. Crouch.

Lost.

MR. WATERS. Mr. Chairman: I move to strike out the whole sentence, beginning on line thirty-six, "all sessions of the Court, whether in bank or in department, shall be held at the capital of the State."

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

REMARKS OF MR. WATERS.

MR. WATERS. Mr. Chairman: I make this motion to strike out that sentence, because I do not believe it is politic to stir up local strife in this coming election to ratify or reject this Constitution. I think it is better to leave the matter to the Legislature, and allow them to fix the sessions of the Supreme Court. If you put this provision in the Constitution, you will antagonize a great many people in the southern portion of the State. We have very little margin to go on, and for one, I should like to see the Constitution ratified. There are evils that ought to be corrected, and if we load this Constitution down here by taking away these privileges, we cannot expect it to be adopted. Would not the people of Sacramento vote solid against the Constitution, if we should put in a provision moving the State Capital away from the place? Certainly. I believe if you should take the terms away from San Francisco, that a great many people there would vote against it on that account. There is a local pride which is very powerful in this regard, and the local pride of Los Angeles is very strong. You had better leave this to the Legislature.

MR. EDGERTON. If I understand the gentleman, he means to impress the Convention with the idea that if this clause is not stricken out, Los Angeles and San Bernardino will vote against the Constitution. I want to know of the Los Angeles and San Bernardino delegations if they mean to get the Supreme Court there by threatening us?

MR. WATERS. The gentleman entirely misunderstands my motives. I mean to say that it is impolitic for us to enter into local legislation in the Constitution.

MR. EDGERTON. This is not local legislation, and there is nothing in the section which necessarily fixes the terms of the Supreme Court in Sacramento, because there is nothing here which fixes the capital at Sacramento. We only provide that the Supreme Court shall be held at the capital. The departments of government should all be together at the capital of the State. I can make nothing else out of the gentleman's remarks, but to threaten this Convention, that if this clause is not stricken out, Los Angeles and San Bernardino will vote against the ratification of the Constitution. Now, if these gentlemen came here for that purpose, they had better go home again.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: It seems it has come to this, that we must parcel out the departments of the State government, giving some to the north, some to the south, some to the east, and some to the west, or they will pull our house down. Now, sir, I am utterly and forever opposed to any division of the State government, or of the Supreme Court as a part of the State government. The Court ought to be at the capital of the State, wherever that may be. If you want to move the capital of the State to the bogs around the bay, why, move it there, and let the Supreme Court go with it. But let the State government be an entirety. Let us not mutilate it, and divide it up among the several points of the compass, in order to carry through the Constitution we are about to frame. If it depends upon such results as this to secure its adoption, then I say let it be voted down and buried out of sight forever.

Now, sir, the statement has been made that this city is subject to floods. I have been informed by a gentleman who is posted, that this ground upon which this Capitol is built is far above the high water mark, and gentlemen need not trouble themselves on that account. Now, let us see how this policy is going to work. If we give them a session of the Supreme Court at Los Angeles, Gilroy, Marysville, Chico, Red Bluff, Red Dog, and Yuba Dam will come and ask for a session of the Supreme Court, and I see no reason for denying it; always provided they can bring a lobby here to the Legislature strong enough to effect that object. And it is proper to say further, that if you leave the door open by leaving the Constitution silent upon the subject, there is no telling where this parceling out process will end. It has been asserted here that there are people in the southern part of the State—a great many people—I do not propose to deny it, I admit it, but claim that there are people in the northern portion of the State too, and they have equal rights and claims with the people of the southern portion of the State, and if the southern portion of the State is entitled to a portion of the State government, I would like to know by what rule you are going to deny the privilege to the people of the northern counties. You will recollect that for the first ten years of our existence as a State we had the capital here, there, and everywhere, and finally it settled down here, upon this soil; and why? Simply because the common sense people of the State settled upon this as the most eligible site, and when gentlemen come to moving it away from here, the people will say, hands off, for the capital is located in the center of the State. But, sir, it is not as an advocate of this particular place that I am speaking; it is in defense of that common-sense policy of keeping the State government together, that I am speaking. They are parts of a great whole, and must be kept together in order to render efficient service.

THE PREVIOUS QUESTION.

MR. HOWARD, of Los Angeles. Mr. Chairman: I do not rise to discuss this question, but merely to move the previous question.

Seconded by Messrs. Ayers, Wyatt, Wilson, and White.

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

Carried.

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

Division was called for, and the motion to strike out prevailed by a vote of 64 ayes to 45 noes.

ELECTION AND QUALIFICATION OF JUDGES.

THE CHAIRMAN. The Secretary will read section three.

MR. SHOEMAKER. I move the committee rise.

Lost.

THE SECRETARY read:

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected; and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election: *provided*, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

MR. WILSON, of First District. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Judiciary and Judicial Department, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. SHOEMAKER. Mr. President: I move we do now adjourn.

Carried.

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

ONE HUNDRED AND FOURTH DAY.

SACRAMENTO, Thursday, January 9th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barnes,	Fawcett,	Martin, of Alameda,
Berry,	Glascock,	Murphy,
Boggs,	Graves,	O'Sullivan,
Campbell,	Gregg,	Porter,
Charles,	Hager,	Schomp,
Cowden,	Jones,	Van Voorhies,
Dean,	Kenny,	Walker, of Marin.
Estee,	Keyes,	

LEAVE OF ABSENCE.

Leave of absence for two days was granted Messrs. Schomp and Walker, of Marin.

Indefinite leave of absence was granted Mr. Keyes.

THE JOURNAL.

MR. NOEL. I move that the reading of the Journal be dispensed with and the same approved.

Carried.

QUESTIONS OF PRIVILEGE.

MR. MCFARLAND. Mr. President: I rise to a question of privilege. I find in the Record-Union of this morning, in the report of the proceedings of this body, in regard to the report of the Committee on Revenue and Taxation, these words: "On motion of Mr. McFarland, the committee rose and reported the article back to the Convention as amended, with the recommendation that it be adopted." Now, it is very possible that the Chairman put the motion in that form, and the report of the reporter may be correct; but I wish to say that the motion I intended to make was simply this: that the committee rise and inform the Convention that the Committee of the Whole had considered all the sections of that report, had adopted some amendments, and reported the same back, and asked to be discharged from further consideration of the report. I had no idea of moving that the committee recommend the adoption of the article, because there are only one or two sections in the article that I am in favor of.

THE PRESIDENT. The gentleman moved that the committee rise and report back the article to the Convention, and the Chair put the question in the usual form, recommending the adoption of the report.

MR. WYATT. Mr. President: I rise to a question of privilege. Is seems to me that I was in error the other day, in making a statement as to the amount of the assessment of the Almaden mine, in Santa Clara County. The information which I had upon that subject I had derived in conversation, in the last three or four months, from several gentlemen from Santa Clara County, and in speaking of the subject the other day, this conversation happened to occur to my mind. From them I had learned that the mine was assessed in that county at about twenty-five thousand dollars. That seems, from the letter of the Assessor of that county, to be an error. He says that the mine is assessed at three hundred and seven thousand and some hundred dollars, and I now make this statement in justice to the Assessor and to the facts of the case.

JUDICIAL DEPARTMENT.

MR. WILSON. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Judiciary and Judicial Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section three is before the committee. The Secretary will read it.

SUPREME COURT.

THE SECRETARY read:

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected; and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election; *provided*, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

MR. CROSS. Mr. Chairman: I send up a substitute for section three.

THE SECRETARY read:

"SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected; and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election; *provided*, that two Justices shall be elected at the first election for State officers after the adoption of this Constitution, who with the existing Justices of the Supreme Court shall constitute

the Supreme Court. The existing Justices of the Supreme Court shall classify themselves by lot into two classes, so that two of them shall go out of office at the end of four years, and three of them at the end of eight years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term; and the Chief Justice shall be chosen by the Justices of the Supreme Court, from among their number, once in four years, or whenever there shall be a vacancy in the office of Chief Justice."

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I will be very brief. I will state that this amendment has in it two objects, neither of which will in any way interfere with the general plan of the report or conflict with the general purposes of the report as a whole. Now, sir, the report of the committee contemplates at the next general election the entire wiping out of the present Supreme Court, and bringing into that body seven new men. For my own part I believe that it is not desirable that at any time in the history of this State after its organization the entire Supreme Court should be changed at one time. I know, sir, that there are in this State men who have feelings of animosity against our present Supreme Court or against the members of it; but, sir, it seems to me that just at this time, when our State is undergoing so many radical changes that there should be in the whole State one body which is not to be changed too suddenly, and that body should be the Supreme Court of the State. So far as I am concerned, I have no fault to find with the present members of the Supreme Court. I do not know that we are certain that we should better the Court by turning out the present five members and putting in others; and if we should adopt the section reported by the committee on the first day of January, eighteen hundred and eighty, we would be very likely to have sitting as our Supreme Court seven men who are not at all familiar with the business of the Court. My observation of that body has been that cases are argued and submitted. Sometimes the decision of these cases require a great deal of investigation. That investigation sometimes lasts weeks, and even months, in order to get decisions that will not have to be changed. Now, it would be natural to suppose that on the first day of January, eighteen hundred and eighty, there will be a large amount of unfinished business in the Supreme Court, and if there be such business in the Supreme Court at that time then every case must be reargued and resubmitted. The work of the Supreme Court would have to be done over again.

Now, sir, another matter is the matter of choosing the Chief Justice of the Supreme Court. This report looks to the election of a Chief Justice of the Supreme Court once in twelve years. The result will be this: that on the first of January, eighteen hundred and eighty, the people of this State will elect a Chief Justice, and that man will be Chief Justice of the State of California for twelve years, and the probabilities are that in the present state of affairs a man will be elected to that position who has not been connected with the bench of the Supreme Court. My idea of this matter is, that it would be much better that when the Justices of the Supreme Court—the seven Justices—have been elected, that they themselves should choose from their number the man who they think best qualified to be Chief Justice. Our present law is that the man who has been on the bench the longest shall be the Chief Justice. I do not think that is the best possible law, because it does not always follow that the oldest man is the best man. But by this provision, a man once elected holds for twelve years, and although there might be a man on the bench better qualified for the position of Chief Justice, and so recognized, not merely by the Supreme Court, but by the people, there is no way to give the people the benefit of his superior abilities as such Chief Justice until the people elect him Chief Justice after twelve years. Now, sir, it seems to me it would be far better if once in four years the members of the Supreme Court had the power amongst themselves to select the ablest man in their body to preside; and it seems to me that when the Supreme Court is composed of seven members, that they are the men who should determine who should be the presiding officer in their affairs. It seems to me that this would be better and wiser. I submit this section with great diffidence, though I know that many lawyers agree with me.

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

THE SECRETARY read:

"Amend section three by striking out the word 'twelve,' in line four, and inserting the word 'four;' and striking out all of said section from the word 'provided,' in line five, to the word 'State,' in line eleven, both inclusive.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I suppose there is no State in the Union where so long a term as that proposed in this article is provided for. Now, does it not strike every member as rather undemocratic to elect officers for nearly one half the term of the active life of man, without any possibility of change, except by the hand of death? I see no reason why for applying a different rule or principle to Judges, from that applied to the other officers or servants of the people. I say that they should, at reasonable intervals, return their trust to the people, and give them the opportunity to pass upon the subject of the efficiency of their services, and even their worthiness for reëlection to the same position. I am satisfied that the principle, the idea of electing officers for such a long term as this, will strike the people of the State, yea, sir, the lawyers themselves, as being repugnant to our institutions and our free elections. There are two systems in this country, one is the appointive system, and the other the elective system. By the elective system Judges are supposed to hold their office during life, or good behavior. This is the United States plan. The elective system is, of course, putting them on the same footing as other officers, and there is no reason for not trusting the people with an opportunity to pass upon the qualifications of their Judges, the same as the balance of their State officers. Therefore, I hope this long term will not be provided for. There is nothing worse than an incompetent, unworthy Judge, and there is nothing that is more dangerous to the liberties of the people than such an officer as that. I say that the proper method is to have the people free, whenever they can pass upon the qualification of their State officers, to pass also upon the judiciary. It will be necessary to strike out, after and including the word "provided," down to and including the word "State," in the eleventh line.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I am in favor of the section as reported by the committee without any change. The amendment offered by the gentleman from Nevada, Mr. Cross, perpetuates the term of persons now in office—or I should say extends it. There is no reason why this should be done. If those gentlemen who occupy positions upon the Supreme bench to-day are men in whom the people of California have confidence, and whom they believe to be the most fit and proper to occupy those positions, it is easy for them to have a reëlection and a reaffirmation of the confidence of the people; and it certainly ought to be a little gratifying to them if they placed themselves again before the people, that the people indorse them by reëlection. But I do not believe that it is just or proper for us in this Constitution, not only to submit to the people of the State a new organic law, but at the same time make it incumbent upon them, when they vote in favor of the Constitution, that they also vote to prolong the term of the existing Supreme Court. We are making this not only an indorsement of the Constitution, but also an indorsement of the present existing Supreme Court, in the amendment offered by Mr. Cross. The argument in favor of this amendment is that it would be disastrous to have these gentlemen go out of office and to have others come into office. Not so at all. If the men that go out of office are good lawyers, and the men that come into office are equally good officers, both of them understand their work and there will be no difficulty at all. Much less is this the case in judicial positions than in any other position, than in any clerical position, or in any ordinary business of life. One lawyer understands the work of another lawyer thoroughly, if he be versed in his profession. There is no argument at all in favor of prolonging the term of these gentlemen, and requiring the people when they vote in favor of the new Constitution also to vote to prolong the terms of the existing Supreme Judges.

I am not in favor of the amendment of the gentleman from San Francisco, Mr. Barbour. He says that the terms ought to be reduced from twelve to four years, and that there are no Judges holding twelve-year terms in the United States. I call the gentleman's attention to the fact that the best bench that we have in the United States to-day is the Federal bench and the Federal judiciary; and that the Federal Judges not only hold for twelve years, but they hold for life, and there has never been any objection to these gentlemen. They have always been found capable, competent, honorable, and honest men. If an attorney qualified to go upon the bench of the Supreme Court is nominated and is elected, he is obliged to leave a lucrative practice, and for the purpose of going on the bench for only four years, many men will hesitate to leave a lucrative practice; but if you give them twelve years, they can afford to leave their practice. They can afford to go upon the bench and do justice to themselves and justice to the people of the State. If you elect them for only four years, it will be impossible for them to accept the position. Such lawyers as we should have, and such lawyers as we must have, to occupy the bench of the Supreme Court, are men who cannot leave their practice merely for four years, and that is the reason the committee placed the time at twelve years, in order that we might get the best talent of the State to occupy the position. The report of this committee is not like unto the report of any other committee which has been offered here. The report from the other committees, although they have been offered to you in sections, have been disjointed and disconnected. You could adopt one section, strike out another section entirely, or put in an entirely new and different section. Not so with this report. This report, although it is offered in sections, is a whole, and must be taken as a whole. It cannot be amended without material injury to the whole report. The committee has labored faithfully, and they offer this report as a whole, and I hope it will be taken as a whole. I hope that the amendment of the gentleman from Nevada, Mr. Cross, will be promptly voted down, and also the amendment offered by the gentleman from San Francisco, Mr. Barbour, limiting the time to four years.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope both the amendments now pending will be voted down, and it may seem arrogant in me to say that it is for the purpose of having one adopted that I would like to offer; but still that is the reason I have for the desire. [Laughter.] I oppose both amendments as I do section three, and as I did section two, upon the ground that we have more Judges of the Supreme Court than is requisite, than is called for by the people or the business of the State. I am in favor of the general idea of the report of the committee, except upon the subject of increasing the number of Justices of the Supreme Court, making seven instead of five, and then making a double headed Supreme Court. The Supreme Court, it appears to me, as blocked out by the committee, has all the grandeur of purpose that could be desired by the most extravagant. It has all the extravagance of pay that any could desire in that respect; and it has, so far as the terms of office are concerned, all that the incumbents could desire; for I think while it is said that office holders seldom die and never resign, that any man ought

to be willing to give up hold upon office when the Creator makes him give up hold upon life. I oppose it then upon these grounds, that, first, the number of Justices are too great by two; that the present number of Judges of the Supreme Court is reasonably sufficient to do the business of this State. I oppose it upon the ground that the tenure of office is too long; and I shall oppose subsequent sections as to the pay of the Judges provided for in the report of the committee, upon the ground that it is too high and extravagant. I do not believe that the cases that come before the Supreme Court as blocked out by the committee will be facilitated in their disposition before that Court. They will first go before one or the other of the branches of that Court—before branch number one or branch number two. The party who loses before that branch will then go before the Chief Justice with his petition to be heard before the entire Court in bank, as it is termed, and every one that loses will be making this petition, and if it is to be heard a second time upon appeal, it cannot reasonably be supposed that it can get through that Supreme Court, after reaching the Court before, from six to eighteen months, as it may happen, according to the amount of business they may be doing. Then, instead of facilitating business, I think it will retard business.

Then I object to it, upon the further ground that the Chief Justice of this Supreme Court can act arbitrarily and with great injustice in the position which he occupies. He can allow A's case to be heard a second time before the full bench, and he can deny B the right to be heard before the full bench, and do either upon his mere will or motion. If we have a Supreme Court, I want a Supreme Court that every man has an equal right to go to, and be heard in, not upon a mere will of one man in that Court, but by virtue of the right of being heard there, whether the Supreme Court wants to hear him or not.

MR. BELCHER. Mr. Chairman: I rise to a point of order. The gentleman is discussing the section which was passed yesterday, which goes to the number of Judges of the Supreme Court. His whole speech so far has been upon that section, and not upon section three, which is under consideration.

THE CHAIRMAN. The gentleman has overlooked the fact that Rule Forty-three has been amended and changed. That portion of it which confined the speaking to the clause under consideration has been left out. Otherwise the Chair would have raised that point before.

MR. WYATT. I will state, if it will be any satisfaction to the members of this Convention or of this committee to know, that I was doing my very best to confine myself to the question in hand, and if I was missing it, it was not from intention, but from ignorance. As I understand it, we are molding and forming a general system for the Supreme Court of the State of California, and we have under consideration now the number of Judges that we will elect. We have under consideration the term of office that they shall hold. It is to this general form and mold that I address myself, and if I am not talking to the question, it is because I am unable to comprehend, know, feel, see, or realize the question. I propose before I sit down, and before the hammer falls on me, to read an amendment that I shall offer if the two amendments now before the committee should be voted down. I draw my amendment from section three of the old Constitution, and a portion of section three under consideration:

"SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected, and the term of office shall be ten years from and after the first Monday of January next succeeding their election, except those elected at the first election, who, at their first meeting, shall so classify themselves by lot that one Justice shall go out of office every two years; the Justice having the shortest term to serve shall be Chief Justice. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term."

In other words the——

THE CHAIRMAN. The gentleman's ten minutes have expired.

MR. WYATT. Well, I have got my amendment read. [Laughter.]

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: It seems to me that the committee here had better adopt section three, as reported by the Committee on Judiciary and Judicial Department. It is entirely consistent with the whole system presented, and the amendments which are offered by the gentlemen respectively, Mr. Cross and Mr. Barbour, will tend to produce confusion and uncertainty, and destroy, to a certain extent, the entire system proposed by the committee. Now, it seems to me, that the term of office of twelve years is not too long where there are seven Judges, and we have, too, provided that two Judges go out at particular periods, to be succeeded by others. Certainly, to insert four years instead of twelve years, would be to make the term very much too short, and I understand that Mr. Barbour's proposition is to make the term four years. Now, if a Judge is elected for four years, and if we have seven of them, we would be electing Judges all the time. We must certainly have a continual election of Judges. A gentleman would only hold his position four years, and just get acquainted with the duties of his office, when he would be called upon to retire. As the election would be by the State at large, certainly it would be difficult to obtain the right material, in view of so short a term of office. It seems to me, that the provisions contained in the proviso here, taken in connection with the other portion of it, provide for everything just as it ought to be. Yesterday the Convention determined upon seven Judges by the adoption of section two, consequently that must be regarded as an established fact, at least at present, until we act in Convention. Now, we are to have seven Judges; a Chief Justice, and six Associates. There should be a classification of the Associate Justices. Now, if we make the term of office twelve years, then, as a matter of course, they could classify so as to go out regularly, and I do not think that term is too long for a Judge of the Supreme Court in this State. Every gentleman knows that it is unjust to ask a man to leave his practice and go upon the bench for so short a term, because, after that term has expired, he goes out upon the world again to seek his practice, after having abandoned it for the purpose of going upon the bench. But, beyond that, and as a question of policy, you will not get the best men to agree to take the place for a short term of office, and the continual changing of Judges is certainly one of the worst things in our system. The reëlection of the Judges is of course an approval of their past conduct, but a man should be permitted to occupy the Supreme Bench for a considerable period, to enable him to become useful, because each day he becomes better. The provisions of section ten would obviate the objections of the gentleman from San Francisco, Mr. Barbour, if we should get an incompetent or improper Judge upon the bench. This system not only provides for an impeachment in the Courts, but section ten authorizes the two houses of the Legislature, by a concurrent resolution adopted by two thirds of each house, to absolutely remove a Judge. It is a system which has prevailed in many of the States, and I think is a very good feature of the Constitution; it enables the State to get rid of a man who is inefficient, who is useless upon the bench, who ought not to be there on general principles, independent of any act of his conduct. I think it is a first rate provision. Impeachment, of course, involves the absolute commission of an offense, and a trial. In many States an inefficient Judge has occupied the bench to the injury of public business. In the case of a man of that kind, where a man is incompetent or inattentive to business, and yet not have committed any offense for which he could be impeached, yet, under section ten, the Legislature might remove him. I will read that section for the information of the committee:

"SEC. 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both houses of the Legislature, adopted by a two-third vote of each house. All other judicial officers, except Justices of the Peace, may be removed by the Senate, on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, or unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal."

Now, there is a very efficient remedy against an inefficient or improper Judge, in cases where he has not committed an impeachable offense. The views which have been advanced by the gentleman from Monterey seem to me to go rather to section two than to section three. I was unable to comprehend any portion of his argument as applying to section three, and therefore will not be called upon to respond to his argument in regard to section two, as adopted yesterday. The propositions contained in the substitute offered by the gentleman from Nevada, Mr. Cross, might be made consistent with the system, but it seems to me it is better to adopt the report as made by the committee. Otherwise we are legislating men into office instead of having an election for all of the officers, as I understand the system is intended to be applied throughout the whole series of officers to be elected under the Constitution. By Mr. Cross' amendment we would have to absolutely legislate certain gentlemen into office, or extend their terms of office for a considerable period of time. I see no special inconvenience to result from the election of Judges throughout. If so, it will be merely temporary. The Court calendar would come to the new Supreme Court with all the undetermined cases, and if they work under the system we have prescribed they will be able to decide these cases and keep up their current business. I see no real reason for changing section three, and I believe that all of the committee, upon that subject, concur with me. Those whom I have talked with are satisfied that section three is better than any substitute which can be offered for it. I hope that the amendments will be voted down and the section adopted.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: This report of the committee, while I do not feel disposed to find fault with it particularly, still it has one objection, in my opinion. It legislates men out of office. Now, while I do not approve of legislating into office, I am just as strongly opposed on the other hand to legislating them out of office. This idea of a Justice of a Supreme Court being reëlected in consequence of having been a good and efficient Judge, is all a delusion. It never has happened in this State, and I do not believe it ever will happen. If a Justice of our Supreme Court is nominated for reëlection, and happens to be on the ticket that wins, he is reëlected. If he happens to be on the ticket in the minority, he is defeated. I have known some of our best Judges defeated because they were put up by a party that was slightly in the minority. I should prefer some system by which you could allow the present Judges to fill out the terms for which they have been elected. The amendment offered by the gentleman from Nevada, Mr. Cross, does not accomplish that. I will admit, I would like if some amendment was introduced which would accomplish that end. I have none prepared, but of the two evils I believe I shall choose the least, and vote for the amendment offered by Mr. Cross, believing that we have a very fair Supreme Court already, taking them all around, and I would rather, for my part, legislate two or three Judges into office, or into two or three years' extension of time, than to legislate them all out of office at once. I know there is a disposition among a great many to have a new deal. For instance, we have wiped out the whole Senate, and we will have a new deal when it comes to the next Legislature. I must say that I would prefer to allow the hold-over Senators to remain in office, and while I do not strictly approve of the amendment offered by the gentleman from Nevada, while it does not exactly meet my views, I shall vote for it, as being better than the section presented by the committee.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I am aware we are treading upon dangerous grounds, as about one half of these men are professional men who think they know all about this matter, and I presume they should know more than a man not connected with the profession; but I am certainly in favor of the amendment offered by the gentleman from San Francisco, Mr. Barbour. There need not be a change in the Court, because we elect every four years, because I believe that the people of this State will reëlect men, and continue to reëlect men, if they are good men for the place. It looks as if these gentlemen were afraid of the people, when they desire to place men for twelve years on the bench. They say men can be removed. Not to exceed twenty men have ever been successfully impeached in all the States of the Union, while at any one time there has never been less than a thousand that ought to have been impeached. I think Judge Rolfe is mistaken, and I think probably his is the only instance where a good Judge has failed to be recognized by the people. I believe the Judge was a good Judge——

MR. ROLFE. I was speaking of Supreme Judges.

MR. LARKIN. I thought you referred to District Judges. I am in favor of electing men for four years, and if these men fill the positions well the people will reëlect them. There are men capable of to-morrow taking their seats upon that bench and filling the position as well as men who are now there and have been there twelve years. No man who goes upon that bench and does right, no man who stands squarely, need be afraid of the people of California; and it looks as if we were bound by a Court that we could not get rid of. It is true that under section ten two thirds of the Legislature may remove a Judge. The same reason that hinders men being impeached would apply there. Its effect is the same, and the same influence is brought to bear to prohibit the Legislature from acting. I am in favor of electing for four years and no longer, and I regret the haste with which the Convention passed yesterday the section increasing the number of Judges to seven. I believe that five men would be plenty; but that matter has been disposed of until we get into Convention. So far as I am concerned I shall then vote to reduce it to five.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I hope the amendments to this section may not be adopted. In regard to the amendment offered by the gentleman from Nevada, Mr. Cross, to continue the present Judges in office, I have this to say: that the terms of two of the present Judges expire the ensuing season. Then there will be only three to be continued. His amendment may continue them for twelve years, because they might draw the long term. Then we would not only submit to the people the question of adopting the Constitution, but the election of these men for twelve years.

MR. CROSS. Two Judges are to be elected for twelve years. The five are to be divided—two for four and three for eight years.

MR. VAN DYKE. I think it would encroach upon the plan of the committee, and upon their scheme for the new judicial system. I would not, however, have any objection to continuing the Judges for the unexpired term, if it could be done without deranging the scheme proposed for the new judicial system, but inasmuch as it cannot be done, I think the amendment should be rejected. Now, in reference to the amendment proposed by the gentleman from San Francisco, Mr. Barbour. If there is one vice in our judicial system more potent than another, it is the election of Judges. We can remedy the evil somewhat by a prolongation of the term. Now, four years is a shorter period than ever has been recognized in this State. The first Constitution fixed the terms at six years, but when the Constitution was amended, it was extended to ten years. The people of this State have never objected to the extension of the term, and now it is proposed to go back further than the Constitution of eighteen hundred and forty-nine, and fix the term at four years. I say that the people of the State have not demanded any such thing. They have approved of the extension to ten years, and will approve of the extension to twelve years. I think both amendments should be voted down.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I will state, as regards the term of service, that the committee had that matter pretty thoroughly discussed. There was a difference of opinion. Some held that we should have a long term, others that they should hold for a short term. I believe that in some of the Eastern States they elect for short terms, and the experience there has led them to believe that short terms are good. It gives the people an opportunity of removing, at times, Judges not fit to hold the position. But it is well known that in the eastern State there is conservatism that does not belong to this coast. It is believed that a short term of service would be not only detrimental to the lawyer but to the bench. There is too much enterprise in politics in this State to have elections for Judges so frequent. The experience of the past has shown that we will have changes, notwithstanding we have good Judges. I say that a principle that will work well in the eastern States will not work well here. You will throw Judges into politics, and make the office of Supreme Judge merely a political office in this State. You must look at the affairs of each State differently. It seems to me that the term of office fixed in the report is about right. And as to continuing in office those who are now on the bench, I think it impolitic. You might as well say that you would continue in office some District Judges, or carry the principle still farther and extend the term of other officers. It is a principle that would not be right.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. Chairman: I hope, sir, that these amendments will all be voted down, and I still further hope that this report, as it came from the Committee on Judiciary, will be adopted as a whole. It is true, sir, I was one of that committee, through the kindness of the President, and I must say that I learned a great deal from the discussions that took place in that committee. There were gentlemen upon that committee who were thoroughly posted in what the judicial system of this State is, and what it ought to be. It is not expected that other gentlemen who are not familiar with the practice in the Courts, and with the organization of the judiciary of this State, would be so familiar with it as those who make a business of it and understand it. Now, sir, this matter received a thorough discussion in that committee. It did not come up as it does in this committee, without consideration. It was discussed night after night, and week after week, and it was considered by gentlemen, many of whom we would vote for for Supreme Judges to-day, and some of whom have honored that position in the past, and they came to the conclusion that it was the best system that could be devised for the State of California. I am clearly convinced, from the discussions that took place, and from the reasons given in that committee, that no better system could be devised for the best interests of California than the system here presented by that committee. Now, so far as long terms and short terms are concerned, let me say this: that we have heretofore endeavored to take the judiciary out of politics. We established a separate and special election for that express purpose; but from the shortness of the term, it did not answer the purpose, and every person is now crying for the abolition of that system of election. Give us a long term, and by that means we obviate the necessity of men going into politics for judicial positions. They also learn what is the interest of the people of the State. That is what the people want. Who ever heard of wanting to turn out of office a Judge that acted according to the best interests of the people in Courts of justice? Who wants them in for a short term if they do their duty and act as they should act? As I had occasion to say, there were gentlemen on that committee who would to-day, if they were candidates, be elected by an overwhelming majority by the people of this State. They present this report to you, and ask you to adopt it, and I say that they are the best judges of it. They are men who in everyday life follow this business, and know what they are doing. They are men in whose opinion, if you were engaged in a lawsuit, you would place the utmost confidence in, and to whom you would say: take my case and defend it. These men have no object in coming before you and asking you to adopt anything that would not be right and just and proper. They have as much at stake as anybody, and perhaps more than the ordinary run of people. This is a good system, and I know it from having heard it thoroughly discussed night after night, and week after week, and the committee have come to the conclusion that it is the best system that can be devised, and it is the one which ought to be adopted. I hope that all amendments to it will be voted down, and the report will be taken as it is, because I know that it is right.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I reluctantly come to the conclusion to oppose both of these amendments; and in order to state my reasons I shall have to call things by their right names again. If there is one question upon which the bar of the State of California, and especially the City of San Francisco, is more unanimous than upon another, it is that they desire to change the personnel of the Supreme Court. That is reason enough for my opposition to the amendment of the gentleman from Nevada, Mr. Cross, and I will stop right there. To illustrate a little further, however, in opposition to the amendment of the gentleman from San Francisco, Mr. Barbour. He desires short terms, that these Judges may be brought nearer the people. I think experience is unfortunate for his argument. It is a well known fact, sir, that the worst, the most unfit man that we have upon the bench of a District Court in San Francisco, is the man who, by some hook or crook, is always re-elected. And so it will ever be much easier to choose the right Judge in the first case than it will be to defeat a bad one when he comes up for office a second time, and for reasons which will suggest themselves to every attorney. I need not allude to the disclosures of the gentleman from San Francisco, the other day, who is not now in his seat, and I only say this because experience shows that the people do not exercise good judgment in these instances in making those changes. Owing to influence, intrigue, swapping, and all the other things that control the question, the bad Judge is often reëlected. These were reasons enough, but, as was explained by the Chairman of the committee, section ten completely cures all the objections that were raised here by the gentleman who offered the amendment, that the Legislature may, by concurrent resolution and two-thirds vote, remove either of these Judges.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: I supposed that the Committee on Judiciary would not have changed the term of office of the Judges of the Supreme Court, except on account of the classification which seemed to make it necessary to make the terms twelve years instead of ten. Now, sir, I cannot see that Judges ought to be elected for a longer term than any other officers. I do not believe in so long a term as that of twelve years, especially when, as in this case, it may be conveniently obviated. No other officers in this State are elected for more than four years, and the Judiciary Committee have recognized the necessity which may arise for the change of Judges for less cause than that which would be cause of impeachment by providing for the removal of Judges by Act of the Legislature. There is therefore recognized a necessity for a provision for change. I prefer giving that opportunity to an election. The faithful Judge, as a rule, will be reëlected, if he wishes to be. Under our system I believe every Judge who has been a candidate for reëlection, with the exception of one, has been reëlected under this ten-year term of office, and that in eighteen hundred and sixty-seven was under a most peculiar political condition of affairs in the State of California. Now, sir, this report proposes to extend the term from this long term of

ten years to twelve years, and I suppose for the reason which I have stated, that in order to classify it was necessary to make the term twelve instead of ten. Now, I confess I might be suited with a term of eight years, but in order to classify it will be necessary to make the terms twelve or six, and I think by striking out the word "twelve" wherever it occurs and inserting "six," and "four" where it occurs and inserting "two," that it will be a better proposition as to term than the twelve-year term provided by the committee. As to the proposition to continue the present Judges in office or extend their terms, I think that is so unusual, and so little reason has been given for it, that it is scarcely worth discussing. I shall offer, if it is not now in order, at the proper time, an amendment to strike out the word "twelve" wherever it occurs, and the word "four" wherever it occurs, and insert in their places the words "six" and "two."

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I certainly am opposed to striking out twelve and inserting any smaller number. I would be in favor of a longer term. If there is any department of the Government that ought to be stable, it is the judiciary. If there is any officer who should be as sacred as possible, as to his tenure of office, it is the Judge. When they go into a Court of justice they are expected to leave every other consideration behind them except the merits of that case. The scales ought to be so even, sir, that neither the slightest breath of popular clamor, nor the slightest consideration of policy should change them in the least. Now, sir, under our system of government, the whole American system of government, the judiciary is by far the most important department to the people. It is about the only one that acts directly upon the people. The Legislature cannot take away your rights or mine without taking away the rights of the whole community. It acts upon the people as a body. Laws are general and uniform in their operations, and it is not very probable, sir, that the Legislature, responsible to the whole people, are going to pass onerous laws which affect the whole people; but, sir, our personal rights are determined—our rights of life, liberty, and property are determined by our Judges. The Courts are the great reservoir of power under this system. We have not a solitary right of person, property, or life itself, that may not come under the power of the Judge. Now, sir, the Judge ought to be in a position where, considering that he is human, and governed to some extent, insensibly, perhaps, by the motives that influence men, he is independent to the farthest possible degree. Now, sir, do you want to put a man upon the bench with the knowledge that within a few years he will have to be reëlected, or else lose his seat? Do you tell me that the very best minds will not be influenced by this question of popularity? A Judge, in determining private rights, should not be influenced in the least by any thought of the popularity of his decision. I can point to-day to one or two gentlemen who were as good men as ever were there, who failed of a reëlectioon, or renomination, because one or two decisions they happened to make were unpopular, and their friends were afraid to nominate them at that time. I say, when a man goes upon the bench, for my part, I am in favor of electing him for life, or, at least, during good behavior. He ought to be paid salary enough to put him beyond the reach of want and beyond the reach of corruption; and in the second place, a term of office so long and so secure that he is not afraid of the people; that he is not afraid of popular opinion.

It is a perfect delusion to say that a good Judge will be reëlected. We know, sir, the political history of this State, and you must keep that fact in view. We know, sir, that almost from the foundation of this State government the people of this State have been divided into two great political parties, nearly equal; and we may assume that that will be the case in the future. That it was impossible to tell which would triumph one year and which the next. Now, sir, it will happen always, almost invariably, that the political party that happens to be in power that year will elect the Judges. It never has been otherwise, that I know of, except perhaps in one or two cases, and then just in San Francisco. When men go to a general election they do not vote for men, they vote for political ideas. When they go to the primary meetings they vote for men, but when they go to a general election they vote for ideas; and you need not tell me that if the Republican party is in power that they are going to elect Democratic Judges, or if the Democratic party is in power they are going to elect Republican Judges. The men will be elected who are nominated by the party that carries the State that year. I do not care how well a Judge discharges his duty, if he does not happen to be on the winning ticket he cannot be reëlected any more than in the case of a Sheriff or County Clerk. Therefore the argument that a good Judge will be reëlected is worth nothing. Now, sir, I ask if it is a good position to put a Judge in, to have him in the power of the changes and the waves of political sentiment? I say, no. It is the same with other officers. Talk about men being reëlected because they have been good officers! We have in this State to-day—although he does not belong to my party—a gentleman acting as Governor of this State, whom I believe, in all respects, has made a good Governor. But, sir, if he should run for Governor again he could not be elected at all, unless his party happened to be in power. It is the same with Judges.

The only safety is in having a bench independent in all things; independent of money influence, independent of the influence of popular clamor, independent of political influence; and, without that, you cannot have a pure and independent judiciary. And, sir, there is no position in the world that requires such high qualities of manhood as that of the Judge; there is certainly none in which more character is required to withstand the influences that sway men outside of Court. More than that, we generally take Judges from middle life at least. You take them right from the midst of a business which they have followed up for years, and upon which they depend for a livelihood; keep them away from that business four years, or six years, and that business is destroyed they have to go back and commence all over again, when they are in the decline of life, to build up another business. When you take a man in the prime of life, and put him in the office of Judge of the Supreme Court, you should give him a term that he may expect for a great portion of the balance of his life. Put him there under these circumstances, and give him salary enough so that he does not have to look after his own private interest, and to pinch himself for money to pay his monthly bills, and you have an independent judiciary; and that is the only way. Let him not be dependent upon the conflicting waves of public opinion, upon the influence of money, or upon political influence. I hope that these amendments will not be adopted.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I am in favor of the principle enunciated by the Committee on Judiciary and Judicial Department, and hope that the substance of the report that they have presented here will be adopted by this Convention. I believe in a long term judiciary. I believe that it will advance the interests of the State and purify the judiciary. If there has been any one thing that has been a greater disgrace to the State than another, it is some of the political decisions made in response to public clamor or party interest. It is only necessary to refer back to the decision rendered by the judiciary, that any person who started from the Atlantic coast, as soon as he arrived he became a citizen of the State of California, and from that time he was entitled to vote.

MR. ROLFE. The Supreme Court never decided that.

MR. TINNIN. That decision was made, and it had an influence in this State. It had an influence, and controlled the vote of this State. It was a political matter——

MR. TERRY. It was an opinion of the Attorney-General. The Court had nothing to do with it.

MR. TINNIN. I refer to the Know-Nothing times. I know that men were influenced in that way and prevented from voting. There are political decisions. Gentlemen argue here that only Judges who have served faithfully will be reëlected. My experience is to the contrary. I have attended the conventions of the Democratic party, of the Independent party, and the Republican party; and what is the argument advanced therein in regard to judicial positions? Why, A already has the office, and the party owes him no more recompense; his fealty has been paid for; now give it to B, or some one else who has served the party. That argument invariably controls the convention, and you will find that those who have held the office are ousted to make room for others. Public clamor has its influence even upon Judges. As soon as you place a man in office he immediately looks out for further advancement, and in order to advance his own private interest he will make decisions in accordance with public clamor. Is that the interest of the public? We find very often that this public sentiment changes very quickly. About three years ago there was in the Legislature of this State a bill to build a railroad in Tuolumne County. Those people came up here by the hundreds and clamored for the Legislature to pass the bill, and finally got the bill through, but the Governor pocketed the bill. The result was that the Governor was burned in effigy in Tuolumne County, and the only gentleman who opposed the bill has been sent since to this Constitutional Convention and has the entire confidence of his constituents. Now, sir, that shows how soon public clamor will change. I hope for this reason that the long term judiciary will be adopted. It will certainly purify the judicial system of this State.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: Having adopted the second section of this report, it seems to me that we should adopt the third, as it is a link in the chain of the new judicial system. We have had the ten-year law as to the tenure of our Supreme Court Justices, and I do not know that it has been subject to any animadversion on account of the length of time. I do not know of any complaint that has ever been uttered against it. As there have been no complaints, and as it is proposed now to extend the term two years simply in order to make this report consistent, and to put the new machinery in practical and working order, I favor the proposition. The only hope of the country, alike in troublous and peaceful times, is in a fearless, outspoken, and independent judiciary. We are peculiarly a people subject to impulses, political changes, and popular clamor. When one occupies so high a position as this he should not only be removed, but should feel himself removed from all extraneous influence. If he does his duty he must combat prejudice and passion. Personal favoritism he must have none. When all else is clamorous—the populace, the press, the bar—the good and great Judge is expected to possess, and must possess, the impress of the equal mind.

Those who have enlightened the jurisprudence of this country the most held a life office. We should have had no such luminous example as Marshall had he not been appointed for life, and thus been enabled to give that close, consecutive study to the various subjects which were presented, especially to the Constitution of his country, which, by his power of analysis and refinement, he made beautiful, symmetrical, and strong, and such as the early fathers intended it should be. Look at the English system, too, and let it not be forgotten that it is from England we get our common law, with its amplifications, its nice discriminations, its perfect adjustments. Under rotary, removable Judges it would have been hopelessly dwarfed, and would never have attained to the proportions it has acquired by the lives and the life office of the Justices and Chancellors.

Suppose you were to provide for the election of Justices of the Supreme Court every four years; would you not at once subject them to the nervous uneasiness of offending some friend, to a morbid sensitiveness that they might lose their position, subject them to the temptation of trying to titilate the public, favor the strong at the expense of the weak, and ingratiate some crafty politician who had control of the local hustings?

We want to have our Judges set apart. Not so with the other departments. There is reason why the Legislature should be changed frequently, because our people demand different laws. Changes are suggested, changes are required, and the whole thing is more or less an experiment. The excellence of the judicial system on the other hand is predicated not on change, but on certainty, on permanence and precedent. What has been said of the Legislature may also be said of the executive department. The State is plentifully supplied with men who are sufficiently honest, and with sufficient judgment to fill the place of Governor or legislator, but quite a different order of talent is required to hand down the laws unimpaired, to adhere to precedent, and to refine without over-refinement.

The Judge should be modeled after the demeanor of Hastings at the bar of the Lords, with "the equal mind" engraven on his forehead, but in all things else unlike him, and to translate literally a sentiment from the Epistles of Horace, whatever may be his party, he should have blazoned above the bench: "Bound to swear to the ipse dixit of no master; whither my convictions carry me, thither I am borne a welcome guest."

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I do not rise, sir, for the purpose of entering into anything of a lengthy or elaborate argument upon this subject; but the more we hear from all sides upon this subject the more thoroughly I am convinced that the report of the committee on section three is correct; that it has been thoroughly digested; that it is in accordance with what is right, and that it is almost unexceptionable. The different amendments proposed may be measures that are good, and in some respects they might work well, but when we consider the matter in its vast bearings, I am convinced that the length of time is decidedly reasonable. Such lawyers as our Judges should be are not reached in a moment. They are a matter of living progress. I am not going to advocate putting Judges in for life, but it is evident that a man with great energies, with fine discrimination, can see and know at once, and in a number of years he commences to make progress, and goes on successively, so that he is able to decide upon the great principles of justice to better purpose than he possibly could in the commencement. As to political influences, I think that they are decidedly in opposition to justice, especially when elections are frequent. These arguments have been presented before this body quite extensively, so that I do not think it is necessary for any of us to dwell particularly upon this subject; but I feel that I shall vote for section three as presented by the committee.

MR. OVERTON. Mr. Chairman: I call for the previous question.

The main question was ordered.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from Nevada, Mr. Cross.

The amendment was rejected.

MR. BELCHER. Mr. Chairman: I have an amendment to offer to that section.

THE SECRETARY read:

"Amend section three by striking out all after the word 'office,' in the twelfth line, down to and including the word 'office,' in the fifteenth line."

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: I am in favor of this report, as made by the committee, with the exception of the amendment which I have just sent up to be read. This report provides that in case of a vacancy the Governor shall appoint a person to fill the vacancy, and then an election shall be had to fill the vacancy. The amendment which I have sent up simply provides that in case of a vacancy the person appointed by the Governor shall hold for the remainder of the unexpired term. Instead of having an election to fill the vacancy already filled by the appointment of the Governor, let that appointee hold for the balance of the unexpired term. I think that would be an improvement upon these frequent elections. I should, myself, be in favor of an appointive judiciary. I believe it would be better than an elective judiciary, but it has become the policy in these later years to have all the Judges elected by the people. Now, I am in favor, when the Governor has appointed some one to fill the office for a year or so, of letting him hold the office for the unexpired term. It does not interfere with this system at all; it does not derange it in any way, but it simply leaves the man appointed by the Governor to occupy the office for one, two, or three years; until the regular election comes to fill the office. I believe it would be a proper amendment.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: I am opposed to the principle of this amendment. It is the sense of this Convention that all officers should be elected by the people, and if the people are qualified to elect their Governors and legislators they are qualified to elect their Judges. When a vacancy occurs by death it would not imply a number of elections, and it would create very little inconvenience to vote for one man more at the next general election. The amendment proposed would give the Governor, in case a vacancy occurred in the first year after an election, a right to appoint for eleven years. He may appoint for eleven, ten, or eight years. It seems to me that the only thing necessary, the only reason for giving the Governor the power at all, is to have the office filled and to have the business transacted until the general election comes round. He is to put in a person temporarily, until the people can act. In that respect the report of the committee is right, that the Governor should appoint only until the time comes when the people may elect a person for the unexpired term. I hope that this amendment will be voted down.

MR. WYATT. Mr. Chairman: I send up an amendment to amend section three, and the pending amendment, as a substitute.

THE SECRETARY read:

"SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected, and the term of office shall be ten years from and after the first Monday of January next succeeding their election, except those elected at the first election, who, at their first meeting, shall so classify themselves by lot, that one Justice shall go out of office every two years—the Justice having the shortest term to serve shall be Chief Justice. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term."

MR. WYATT. The amendment moved there contemplates——

MR. TERRY. I rise to a point of order. The amendment is out of order, for the reason that it is in conflict with section two, which is already adopted.

THE CHAIRMAN. It could not be a question of order. It is competent for the committee to adopt inconsistent amendments if it thinks proper.

MR. WYATT. That is just what I am after, to reconsider what we have done yesterday with reference to the election of seven Judges, or of constituting the Supreme Court with seven Judges.

THE CHAIRMAN. If the gentleman offers it on that ground the Chair must decide it out of order.

MR. HOWARD. Then it seems——

THE CHAIRMAN. If the gentleman avows that is the object, the Chair will hold that it is out of order. The Committee of the Whole cannot reconsider.

MR. WYATT. Mr. Chairman: I submit that in presenting a proposition here, this committee is not tied or bound by anything that they have done yesterday.

THE CHAIRMAN. The Chair decides that they are bound. There can be no reconsideration in Committee of the Whole.

MR. WYATT. I most respectfully appeal from the decision of the Chair, to see whether that question be carried by the decision of the Chair, or by the action of the committee.

THE CHAIRMAN. It takes three to appeal.

MR. HERRINGTON. I second the appeal.

MR. WYATT. I apprehend that I have not the necessary assistance from the way gentlemen act.

MR. EVEY. I second the appeal.

MR. WILSON, of Tehama. I second the appeal.

THE CHAIRMAN. The gentleman proposes an amendment which he declares is for the purpose of reconsidering the action of yesterday. The Chair explained, on a former occasion, why the Committee of the Whole cannot reconsider any vote. Its action is binding upon itself. The gentleman now takes an appeal from the decision of the Chair. The question is: Shall the decision of the Chair stand as the decision of the committee?

MR. LAINE. It seems to me that the Chair is in error. On yesterday we took no vote upon section two, but simply refused to amend it. The committee took no vote adopting that section. So, it seems to me, that this may be in order now.

THE CHAIRMAN. The committee refused to amend that section, which is equivalent to the adoption of it, and the report back to the Convention would be that provision of the report as adopted by the committee. The question is: Shall the decision of the Chair stand as the decision of the committee?

The decision of the Chair was sustained.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Yuba, Mr. Belcher.

The amendment was rejected.

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

THE SECRETARY read:

"Strike out the words 'twelve,' and 'eight,' wherever they occur relative to the term of office, and insert 'six' and 'four;' also strike out 'four,' where it occurs, and insert 'two.'"

MR. JOYCE. I second the amendment.

MR. MCCALLUM. I think that will read correctly. The idea presented is, as I stated before, simply to reduce the term of office to six years intead of twelve. If the Committee of the Whole are in favor of the idea of a six years term, and an election every two years, there is no difficulty about the plan, because it does not interfere with the plan of the Judiciary Committee.

The amendment was rejected.

THE CHAIRMAN. The Secretary will read section four.

THE SECRETARY read:

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars; also in cases of forcible entry and detainer, and in all such probate matters as may be provided by law; also in all criminal cases amounting to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

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

THE SECRETARY read:

"Amend by striking out the words 'three hundred' in line five, and inserting in lieu thereof the words 'one thousand.'"

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: The section already provides that an appeal may be taken in all cases which involve the title of possession of real estate or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also in cases of forcible entry and detainer, and in all such probate matters as may be provided by law; also in all criminal cases amounting to felony. What I propose to amend is this: This section proposes to give the right of appeal in all cases in which the amount in dispute is three hundred dollars. Now, sir, I believe that the business of our appellate Court has been unnecessarily retarded by appeals in small matters. I do not see why in the world, if a man has a dispute with another about four or five hundred dollars, an ordinary case, the Judge of the District Court, or a Superior Judge, under this system, either with or without a jury, cannot do as much justice in that case as is possible to be done by any Court. The fact of the business is that the case only can be tried in the nisi prius Court anyway. When you go into an appellate Court you have only the skeleton of a case. There is no flesh and blood. Only a ghost of it. It is more ephemeral. It is a mere determining of an abstract question. Now, sir, I believe that benefits would accrue to litigants in all that class of cases, if the decision of the Court below was final. In the first place, you can only try a case where the parties and the witnesses are before the Court that tries it. In the second place, you would have your case tried there. As it is now, the cases are not half tried, because it is a natural understanding that everything is going to be appealed. The lawyers know they are going to appeal. The Judge upon the bench says: "My responsibility is not very great, for if I make an error this will be appealed." It may be said that in the hurry of a nisi prius trial a good Judge may commit an error. Upon a motion for a new trial he has plenty of time to reconsider, and if he finds that he has committed an error and has done an injury to a party, having the whole case before him, he can grant a new trial. That can be done with very little expense. Why is he not in a position to do justice in that case? Why cannot more justice be done there than anywhere else? It may be said that a man ought to have a right to appeal in any case. You have abandoned that principle now, because you provide that he can only appeal in a case involving three hundred dollars. It is a mere question of where you shall draw the line. I do not believe men are much benefited by appeals in these small cases. And I believe that for all the parties the best justice they could get could be had right there in that Court. Suppose a party appeals in a matter involving four or five hundred dollars. If he does not get a reversal he is so much more the loser. Now if he gets a reversal the chances are a new trial is ordered. He may win there again or he may not. If he does not win he has got to appeal again. If he wins the other side appeals, and his outside expenses will amount to more than the whole matter involved; and I believe that more justice would be done to litigants if appeals were cut off in these small cases than will be done otherwise, and more than that, the cases would be so much better tried. When all parties have an understanding that the judgment is final, that judgment will be much more apt to be right than where each party understands there is going to be an appeal. It will keep a great many cases out of the Supreme Court, would facilitate their business, and would give them more time to examine leading cases which involve precedents. These appeals, instead of doing litigants good, do them harm and involve them in extra costs. There is only one argument against this amendment, and that is that a man having a small case should have as much right to appeal as one having a large case. But you have already abandoned that principle by fixing the limit at three hundred dollars. Now there are a great many cases where the right of appeal should be taken away. Suppose I claim that a man owes me a thousand dollars on account. It is a mere question of fact. There are no abstruse legal questions, no question about the title of real estate. It is a simple question of fact. Now, sir, that case can be tried and more justice can be done to the parties with the understanding that the trial shall be ended in the lower Court than where you grant an appeal. In the end these appeals do injury to everybody, to both sides of a case and to the clients. The lawyers would try their cases more carefully and thoroughly if they did not have this right of appeal. And then, sir, you send to the appellate Court only the more important cases, and those which involve questions of precedents.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I do not know whether the gentleman has resided much in the interior counties of this State, but if he has he has certainly learned that nearly every interior county has a ring, and that that ring has influence more or less with the Judges that sit there. Now, if the District or Superior Judge has an opportunity of trying for the last time a set of cases, it gives him the power, which he will use, to reëlect himself and his associates in that county. I have had some experience in this question, and I know something about it. The principle that appeals should be allowed is correct. I think if the gentleman will look at it he will see that there is no line drawn. It allows appeals in all cases in Justices' Courts to the Superior Courts, and all cases in the Superior Courts are allowed to be appealed to the Supreme Court. Now, there are many cases of three hundred dollars of which the law is just as important and just as difficult as cases of three hundred thousand dollars. If a man has a case involving three hundred dollars, he has as much right to all the advantages of the administration of law as the man who has a case involving three hundred thousand dollars. You say you will give the advantages of the Supreme Court to men who have large amounts involved, but you refuse them to men who have but small amounts. Now, I take it that it is against the principle of government. The principle of government is to protect the weak, the strong will look out for themselves. I would be in favor of allowing appeal in all cases if it was only one hundred dollars. Let there be one appeal—one appeal from the Justices' to the Superior Court, and one appeal from the Superior Court to the Supreme Court in all cases.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: In this respect the provision in the report of the committee is identical with the Constitution as it is. Now, the committee have proposed a scheme, or plan, to facilitate the decision of cases by an increase of the Judges of the Supreme Court, and by a provision that that Court shall sit in sections, and also with reference to a Superior Court in every county in the State. There was more argument when the Constitution was as it is now for making the limitation one thousand dollars than there is under this proposed plan of the committee. But there was one argument, I submit to the gentleman from Sacramento, which ought to be deemed conclusive in this article reported by the committee. While it presents many beneficial features which entirely, in my judgment, overcome the objectionable features of it, this thing must be said as against it: that is, in providing that every county in the State shall have a Superior Court; and the counties are to be classified so that the compensation shall be but two thousand dollars; and yet, you take small counties like Mono and Inyo, it is not expected, or cannot be expected, to have so high an order of talent in the Superior Court Judges under that clause as under the present system. Therefore, there will be more reason for giving the right of appeal, or rather retaining the right of appeal, in all cases involving three hundred dollars and upwards, than under the present system. Now, sir, it is very expensive to appeal. Under the present rule there are not many appeals in that class of cases; and yet, as has been intimated, it is just as important that justice should be done to the poor man where the amount involved is three hundred dollars and upwards, as that justice should be done to the rich man where the sums in controversy amount to thousands. I do not think that there should be a disposition on the part of the committee to recommend any change of the Constitution from what it has been upon that subject.

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

The amendment was rejected.

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

THE SECRETARY read:

"Amend section four, by striking out the word 'three' in line five, and inserting the word 'six' in its place.'"

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: I desire to say a few words in support of this amendment. Now, it will be observed by almost every lawyer that has any practice that a case cannot be carried to the Supreme Court scarcely for three hundred dollars. The man who wins the suit is loser, and this section encourages these small appeals. Lawyers will advise their clients to take them that they may get the fees. If you would place it at six hundred dollars, if a man wins his appealed case he would have something left. It strikes me as an argument in favor of raising the appellate jurisdiction, that the wealthy man can afford to appeal and to keep the poor man in litigation for the purpose of vexation. The rich man appeals and can satisfy his hatred and animosity, and where the poor man wins his case it costs him more than it is worth.

MR. HILBORN. Is there a State in the Union where limit is fixed so high?

MR. LAINE. I am going upon the common sense of the proposition. I believe it will be beneficial to the people of this State, regardless of other commonwealths. If there are any other gentlemen whose judgment are the other way they will vote against it. I know that in some of the States of the Union they have limited appeals in Justices Courts, and I believe we ought to do it here. Remarkably so I notice in the Constitution of Texas, they have provided that in cases in Justices Courts involving twenty dollars there should not be any appeal. I believe that a limitation of an appeal to six hundred dollars would be valuable to the people of the State.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope that the amount will remain as fixed by the committee. If it were within my power I should certainly strike out any amount and allow an appeal for any amount. There are a number of States in the Union where the appeal does not depend upon the amount in controversy at all. I do not think that it depends upon the amount in controversy in the State of New York; at all events it did not a few years ago. In the State of Michigan an appeal can be taken to the Supreme Court for five dollars, and some of the most important law questions that have been decided by Courts of last resort, have been decided in cases where the amount involved was merely nominal. The argument used by the gentleman from Santa Clara that if an appeal be taken in a case involving but three hundred dollars, that the expenses of the appeal will totally use up the amount of the client's judgment, is a matter not to be considered by this Convention. It is a matter that rests solely and alone with the client. If a man sees fit to appeal he pays the expense, but the privilege ought to remain. The gentleman says that the rich man can increase the expenses of the poor man by appealing; but the gentleman forgets that the rich man could manipulate juries much easier in a Justice's Court than the poor man could, and by the manipulation of a petit jury in the District Court, the rich man securing a judgment against the poor

man, the only resort of the poor man would be to make an application for a new trial. That application being mainly or wholly discretionary with the District Judge, he could refuse the application for a new trial, and the poor man would be wholly remediless against the rich. By leaving out the limitation we would be giving justice to the poor man and not to the rich man. I think that three hundred dollars is not small enough, and I should be in favor of putting it at fifty dollars.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I should be in favor of the report of the committee as it now stands were it not for the system under which the Court itself is organized, and I am in favor now of the amendment offered by the gentleman from Santa Clara, so long as the system that has been adopted here by this Committee of the Whole shall remain as it now stands; because I believe that in every instance where a person is prevented from any further litigation it will be to his best interest that it shall be adopted and he prevented from taking any further steps. The very first provision that we find here with reference to the appellate Court, is a discretionary power lodged in the highest officer of that Court—a discretionary power which reaches to every case and every character of case that is appealable to the Supreme Court. And it is lodged in the discretion of that officer to say whether that appeal shall be to the Court in bank or not. It is not a mere appeal that is taken and ends litigation. But when a case is decided in one branch against a man he may be able to get it into the Court in bank, for the purpose of determining finally that he is wrong or that he is right. I say that the gentleman from Santa Clara is right when he says that it will cost more to take an appeal than the amount involved in every instance. There will be found always some excuse for carrying a case into bank when the case is decided against some large corporation or capitalist. I have seen too many of these cases tried in Courts of nisi prius, and the favors that are conferred upon them. Now, I say that in every case where an appeal can be barred, I am standing for barring the appeal, because in such instances I apprehend that even handed justice will be done in the Court nisi prius. Now, upon a proper organization of this Court, I admit with the gentleman from San Francisco, that I would be in favor of an appeal based upon five dollars, because a man would stand his equal chance in the upper tribunal; but until another system is adopted than that presented by the committee, I am in favor of cutting off every appeal that is possible to cut off from the Court nisi prius.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Laine.

The amendment was rejected.

MR. TERRY. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Amend section four by striking out the words 'amounting to felony' in the seventh line, and inserting in lieu thereof the words 'prosecuted by indictment.'"

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman:. The Legislature have determined heretofore the jurisdiction of the Courts, by defining the punishment of the crime, and the definition of felony, given in the Code, and always given in the statute of this State—it means any offense which is punished by death, or imprisonment in the State Prison. There have always been certain crimes known to the statutes of this State, the status of which, as to whether they were felonies or misdemeanors, could only be determined by the judgment of a Court. There were cases of assaults, felonious assaults, in which the Court may either punish by imprisonment in the State Prison, by imprisonment in the County Jail, or by fine, so that in these cases, after the jury returned the verdict, it was never known whether a man had been convicted of a felony until after the judgment of the Court had been pronounced; and the right of appeal depended, not upon the verdict of the jury, but upon the sentence of the Court. If he was sentenced simply to fine or imprisonment in the County Jail, he had no appeal; whereas, if he was sentenced to one month in the State Prison, his right to appeal would be perfect. I propose to extend the right of appeal to all cases prosecuted by indictment, so that when a man is indicted he is entitled to have an appeal from the judgment if it is against him. I can see no reason against this rule. The only reason that existed heretofore was the great number of cases before the Supreme Court—that the Court was overworked; but we have provided in this report for two branches of the Supreme Court, and that reason does not obtain.

MR. BEERSTECHER. The committee has adopted a report which allows prosecutions on information without indictment. Now, if you say "indictment," that would probably cut off those who were prosecuted on information.

MR. TERRY. I will accept that amendment. Make it "prosecuted by indictment or information." No, that won't do, for "information" covers cases before the Police Courts.

MR. BEERSTECHER. Suppose some counties do away with the Grand Jury?

MR. VAN DYKE. Add to it, "in a Court of record."

MR. TERRY. Yes, I will put it in that form. Will the Secretary read it as it would stand then?

THE SECRETARY read:

"Amend section four by striking out the words 'amounting to felony,' in the seventh line, and inserting in lieu thereof the words 'prosecuted by indictment or information in a Court of record.'"

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: Whether the amendment should be in that form, or in any form to express the idea which the gentleman evidently designs, I think we ought not to change the Constitution. We propose a higher order of tribunal hereafter to try that class of cases which have heretofore been prosecuted by indictment. Heretofore they have been tried, with the exception of capital cases, in the County Courts. Now we propose Superior Courts, which are to take the place of District Courts and County Courts, and which are in contemplation of the same character as District Courts, and therefore there will be a higher order of talent generally, and more correct decisions, we may assume, in the Superior Courts, than have been heretofore in the County Courts. This involves cases of libel. I do not know what may be the decision of this Committee of the Whole when it comes into Convention, but I will say, that from the expressions I have heard, there is a disposition among those who favored the amendment presented by Judge Fawcett to let the newspapers have their way about that matter, and to not furnish any of them with the pretense that they oppose the Constitution upon the assumed and erroneous ground that that amendment in any manner affected the liberty of the press. I say the expression I have heard would seem to indicate that the majority of the Convention may yield that much to the press, in view of the greater good which they may hope to do by getting their support for the work of the Convention. Supposing that to be the result, that the Fawcett amendment should be defeated in Convention although carried by a small majority in the Committee of the Whole, it would leave it in this position—and I suppose it is that which the gentleman from San Joaquin mainly aims at, as he has been a very prominent counsel in some libel cases—on the defense. The article of the Constitution on that subject provides that the jury shall be the judge of the law and the fact. The gentleman says there shall be the right of appeal in these cases; that is, the Supreme Court is to determine the law in a case where the Constitution says the jury shall be the exclusive judge of the law and the fact. It would make a contradiction in the Constitution itself. But for other reasons I am opposed to the amendment.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: For myself, and I believe for a majority of the Committee on Judiciary, I see no objection to this amendment proposed by the gentleman from San Joaquin. This matter was discussed to a considerable extent in the Committee on Judiciary, and different opinions were expressed, but at this time I think that the amendment is a good one. I myself shall vote for it. I do not see why in all criminal cases prosecuted by indictment or information in a Court of record a party should not have an appeal, and if they have it in cases of libel, as the gentleman on the other side has suggested, that is an additional reason why I would give them an appeal, because it does embrace libel. I can see no objection to it. If a man is prosecuted by indictment, then the offense rises to such magnitude that it seems to me every citizen should have the right of appeal. For that reason I shall favor the amendment.

MR. MCCALLUM. If the law as to libel shall remain as it is in the Constitution, which provides that the jury shall be the judge of the law and the fact, how can the Supreme Court pass upon the question of law in that case when the jury is declared to be the judge of the law?

MR. WILSON. I do not think the jury are judges of the law in any case. They have got to take the law from the Court. That is what has already been passed upon; and I think that the intention of the Convention in adopting that clause in reference to libel is to put prosecutions for libel upon the same basis as all other criminal cases, and if the Convention adhere to that proposition then persons accused of any criminal offense will stand upon an equal footing, and the Supreme Court would judge of a libel case just exactly as it would judge of an assault with intent to commit bodily injury, or assault to commit murder, and review the proceedings in the same manner precisely.

MR. MILLS. Mr. Chairman: If a man presents his complaint to a Justice of the Peace, then there would be no indictment in the case. If he took it before the Grand Jury, of course it is all proper, but the complaint might be made on information.

MR. WILSON. It is not the intention to give the Supreme Court jurisdiction in cases of appeal from Justices of the Peace. It is intended that the Superior Courts shall operate as appellate Courts from Justices of the Peace. This section four refers to the Supreme Court. No appeals can come directly from Justices of the Peace to the Supreme Court in any case.

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

The amendment was adopted.

MR. HALE. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Amend by inserting between the words 'tax' and 'impost,' where they occur in line three, the words 'fares and freights.'"

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: It will be borne in mind that in our article upon corporations other than municipal, we have provided for the creation of a Railroad Commission, and among other powers and duties are those of fixing fares and freights. The policy of this amendment is to confer upon the Supreme Court appellate jurisdiction to determine the legality of such fares and such freights as may be prescribed by the commission created by the Constitution. I think it will be found that the reason upon which they should have this jurisdiction rests upon the same consideration that has now extended that jurisdiction to cases of tax, impost, assessment, toll, or municipal fines; in other words, there should be a power in that Court to determine the legality of these rates, whether they amount to the sum of three hundred dollars or not—irrespective of the amount. I invite the attention of the members of the bar to the consideration whether it is not necessary to adopt this clause to conform to the change we propose to make in the organic law in regard to that Commission?

MR. McFARLAND. I would like to ask the gentleman from Placer whether this is intended to apply to appeals from the Commission or appeals from the Court?

MR. HALE. It gives this Court appellate power to hear on appeal, on writ of error, and determine the legality of fares and freights as well as any tax or impost.

MR. McFARLAND. Fares and freights as established by the Commission?

MR. HALE. The article on corporations uses the terms which I have here employed—fares and freights—they are therefore constitutional terms; they relate to the rates at which railroad and transportation companies shall be required to take passengers and freight. They are constitutional terms, and the legality of these rates should be a matter of Supreme Court jurisdiction in the last resort.

MR. HOWARD. Mr. Chairman: I am opposed to that amendment. It would do precisely what Lord Cameron said was entirely incompetent for a Court to do—regulate fares and freights. That was the statement in the House of Lords, in eighteen hundred and fifty-four, and in consequence of that the English Parliament amended their law and created a Commission, and gave them the power.

MR. EDGERTON. Does the gentleman state that the English Commission has power to regulate fares and freights?

MR. HOWARD. Yes, sir.

MR. EDGERTON. Where has the gentleman read any such thing as that?

MR. HOWARD. I read it here the other day—the gentleman need not go off half-cocked—and if I had the volume I could turn to it again in two minutes.

MR. EDGERTON. I deny it.

MR. HOWARD. So far as that is concerned that is an objection to it, but so far as it might apply to judgments from inferior Courts, it gives the railroad power to worry every small litigant out. Of course if a party got judgment for less than three hundred dollars, the railroad is strong enough to appeal, and is strong enough to destroy all remedy by appealing and worrying out a man who may have been damaged by the action of the railroad.

MR. CASSERLY. Mr. Chairman: I wish to say in reference to what has been said by the gentleman from Los Angeles, that upon a comparison of the powers vested in Courts in England and the powers vested in Courts in the United States, we have very little to be proud of in regard to the oppressions of railroads. As I understand the matter, by a recent Act of Parliament the power to deal with railroads in respect to all unjust and improper action is of the most summary character. A brief and summary notice is issued, and the railroad is at once brought up, if I may use such language, with a round turn, and for every day that they delay or refuse to recognize the writ of a Court, they are liable to a fine of two hundred pounds sterling per day. Now, sir, when we have in this country some summary process of that kind we may, perhaps, boast of our freedom from the oppressions of railroads, but not till then.

MR. BEERSTECHER. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Judiciary and Judicial Department, have made progress therein, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

SPECIAL ORDER—THE O'DONNELL CASE.

THE PRESIDENT. The matter before the Convention is the report of the special committee, and the resolution offered by them:

To J. P. Hoge, Esq., President Constitutional Convention:

Your committee to whom was referred the case of a member of this Convention, Charles C. O'Donnell, charged with grave crimes, have considered the same, and submit the following report:

The history of the events leading up to the appointment of this committee is matter of public notoriety. In the discussion, in this Convention, of what is known as the Fawcett amendment to the provision concerning libel, the member, O'Donnell, made remarks derogatory to the San Francisco Chronicle, a newspaper published in the City of San Francisco. The next issue of that paper assailed O'Donnell as a quack, imposter, abortionist, etc. Some time afterward O'Donnell entered criminal prosecutions for libel, in San Francisco and Sacramento, against the publishers of the Chronicle. A trial has been had of the case in San Francisco, in which the defendants admitted the publication, and based their defense on the truth of the alleged libel, and that it was published from good motives and for justifiable ends. The result of that trial was disastrous to the member, O'Donnell. In order to establish their innocence of the alleged libel, it became necessary for the defendants to prove the guilt of the complainant, O'Donnell. At the close of the trial they were promptly discharged by the Court, and we have seen no reason, after an examination of the reported testimony, to question the correctness of the decision of the Court.

The case entered in Sacramento, which is for the same cause, has not yet been tried.

Pursuant to the resolution creating it, your committee entered at once upon the examination of the subject-matter of the above described proceedings. They procured a copy of the reported testimony of the case in San Francisco, verified as correct by the affidavits of three witnesses. They notified the member, O'Donnell, of a time and place at which they would hear him. He appeared before us according to the notice, and was duly informed of the nature of the investigation and the testimony already in the hands of the committee, i. e., the report of the trial contained in the San Francisco Chronicle of December twenty-second and twenty-fourth, eighteen hundred and seventy eight, with the affidavits of the witnesses referred to thereto attached, all of which is hereby referred to and hereto annexed, marked "Exhibit A," and made a part of this report.

He furnished us with no additional legal proof to rebut the showing made against him on the trial, but claimed that if time and opportunity were given him to procure counsel and produce witnesses before us, he could satisfy us and the Convention of his innocence of the charges made against him. He stated to us that the testimony given against him upon the trial was suborned and perjured testimony; that he was taken by surprise; that he was unprepared, either with counsel or witnesses, to meet the case made against him, and asked for delay to allow him to procure counsel and produce witnesses before us. Your committee did not feel authorized to constitute itself a Court of appeal from the decision of the Courts. The state of the funds at the disposal of this Convention did not warrant us in launching into any wild expenditure for persons and papers. We were not satisfied with the excuses made by the accused member, and we were not convinced of the relevancy of the testimony he claimed to be able to produce. In a country teeming with lawyers, it would seem that one month was time enough in which to procure counsel, especially by one having the financial ability to remunerate them, as appears to be the case with the member O'Donnell. It would also seem to be time enough for a party complainant in a criminal prosecution to prepare therefor. But inasmuch as the accused member had publicly declared that he would vindicate his character, by prosecuting the witnesses who appeared against him for perjury, and inasmuch as a complaint had been filed and was pending in Sacramento involving the identical issue with the one tried in San Francisco, your committee offered to delay action, provided he would assure them of his determination to go ahead before the legal tribunals of the country. He stated that he would consult counsel and give us an answer. We agreed to await three days for such answer. At the expiration of the time he appeared before us and stated that he had not consulted counsel, and asked for more time.

Your committee have come to the conclusion that the accused member has been attempting to delude them with frivolous pretenses and shallow excuses. They observe that the Grand Jury of San Francisco has adjourned, and nothing appears to have been done there by the accused member. They have also ascertained that the case pending in Sacramento has been abandoned. We are driven to the conclusion that the accused member never made the complaints in good faith; that he never really intended to put his character in issue in law; that he was unable to postpone the trials beyond the session of this Convention, and that is the only surprise by which he has been taken. For the purposes of this inquiry, the testimony herewith appended sufficiently attests the guilt of the accused member of the crimes charged against him to warrant this committee in submitting to the Convention whether such a man is worthy to retain his seat in this honorable body.

Of the power of this Convention to deal with this subject, your committee entertains no doubt. An examination of the authorities and precedents has satisfied us of the correctness of this position. Wherefore, your committee report the following resolution, and recommend its adoption:

Resolved, That Charles C. O'Donnell, a member of this Convention, be and he is hereby expelled therefrom.

All of which is respectfully submitted.

CLITUS BARBOUR,
BENJ. SHURTLEFF,
J. A. FILCHER,
Committee.

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

The ayes and noes were demanded by Messrs. Shurtleff, Filcher, Lampson, Caples, and Miller.

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

AYES.

Boucher,	Hunter,	Ringgold,
Brown,	Inman,	Rolfe,
Burt,	Johnson,	Shafter,
Chapman,	Larue,	Stuart,
Dudley, of San Joaquin,	Lewis,	Sweasey,
Dunlap,	Martin, of Santa Cruz,	Swing,
Eagon,	McFarland,	Terry,
Edgerton,	McNutt,	Thompson,
Estey,	Mills,	Townsend,
Evey,	Moreland,	Tully,
Garvey,	Noel,	Walker, of Tuolumne,
Hale,	Ohleyer,	Waters,
Harvey,	Overton,	Weller,
Heiskell,	Prouty,	Wilson, of Tehama,
Holmes,	Pulliam,	Wilson, of 1st District,
Howard, of Los Angeles,	Reddy,	Winans,
Howard, of Mariposa,	Reed,	Wyatt,
Hughey,	Rhodes,	Mr. President—54.

NOES.

Andrews,	Harrison,	Reynolds,
Ayers,	Herrington,	Shoemaker,
Barbour,	Hilborn,	Shurtleff,
Barry,	Hitchcock,	Smith, of Santa Clara,
Barton,	Huestis,	Smith, of San Francisco,
Belcher,	Joyce,	Soule,
Bell,	Kelley,	Steele,
Caples,	Kleine,	Stevenson,
Casserly,	Laine,	Swenson,
Condon,	Lampson,	Tinnin,
Crouch,	Larkin,	Turner,
Davis,	Lavigne,	Tuttle,
Dowling,	Lindow,	Vacquerel,
Dudley, of Solano,	Mansfield,	Van Dyke,
Farrell,	McCallum,	Wellin,
Filcher,	McComas,	West,
Freud,	McCoy,	Wickes,
Gorman,	Moffat,	White—56.
Hall,	Morse,	

MR. MORELAND. I move that the whole subject-matter be postponed until seven o'clock this evening.

MR. TULLY. Mr. President: I move to indefinitely postpone the whole matter.

MR. McCALLUM. I ask if the Chair is willing to give an opinion as to what vote it will require to adopt the resolution reported by the committee?

THE PRESIDENT. A majority vote of the Convention.

The ayes and noes were demanded by Messrs. White, Wickes, Tully, Beerstecher, and Moreland.

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

AYES.

Boucher,	Hunter,	Rhodes,
Brown,	Inman,	Ringgold,
Burt,	Johnson,	Rolfe,
Casserly,	Larue,	Shafter,
Chapman,	Lavigne,	Stuart,
Dudley, of San Joaquin,	Lewis,	Sweasey,
Dunlap,	Martin, of Santa Cruz,	Swing,
Eagon,	McComas,	Terry,
Edgerton,	McConnell,	Thompson,
Estey,	McFarland,	Townsend,
Evey,	McNutt,	Tully,
Freeman,	Miller,	Vacquerel,
Garvey,	Mills,	Walker, of Tuolumne,
Hale,	Nason,	Waters,
Harvey,	Noel,	Weller,
Heiskell,	Ohleyer,	Wilson, of Tehama,
Herrington,	Overton,	Wilson, of 1st District,
Holmes,	Prouty,	Winans,
Howard, of Los Angeles,	Pulliam,	Wyatt,
Howard, of Mariposa,	Reddy,	Mr. President—62.
Hughey,	Reed,	

NOES.

Andrews,	Harrison,	Shoemaker,
Ayers,	Herold,	Shurtleff,
Barbour,	Hilborn,	Smith, of Santa Clara,
Barry,	Hitchcock,	Smith, of San Francisco,
Barton,	Huestis,	Soule,
Belcher,	Joyce,	Stedman,
Bell,	Kelley,	Steele,
Blackmer,	Kleine,	Stevenson,
Caples,	Laine,	Swenson,
Condon,	Lampson,	Tinnin,
Cross,	Larkin,	Turner,
Crouch,	Lindow,	Tuttle,
Davis,	Mansfield,	Van Dyke,
Dowling,	McCallum,	Webster,
Dudley, of Solano,	McCoy,	Wellin,
Farrell,	Moffat,	West,
Filcher,	Moreland,	Wickes,
Freud,	Morse,	White—58.
Gorman,	Neunaber,	
Hall,	Reynolds,	

Mr. Beerstecher announced that he was paired with Mr. Biggs, who would have voted aye.

JURISDICTION OF THE SUPREME COURT.

MR. EDGERTON. I move that the Convention now resolve itself into a Committee of the Whole, the President in the chair, to further consider the report of the Committee on Judiciary and Judicial Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The fourth section and the amendment of the gentleman from Placer, Judge Hale.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope the amendment of the gentleman from Placer will not be adopted. If that amendment of the gentleman should be adopted, it either in express terms confers upon the Supreme Court the right of review over the action of the railway commission which the Convention has provided for, or at the best it leaves the matter in doubt, and a subject of dispute between the Supreme Court and the Commission is created. The Commission is intended to have absolute and exclusive powers within the provinces conferred upon it. This amendment either gives the Supreme Court the right of review over them, or it makes the Constitution ambiguous, neither of which is desirable. If the intention be merely to give the Supreme Court of this State the right to review cases at law and cases in equity, outside of the exclusive power conferred upon the Commission, then the words are surplusage and useless, as the Supreme Court already possesses the power of review to that extent, under the general powers conferred upon the Court. The Court has a right to review all suits involving over three hundred dollars, no matter whether the subject be fares and freights or something else. They already possess the right of review. These words are surplusage and useless in the Constitution, and we ought not to tolerate any useless language in the Constitution. If the object be to give the Supreme Court the right of review over the action of the Commission, then by adopting these words we simply annul the Commission and make them men of straw. You might as well say the Supreme Court of this State should have power to control the rates of freights and fares at once. Therefore, I hope the amendment will not be adopted.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Placer, Judge Hale.

Lost.

THE CHAIRMAN. The Secretary will read section five.

THE SECRETARY read:

SEC. 5. The Superior Courts shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; also, in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance; also, of all matters of probate, and also for divorce and for annulment of marriage, and all such special cases and proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. Said Courts shall be always open (legal holidays and non-judicial days excepted), and their original jurisdiction shall extend to all parts of the State. Said Courts and their Judges shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties.

MR. REDDY. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Strike out, in line fifteen, the following words: 'and their original jurisdiction shall extend to all parts of the State.'"

MR. WILSON. I had prepared an amendment to the same paragraph to satisfy some objections. I move to amend by striking out the words "original jurisdiction," and inserting the word "process."

MR. REDDY. Whether the word "process" would not mean subpœna as well as summons, and that a man could be taken from one end of the State to another, if they can send process to all parts of the State——

MR. TERRY. They do now.

MR. REDDY. I will accept the amendment of the gentleman from San Francisco and withdraw mine.

MR. WILSON. I think this amendment is better.

MR. EDGERTON. I would ask what is the use of that line in the Constitution? I do not see what particular value those words have in the Constitution. It is subject to legislative enactment.

MR. HOWARD, of Los Angeles. Without that provision, or some statutory provision of like character, suppose I bring an action in San Diego County, how am I going to get along?

MR. EDGERTON. The same as you do now, by virtue of the statute. This line does not add any additional force to the first six lines of the section.

MR. CROUCH. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Strike out the word 'three' in line five, and insert in lieu thereof the word 'one.'"

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: In reference to the amendment proposed by myself, I can say this, that without some affirmative declaration of the power of the Court to send process, it would be a question of argument as to whether they had that power. It was discussed a great deal with reference to the Courts of San Francisco, as to whether the Court had power to send process outside of San Francisco. It certainly does no harm to leave it in. It is merely affirmative of the right of the Court, and it certainly can do no harm. There is no objection to the Court issuing process to all parts of the State. It will remove any doubt. Take the United States Courts, they cannot send process out of their respective districts. So here, as we have a Superior Court for each county, the question might arise as to whether they could send process out of the county.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I am in favor of the amendment of Mr. Reddy, or of the suggestion of the gentleman from Sacramento to strike out that line, or else I want some restriction inserted by which the Legislature can control the bringing of actions in this State. If the power of original process be left to all the Courts unrestricted, that they can send all over our State, regardless of our legislative limitations, then it is not right. To avoid the possibility of a man being sued in San Diego who ought to be sued in San Francisco, I want some positive definition.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am opposed to the amendment, as proposed by the gentleman from San Francisco, because I believe it would exclude the jurisdiction of the Court outside of its own district, notwithstanding it says process may extend to all parts of the State, because that would seem to indicate an exception in favor of "process" extending to all parts of the State. I am in favor of retaining the words "jurisdiction throughout the State," to give the Courts general jurisdiction, with the addition of an amendment which I shall offer in relation to the changing of venue. That will leave the Legislature to determine the reasons upon which a change can be granted. I think that is the better plan. If I am permitted to offer an amendment I will write it out.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: I would like to state now that the old Constitution was silent upon this particular subject, hence the Legislature had power to control the matter, to provide where actions should be commenced, and for what causes they might be changed from one county to another. But here the Constitution fixes the jurisdiction of every one of these Courts. For instance, if an action be commenced in San Francisco, there is no power in the Legislature to take the jurisdiction away from that Court and transfer it to another, except upon the ground that it is brought in the wrong county. There is certainly a great necessity for striking it out. It is not worth while to say anything more about it. By striking it out and inserting, as the Chairman of the committee proposes, there will be no harm done. It will leave us where we were under the old Constitution.

REMARKS OF MR. TERRY.

MR. TERRY. There seems to be an apprehension on the part of some members that this word "process" extends to and includes subpœnas. I do not understand this to be final process. Mesne process is that process by which a defendant is brought into Court. Final process is that process by which the Court reaches his property. Now, the object of this provision which is sought to be engrafted into the Constitution is, that if a Judge renders judgment against a man in one county he can go into another county and levy upon the property there, which is as it is now, except that it is a constitutional instead of a statutory provision.

THE CHAIRMAN. The question is on the amendment of Mr. Wilson, as accepted by Mr. Reddy.

Adopted.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Napa, Judge Crouch, to strike out three hundred dollars and insert one hundred dollars.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I hope this amendment will be adopted. I think I can safely appeal to the lawyers on this floor in favor of it. It will enable parties to bring their actions direct in the Superior Court, if they choose, for one hundred dollars or over, or they may, if they choose, bring them in the Justices' Courts in any case not involving over three hundred dollars.

THE CHAIRMAN. The question is on the amendment.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. Chairman: I think if this amendment is understood by the Convention it will not be adopted. It destroys the right of appeal in all that class of cases involving over one hundred dollars and under three hundred dollars. That is the effect of the amendment. I do not think that is proper. I think small cases should have an appeal as well as large ones. By this means in that class of cases you limit the trial to the one Court alone, because there is no appeal to the Supreme Court in that class of cases. They have either to give up the right of appeal or bring their action in the Justice's Court in the first instance.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: I confess I was not favorably impressed with this amendment at first, but the more I examine it the more it appears to me to be a good amendment. Strike out the word "three" and insert "one." As to the objections urged by the gentleman from San Bernardino, I cannot appreciate their force. If a man has a case in the Justice's Court, he has a right of appeal to the Superior Court. If he chooses to commence the action in the Superior Court in the first instance, I cannot see that he is wronged.

MR. HALE. The plan of the amendment is to give concurrent jurisdiction between one hundred dollars and three hundred dollars, and of course if a suit is brought in the Justice's Court for three hundred dollars, there lies an appeal to the Superior Court. If it be brought in the Superior Court in the first instance, you have the final judgment of that Court just the same.

MR. McCALLUM. It is simply allowing the parties to have one trial instead of two. They waive their right to try in the Justice's Court, and take the final judgment at once. The objections urged against it amount to nothing. The parties have their choice. They can try it in the Justice's Court and then appeal, or they can take it to the Superior Court at once. If you can get the judgment of the Superior Court at one trial, why is it not better than to go to the trouble and expense of two trials to obtain the same result? It is simply a provision that the Superior Court shall have concurrent and appellate jurisdiction in a certain class of cases. There is no difficulty about it.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. The main objection I have to this whole plan is that the dignity and standing of the main Courts of the State will be lowered. That is the objection I have heard made to it among lawyers, that having only one Court to take the place of the present District and County Courts, the standing and dignity will be lowered, and the same respect will not be paid to their decisions. Now, it does seem to me that three hundred dollars is low enough. The judicial system of this State has always been based upon the theory of no concurrent jurisdiction. I do not believe in that system. Now, you propose to put the Superior Court upon a level with the Justices' Courts between the sums of one hundred dollars and three hundred dollars. Why do you want to make this change? The law has been heretofore that cases involving under three hundred dollars were to be tried in the Justices' Courts, and the appeal lay to the County Court. Now, you propose to unite the jurisdiction of the County Courts and the District Courts in the Superior Courts, and then you propose to put them upon a dead level with Justices of the Peace. I have one great objection to this system, and that is, the people will get to look upon the Superior Court very much as they look upon the County Court, and I think there is a great deal in keeping the respect of the people for your Courts. I can see no reason why the old rule should be changed. I hope the amendment will not be adopted.

MR. McCALLUM. How much more dignity is there between trying a case on appeal and trying it originally?

MR. McFARLAND. These small cases should be tried in the lower Courts, and the testimony taken there. I do not think you ought to compel the Superior Courts to try these small cases originally.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: When the proposition of giving concurrent jurisdiction to the Justice and Superior Courts was presented here, it struck me rather favorably; at least I announced to the gentleman that I saw no objection to it. Upon further reflection and examination I see it in a less favorable light, and I am of the opinion that it will be better to leave it as presented by the committee. Now, if you give this concurrent jurisdiction it would seem like giving to the parties the right to select either the Justice's Court or the Superior Court without those limits. It is not giving the selection except to one side, and that to the plaintiff. If the plaintiff prefers the lower Court he will bring his action there. If he prefers the Superior Court he will bring it there. The defendant has no choice in the matter. He is carried to the Court without any choice, and when the decision of the Superior Court is rendered it is final, and he has no appeal. Now, sir, if the plaintiff has the choice of Courts, he has an advantage over the defendant.

MR. HALE. If the case is tried in the lower Court the defendant can invoke the jurisdiction of the Superior Court afterwards. If the plaintiff brings it in the Superior Court in the first instance and gets judgment, it is the same judgment only that would have been rendered on appeal.

MR. WILSON. The right of review seems to run through and be a part of our general system, and this deprives the party of the right of review. Now, by creating this new feature and allowing the action to be brought in the Superior Court in the first instance, we are doing away with the right of appeal.

THE CHAIRMAN. The question is on the adoption of the amendment.

Lost.

MR. FREEMAN. I move an amendment.

THE SECRETARY read:

"Add to the section, 'injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.'"

Adopted.

MR. FREEMAN. Suppose I want to take away a house that is in dispute? I select a non-judicial day, and there is no method whatever to prevent it, because no writ of prohibition can issue.

MR. WILSON, of First District. That is a very desirable amendment. I have seen instances where work was done on Saturday night, just because no writ could issue.

The amendment was adopted.

MR. WATERS. I offer an amendment.

THE SECRETARY read:

"Amend section five, line twelve, after the word 'jurisdiction,' by inserting the words 'on questions of law alone.'"

REMARKS OF MR. WATERS.

MR. WATERS. Mr. Chairman: The object of the amendment is to prevent frivolous appeals being taken. In my estimation this makes the system more complete. I see no necessity for new trials upon questions of fact. If there are any questions of law, let the higher Courts pass upon them. The higher Court can pass upon these questions of law very rapidly, but there is no need of appeals on questions of fact.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope that the amendment of the gentleman will be voted down. There is no way by which the proceedings before a Justice of the Peace are preserved. There would be no benefit arising from taking an appeal upon questions of law alone, and not upon questions of fact. I hope the amendment will be promptly voted down.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: This section was discussed a good deal in the committee, and it was thought best to leave it as it is, and not undertake to prescribe details like this. This section provides that the Superior Courts shall have appellate jurisdiction in a certain class of cases from Justices' and other inferior Courts, as may be prescribed by law. The Legislature may see fit to limit appeals to questions of law alone; and they may, on the other hand, find it better policy, and more in the interest of justice, to allow the facts to be reviewed, as well as questions of law. Why not leave this matter to the Legislature? Why lay down an iron rule upon this subject, which for twenty-five years shall control the judiciary? It was considerations of this kind that induced the committee to delegate that question to the Legislature. Now, it seems to me that it is better to do that than to go into details. I am therefore opposed to the amendment of the gentleman from San Bernardino, because it takes away from the Legislature the power of regulating this matter.

THE CHAIRMAN. The question is on the amendment.

Lost.

MR. BARRY. I offer an amendment.

THE SECRETARY read:

"Amend section five by adding to the section the words: 'And a case in a Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record appointed by the Court and sworn to try the cause.'"

MR. BARRY. Mr. Chairman: I offer this amendment for the gentleman from Kern, Mr. Gregg. He spoke to me with regard to this amendment, and requested me to offer it at the proper time. He did not state his reasons for the amendment, but I presume they are about as follows: That should circumstances arise by which the Judge will be unable to try a case, such as sickness, or other cause, the attorneys, for their clients, can agree upon a certain attorney, who would be qualified to try the case. There are cases where the Judge cannot be personally present. There are other cases where the Judge may have been an attorney in the case before he went upon the bench. In a case of that kind he would be disqualified from trying the case. In that case par-

ticularly, it would be well to have some one who is free from bias, and whom the attorneys might agree upon.

MR. EAGON. That would come in a good deal better in section eight.

MR. BARRY. Then I will withdraw it for the present.

THE CHAIRMAN. The Secretary will read section six.

THE SECRETARY read:

SEC. 6. There shall be in each of the organized counties, or cities and counties, of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, Los Angeles, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court elected in the City and County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

MR. OVERTON. I offer an amendment.

THE SECRETARY read:

"Amend by inserting in line fourteen, after the words 'Los Angeles,' the word 'Sonoma.'"

MR. OVERTON. Mr. Chairman: I will state, sir, that it is the unanimous wish of the bar of my county to have two Judges. It is also the opinion of the District Judge, and the County Judge, and their opinions should have some weight in the matter. We have over twenty-five thousand people, and the county is growing very fast. One Judge cannot transact the business of the county. They want two Judges instead of one.

MR. HERRINGTON. Mr. Chairman: I move an amendment.

THE SECRETARY read:

"Amend section six, by inserting after the words 'Los Angeles,' the words 'Santa Clara.'"

THE CHAIRMAN. The question is on the amendment of the gentleman from Sonoma.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I have but a word to say. I have a petition here addressed to the delegation, signed by eighteen members of our bar, in which they petition this body to allow Sonoma County to have two Judges, instead of one, as reported by the committee. I am also advised that about two thirds of Judge Temple's time is taken up by Sonoma County business. I know the County Judge is busy all the time. So I believe it is absolutely necessary for our county to have two Judges.

The amendment was adopted on division, by a vote of 69 ayes to 26 noes.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: There is a petition signed, I believe, by nearly all the attorneys of San José, and, I may say, the principal attorneys of the county, placed in the hands of the gentleman from Santa Clara, Mr. Tully, whose seat I discover is now vacant. I was requested, by a portion of the attorneys who signed that document, to present this amendment. I believe that the county is of sufficient importance in population and business to justify two Judges. As the business now is I am satisfied it is not less than the business of Los Angeles County—not much less than the business of Alameda County. We have a County Judge, and a District Judge for Santa Clara and the balance of the district. I have been informed by one of the Judges that the business is more than one Judge can attend to. We want the legal business done in a legal way, and I do submit that with a population of forty-five thousand people, it is not possible for one Judge to transact all the business in a manner satisfactory to the people.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: It is exceedingly unpleasant to say anything in opposition to the delegates who may deem it necessary to have two Judges, and I would not say one word were it not that I think it may defeat the whole plan of the committee. The number of Judges has in no case been increased by the committee, unless in the County of Sacramento. There is no increase in Alameda. There we have a District Judge for the whole county, and the County Judge. In Sonoma there is one County Judge, and a District Judge for three counties. Then the Santa Clara district is composed of four counties. Now, if we increase the number of Judges in those counties, they will belong to Judges of the first class, whose salaries are fixed in this article at five thousand dollars a year, so that it would add greatly to the expense. Just as good arguments may be made in favor of San Joaquin and other counties. I am afraid when we get through with the whole thing, and figure it all up, we will find that we have adopted a far more expensive system than we have at present, and if it is so I am afraid that a majority of this Convention will not agree to it.

MR. JOHNSON. Let me ask you a question. Would you have any objection to striking out one of the Judges in Alameda County, for the sake of saving some of this expense?

MR. MCCALLUM. Alameda has the same number of Judges now that is accorded her in this article—a District Judge and a County Judge. That is the theory of the committee, and it is the correct theory. Once depart from it, and there is no end to it. The result will be to defeat the whole scheme. There is another provision in this article which provides for increasing the number of Judges when it becomes necessary. That is section nine.

MR. HOWARD, of Los Angeles. I hope the motion of the gentleman from Santa Clara will prevail. The county is clearly entitled to it. It is nothing more than justice. As far as spending a few thousand dollars, more or less, it is a matter which ought not to be considered.

REMARKS OF MR. WELLER.

MR. WELLER. Mr. Chairman: I cannot let this matter pass without stating what I believe to be the views of our county. I have been instructed by a portion of my constituents that one Judge is not sufficient to transact the business of that county. Compare that county with Los Angeles. The assessed value of the property there is ten million dollars. The assessed value of the property of Santa Clara is twenty-six million dollars and over. Los Angeles has two hundred more votes than Santa Clara. Immediately after the report of this committee came in I sent the report to some of the attorneys there. I have received a reply from one of them, and he says that one Judge is not enough. That, in his experience, one man will never be able to transact the business of the county. I hope the amendment will be adopted.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: I voted against the amendment to give two Judges to Sonoma County. I know a number of members of our bar desire two Judges for Santa Clara County, but I am perfectly convinced that one Judge can do the work if he is any account. If we give them two they will want three. We have two Judges there, the District Judge and the County Judge. The District Judge has four counties, and I am satisfied the County Judge is not engaged one third of his time. The District Judge is not half his time in our county. I am satisfied that one Judge can do all the business.

MR. HALL. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Amend the amendment offered by Mr. Herrington, by adding the words 'San Joaquin.'"

REMARKS OF MR. HALL.

MR. HALL. Mr. Chairman: The business of the District and County Courts combined is such that the delegation from that county, at least four of them, are of the opinion that San Joaquin is entitled to two Judges of the Superior Court. Now, San Joaquin, in point of territory, is quite as large as the County of Sacramento. In respect to the aggregate wealth of the two counties, they are about equal. I recollect some time ago having seen a statement of the aggregate wealth of these two counties, and there was so little difference as to be hardly worth mentioning. Now the business there is increasing. It is a rich county—one of the richest counties in the State. Its population is increasing and keeping march with the business. The Judges there are constantly engaged, and I do believe that the interests of the people will be subserved by having two Judges. One fact I may mention. In the four years last past, there were sixty appeals taken from the County of Santa Clara, and fifty-five taken from the County of San Joaquin. I mention the fact as indicating, in some degree, the comparative business of the two counties. I have an epitome of the business transacted in that county for the years eighteen hundred and seventy-six, eighteen hundred and seventy-seven, and eighteen hundred and seventy-eight. With the permission of the committee I will read it:

In eighteen hundred and seventy-six: District Court—Number of suits commenced, two hundred and eighty-two; number of decrees, one hundred and twenty-six; number of days in session, one hundred and twenty-three. County Court—Number of civil cases, thirty-eight; number of criminal cases, sixty-three; days of session, two hundred and forty-nine. Probate Court—Number commenced, fifty-seven; number of cases heard, four hundred and thirty-four; number of days of session, one hundred and seventy.

For the year eighteen hundred and seventy-seven: District Court—Number of suits commenced, two hundred and ninety-two; number of decrees, one hundred and thirty-six; number of days of session, one hundred and thirty. County Court—Number of civil cases, forty-six; number of civil judgments, twenty-seven; number of criminal judgments, one hundred and sixteen; number of days in session, one hundred and eighty. Probate Court—Cases, forty-five; number of cases heard, three hundred and thirty-eight; number of days of session, one hundred and thirty-three.

For the year eighteen hundred and seventy-eight: District Court—Number of suits commenced, two hundred and five; number of decrees, one hundred and sixty-two; number of days of session, one hundred

and twenty-two. County Court—Number of civil cases, seventy-seven; number of civil judgments, fifty-one; number of criminal judgments, ninety-five; number of days of session, one hundred and sixty-three. Probate Court—Number of cases, fifty-seven; number of cases heard, four hundred and twenty-three; number of days of session, one hundred and fifty-seven.

Now, this shows on the face, the business done there; but it does not show all the work performed by the Judges, by any means. Every lawyer knows that Judges are engaged for thirty-three per cent of the time in Chambers duty. Every member of the bar on this floor will understand that. Cases are often argued out of term. They are heard in Court, and argued in Chambers, and the argument sometimes lasts for days. Writs of injunction, and all that class of business, occupies a great deal of the time, as every lawyer knows. So I can safely appeal, from the statement I have read here, to the justice and fairness of this Convention to allow us two Judges in San Joaquin County. One Judge will not be able to do the business of that county. I am perfectly well satisfied on that point; and I believe that the interests of the public and a due and prompt administration of justice require it. And, sir, although I have no data upon which I can express a positive opinion in regard to the sentiment there, so far as I have heard any expression, it has been in favor of giving to that county two Superior Judges. Certainly, if the Counties of Sacramento and Sonoma are entitled to two Judges, the County of San Joaquin ought to be.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. Chairman: I am in favor of the amendment of my friend Herrington, from Santa Clara, giving Santa Clara County two Judges. I hold in my hand a letter addressed to me, signed by twenty members of the bar of that county—all prominent attorneys of the county—stating that two Judges are absolutely necessary for that county. When I was at home I conversed with Judge Belden, and he assured me that one man could not do the business of that county. I had also a talk with the District Attorney, a gentleman who has been District Attorney for a number of years, and he assured me of the fact. And upon the recommendation of those gentlemen, more than upon my own, I support the amendment of my friend Herrington, and ask that Santa Clara County be given two Judges.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of San Joaquin. Mr. Chairman: I hope that the amendment proposed by my colleague will receive the favorable consideration of this body. I have practiced my profession there for eleven years, and I am familiar with the litigation of that county. I think, sir, that I can safely assert that one man cannot do the business of that county. We have four terms of the District Court in that county, a year, and at every term the calendar has averaged from ninety to one hundred and twenty cases. Business is on the increase in the County Court, and of the amount of business the members of the bar are probably the best judges. The number of members of the bar in San Joaquin is thirty-five. They say that one Judge cannot possibly keep the calendar clear. Now, I find the number of cases appealed from this county, from the first of January, eighteen hundred and seventy-four, to the first of January, eighteen hundred and seventy-eight, was sixty. San Joaquin, fifty-five—only five difference. I believe that justice to San Joaquin County demands the adoption of this amendment.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: It seems to me that unless this judicial system is recommended to the people of the State upon the basis of economy they will not accept it. And if we go on increasing the number of Judges, making a great many more than we have now, it will not be considered as based upon ideas of economy. As far as I am concerned, I take a different view in reference to economy in the pay of the Judges, from what some others do. I think we should pay the Judges well, and give them plenty to do. But that is not the popular idea. The people look at the figures before them, and calculate it upon that basis. Now, another idea here is to have the Court sit continuously, and in that way it seems to me a great deal of business will be dispatched. The Judges lose no time traveling round, as the District Judges have had to do, and there will be another saving in time. I think these counties ought to be able to get along with one Judge. If Sonoma is entitled to two Judges, Santa Clara is also.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I do not like to find fault with the report of the committee, or with what the Convention is doing; but what sort of basis is it upon which this thing is operated? I suppose it goes upon some kind of figures as a basis. We look around to find the figures. We find according to the figures we have, in regard to population, that Sonoma County has less than seven hundred more people than Nevada County, in which I live. Now, the proposition is to give to Sonoma County two Judges at five thousand dollars a year each, but to only give Nevada County one at four thousand dollars a year. Now, sir, I asked one gentleman about this matter—what they made the basis—and he said the basis was the United States census of the year eighteen hundred and seventy. I said this was not carried out by the result. He said the representatives from those counties upon the committee represented that they needed these Judges. Then I suppose the reason that Nevada County was only given one Judge was because that county did not have a representative upon the committee. Now, sir, I see further by the last census that San Joaquin County had a population of twenty-one thousand and a few over, while Nevada County had a population of nineteen thousand and over. Thus two thousand people in San Joaquin County are to have one Judge at five thousand dollars a year, while the whole of Nevada County, with nineteen thousand people, is to have one Judge at four thousand dollars a year. And yet, what man does not know that these mining counties have more litigation, more troublesome litigation, than the agricultural counties? Now, sir, if we are going to give two Judges to Santa Clara, which has three thousand more population than Nevada; if you are going to give Sonoma and San Joaquin two Judges because they have pooled their issues, then, sir, we want Nevada County taken into the ring. I believe we are going too far in this matter. The idea was to have one Judge for each county, so as to reduce the expense; but if we give two to each of these counties, instead of diminishing the expense, we will increase it. I believe this to be unwise. The gentleman enumerates the probate cases and the number of days the Probate Court in his county was in session; and yet the gentleman knows that the Probate Court only sits for a short time, and a great many cases are disposed of in a few moments. In Nevada County we have the most tedious litigation. The suits are heavy mining suits in many cases, which take a long time to try. But, I say, these counties must not expect two Judges. It is unfair to other counties. There are no counties in the State that ought to have two Judges, except San Francisco and Alameda. Los Angeles County is given two Judges. Los Angeles has fifteen thousand people, and two Judges at five thousand dollars a year each. Nevada County, with nineteen thousand, has one Judge at four thousand dollars.

MR. AYERS. No, sir; no such thing.

MR. CROSS. I have the census for Los Angeles—fifteen thousand three hundred and nine. I have no doubt that the population has increased there, and I have no doubt this was represented to the committee. If we had had a representative upon the committee we might have had a different standing.

MR. WHITE. Is an amendment in order? I want to move for another Judge for Santa Cruz. We have at least ten lawyers who want to get upon the bench, and we want more places.

MR. MCCALLUM. There is not a county in the State but that the bar is in favor of an additional Judge.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Joaquin.

Lost.

MR. BELCHER. Mr. Chairman: I wish to offer an amendment.

THE SECRETARY read:

"Insert after the word 'election' in the fourth line, the words, 'provided, that until otherwise ordered by the Legislature, only one Judge shall be elected for the Counties of Yuba and Sutter.'"

REMARKS OF MR. BELCHER.

MR. BELCHER. A good deal has been said here about economy, and I have sent up a proposition to combine these two counties. Now, sir, I know very well that one Judge can do all the business of the two counties named. Now, I presume there are many other counties in the State where one Judge could do the business as well as not. There are not many where the circumstances and situation are so favorable as Yuba and Sutter. It so happens that the county seats of the two counties are within fifteen or twenty minutes walk of each other. One Judge can do the business as well as two, and there is no necessity for more.

The amendment was adopted.

MR. INMAN. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend by inserting in line fifteen, after the word 'Judges,' the words, 'whose salaries shall be fixed by the respective Boards of Supervisors, and whose salaries shall be paid by their respective counties.'"

MR. INMAN. Mr. Chairman: I offer that amendment in good faith. I believe by offering that amendment we will have less Judges, and that they will receive less salaries.

MR. WILSON, of First District. There is another section upon the subject of salaries, and I would suggest that this amendment would be more proper when you reach that section.

MR. INMAN. My object was to stop this discussion about an increase of Judges, because I think the salaries has a good deal to do with it. Just as well put it in here.

MR. WILSON. This is not the proper place for it.

MR. INMAN. I want the counties to pay for these Judges. I want each county to pay for its own Judge. However, out of respect for the gentleman, if he wishes, I will withdraw it until we reach the other section, but I intend to introduce it again.

MR. BARBOUR. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Amend by inserting after the word 'Judges,' in line fifteen, the words 'the Legislature shall have power to provide for attaching any county to a contiguous county for judicial purposes.'"

MR. BARBOUR. In a State like California there are often cases where two counties might be attached together for judicial purposes. I do not believe it is right to tie the hands of the Legislature so completely that they can exercise no discretion. This will be a very expensive system, and for that reason the amendment ought to be adopted, if for no other.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I had not expected to have a word to say, but as a citizen I realize that this is going to be a very expensive system the best we can do, and the amendment of the gentleman from San Francisco, Mr. Barbour, allows the Legislature to reduce the expenses somewhat by reducing the number of Judges for certain counties, and compelling one Judge to do the work of two or more counties. Now, I have taken occasion to make out some figures, showing the comparative cost of the two systems. Assuming that the average salary of the County Judges of this State is two thousand dollars each, and the salary of eleven District Judges five thousand dollars each, and the total expense, outside of the local Courts, Police Courts, etc., would be two hundred and sixty-one thousand dollars. Now the present system provides for a Judge in

each county, to receive five thousand dollars a year, and fifty-two Judges would be two hundred and sixty thousand dollars a year; and eleven extra Judges for San Francisco, at the same salary, fifty-five thousand dollars more, and three extra Judges for these other counties, fifteen thousand dollars more, and seven Supreme Court Judges, forty-two thousand dollars, making a total of three hundred and seventy-two thousand dollars we will have to pay under that system, or one hundred and eleven thousand dollars more than we do now. Now that may be right, it may be satisfactory, but my idea was to simplify the system instead of making it more complex.

MR. SMITH. How many counties have you got down for five thousand dollar salaries? Some get only two thousand, and some four thousand, and some three thousand. It is not much over the present system.

MR. WILSON, of First District. What did you estimate the salaries at?

MR. FILCHER. At five thousand dollars.

MR. WILSON. A great many of them do not get that. They are divided into four classes. There is only one class who get five thousand dollars. The second class four thousand dollars, the third class three thousand dollars, and the fourth class only two thousand dollars, so your figures are entirely defective.

MR. FILCHER. I did not notice that part of it. I assumed that they all received five thousand dollars. It would make some difference, but the system is still a great deal more expensive than the old system.

REMARKS OF MR. CROUCH.

MR. CROUCH. Mr. Chairman: I think the question of expense is one that ought to be carefully considered. Under the present proposed system there are seven Supreme Judges, forty-two thousand dollars; twenty-two Superior Judges, at five thousand dollars, one hundred and ten thousand dollars; eighteen Superior Judges, at four thousand dollars, seventy-two thousand dollars; nineteen Superior Judges, at three thousand dollars, fifty-seven thousand dollars; nine Superior Judges, at two thousand dollars, eighteen thousand dollars. Total, two hundred and ninety-nine thousand dollars. Our present system, there are five Supreme Justices, thirty thousand dollars; five District Judges, at six thousand dollars, thirty thousand dollars; eighteen District Judges, at five thousand dollars, ninety thousand dollars; fifty-two County Judges, eighty-eight thousand nine hundred dollars; making a total of two hundred and thirty-eight thousand nine hundred dollars, to which we add the Probate and Criminal Courts of San Francisco, nineteen thousand dollars more, making the present expense, two hundred and fifty-seven thousand nine hundred dollars. Making a difference of forty-one thousand one hundred dollars in favor of the present system. The proposed plan will cost forty-one thousand dollars more than the old plan.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I think the argument in a money point of view amounts to very little. I do not myself see any force in it in that connection.. The question is whether the present system is adequate to the wants of the State. If it is inadequate, why then we must depart from it. Having arrived at the conclusion that the old system must give way, we come then to the new system; and the question is, whether the new system is adequate to the wants of the State. Is it what the State requires? If so, then the State must stand the expense of it. Consequently comparisons between an adequate and an inadequate system contain no argument at all. If the gentleman can show that we can get along with the old system, that it is good enough, then of course there would be some force in his figures. Having come to the determination, as I understand this Convention has, that the old system is inadequate, then the question of the difference of expense amounts to nothing.

MR. FILCHER. Don't you think, as Chairman of the committee, that we can safely combine some of the smaller counties?

MR. WILSON. I have no objections, but you need not declaim against the system. We have already combined Sutter and Yuba Counties, and there is another proposition to combine El Dorado and Alpine, and I see no objections to it. I see no objections to cheapening the system where it can be done consistently and conveniently. There is no objection that I can see to the amendment proposed by the gentleman from San Francisco, Mr. Barbour. On the contrary, it meets my judgment. Whenever there can be counties consolidated for judicial purposes I can see no objection to its being done, and I think that amendment ought to be adopted. It leaves the system flexible, so that if counties grow too small in wealth and population two or more of them can be consolidated, and if counties grow to such importance as to demand more Judges, they can be provided by the Legislature.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: Believing as I do, I take a different standpoint in regard to the amendment offered by Mr. Barbour. I think it will break up and destroy the uniformity of this system. Suppose Inyo County should go to the Legislature and ask to be united to Kern County for judicial purposes. In that way our Judge, paid for by our county, would be taken away, and we would have no Judge. You start out with the proposition that each county shall have one Judge, and now you propose to put a clause in saying that the Legislature may consolidate counties. It seems to me that no county in the State will ever have less population than there is to-day, and we can find out and unite such counties now as well as the Legislature can. There has been some rising and falling in certain counties, but I think the time is past when any county will get any lower. First, you say each county shall have one Judge, and now you say that the Legislature may unite several counties and give them one Judge between them. We have a Judge in our county, for instance. We may have important business to transact, and yet he would be out of the county, holding Court somewhere else. In that district now, the District Judge has to travel a long way in a circle, to get to us, and the same is true with other districts, and it is to avoid that difficulty that this new system is proposed, to give each county a Judge. This amendment will overturn the entire system.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. Chairman: I hope this amendment to unite different counties will not prevail. There is one instance where it can be done, and that is in the case of the Counties of Yuba and Sutter. The county seats of these counties are within a quarter of a mile of each other, and one Judge can transact the business of these two counties as well as two. But the beauty of this system, and the reason why the people want this system, is that we will have a Judge always in the county. It will do away with this term system, by which we have to run all over a large district to do Chambers work. We want to get rid of this old system, so as to have the business right at home—it has often caused great inconvenience in my district. Now, the gentlemen talk about a little expense; what does it amount to compared to having a system that will give satisfaction? If you give us a Judge for every county in the State, you will find that it will be a very popular measure. The people are not demanding a cheap judicial system so much as an adequate system. They do not care for the cost so long as justice is properly and promptly administered. You cannot get good Judges unless you pay them; so let us not haggle over the cost. I know the people are willing to pay fair and reasonable salaries. I hope this talk about cutting down salaries will be done away with, and that this amendment will be voted down.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: I hope we will provide for a Judge in each county. I understand the State is to pay them. There are a great many reasons why we should have a Judge in each county. In some of the mountain districts the counties are very large, and the mode of travel from one county seat to another, very slow. Suppose Inyo and Kern were united, and the Court happened to be sitting in Kern, and a writ of injunction was wanted to prevent a man from destroying another man's property, we would have to travel all that distance to find the Judge in order to get out the writ. The whole character of litigation demands that there shall be a Judge in each county. The Judges will have plenty of work to do to keep them busy. The question of cost cuts no figure; it is a question of providing a system whereby justice can be had promptly. I hope the amendment will not prevail.

MR. MCCALLUM. This amendment will be more proper if offered to section nine, if anywhere.

MR. BARBOUR. I will withdraw the amendment for the present.

MR. LARKIN. I wish to offer an amendment similar to that offered by Judge Belcher, uniting El Dorado and Alpine Counties. One Judge can discharge all the business of those two counties as well as not. The Clerk of the Court of either of those two counties can notify the Judge, and in twenty-four hours from that time he can be there ready to hold Court. A great many of the counties will have a Judge getting three or four thousand dollars a year, when he will perhaps not sit twenty days in the year.

MR. SCHELL. Don't you know a man might be compelled to remain one, two, or three weeks, and that it would work against the interests of justice?

MR. LARKIN. I think not. I am in favor of this course. There were only seventy-five days of Court in El Dorado County. We get along very peaceably. I hope the amendment will prevail.

MR. MCCALLUM. I would like to ask, what is the distance to be traveled in Winter time from the county seat of El Dorado County to the county seat of Alpine County?

MR. LARKIN. About twenty-four hours ride.

MR. SCHELL. Would it not rather increase the expense than diminish it?

MR. LARKIN. The Judge will pay his own expenses; he will pay his own hotel bill. The County Judge there receives one thousand five hundred dollars a year. He has made a good Judge there and will take this position and do all the business of the two counties. So you will find good men all through the State who will accept these positions at a moderate salary. Unite these two counties, and one man can do all the work. In Judge Belcher's county there is no necessity there for two Judges. One can do all the business. Let us double up these counties, so as to employ Judges at least one hundred days in the year. I intended to offer an amendment for this whole proposition, to provide for a Judge in each Senatorial district in the State. That is the true principle: that will give permanent work and permanent pay. There are forty Senatorial districts in the State, and forty Judges can do all the business well enough. I would like to see such a system as that, and the people would like to see such a system adopted in this State. I believe it is the true policy. Anyway, I desire that these two counties shall be united. It is the true policy, to unite these two small counties. It is in the interest of the State, and we must stand by the interest of the State. There is no necessity for it.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I think it would be bad policy, in any case, to have one Judge for two counties, especially where there is any distance between the county seats. If we adopt this system of having one Judge to attend to all the business of the county, then it is necessary that the Judge should be at the county seat all the time for that purpose. It will do, of course, in a case like Yuba and Sutter, where the Court Houses are not farther apart than this Capitol and the Golden

Eagle Hotel. But where it takes twenty-four hours to travel between them, I say it will not work well. It will be doing injustice to the Judge, because, if he has to travel back and forth all the time, he ought to be paid for it, and if he is paid his mileage, it would cost as much as it would to have two Judges.

MR. BROWN. Mr. Chairman: I think this matter has been discussed long enough. I think it is evident from the arguments here that there ought to be a Court for each county. Uniformity requires it, and for the mere matter of a little expense I do not want to see the harmony of the system spoiled. I hope, therefore, that the amendment will be voted down.

MR. TERRY. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Lost.

THE PREVIOUS QUESTION.

MR. BROWN. I move the previous question.

Seconded by Messrs. Filcher, Caples, Wyatt, and White.

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

Carried.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from El Dorado, Mr. Larkin.

Division was called for, and the amendment was adopted by a vote of 45 ayes to 40 noes.

THE CHAIRMAN. The Secretary will read section seven.

THE SECRETARY read:

SEC. 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

MR. SCHELL. I move the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Judiciary and Judicial Department, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. TOWNSEND. Mr. Chairman: I move that the Convention do now adjourn.

Carried.

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

ONE HUNDRED AND FIFTH DAY.

SACRAMENTO, Friday, January 10th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barnes,	Dudley, of San Joaquin,	McFarland,
Berry,	Estee,	Noel,
Biggs,	Fawcett,	O'Sullivan,
Boggs,	Graves,	Overton,
Campbell,	Gregg,	Porter,
Charles,	Hager,	Shurtleff,
Cowden,	Keyes,	Walker, of Marin.
Dean,	Martin, of Alameda,	

LEAVE OF ABSENCE.

Leave of absence was granted for one day to Messrs. Kenny and Shurtleff.

Two days' leave of absence was granted to Mr. Biggs.

Indefinite leave of absence was granted to Messrs. Noel and Overton.

Leave of absence for one week was granted to Mr. Dean.

THE JOURNAL.

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

Carried.

APPOINTMENT.

THE PRESIDENT. The Chair will appoint P. M. Wellin on the Committee on Miscellaneous Subjects, in place of B. F. Kenny, deceased.

JUDICIAL DEPARTMENT.

MR. WILSON, of First District. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Judiciary and Judicial Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section eight.

HOLDING COURT.

THE SECRETARY read:

SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty to do so.

MR. BARRY. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Amend by adding to the end of the section the words: 'And a case in a Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record approved by the Court and sworn to try the cause.'"

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: This is the same amendment I offered yesterday, and withdrew, in order to wait for this section. I have only a little to say in explanation of it. If the attorneys and their clients agree in writing upon some attorney to try a case, and he is approved by the Court, this provides that the attorney may try that particular case. The object of the amendment as to any case is, as I stated on yesterday, where the presiding Judge may be disqualified to try a particular cause, and that in such an event the respective attorneys, or the parties litigant, may agree upon a competent attorney to sit upon the trial of that cause. There are times, in counties of the interior, where the Judge might not reside at the county seat, where there are two counties joined together to form a particular district, and in another case he might be sick, or he might be absent, or he might have been an attorney previously in the case, before he was elected Judge, and for that reason would be disqualified to try the case. This would provide a remedy whereby the trial might go on. It is, of course, a fact that justice should not be delayed, but on the contrary, it should be as speedy as possible. There are cases where the attorneys and clients of both sides desire a speedy trial, and, in a case of this kind, I see no reason why they should not have an opportunity of going ahead with the trial, if they all agree upon a certain attorney who is competent, and whom the Judge will approve, to try the cause. I do not see any harm that may come from it, and I do see a great deal of good that may come from it.

MR. ROLFE. I would like to ask the gentleman, for information, if he does not think the same object could be obtained under the section as it is in our Code of Civil Procedure, where parties consent to try a case by referee?

MR. BARRY. In that case they would lose the benefit of a jury trial. I think the amendment can do no possible harm, and is one that in many cases will be of great benefit. By referring the case the party would lose the benefit of a jury trial. In this case he procures a trial by an impartial Judge, without the necessity of changing the venue or sending off for another Judge from another district to come there and try the case, and he has the benefit of a jury just the same as if the regular Judge was presiding.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: The difference between this method of choosing a Judge and trying the case, and referring it to the referee, would be this: where a reference is had after the evidence is taken, a report in writing of the whole matter must be submitted to the Judge, and he must pass upon it. In this case the party agreed upon is

that Judge, to all intents and purposes, and there is no further reference to the Judge elected, or to the regular Judge. The person chosen, sitting as Judge, makes his rulings and he tries the case, with the aid and assistance of the jury, exceptions are taken to his rulings, and an appeal can be had from his decisions upon questions of law just the same as from the decisions of the regular Judge. The system here advocated has been in vogue in the State of Indiana for a number of years. It is the practice there to-day, that where attorneys agree they can choose a duly qualified attorney to sit as a Judge in the case. I have seen this method employed in the State of Michigan. It is frequently employed where the Court is pressed with business. Where litigants are obliged to come from a distance with their attorneys and witnesses, and cases are on trial before the regular Judge, and the trial is being prolonged, and it is a hardship for the witnesses, the attorneys for the respective parties have chosen an attorney in whom they had confidence, and, by agreement, allowed him to sit as Judge in the case, and tried the case, either with or without the aid of a jury, and it has universally given satisfaction. It is a matter, of course, which, if the amendment is adopted, rests wholly and solely with the parties to the case. If they choose to have an attorney sit as Judge in their case, certainly no one ought to have a right to complain, and it furthers the ends of justice. It makes justice more speedy, and it has been found in those States in which it has been adopted that the practice is satisfactory.

REMARKS OF MR. HALL.

MR. HALL. Mr. Chairman: I hope that the amendment will not prevail. I am utterly opposed to this system of having a Judge *in esse* and half a dozen *in posse*. We have provided a system by which we are to have a Judge of a Superior Court in each county of the State. We are to clothe him with the robes of his judicial office, and a method is now proposed by which he will be enabled occasionally, or as his convenience may be served, or the wishes of counsel will be gratified, to throw off his robe of office, and some one else, a member of the bar, to assume it. I can see that there are vices about this proposed plan. One of them is this: there is no limitation in respect to the character of cases which are to be tried by the Judge pro tempore. It will extend equally to cases of a criminal character as to cases of a civil character. I can see how there may be collusion between counsel, and although I have the very highest respect for my profession, and I believe them to be, as a mass, a highly honorable class, we must admit that there are to be found among them some men of bad character. I do not want to open the door to the possibility of collusion by which the violator of the law may escape punishment for his crimes. Now again, sir, this temporary officer will sit upon the case, he will hear the testimony, etc., and when he goes off the bench there are certain supplementary proceedings in the case, such as the settlement of bills of exception, settlements for the purpose of appeal, or with a view to a motion for a new trial, and proceedings of that character. Then how long is this quasi-judicial character to inhere to this temporary officer? When is it to end? It seems to me that we might have one Judge, one constitutional officer, elected by the people, to execute these very important functions in behalf of the administration of justice, and not an unlimited number of others who have hanging about them loosely some scrap of the official judicial robes. I am opposed to it, Mr. Chairman, and I trust it will not receive the approbation of this committee. If it shall find its way into this section, I shall be obliged to vote against it when we come into Convention and the final vote is taken.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: This proposition was presented to the Committee on Judiciary and Judicial Department, and as the Secretary of our committee has since died we have not got the notes and memoranda which were kept of our proceedings. My recollection is that this proposition was favorably considered by the committee. For some reason it was not engrafted in the report. I cannot see any objection to adopting this additional provision. The attorneys interested in the case, or parties interested in the case, on both sides, have to agree in writing, and after that is done the Judge has to approve of it. Now, it would certainly be very beneficial in many aspects of the case. Under this system we will have a series of new Judges. In any county the Judge will probably have been an active member of the bar, and will have a good many cases in which he was interested. In that case they would have to remain untried until a Judge could be called from some other county, to come in there and try these cases; and it works a great deal of inconvenience. This mode lays the basis for selecting a Judge from among the members of the bar who is agreed to by both parties, and approved by the Judge. I remember having once seen a case tried in that way, at Rock Island, by a prominent lawyer. It seems to me a good provision, and I cannot see any objection to it; therefore I hope the amendment will prevail.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I will say that in the State of Illinois it is customary, when the Courts are crowded with business, to put the business out in this way, and have, sometimes, two or three jury trials going on at one time. I never heard any complaint about the system, and it is often spoken of approvingly. There is a class of cases in which there are attorneys especially familiar with some particular branch of law, and in such cases it was often to the advantage of attorneys to have the case tried before such an attorney, instead of before the regular Court. Then, I do not see what objection there could be to allowing parties interested to agree, and have their cases submitted to a certain man, who must be learned in the law in order to be a member of the bar. This applies to civil cases. It would facilitate the business of the Courts, it would accommodate litigants, it would secure a speedy administration of justice, it would injure nobody, and I hope it will be adopted.

MR. CROUCH. I would suggest to the gentleman that he amend it so as to read, "approved by the Court, or the Judge thereof," so that the Judge, as well as the Court, could approve.

MR. BARRY. I think that is included in the way the amendment reads. The Court really includes the Judge as well. I would prefer it the way I offer it.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Sierra, Mr. Barry.

The amendment was adopted, on a division, by a vote of 73 ayes to 14 noes.

THE CHAIRMAN. The Secretary will read section nine.

LEAVE OF ABSENCE TO JUDGES.

THE SECRETARY read:

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days, shall be deemed to have forfeited his office. The Legislature of the State may, at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; provided that no such reduction shall affect any Judge who has been elected.

MR. LARKIN. Mr. Chairman: I have an amendment to send up.

THE SECRETARY read:

"Amend section nine by striking out 'sixty' and inserting 'thirty.'"

MR. LARKIN. Mr. Chairman: The object of the amendment is to reduce the time that a Judge may be absent from the State. If a Judge is necessarily absent from the State more than thirty days, he had better resign, and let a Judge be elected, and the business of the Court go on. I am in favor of the amendment, and I think no Judge should be absent from the State, and retain his office, more than thirty days.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I think the sixty days is not too long. Judges get sick just as well as anybody else. I have known gentlemen to be compelled to leave here and go to the Atlantic States, and if they are limited to thirty days they could not do it. It takes eight days to go and eight days to return, leaving only about thirteen days that a man can remain in the States to transact business, or for his health. Sixty days is certainly not too long to allow a man under circumstances which may occur. I do not think we should treat this thing in an illiberal manner, and assume that the Judge will abuse any privilege of this kind. I can only say, that in other places the Courts have long vacations. California is the only place on the face of the earth where Judges work all the time. In England there are very long Summer vacations, which are taken by the Judges, and it has been a common remark, that the long lives of the English Judges arises from the fact that they do take vacations in Summer, and break up this everlasting wear and tear of hard work. An Englishman will be called upon to participate in the affairs of the nation and counsels of the nation when he is eighty years of age, and sometimes up to ninety. Here we think a man old at sixty or sixty-five, because he is working all the time. The English Judges preserve their health and keep strong their mental powers on account of their having time to take their Summer recreations. In the Atlantic States the Courts all have long vacations. They necessarily have them from the heat of Summer. Go to an Atlantic State—go to New York, to Boston, or any of those great leading cities of the East during the Summer months, and you will find that the Courts are not sitting at all. Very little is done there on account of the heat. It is a question simply of giving them an opportunity to preserve their health. Two months out of twelve is certainly not too much as a simple question of vacation. I take it for granted that no Judge is likely to leave the State, unless the absolute requirements of his affairs, or the condition of his health, renders it necessary; And the idea that if a Judge is East, and does not hurry back and get into the State within thirty days, he will forfeit his position, looks to me to be unworthy of a Constitution. I do not believe that the privilege would be availed of, except in cases of necessity.

MR. BROWN. Mr. Chairman: It appears to me that the view of the Chairman of the committee is correct, and that in this case, as well as in others, that we have gone over, in the report of the Judiciary Committee we find that there has been a degree of judgment, solid sense, and discrimination exercised. I am under the impression that it would be improper to make any change whatever. We do not expect that any of these Judges will be inclined to shirk responsibility or avoid business. But in cases such as have been mentioned by the Chairman of the committee, it may be absolutely necessary; I think under the circumstances it would be injudicious to adopt the amendment.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from El Dorado, Mr. Larkin.

The amendment was rejected.

MR. LARKIN. Mr. Chairman: I send up another amendment.

THE SECRETARY read:

"Amend section nine by adding, 'provided that the Legislature shall have power to consolidate two or more counties for judicial purposes.'"

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: The object of that amendment is to leave to the Legislature at any time to consolidate small counties of the State that wish it. I understand that there will be a proposition offered to-day to provide that the counties shall pay their Judges; if so I am satisfied that nearly one third of the counties of this State will not be willing to pay for Judges at the rate proposed in this bill, and that it would be as well to leave to the Legislature—the representatives directly from the people—the power to provide that some counties may be con-

solidated for judicial purposes. Many of these counties would be unable to support a Judge under this plan. I think it is safe to leave it to the Legislature to determine, from time to time, upon the adjusting of these districts, combining the counties and reducing the expenses.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope that the gentleman's amendment will be voted down. I do not believe there is any danger that this Convention will provide that each county will pay for its own Judge. The Judges will undoubtedly be paid as they are paid to-day—out of the State treasury. If we consolidate the counties, then one county will have a Judge resident therein, and there will be no resident Judge in the other county. As it is to-day, each county has its Judge; that is to say, its County Judge; and, in addition, has a District Judge who holds at least one term in the county in the course of a year. Under this system, the County Judges are wiped out, and unless we give each county a Superior Judge, some counties will not have any Judge at all to transact their business; and I do not think that it is a system that is at all desirable. The salary of the Judges, as fixed by the committee, in the lowest grade of counties, is two thousand dollars; and I think the State can well afford to pay two thousand dollars in order to have a Judge within each organized county in the State. When the time comes that there are not sufficient inhabitants within a certain territorial limit to comprise a county, then it is time to disorganize the county and attach it to some other county; but as long as the county organization is intact, so long the State ought to provide it with a Judge. I think it is a wrong economy for gentlemen to get upon this floor and say that some counties ought to have a Judge together; that is, the people of Alpine County can use the Judge of El Dorado County. The gentleman calculates that he is going to run the politics of El Dorado County, and through the influence of the Judge he elects, he is going to run Alpine County. I do not think we are going to aid him in anything of the kind, and I hope the committee will vote down the gentleman's political schemes and aspirations.

MR. LARKIN. Mr. Chairman: I am aware that under this system fifty-two Judges for the counties are provided. The seven Supreme Judges will just include the number of lawyers on this floor, and the draft of this bill was made with reference to giving each man a place. Each lawyer in this Convention was expected to have a place either in the counties or on the Supreme bench.

MR. TULLY. I do not want the position in El Dorado County.

MR. LARKIN. I think that political aspirations have nothing to do with it. I want a system that will be flexible, a system that will leave to the Legislature the regulation of our Courts. Two thirds of the counties to-day cannot afford to pay five thousand dollars or four thousand dollars. Their County Judges, many of them, receive but one thousand five hundred dollars, and they are men quite as capable of discharging their duties as any that will be elected. This system is too magnificent for the State of California. These men are looking at it from the attorney's standpoint, and see places ahead at salaries that they never anticipated.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: If the gentleman by this small attack upon lawyers expects to recommend himself to popular favor, I think he will be mistaken. The people of this country have sufficient intelligence to understand this sort of thing. I am in favor of a Judge in every county, because it is not right to require the people when they want orders in a Probate Court, or in some particular Chamber business, to travel three or four hundred miles to hunt up a Judge to get an order. If the counties are so destitute as to render the expense accounts improper, the Legislature can unite one county to another. Neither is it true that any additional expense, or at least to any considerable amount, is to be imposed upon the State by having a Superior Judge in each county, for I take it for granted that Judges are to be paid out of the State treasury. It is for that we pay taxes. And there would be just as much propriety in requiring every county to pay its member of the Legislature as to pay its Judge. More than all that, at first I was inclined to the opinion that the report of the committee would enhance the expenses of the judiciary, but in looking at it more carefully, and making some calculations, I have come to a different conclusion. In my county, and I believe in all others, there is a tax in the shape of fees in favor of the Probate Judge. We escape all this by the system recommended by the committee. The county and the taxpayers and litigants are relieved from these fees, and my opinion is that in the aggregate they will amount to the increase which the system reported will entail upon the State.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: The sixth section provides that "there shall be, in each of the organized counties, or cities and counties of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election." Now, if this amendment is adopted it would require the re-formation of that section, and of some other sections in this article, from the Judiciary Committee. In fact I rather regret to hear the apparent assent of the Chairman of that committee to these propositions, except in the case of Yuba and Sutter, where it was under very special circumstances, the two county seats being close together and the two Court Houses being within half a mile of each other; so it seemed to be understood that substantially all the benefits of this article, in reference to a Judge in each county, was accomplished in that case by having one Judge for the two counties; but there are no other cases of the kind. My friend from El Dorado is sometimes right and sometimes wrong. This is one of the cases in which he is clearly wrong. I think just previously he was right, when he proposed an amendment to reduce to thirty days the time which a Judge might absent himself from the State. But in the case of his own county, although it may seem a little vain to say it, I believe he is not at all familiar with the workings of its business. In these cases of small counties, where they ought to be disorganized when we get to the report of the Committee on County Boundaries, a sheme is provided by which the territory may be added to adjoining counties. I submit that we ought not to adopt any amendment with reference to this matter, except as to Yuba and Sutter; but if we adopt this amendment there will certainly be a necessity for reconstructing section six and several other sections.

MR. SHAFTER. Mr. Chairman: I would suggest that if it is to be left with the Legislature, we should likewise leave with the Legislature the power to arrange the salaries of Judges in such cases. I would suggest that there should be added to the amendment offered by the gentleman from El Dorado the words "and fix the salaries of Judges in such consolidated counties, not to exceed five thousand dollars to any Judge." I therefore beg leave to offer it as an amendment.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: This is substantially the same as the amendment proposed by myself to section six, and the suggestion of the gentleman from Marin is also correct. I do not believe that it is proper for this Convention to inflict upon this State any cast iron, inflexible rule, in view of the changing condition of things. I assume that the Convention will retain the provision and adopt the provision proposed by the committee, authorizing the payment of the Judges out of the State treasury. I do not express my opinion upon this system as yet. There are fifty-two County Judges in the State at present, whose salaries are paid from the county treasuries, as I understand it. There are twenty-three District Judges and five Supreme Court Judges, who are paid from the State treasury. If gentlemen will make the computation they will find that it adds a burden upon the State treasury of nearly forty Judges. If the provision is adopted authorizing a Judge in every county there will be nearly forty Judges in addition to what are paid from the State treasury at present. Now, sir, it always makes a difference to the people who pay the piper. We do not care much how many Federal officers there are, or how much salary they get. It would be apt to be so with the counties. If the State pays and the county does not pay, the chances are that the people of the county would prefer to have a Judge with a good salary paid from the State. A very small portion falls upon the county. What is everybody's business is nobody's business.

Now, sir, you will find this state of affairs as the result of an inflexible rule like this. In some county where the whole judicial business will not occupy the Judge more than three weeks in the year, they will be very glad to elect a Judge with a good record, who fastens himself upon the State treasury. The people do not care. They have got no particular interest, only their small percentage of expense in common with the people of the State. In that state of things, if the Legislature is given the power to attach another county to that one for judicial purposes, the expense is decreased. Another thing, in my opinion the principle of having a Judge in each county does not commend itself to the good sense and judgment of intelligent men. The proper basis is population and business. Of course that must be taken with geographical arrangements; with facility of communication, etc. In the other States I find that the judicial districts are distributed upon that basis, all the way from a population of forty thousand up to a hundred thousand. And the State of Pennsylvania, whenever a county has a population of forty thousand, under their Constitution, it constitutes a separate judicial district; that is, their Court of Common Pleas, which answers to our District Court. In the State of Illinois it is one hundred thousand; but in the State of Illinois there are criminal Courts which have some of the jurisdiction and some of the work of our District Courts. In this State it is fair to say that one Judge of ordinary industry and ability can try the cases of a population of twenty-five thousand. Less than that, it appears to me, you are making, to a greater or less degree, sinecure offices. The committee has already departed from its rule that there shall be in each organized county a separate Court. The gentleman from Yuba has obtained here a proviso consolidating the two counties of Yuba and Sutter, and having departed from the rule in that case, why not leave the matter open to the Legislature, whenever, in their judgment, it becomes necessary to attach these counties for judicial purposes.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: It seems to me that these provisions are without reason, without rhyme, and without consistency. There has been, in regard to a change in the judiciary in this State, but one idea, and that is to have a Judge in each county; and the reason of it is apparent to every one, that they want a Judge there to attend to the business. Now, what is the result of this change? The Superior Judge that is to be put there is to take the place of the District Judge and the County Judge, and is to be the probate officer. Now, there is a great deal of business in probate that it is absolutely necessary that the Judge should be at hand at the time. A man dies who has a large estate. Some provisional power must be made to attend to that estate at once. And so with a great many other matters of probate, and other kinds of legal business, that it is absolutely necessary that the Judge should be at hand. Under this system you throw it back to the position of a Circuit Judge or District Judge without the advantage of the Probate Judge being in the county. You take away the advantages of the present system and you do not add anything better to it. Now, Mr. Barbour has said that a Judge in one of these outlying counties may saddle himself upon the State. Has not every county in the State a County Judge? Does he not receive a salary? Will this add anything more? Does not this report leave it to the Legislature to fix the salary at the first term? What more is done? Now, this matter can all be arranged about paying salaries. If a man does not amount to much do not give him much salary.

It does seem to me that a county that cannot support one Judge ought not to exist; it should be abolished. Now, this will break down this system entirely. You have already declared that each county shall have a Judge, and now you propose to say that the Legislature shall make Circuit Judges under this system. It is unfair. Here, in the central portion of the State, they get the same number of Judges, and in San Francisco you give them twelve Judges, one more than they have got at present. This thing is unjust and unreasonable, and I, as representing an outlying county, protest, on the part of my constituents, against any such unequal provision. Now, sir, if this should be allowed, members in the Legislature who do not know anything more about the condition of affairs than my friend, Mr. Larkin, and who have influence in the body, as he has in this, may come forward and say: "Unite Inyo County and Kern County, because Inyo is a small county," and thereby take away from the County of Kern, that has a large and increasing population, its Judge. The Judge may be located hundreds of miles over the mountains where railroads can never run, and where it takes two weeks to go and come. In the meantime our probate business cannot be attended to. Other matters cannot be attended to. As it is now, we have almost practically no District Court down there; our Judge has to travel over these mountains, and is gone most of the time. We feel it, and we know what it is. We want a change on that account. I believe that everybody wants a change on that account. When this matter came up in the committee it was the unanimous opinion that we should have a change, because every county ought to have a Judge. It came by unanimous consent. It seemed to be universally admitted that this particular thing should be, and the discussion was all as to what should be the constitution of the Supreme Court. But, in regard to nisi prius Courts, there was but one opinion, and that was, that each county should have a Judge. And now, to come in and break down this principle altogether, making conflicting systems here, I say that it is unreasonable and unjust to the outlying counties.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: I am a member of the committee that framed this report, and I am in favor of having the best Courts possible to have to do the business; but, sir, I am in favor of the amendment proposed, and it is for this reason: there are counties in this State that, in my judgment, can be united. Population changes. The population of some of our counties increases; the population of other counties does not increase. There are counties. the population of which has diminished, and the amount of legal business has diminished very largely within my knowledge. Now, I think I can see where it may be possible, at some time, to unite, without inconvenience, two counties, where one Judge can do the business of two counties without inconvenience. If that be possible, why should we have extra Judges? If I were a Judge I would rather have a fair amount of business to do than to be idle. I believe in giving Judges employment as we give other men employment. Let the time be occupied to a considerable extent. Now, sir, take many of the counties in this State, and with all the business that they have there, the Judge in the county will be idle the greater part of his time. Suppose there are two counties where the business is not greater than one man can do? Suppose you take Tehama and Shasta Counties. Suppose a Judge could be in one county one day, and in the other the next, and hold Court without difficulty; and supposing that the business was not greater than one man could do, why should not one man do it? Why should we have one Judge in Shasta and another in Tehama? Why not have one Judge? So, you take the two Counties of Yolo and Solano. Suppose one Judge could do the business there for the two counties. With the railroad passing directly from one to the other, the Judge could be in both counties during the same day, if need be, and transact business. Why might you not have one Judge for El Dorado and Placer? Why is not one Judge enough? There are many counties in this State where, without any inconvenience, one Judge could do all the business for two counties. The proposition here is simply to permit the Legislature, when it finds that one Judge can do the business for two counties, to provide that one Judge shall do it. Now, I see no reason why it should not be so; and I am in favor of it for another reason: the Legislature has to provide for the salaries of Judges in this State, and the Legislature will not pay Judges well unless Judges have something to do.

The gentleman says let your Judges of the outlying counties have small salaries. I do not know how it is in the gentleman's county, but as for myself I know of no lawyers, who are fit to be Judges, who are willing to serve in that capacity for two thousand dollars a year. I am in favor of giving the lawyers who go upon the bench fair pay, and then they will work for it. I believe that is the better system.

It is said you cannot dispose of the probate business here in these counties. The greater part of the business can be disposed of always by the Court Commissioner who is provided for by this article. There is no question about it. So far as there is business that requires the judgment of the Judge, the Judge will attend to it in the Probate Court. The greater part of the business will be routine business, like orders that attorneys have written out for him to sign, where there is no question as to what the order shall be. I say there are several cases now where one Judge can do the business for two counties. I have spoken of three where there is no doubt about it. I have been told by some of the lawyers of these counties that one Judge could do the business for Tehama and Shasta Counties without any trouble. I believe one Judge could do the business for Yolo and Solano Counties. I believe—because I have been told so—that one Judge could do all the business in Nevada and Placer Counties; do it without any difficulty at all. I have, for some number of years, been a lawyer. I have been looking at the work of Judges, and I know a Judge can do a good deal of work if he undertakes it. And I know it is better for a Judge that he shall have work to do, instead of idling about the streets with nothing upon his hands.

Now, I am for paying Judges well. I am for giving our Judges good salaries. If I have to try a case I want to try it before a man who is worth something to himself. If a man has got a good business he will not leave it and go on the bench unless you pay him something near what his practice brings him. But while I want to see Judges well paid, I want to have it so that they will have something to do, so that the State can afford to pay good salaries. If I was in the Legislature hereafter I would be for uniting these counties wherever one Judge could do the business. There is a difficulty in doing this in some cases. Take the County of Sierra, for instance. The county seat is inaccessible, and the Judge cannot pass from that county seat to another readily. But wherever the Judge can pass readily, and the business is not too large, and one Judge can do it, I believe we ought to leave it in the power of the Legislature to have it so arranged. This amendment ought to be adopted, so that the Legislature can effect this end if it should seem best in the future.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am sorry to observe the gentlemen of this committee conceding that the system which they have formed is a failure. It was a system that was unanimously agreed to, as I understand it, by that committee. It was a system that was based upon three primary main propositions: First, that the people would have justice at their doors, without having the necessity of traveling a long distance to obtain it. Next, they would have perpetual sessions, and business could be transacted constantly in these Courts. In the immediate future, all the interests of litigants would be attended to. The other was that of dispensing with numerous Courts, or rather, a consolidation of jurisdiction; the doing away, so far as that is concerned, with this thing of terms for Courts in the various counties. Now, it is conceded, Mr. Chairman, by this same committee, that the very foundation upon which their theory rested is an utter failure. They are asking now to engraft upon this same system, a system of District Courts: and they are asking to add terms to these Courts by having the Courts sit first in one county, and then to sit in another county. The whole theory might have been met by simply giving the jurisdiction to the County Judge to issue the necessary writs, in the first instance, that is required to be issued by the District Court when great dispatch is requisite and absolutely necessary. All the difficulties could have been met by a simple provision of that character, giving to the County Judge such jurisdiction, and the whole system of this committee would have been carried out more systematically, and perhaps with better satisfaction to the people. But as it is now, there will be no alternative but to travel the distance that is provided between the various counties, and the county seat where the District Court may be in session, when it is composed of two or more counties in a district. Now, where is all this beautifully spun theory with reference to the consolidation of jurisdiction in one Judge, and this beautiful theory of continuous sessions, and this beautiful open theory of having justice administered at the doors of litigants? It has all vanished into thin air, and the gentleman from El Dorado has sprung upon it a proposition which has exploded the whole proposition like a bombshell, and it is scattered into fragments, and to the four winds. Now, if Alpine County is to be united to El Dorado County why not give San Benito to Santa Clara? It is a trifling place. It is up there among the hills. It has no business with a Judge. One man could not occupy his time more than a third of the year, and our Judge sits about two thirds of the time. What, in the name of common sense, is the use of allowing this trifling little county to have a Judge of its own? Why not unite it to Santa Clara?

MR. TOWNSEND. Were you not contending for two Judges in Santa Clara County yesterday?

MR. HERRINGTON. I was desiring to carry out the scheme of the committee and to have justice administered at our doors and that speedily, and I am for one Judge in each county in this State; to carry out the scheme of this committee. If we intend to have the scheme of any use; a scheme that will accommodate the people; if we are going to add expense to the system, let the expense be met with something adequate in the form of justice to pay for the expense. Do not make the people travel from one county to another to find their Judge, and then charge them more for the luxury than they pay now. Either maintain your scheme or abandon your scheme. Either you are right or you are wrong in your determination. Your principles, in the first place, were either founded in justice and right, or they are wholly wrong, and the gentleman from El Dorado is right, and you gentlemen have taken the wrong track. Now, you either ought to be condemned out of your own mouths, and your system ought to go to the wall entirely, or else it ought to be maintained in its integrity, and we ought to have the advantages intended by this scheme. These gentlemen that live in the mountains ought to have it brought home to their doors, and the State ought to pay for it. Do you understand me? [Laughter.] That is what it meant. But when you come to test the scheme and come down to dollars and cents, you forget the justice that the people are requiring, you forget the trouble it is to litigants, and you sneakingly skulk out of the proposition upon which your whole proposition was based, and leave the people in the same condition that they find themselves now, traveling from one county to another. Now, either honestly abandon your scheme and give that jurisdiction to your County Courts, or else give us justice right at the doors of the people, and pay the additional expense and let your scheme stand consistent with itself. Do not abandon cowardly a system simply because some one tells you it adds a thousand dollars expense. Either it is worth it or it ought to go down altogether. The scheme ought to stand as a whole, or be condemned as a whole.

MR. MCCALLUM. I move as a substitute for the pending amendment, to add to the end of section nine the following: "except in case of the consolidation of two or more counties into one county."

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I understand that the Convention here have expressed a decided opinion in favor of the system as reported by the committee, and it has been acted upon and adopted in the main. The gentleman from Santa Clara has expressed his approval of it as a good system, and stated some reasons why I think it a good system. The gentleman from El Dorado has moved an amendment to section nine, stating his reasons why he thinks a mere modification in that very small degree should be made, or rather not a modification, except that it leaves to the Legislature power in certain exceptional cases to consolidate counties. Two gentlemen of the committee have expressed themselves favorable to that modification. Seventeen of the nineteen members of the committee have expressed no opinion upon the subject at this period of time; yet the gentleman from Santa Clara indulges in the highly classical language that the committee skulks sneakingly out of the scheme. Now, if he likes to appear before this Convention using such expressions upon that basis, I give him the high pedestal to which they elevate him.

MR. HERRINGTON. If the Chairman of the committee has not indorsed that scheme I will take it back. I understood him to do so.

MR. WILSON. I have not yet spoken upon it.

MR. HERRINGTON. Then I take it back and apologize.

MR. WILSON. Your apology is accepted on the condition that you do not offend again in the same way. I myself have preferred from the beginning the plan reported by the committee without any modification at all in respect to the matter now under discussion. It is very hard to get a system to work absolutely perfect in every respect. Now, sir, gentlemen have suggested rare and exceptional cases where this system does not act so well in one or two counties as it does generally throughout the State. Now, if we adopt a system which is generally good, it is all that could be expected. No general rule works to perfection in every case; and an exception arose in the case of Yuba and Sutter, which was a very peculiar case, and an amendment was made in that respect, to which I yielded my assent, because I think there should be in every system some flexibility; I think every Constitution ought to have some flexibility about it.

MR. HERRINGTON. Now, I understand that the gentleman admits that he consented to the arrangement about Sutter and Yuba yesterday.

MR. WILSON. I preferred the system as adopted by the committee, without any change, but as that was interposed I raised no objection to it at all, as an exceptional case, or as an exception to the general rule. Now, if there are one or two other exceptional cases, it does not disturb the general system. It rather tends to strengthen and improve the general system. I think it is better to have a Court in each county myself. I think that although there are exceptional counties, where the Judge may not be employed all of his time, yet as long as the county organization exists, they ought to have a Court in that county. Now, take probate business. Gentlemen say there is not much in probate business. Now, we know that some of the most important business arises in the Probate Court. In that Court there is liable to arise some of the most important questions that can arise in any Court. Some of the greatest cases in the books have been on wills, some on descent, some on heirship, questions of distribution, and all those things which are very intricate and difficult. This thing seems to have been overlooked, that almost all the property of the county, sooner or later, must pass through the Probate Court. In the course of fifteen or twenty years, every article in the county is liable to, and I think does, pass through the Probate Court. Therefore it is well to have a Judge stationary in the county, and at the county seat, who will be at all times ready to attend to business of that kind, together with the other business connected with his office.

Now, the Superior Courts, under this system, are to have jurisdiction of all that has heretofore come before the County Courts, before the criminal Courts, and before the Probate Courts; and unless there is a Judge in the county, and at the county seat, there will be a failure of justice in many instances. In case of forcible entry and detainer, either by persons entering by force upon a piece of land, or a house, or by a tenant holding over; now, unless there is a Judge in the county, there would be great inconvenience. And, although there are one or two counties like Alpine, where it would seem that that county could be very well attached to some other county, yet on the whole the system would be better if maintained in its integrity. So far as an exceptional case is concerned, it does not at all interfere with the grand plan that is here proposed, and I take it for granted, that if the Legislature had the power with which it is thought to be invested by the amendment now pending, that it would never be exercised, unless it was the wish of the county—unless it was the desire of the people to be affected by it. Therefore, no great harm could be done by the amendment. I have no deep feelings upon the subject, although I prefer, as a matter of justice, the original system, and that is to give to each county its own Judge.

MR. SMITH, of Fourth District. Would it not be very likely that the Legislature would do it to save expense to the State?

MR. WILSON. I do not think that the Legislature would ever do it without the request of the county.

MR. McCALLUM. I would like to ask the Chairman whether a Judge has a right to his salary where the number of Judges is diminished under this provision: "The Legislature of the State may, at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; *provided*, that no such reduction shall affect any Judge who has been elected." Now, suppose, in the case of Alpine, there should be a consolidation, as provided for in this article, might there not be a legal question as to the Judge drawing his salary for the balance of the term?

MR. WILSON. It would operate in the same way, and the same question would arise in the case of a consolidation of counties. The object of that provision, as I understand it, is, that there should be no scheming to affect a Judge. The Legislature might diminish the number for the purpose of legislating him out of office. If the public interest requires a reduction of Judges, it will of course be done by the Legislature; but it has sometimes been done to seek to attack a Judge, out of some personal spite, or for political considerations.

MR. McCALLUM. Suppose a Judge is elected in Alpine County, and next year that county should be disorganized and attached to El Dorado County, how about that Judge's salary for the balance of his term of office, and the office itself?

MR. WILSON. It is a question whether he would not really get his salary. I suppose he would really not be entitled to his salary.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. Chairman: I do not think it advisable that we should unite counties. We have already had District and County Courts in one jurisdiction. With regard to the inter-communication between counties, it is generally where the counties are thickly settled, and there will be the most legal business. Now counties whose county seats are close together and easy of access are the very counties that are thickly settled. Each of these counties will doubtless need a Judge. In those counties which are sparsely settled their county seats are difficult of access; but in the course of time the population of these counties which are sparsely settled may increase, and inter-communication between the county seats may be easier, and there would be a necessity for some change. And while I do not think it feasible at present, yet I am willing, for the sake of imparting some flexibility to the Constitution, to leave this matter to the Legislature. I will therefore vote for the amendment.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I am in hopes that this amendment will not prevail. The very illustration used by the gentleman from Yuba, of Shasta and Tehama, should satisfy any one that the amendment should not prevail. It is proposed by this system to give us a better judicial system than we have now. That would place Shasta and Tehama in a worse condition than they are now, because they each have a Judge now. Under that system they would only have one Judge for the two. I think that the proposition of the committee is correct—that every county should have a Judge. Every county has a Judge now. If it is necessary to consolidate counties let it be done, but as long as we have a county that county should have a Judge, for reasons that have been alluded to heretofore, and, as I think, fully set forth. I am in hopes that the amendment will not prevail.

REMARKS OF MR. MILLS.

MR. MILLS. Mr. Chairman: I hope that neither of the amendments will prevail. Situated as we are who have seats in this part of the hall, it is almost impossible for us to hear any of the arguments that come from the other side of the house, and as my voice is not strong I have almost given up attempting to be heard in this body. I have been somewhat familiar with the course and management of the District Courts. At one time Contra Costa County was connected with the Third Judicial District. The district extended to Monterey and I think San Luis Obispo Counties. It embraced Alameda, Contra Costa, Santa Cruz, Monterey, and I think San Luis Obispo. Now, sir, what would prevent the Legislature from making a district of the whole State if they saw proper. Would not that defeat the entire system? It is said we are willing to trust to the Legislature. Why not trust them entirely? We have had some experience in our county with the policy of leaving it to the Legislature to decide whether the county shall remain in one district or go to another. A few gentlemen here decided that it was best that Contra Costa should not remain in the Third Judicial District, and we went over into the seventh. When we wanted an injunction, or to transact some business which required an order of the Judge, we were obliged to go sometimes on horseback and sometimes on foot to hunt up the Judge. The Court could not tell what length of time it would remain in a given county. He might expect to remain two or three weeks, and the business might be dispatched in a few days. You could not tell until you got to the county seat whether you would find the Judge there or not. The result was that we have often been compelled to let our business remain until we could find out the locality of the Judge.

Now, it is proposed that the Superior Judge shall transact the business formerly done by the County Judge. It is proposed to place within the jurisdiction of this Court all matters in probate, all proceedings in insolvency, and also all matters in respect to forcible entry and detainer. You are well aware that in such cases the business ought to be transacted promptly. The case might be one where damage is constantly taking place. Why should you say that property shall be destroyed because your Judge is engaged in business in another county? Your County Court at the present time is continously open for the purpose of trying these cases. Now, you propose to do away with those Courts. Suppose the Legislature should undertake to say that Contra Costa and Alameda Counties can get along with one Judge or two Judges. Why, what then? Why, we would have no Judge most of the time to attend to the class of business I have referred to. It is said we can trust the Legislature. Why can you trust them? It is hard to tell what they may do. We went out of the third district into the seventh, then out of the seventh into the fourth, and then back into the third, and now we are in the fifteenth. How long we shall remain there depends upon the view gentleman take who come to the Legislature. We are floating and floating and floating about, and so it would be if this amendment was adopted. I hope that none of these amendments will prevail, and that the scheme proposed by the committee will be carried out.

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

The main question was ordered.

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

The amendment was adopted, on a division, by a vote of 58 ayes to 42 noes.

THE CHAIRMAN. The question recurs on the adoption of the amendment as amended.

The amendment as amended was rejected, on a division, by a vote of 45 ayes to 70 noes.

MR. McCALLUM. Mr. Chairman: I ask the Secretary now to read the amendment which I proposed.

THE SECRETARY read:

"I move, as a substitute for the pending amendment, to add to the end of section nine 'except in case of the consolidation of two or more counties into one county.'"

MR. WILSON. Is not that amendment useless now?

MR. HOWARD. It is suggested as an amendment to an appending amendment.

MR. McCALLUM. That part is withdrawn. It is now offered as an amendment to the section. This does not apply to the consolidation of districts, but to the consolidation of counties. In such cases I propose to avoid the legal question as to the right of a Judge for the continuation of the right of holding office. The argument will be made in these cases, that we have Judges for six years, and we might as well continue the county organization. It is to avoid that constitutional question that I propose that amendment. I think, as I understand the Chairman, he admits that the Judge would, in such a case, be entitled still to a continuation of his salary. We had better provide against that.

MR. LAINE. That does not make, in my judgment, any sense whatever, because this section provides for the reduction of the judicial force of the county.

MR. WILSON. I do not see why that should be introduced into the judicial system. Suppose a county is abolished, what becomes of all the officers of the county? What becomes of the Sheriff, and the County Clerk, and all of these other officers? As a matter of course, the whole county organization goes out. That proposition is not peculiar to Judges. It would apply to the whole force of county officers, and if there is any provision of that kind to be put in, it seems to me it ought to be put in some place where it would apply to the whole system of county officers. My own judgment would be, that if the county organization is absolutely abolished by the Legislature—that is, if the Legislature should say that the County of Alameda and the County of Contra Costa should both be abolished, and one county organization should exist where there are now two, it seems to me that all the officers of every kind would go out.

MR. McCALLUM. I think, myself, on consideration, it would be better, and I will withdraw my amendment.

THE CHAIRMAN. The Secretary will read section ten.

THE SECRETARY read:

SEC. 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both houses of the Legislature, adopted by a two-third vote of each house. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor: but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, or unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

THE CHAIRMAN. If there are no amendments to section ten the Secretary will read section eleven.

THE SECRETARY read:

SEC. 11. There shall be one Justice of the Peace elected in each township in the State, and the Legislature shall determine the number of Justices of the Peace to be elected in each incorporated city and town, or city and county, and shall fix, by law, the powers, duties, and responsibilities of Justices of the Peace; provided such powers shall not, in any case, trench upon the jurisdiction of the several Courts of record, except that such Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars.

MR. WEBSTER. I have an amendment to section eleven.

THE SECRETARY read:

"Amend section eleven by striking out the words 'twenty-five' where they occur in the eighth line, and insert in lieu thereof the word 'fifty.'"

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: It occurs to me, sir, that Justices of the Peace, in their several districts, should have jurisdiction, or concurrent jurisdiction at least, in a sum greater than twenty-five dollars. It is very well known, to those who have experience, that the greatest difficulty exists with those persons whose rental is greater than twenty-five dollars per month; those who really live in brownstone fronts. It is not the poor class of tenants that there is the greatest difficulty with. It may be claimed that because the Superior Courts will always be in session, that this will obviate the difficulty. In my opinion it will not, for the reason that the Superior Court will be at the county seat, wherever that may be. A case of forcible entry and detainer may be fifty miles off, and it will be necessary to go to the county seat. And I think concurrent jurisdiction should exist to the amount of fifty dollars; I do not see how there can be any objection to it.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I hope this amendment will not be adopted. It will be seen, upon considering the question, that it gives the Justice a much larger jurisdiction than would at first be supposed. Now, if an action be brought under this section, it might not only include the rent of one month, but it might include the rent for a whole year. The forcible entry and detainer complained of might have taken place a year preceding the suit; if so, as under our statute in such cases, if anything is recovered it is trebled, this would give a Justice of the Peace the power to enter a judgment for eighteen hundred dollars damages, besides the possession of the property. It is too large a jurisdiction to be exercised by a Justice of the Peace.

MR. TERRY. Mr. Chairman: I offer an amendment to the amendment. Amend section eleven by striking out all after the word "record," in the sixth line.

THE CHAIRMAN. It is not an amendment to the amendment, it is an independent amendment. The first question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. Webster.

The amendment was rejected.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Joaquin.

MR. FILCHER. I have a substitute for the section.

THE SECRETARY read the amendment offered by the gentleman from San Joaquin, Mr. Terry, as follows:

"Amend section eleven, by striking out all after the word 'record,' in the sixth line."

MR. ROLFE. I move to amend section eleven by adding: "And in any action for the recovery of a money demand not exceeding, exclusive of interest, the sum of three hundred dollars, and in actions for damages and for the recovery of personal property where the amount of the demand or the value of the property in controversy does not exceed three hundred dollars."

THE CHAIRMAN. It is not in order at present. The question is on the adoption of the amendment offered by the gentleman from San Joaquin, Mr. Terry.

MR. TERRY. Mr. Chairman: When the Superior Courts are always in session, I cannot see any reason for giving Justices of the Peace jurisdiction over a class of cases in which sometimes the most difficult questions arise. It occurs to me that there is no good to be accomplished by it. The Superior Courts being always in session, the case can be decided as speedily in them as by bringing it before the Justices of the Peace. It is inconsistent with the balance of the scheme, which gives to these Courts the jurisdiction over all cases involving a title or possession of real property. I see no reason for making an exception in case of forcible entry and detainer.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. Chairman: All lawyers will recollect that prior to the amendment of eighteen hundred and sixty-three, the Justices of the Peace had jurisdiction in all of these cases. I never knew of any good reason for changing it. Lawyers who practice at the county seats, perhaps have not felt the injustice of the present system, or the inconvenience of it; but those who practice in large counties, remote from the county seat, know this, that there are considerable towns growing up at a distance of from twenty to sixty miles from the county seat. Now, if a person gets into a piece of property, or into a house that is only worth three hundred dollars, you have to make three or four trips to the county seat, take your attorney there, pay the Sheriff for serving the process and subpœnaing witnesses, and finally, when the plaintiff sums up the result, he finds that he had better give the recreant tenant his property, rather than bring his action sixty miles away. I cannot see any reason why he should not go into a Justice's Court and have the matter settled at once. In many cases there is no real sound defense. It is no answer to say that the Superior Court is always open. It has always been open for this purpose. What is the benefit of a Court opened sixty miles away? This is only asked in cases where the rental value is less than twenty-five dollars. Cases where large amounts are involved, may be tried as before, in a Court of larger jurisdiction. It is only in these trivial cases, which ought to be decided summarily, under any system ever devised in any State in the Union, that we ask this change. I can see no possible reason for opposing it, and I can see that it will be a great advantage to a great many poor people who have their property confiscated under the present unreasonable system.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: I hope the amendment of the gentleman from San Joaquin will be adopted; that is, to strike out all after the word "record," in the sixth line. I would ask some gentleman of the committee if it is the intention to make the decision of the Justice final. I do not see how you are going to take an appeal from a Court of concurrent jurisdiction to another Court of jurisdiction. Either we should strike this out, or give the Justice only original jurisdiction. Very few people would be willing to make the decision of a Justice of the Peace final upon such a matter.

MR. SMITH, of Fourth District. Why should concurrent jurisdiction prevent an appeal?

MR. REDDY. It always has prevented an appeal so far in the history of law.

MR. CROSS. Would not lines twelve and thirteen of section five indicate that the Superior Court would have appellate jurisdiction in such cases?

MR. REDDY. But it is prescribed in the Constitution that Justices shall have concurrent jurisdiction with the Superior Courts in such cases. Here the Constitution fixes a concurrent power in the Justice. Whether I am right or not in this position, I think it would be well to remodel that section, so as to let the Justice have jurisdiction in the first

instance, but leave the right of appeal to the Superior Court of the county.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: I hope that the amendment proposed by the gentleman from San Joaquin will be adopted, and that portion of the section will be stricken out, not only for the reasons given by the gentleman from Inyo, Mr. Reddy, which I deem to be well taken, that if the section stands the decision of the Justice of the Peace would be final. There would be no remedy—but for the additional reason that throughout a large portion of this State the Justices of the Peace are not men so learned in the law, or perhaps in the usages of Courts, as to be fit to deal with questions of the kind involved in the section. If a mode of appeal from their decision should be provided, the real result to the poor people of whom the gentleman from Solano, Mr. Hilborn speaks, would be that there would be an appeal taken from the decision from the Justice, and the people would have the expense of two suits instead of one. I fancy that the reason why that jurisdiction has been withdrawn, has been that it did not operate advantageously; that an appeal was almost an invariable result when there was anything at stake. In the larger cities I am well aware they are able to secure the services of men of sufficient legal learning, ability, and experience to decide such matters, but it is a very small portion of the area of the State, and in a very large portion of the State they are not so favorably situated. I desire to say that we cannot take our best business men. Even they, unlearned and unread in the law, we cannot get them to accept the office of Justice of the Peace. The emoluments are very small, the honor is not very great, and there is but little temptation for men to accept the position, and almost uniformly we are compelled, if we have a Justice of the Peace at all in the county, to select men who have little else to do, and they are usually the best officers. I think it would be cheaper and better for the people, decidedly, that cases involving any questions of that importance should be brought directly before a Court competent to try any kind of civil or criminal case. It is true that there are portions of some of our counties remote from the county seat, and it is inconvenient to bring complaints there, but it is also true that unless you multiply Justices of the Peace greatly you will have still a great distance to go in some cases. It would scarcely give satisfaction to the people of a large township. Our townships are some of them sixty or seventy miles across. The county seat may be central, and might be nearer than the residence of the Justice of the Peace.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I think that section eleven, as adopted by the committee, is the best that could be adopted upon this subject, and I hope that the amendment of the gentleman from San Joaquin will not be adopted. This case of concurrent jurisdiction between the Superior Court and the Justices of the Peace, in the special case of forcible entry and detainer, was adopted by the Committee on Judiciary for the reasons, mainly, referred to by the gentleman from Solano, Mr. Hilborn. A great many counties in the State are large counties, but there will be Justices of the Peace in different townships which are remote from the county seat who can attend to these cases. Any perverse tenant who holds over against the covenants of his lease may, to a considerable degree, annoy and vex the landholder for the purpose of keeping on the land where he has no right. There will be no delay. There will be no attempt at it. That is the class of cases that is attempted to be reached by the committee in section eleven.

MR. REDDY. Was it the intention of the committee that the judgment of the Justice should be final?

MR. WILSON. It was the intention of the committee to leave the question of appellate jurisdiction to the Legislature, because section five provides that the Superior Court shall have appellate jurisdiction in all cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. It should be determined by the Legislature themselves, and this would be one of those cases.

MR. REDDY. Allow me to call your attention to section four, where it states that the Supreme Court shall have appellate jurisdiction in cases of forcible entry and detainer. Now, you give an appeal direct from a Justice's Court to the Supreme Court of the State.

MR. WILSON. I do not think so at all.

MR. REDDY. Look at lines five and six of section four.

MR. WILSON. It has jurisdiction in these cases, but the appellate jurisdiction and the whole provision and machinery for appeal is to be provided for by the Legislature. As a matter of course, these sections are to be read together. We do not consider any one section alone. We look at all of the different sections. Whilst that section four gives the Supreme Court appellate jurisdiction in cases of forcible entry and detainer, section five provides that in cases arising in the Justices Courts the jurisdiction shall be determined by the Legislature. As a matter of course they can provide that an appeal be taken from the Justices of the Peace to the Superior Court, and that would be the appeal that the party would have to take. Now, this is only intended to cover, and I think would only apply practically to the class of cases which have been referred to by the gentleman from Solano, Mr. Hilborn. It is to remove the hardship which would arise from having to go forty or fifty miles to bring an action against a perverse tenant who may be perfectly impecunious. The plaintiff, therefore, ought to have a speedy remedy right at his own door. I am in favor of the section as originally reported and against the amendment.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I would like to call the attention of the chairman of the committee to the fact that the Supreme Court has decided upon this very clause in the present Constitution, in a case of appellate jurisdiction, given to the County Court from any inferior Court created by the Legislature in incorporated cities and towns. The Supreme Court have decided that where the appellate jurisdiction is given, it cannot be denied, and must be enforced in every manner. Now, in lines five and six of section four, appellate jurisdiction in cases of forcible entry and detainer is given to the Supreme Court. Now, under that decision an appeal to the Supreme Court in this class of cases cannot be denied.

MR. CROSS. What kind of a record will you have in cases from a Justice's Court to the Supreme Court?

MR. REYNOLDS. I do not know. If you have the right to appeal to the Superior Court, then you could start a case in the Justice's Court and appeal to the Superior Court, and then to the Supreme Court, under the decision of the Supreme Court, in precisely the same class of cases as this.

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

THE SECRETARY read:

"Strike out in the seventh line the words 'concurrent jurisdiction of the Superior Courts,' and insert the words 'original jurisdiction.'"

MR. HEISKELL. Mr. Chairman: I think the reasons given by the gentleman from Solano are just and proper in these small cases.

REMARKS OF MR. WILSON.

MR. WILSON. If it is the wish of the committee to give Justices of the Peace concurrent jurisdiction in this limited class of cases, and gentlemen fear that there may be an appeal taken directly from Justices of the Peace to the Supreme Court, the thing can very easily be remedied by adding to section eleven a further proviso, that in case of an appeal being taken, that the appeal from the Justice of the Peace should be limited to the Superior Court, and the judgment of the Superior Court should be final. That would obviate that difficulty. The question before the committee is this: shall we give to the Justices of the Peace concurrent jurisdiction in this class of cases? If that is desirable then an amendment is very easily added, that no two appeals shall be taken, nor shall any appeal be taken to the Supreme Court of the State from a Justice's Court. That question is a different question from the one presented, as to whether we shall give the Justices of the Peace jurisdiction in these cases. If the committee adopt this section as it is in other respects, I would add a proviso to obviate the objection, that there may be an appeal directly to the Supreme Court.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: I hope the amendment of Judge Terry will be adopted. My experience in Justices' Courts leads me to believe that it is the poorest tribunal to which a man can go for law or justice. I believe that the Superior Court always ought to try these cases, and I believe so far as the question of economy to litigants is concerned that it is cheaper to litigate cases before competent Courts. It is the experience, I apprehend, of every lawyer here who ever practices before a Justice of the Peace, that in every case that involves any particular amount of money—a hundred or two hundred dollars at least—is always appealed to an appellate Court, thus making double the expense; whereas, if you go to a Court in which litigants have any confidence, they would rather submit to the decision of that Court and end the litigation. I say, that in nine cases out of ten it would be decidedly cheaper to litigate the cases in the Superior Court in the first instance. I hope that the committee will adopt the amendment offered by the gentleman from San Joaquin.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope that the amendment offered by Judge Terry will not be adopted. I am convinced from my experience in matters of this character that Justices' Courts and Courts of inferior jurisdiction should have the power and authority to decide in cases of forcible entry and detainer, where the amount involved is less than twenty-five dollars per month, and the amount of damages does not exceed two hundred dollars. Probably nine tenths of the cases of forcible entry and detainer—and when I say cases of forcible entry and detainer, I mean cases in which parties have rented places, or portions of places, either a whole house or certain rooms in a house—are litigated and passed upon in the City of San Francisco. Now, the experience in that city is this: If a tenant does not pay his rent, the landlord is compelled to go into the County Court, as the practice stands to-day, or if this Constitution be adopted with the amendment of Judge Terry, they will be obliged to go into the Superior Court. Now, the whole question to be decided in nine tenths of these cases, is whether the man has paid his rent or not; whether he has lived up to the obligations of his lease or not. As the case stands to-day, and as the case will stand if the amendment of Judge Terry is adopted, the landlord is obliged to go into the County Court, or into the Superior Court upon the adoption of this Constitution, to file his complaint, and go to an expense of from twenty-five dollars to fifty dollars in order to have his case adjudicated.

MR. CROSS. Is there any such thing as forcible entry upon property held under a lease?

MR. BEERSTECHER. That is the object of the amendment, as it stands now. Nine tenths of these cases are default cases. There is no important question for the Judge at all.

MR. SCHELL. I will ask you whether you have practiced law in the interior counties of this State?

MR. BEERSTECHER. No, sir.

MR. SCHELL. Of course the difficulty you speak of would not be likely to occur in the larger cities?

MR. BEERSTECHER. Yes, sir.

MR. SCHELL. Would it in the country?

MR. BEERSTECHER. Yes, sir.

MR. SCHELL. Don't you know that almost every case is appealed to

the County Court, thus involving two trials? I am firmly convinced that it would lessen the expense by adopting this amendment.

MR. REDDY. It cannot possibly apply to holding over.

MR. BEERSTECHER. It is a detainer. I understand from practicing attorneys in the country that it is just exactly the same there as in the city. The only question is whether the defendant has a right to retain the premises or not. The defendant is taken into the Court; there is a default judgment in nine tenths of the cases, and the costs are multiplied against the defendant, and a judgment of treble the amount of rent is taken against him. So that if a man holds over two weeks, and the actual amount of rent due would be ten dollars, they would give a judgment to-day in favor of the landlords of San Francisco for from seventy-five dollars to one hundred dollars, costs, and damages. The execution upon that judgment runs against the defendant's wages, and against anything that the man can earn. It would not only do justice to the men that own the property, but also secure justice to the men that lease and hold the property, that Justices of the Peace should have the right to adjudicate these cases. And it is a speedy judgment. In this way men can wrongfully hold the property of other men, for months and months, and then, of course, they are mulcted in damages that sometimes they are never able to pay, or else they are harassed upon the judgment for ten or fifteen years. I believe that the ends of justice require that section to be adopted. I am in favor of the amendment offered by the gentleman from Stanislaus, Mr. Heiskell, and I am opposed to the amendment offered by Judge Terry.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am in favor of the amendment offered by the gentleman from San Joaquin, Judge Terry, and I hope it will be adopted. I hope so, for this reason: I am aware that a great many of these cases that are spoken of by gentlemen are founded upon leases. They are also founded upon notices to quit; and I had almost said, or was about to say, that in nine cases out of ten they are brought upon complaints that do not state facts sufficient to constitute a cause of action. They are allowed to go by default, and finally there is a certiorari issued from a superior tribunal, and the case brought up.

MR. HALL. Would the words "forcible entry and detainer" necessarily include the case of an unlawful detainer where a tenant refused to give up property?

MR. HERRINGTON. I am treating it as if it included every question. I supposed it was really intended to cover the whole ground. I am treating it in that light. I think that was the intention of the committee. I know that the statute makes it forcible detainer where there is a lease and a notice to quit. I am treating this as covering all the questions, and I say that in nine cases out of ten, in these country places, where every one is permitted to appear in the Justices' Court and practice, in these cases, the complaints will not support the judgment taken by default. The consequence is, that the expenses afterward incurred are very great, and there is a great deal of litigation that otherwise might be avoided by appearing, in the first place, in a Court where the pleadings will be passed upon, and where they will be either supported or not, upon the proof made by a competent attorney, instead of parties practicing as a matter of compassion for these parties, and who know nothing about law. Litigants ought not to be hoodwinked in that way. Ninety-nine out of one hundred of these men who practice in Justices' Courts in these cases, know nothing about the intricacy that is involved in a suit of this kind. I submit that the amendment of the gentleman from San Joaquin ought to be adopted, and a Justice of the Peace ought not to be allowed a jurisdiction of the character that is attempted to be given by this section.

MR. AYERS. I would like to ask the gentleman from San Francisco if, in his opinion, this section will enable the plaintiff to obtain treble damages?

MR. BEERSTECHER. The matter of treble damages is a matter of legislation in the Code.

MR. AYERS. You believe it would. Then I am opposed to it. I am opposed to amplifying the English language by the addition of a new word.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: There are some counties, as the gentleman from Solano has said, where they have good sized towns a great distance from the county seat, and it would be very unjust and unreasonable to have these parties forced to go to the county seat in order to get a tenant out of the premises who holds them only because he knows it will take a good deal of trouble and expense to get him out. Now, I undertake to say that in nine cases out of ten of that character, if the tenants knew that they would be got out immediately there would be no suit, and for that reason it seems to me that this section should be allowed to stand. In all our counties there are several towns a great distance from the county seat. We have one town seventy-five miles from the county seat; another forty-five miles, and another forty miles. There are a great many such cases in this State. Gentlemen have intimated that forcible entry and detainer go together necessarily. I think the Supreme Court has decided otherwise. If a man leases a piece of property and his lease has expired and he fails to go, it is an unlawful detainer. In San Francisco, when the calendar is large in the Superior Court, if the Justices had jurisdiction in these matters they could be applied to at once and the tenants got out immediately. An imposition would be prevented, and I think a great many cases would not be brought which are now forced to be brought and the tenants remain in until they get judgment, thereby saving a month or more of rent without paying for it. The Justices' Courts of Oregon, and many of the eastern States, have jurisdiction in these cases; have now and always have had. There is no good reason why they should not have.

REMARKS OF MR. HALL.

MR. HALL. Mr. Chairman: I desire to vote intelligently upon this question, and I should like to be informed by the Chairman of the committee whether the words "forcible entry and detainer" in his opinion embraces that class of cases which have been alluded to here.

MR. WILSON. Mr. Chairman: The question arose before the committee, and was thoroughly examined and talked of. The Supreme Court of this State have construed the words "forcible entry and detainer" as embracing both classes of cases; that is, a case of forcible entry as well as an unlawful holding over of a tenant; and for that reason, as the Court held that these words cover the entire class of cases, it was better to retain the old language. That was the reason which influenced the committee at the time, so that these words were inserted, *ex industria*, because they had been construed by the Supreme Court as covering all these different classes of cases.

MR. HALL. I was not aware of the decision of the Supreme Court to which the Chairman of the Committee on Judiciary alludes.

MR. HILBORN. The case of Culver against Stephens, I think in the twenty-eighth California. Mr. Dunlap was in the case. It went up from this county.

MR. HALL. Still it seems to me that it has been held proper that a summary proceeding may be had upon the part of a landlord against a tenant refusing to pay rent; and I had been under the impression, until just now corrected by the Chairman of the Committee on Judiciary and by the honorable gentleman from Solano, that this proceeding in the County Courts of our State, under section eight of the existing Constitution, was permitted in that Court under and by virtue of a provision which confers upon the County Court jurisdiction of forcible entry and detainer, and not by virtue of the statute passed in pursuance of the general power, contained in the same section, given to the Legislature to confer upon County Courts jurisdiction in such special cases as are not otherwise provided for; and that, acting under that authority, under that constitutional power, the Legislature had created another class of special cases, jurisdiction over which was conferred upon the County Courts; and that the case of a tenant refusing to surrender possession after demand for possession, or refusing to pay rent upon demand being made upon him, constituted a case of unlawful detainer as distinguished from a case of forcible detainer.

That in order to constitute forcible entry and detainer there must be some threats, or some menace, or some exhibition of force, some declaration or act upon the part of some person which would amount to a criminal offense; and for that reason judgment has been in form of treble damages—punitive damages—punishing the party for a violation of the law in refusing to surrender possession. Now, whether I am right in my construction or not, I must yield, of course, to the Chairman of the Committee on Judiciary. I am still opposed to the amendment, because I think, sir, that we should open the Courts in distant portions of the county, remote from the county seat, to enable parties, particularly in those causes of action as between landlord and tenant, to proceed summarily for possession. Now, the delegate from the Fourth District, Mr. Schell, says that nine tenths of the cases are appealed to the County Court. Well, sir, I am aware myself that a very large per cent. of cases are carried up by appeal to the County Court, but I do not think the percentage is so great as the gentleman has stated; and it would certainly in some instances amount to injustice to close the doors of these Courts in cases of that kind, when parties are seeking to recover the possession of their property. Now, I will take the case of San Joaquin County. An application was made here yesterday, the object of which was to entitle her to two Judges of the Superior Court. This committee declined to grant the application from the showing which has been made here of the number of cases originating in that county, all of which would have to go into the Superior Court. I submit that it would be almost equivalent to closing the doors of justice to a man altogether. I think that the amendment should not be adopted.

MR. WILSON. Mr. Chairman: I ask permission to send up to the Secretary's desk and have read an amendment which I propose to offer in case the amendment offered by Judge Terry should be voted down.

THE SECRETARY read:

"Provided, that no appeal shall be taken from any judgment in a Justice's Court in a case of forcible entry and detainer, except to the Superior Court of the same county, or city and county, and the judgment of the Superior Court thereon shall be final."

MR. EDGERTON. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Judiciary and Judicial Department, have made progress therein, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

JUSTICES OF THE PEACE.

MR. WILSON, of First District. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Judiciary and Judicial Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Joaquin, Judge Terry.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I am in favor of the motion of the gentleman from San Joaquin, to strike out. It is, however, due to the committee for me to say that in the committee I voted for the section as it now stands. That part of the section was offered by the gentleman from Solano, Mr. Hilborn, and it seemed to me at that time that it was a judicious provision. Subsequent reflection upon that subject, however, has caused me to change my mind, so that I am involved in that inconsistency. Sam. Johnson said there were two kinds of men who were to be avoided—the man who is always changing his mind, and the man who never changes his mind. As this is the first time I have changed my mind this Winter, I suppose I may be excused. Now, as to the question as to conferring jurisdiction upon Justices of the Peace at all. Under the Constitution of eighteen hundred and forty-nine, it was provided that the Supreme Court should have appellate jurisdiction in all cases relating to the title or possession of real property, and the Justices of the Peace should have such jurisdiction as the Legislature might confer upon them. The Legislature conferred power upon them to try such cases of forcible entry and detainer. When the Constitution was amended in eighteen hundred and sixty-four, that power was taken away entirely from Justices of the Peace, and original jurisdiction was conferred upon the County Court in those cases, with an appeal to the Supreme Court. As I understand it, the Supreme Court has always had appellate power over these cases. Now, from the foundation of the government, while men could be sent to the County Jail for a year; while a man could be fined, and costs piled up upon him, without any appeal, nevertheless, in those cases affecting the title or possession of real property, it has been the policy always to give an appeal to the Supreme Court. They have always had that appellate power. Now, section four provides that the Supreme Court shall have appellate power in all cases of forcible entry and detainer. Now, sir, upon reflection, I do not believe that Justices of the Peace should have anything to do with these cases at all. These actions of forcible entry and detainer affect a man's home, and tracks him to his own fireside. You pitch a man out of his castle; to throw a man and his wife, and the infant in the cradle, into the street; and it is because of the importance of this class of litigation that the Constitution and the legislation of this State have always invariably provided that the party should have the right of appeal to the Supreme Court. Now, sir, this may become a matter of the utmost importance. This matter of twenty-five dollars a month may become a matter of the very greatest moment. Suppose a man leases a place for a sum of money, say twenty-five dollars a month. All of a sudden the place grows up to be thickly populated, and the rental value of that place increases of a sudden from twenty-five dollars a month to one hundred and fifty dollars a month. It thus becomes a case of very great importance. It seems to me that it is a case that ought to be reviewed and finally passed upon by the Court of last resort. If a man has a suit in regard to a place, the rental value of which is thirty dollars a month, he can go to the Supreme Court and have the case reviewed. But if he has a suit involving a rental value of twenty-five dollars a month, he has to stop at the lower Court, though the two cases may be precisely analogous, and involve precisely the same questions. It seems to me it is an inconsistency, and I shall support the amendment. I am very sorry to disagree with my learned friend, the Chairman of the Judiciary Committee, for I nearly always follow him in matters of constitutional law, but this time I must disagree with him.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: It may appear presumptuous in any one not an attorney to speak upon any matter relating to the judiciary system; and yet, from my standpoint, it appears to me that there are other classes of citizens interested in this matter. Now, there are quite a number of cases of this kind all over the country. Right here, permit me to say, that I do not fully concur with the idea that in every instance Justices of the Peace are not competent to try these cases. We find towns of moderate size containing five hundred or one thousand people strung out all over the country, remote from the county seat, where a large class of cases of this kind come up, and where the greatest harm might result in not having a Court where these cases could be tried. I mean these small cases which come up to be tried immediately. There is a question of economy right here. It has been argued that it was cheaper to go into the County Court in the first instance. Well, under this section that privilege is granted. It is optional whether he commences the action in the Superior Court, or before a local Justice of the Peace. I know there are in my county five or six quite important little towns that are from twelve to twenty-five miles distant from the county seat. In these towns there are persons competent to act as Justices of the Peace, and in these important centers persons of that class are elected. So it is not always true that ignoramuses are chosen. That condition of affairs is passing off, and a better class of men will be selected to fill those offices in future. I believe it to be in the interest of litigants that they should have resort to these local Courts. Attorneys, like everybody else, are mistaken in some things. They will charge more to go into the County Court than they will to go into the Justices Court. Now, if you add to the costs the additional attorney's fees for going into the Superior Court—and they charge generally about twenty-five dollars—and the expense of taking witnesses and maintaining them at the county seat, you will find that it will be very costly for all these small cases. That is my point of economy.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: It is proposed to leave the Constitution as it is by the amendment of Judge Terry, so we have a strong argument in favor of the motion. But I find this additional argument in looking through the Constitutions of other States: I do not find any single one that there is any provision in giving Justices' Courts jurisdiction in cases of forcible entry and detainer. So, unless that amendment is adopted, California will stand alone in giving such jurisdiction. Now, I don't know how it may be in Los Angeles, that the gentleman speaks about, but in the County of Alameda there is no demand for any such change—at least I never heard of it. We have some considerable towns there, forty or fifty miles from the county seat. I believe it is more economical to try these cases in the Superior Court than in the Justice's Court. The whole costs for an ordinary suit would be, perhaps, fifteen dollars. In the Justice's Court it would be as great.

MR. HILBORN. Suppose the county seat should be changed from Oakland to San Leandro, would you then be in favor of the change or not?

MR. MCCALLUM. I trust I am in favor of some higher consideration than my own personal consideration. It appears to me that these considerations should have some weight. As far as any public expression is concerned, there is no demand for the change. If we do make that a constitutional provision, we will stand alone in this respect. I would be willing to support an amendment which would give Justices' Courts jurisdiction in uncontested cases. But so many objections can be raised to it, that I do not feel like formulating such an amendment myself.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: Without having considered this section as carefully as I would, I feel impelled to sustain the section as it stands, in the face of all the pending amendments. I recognize the full force of the arguments of the gentleman from Sacramento, and in answer to them I desire to say, in behalf of the people of San Francisco, that there is a large class of cases of forcible entry and detainer, in which justice demands a speedy and cheap remedy. I refer to that class of trifling, worthless tenants—and in that city there is a great many of them—who go about imposing upon landlords, who get into a house or room, pay the first month's rent, and stay as long as they can without paying any more, until the landlord can stand it no more, and he is compelled to bring an action of forcible entry and detainer. What is the result? He has to bring that action in the County Court. The Clerk's fees come to eleven dollars and fifty cents; judgment, four dollars and fifty cents, making fifteen dollars. The judgment is good for nothing, because the tenant has nothing. It costs him that at the very lowest to get possession of his premises, to say nothing of attorney fees. The result is, altogether, that it costs him from thirty-five to forty dollars to get the tenant out of his house, where the rent does not amount actually to more than ten or fifteen dollars a month. There is a large class of that kind of cases, which demand a speedy and cheap mode of trial. It does not involve the title to real estate. It is only the getting possession of his own property. I believe under this section there is an appeal to the Superior Court, but nineteen twentieths of these cases will end right there in the Justice's Court. But if there is a case that ought to be appealed, let it go to the Superior Court, and that will dispose of it. Perhaps not one in a thousand will ever reach the Supreme Court. I believe this section ought to stand as it is. It will afford a remedy that I know is needed in San Francisco. I believe every city needs it, and that it will work no hardship, because if there is a case of importance, it will be brought in the Superior Court at once.

MR. HERRINGTON. Nearly all the Justices of the Peace are lawyers, are they not?

MR. REYNOLDS. Yes, sir.

MR. HERRINGTON. That is not so in the country, is it?

MR. REYNOLDS. I don't see the relevancy with the question at issue. We simply propose to give them jurisdiction. Whether they are lawyers or not, I cannot see what difference it makes; one man can decide these cases as well as another; all it needs is a little common sense. If any man supposes that there is any intricate question of law involved, he has the privilege of going to the Superior Court with it, and trying it there. I think the section ought to stand; it will afford a remedy in that class of cases where sumptuary proceedings are required. If it is not adopted it will work a hardship to a large class of people.

THE PREVIOUS QUESTION.

MR. WINANS. I move the previous question.

Seconded by Messrs. Stedman, Brown, Moreland, and West.

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

Carried.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Joaquin, Judge Terry.

Division was called for, and the amendment was lost by a vote of 31 ayes to 69 noes.

THE CHAIRMAN. The question is on the amendment of the gentleman from Stanislaus, Mr. Heiskell.

Lost.

MR. WILSON, of First District. I send up an amendment, or additional proviso.

THE SECRETARY read:

"Provided further, that no appeal shall be taken from any judgment in a Justice's Court, in a case of forcible entry and detainer, except to the Superior Court of the same county, or city and county, and the judgment of the Superior Court thereon shall be final."

REMARKS OF MR. EDGERTON.

MR. EDGERTON. I would ask the Chairman of the committee if that might not involve an inconsistency and absurdity in this class of cases? A party brings an action in the Superior Court in the first instance, under a lease, where the rental value is twenty dollars a month. Another party brings an action in the Justice's Court, where the rental value is twenty dollars a month, and an appeal is taken to the Superior Court. Now, sir, precisely the same amounts are involved in both cases. The cases are of the same magnitude, and precisely the same questions are involved. The Judge of the Superior Court renders judgment, in both cases, precisely alike, and yet, the person who comes up from the Justice's Court is deprived of the right of appeal, while the party who brought his action in the Superior Court can appeal.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I do not see any serious difficulty in the proposition presented by my friend from Sacramento, and I can call to his mind a hundred instances in which similar questions might arise. A man might bring an action on a promissory note in a Justice's Court, under three hundred dollars; another might bring an action in the Superior Court for three hundred and one dollars, and the same questions might arise in each case. One would have an appeal to the Supreme Court and the other would not, although precisely the same questions are involved—the only difference being one dollar. There is the dividing line between the general jurisdiction of the Superior Court and the general jurisdiction of the Justice's Court. The proposition that such things may happen is no objection to the system at all. No lawyer will say so. My learned friend will answer himself, and I hope he will have the candor to say that there is nothing in the question he propounds.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I hope the amendment will not be adopted. It is one of the most dangerous character. It involves the possession of real property, and no appeal allowed to the Supreme Court. Under this section we limit the jurisdiction to the simple rental value of the property. Now, there are many properties, not having a rental value exceeding twenty-five dollars a month, that are worth four or five thousand dollars, and to turn persons out of the possession of property of that kind, without any right of appeal to the Supreme Court, is an exception that should not be established.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: As far as I am concerned, I hope the amendment will be voted down, and for this reason: I do not think the Superior Court ought to be a Court of last resort. If there is to be an appeal at all, in this class of cases, it ought to be to the Supreme Court. Now, under this section suit may be brought in the Justice's Court involving one thousand dollars rent. I understand it to say where the rental value does not exceed twenty-five dollars a month; but it doesn't say anything about where one month's rent has accrued, or six months' rent, or a year's rent, or three years' rent. The party may have taken a lease for four years, and at the end of the four years he might not surrender the premises. In such a case as that, which involves a large amount of money, it may be brought in the Justice's Court, and under this proposed amendment there would be no appeal to the Supreme Court. I say he should not be prohibited from appealing to the Supreme Court, and the Superior Court should not be constituted a Court of last resort.

MR. HILBORN. Doesn't the gentleman know that the limit of damages is two hundred dollars?

MR. SCHELL. A party can sue for two hundred dollars when it involves but the one question of the fact of possession.

MR. EDGERTON. We have lived under the present system for thirty years, the same system which prevails, I believe, in every State in the Union. It is proposed here to limit to cases where the rental value is twenty-five dollars, and this sum may accumulate to six hundred dollars, and yet it must end in the Superior Court. I don't see that the Chairman of the committee has helped us out of the difficulty. I think it involves the inconsistency which I mentioned in the first place. A man may allow the rent to fall behind, even at twenty-five dollars a month, until it reaches six hundred dollars or one thousand dollars a month. It seems to me that a suit which may involve that amount should be subject to review by the Court of last resort.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: This gives the plaintiff the absolute right to deprive the defendant of the right of appeal to the Supreme Court, if the case is decided against him. By bringing the action before a Justice of the Peace, the defendant is deprived of the right of appeal to the Supreme Court. If this amendment should prevail there ought to be a further amendment to enable the person to transfer the case to the Superior Court, by giving a bond for costs. The only reason I have heard advanced for this amendment is that there are a large number of defendants who are without money, and that no judgment could be collected; and even the costs the plaintiff would be compelled to advance in nine cases out of ten. That may be true, but there are cases which involve very considerable interests, which would be within the jurisdiction of Justices of the Peace. It might include the possession of one hundred and sixty acres of land worth twenty dollars an acre, and it might involve a lease upon it which has twenty years to run. I can see no reason why the parties should not be allowed to appeal. I can see no good to be accomplished by this amendment. Under the system which prevailed before eighteen hundred and sixty-four in this State, these cases were commenced in the Justice's Court, and could be appealed to the County Court, and from there to the Supreme Court. I can see no reason why the defendant, if he is able to give bonds to secure the plaintiff, should not have the right to go to the Supreme Court and have the case reviewed. I think the amendment ought to be voted down. That is, unless it shall be so amended as to allow farther appeal to the Supreme Court.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I do not think this amendment a judicious one. This is a matter that may safely be left open to the Legislature. Whether the Court finds heavy damages or light damages, is of no consequence. That is merely accessory, and does not make any difference. It is the right of possession. What is the use of making this distinction? One party should have the right of appeal as much as another. An action brought for two hundred and ninety-nine dollars damages would be brought before a Justice of the Peace, and an action for three hundred and one dollars would be brought before the Superior Court. The right of possession, where the damage is laid at two hundred and ninety-nine dollars, may be worth twenty thousand dollars, and in the other case the right of possession may not be worth ten dollars One case is appealable and the other is not. There is no difficulty about allowing a party the right of appeal. What inconvenience is there. I cannot see any whatever. I am in favor of allowing the Justices' Courts to have jurisdiction in these cases. As the gentleman from San Francisco said: there are a great many people who go into houses or rooms intending to pay no rent. They will stay there until they are put out, and then go somewhere else. There ought to be some quick process to dispose of that class of cases; but I can see no reason why the right of appeal should be taken away. I would allow appeal in all cases to the Supreme Court. There is not a particle of inconvenience. I hope we shall vote the amendment down.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: When I stated awhile ago that even at that amount of monthly rental it might involve six hundred dollars, the gentleman referred me to section six, to convince me that my position was wrong, and when I first glanced at it I thought perhaps I might be wrong. But upon further consideration and reflection I am satisfied my position was correct, and I am satisfied that it will be so construed. It will be construed with reference to the statutes upon that subject. I believe that is one rule of construing constitutional provisions. And I say under our statutes the rental of twenty-five dollars per month will be contradistinguished from the question of damages. I will refer you to the Code of Civil Procedure, section one thousand one hundred and seventy-four. There there is a plain distinction made between damages and the rental value. So I claim that a man under this provision may sue for damages of two hundred dollars and an accrued rental of six hundred dollars, which would make eight hundred dollars altogether. I think my position is correct.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope the amendment of the gentleman from San Francisco will not prevail. I don't believe it is any hardship to grant the right of appeal from the Justices' Courts to the Superior, and from the Superior Court to the Supreme Court. The practice in the State of Michigan for thirty years has been to allow Justices of the Peace jurisdiction in these cases, in any amount, in those townships where no Court Commissioners reside. But in the township where the Circuit Court Commissioner resides the action must be brought before the Commissioner. And where the matter is tried before the Commissioner the appeal lies direct to the Supreme Court, without any intervention of the Superior Court. In the other case it is brought before the Justice of the Peace, without limit, both as to the amount of the rental and the property involved. The appeal lies from the decision of the Justice of the Peace to the Circuit Court, and from the Circuit Court to the Supreme Court. I think that there should always be given the right of appeal, the appellant, of course, being required to give bonds for costs. The object of conferring this jurisdiction upon Justices of the Peace is to allow them to try cases where there are really no meritorious questions to be passed upon. But where there is merit in the case, the right of appeal should be conferred on both sides, provided sufficient bond is given to cover the rental value and the costs. The rights of both parties are thus secured, and the right of appeal can do no harm.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: This committee has adopted section eleven as it now is, by which it is said that in a certain class of cases, of small amounts, the Justices of the Peace shall have jurisdiction. Now, the proposition which I present is, whether, in that class of cases, one appeal only shall be allowed, or two appeals?

MR. EDGERTON. I would like to ask you a question. A person can commence in the Superior Court, and from there can appeal to the Supreme Court. If he commences in the Justice's Court it can be appealed to the Superior Court, and there he has got to stop.

MR. WILSON. Is that all you have to say?

MR. EDGERTON. That is all I have to say.

MR. WILSON. You haven't said much. [Laughter.] Now, to proceed. My learned friend interrupted me to ask me what I thought of what he thought. We have adopted a section permitting these small cases to be tried in the Justice's Court, limiting it to small cases for the convenience of persons. The question before the committee then is: in what class of cases should the parties be limited to one appeal, and in what cases should they have two appeals? Two trials, it seems to me, ought to be sufficient. That is the proposition now before the committee. Shall we limit parties in that class of cases to one appeal, or shall they have three trials? Don't forget what these cases are. Gentlemen say they involve the title to real property. That is not true. In no

case do they involve title to real property. They are only intended to apply in this small class of cases. The proceedings are never intended to try the question of title. The owner of a piece of land cannot enter into possession of it after he has leased it, even if the tenant does not keep his agreement, except by such proceedings as these. He should have a quick and speedy remedy, and the same remedy will guard the tenant against wrong if he is forcibly ousted from the possession of the property. The trial of title to land is expressly excluded. They are intended to apply to cases of taking possession of property by force in case the tenants improperly or unlawfully attempt to hold over. In a case of that kind, where the damage is small, and the property of little value, the case is brought before a Justice of the Peace, and the defendant has judgment rendered against him, and he appeals the case to the Superior Court, and there he is in a Court of general jurisdiction. He is in a Court of record, which is presided over by a learned Judge, because under our new system we expect to have good Judges, learned in the law, to occupy these positions.

Now, after having had a trial before a Justice of the Peace, after having learned what the evidence is and what the points of law are, he comes before the learned Judge and has the case reviewed. Now why, in that class of cases, should an appeal be had to the Supreme Court? I say, there is no reason for it. It encourages litigation to an improper extent. I say, it is a discrimination against the man of small means, in favor of the man of larger means, who is able to carry on the litigation from Court to Court. There is no danger in leaving that jurisdiction with the Superior Court, because these Courts are supposed to be presided over by Judges of sufficient capacity to determine any question. Now, we don't pretend to take away the final jurisdiction from the Superior Courts in that great class of cases. There is all that large class of misdemeanors which may be prosecuted in the Superior Courts, which are not appealable to the Supreme Court at all. Why, take the cases of libel, which are cases not amounting to felony, and we all know that the judgment of the County Court is final; there is no appeal. And yet, in a case of libel the defendant is liable to a very heavy fine—I don't remember how much, five thousand dollars, I think—and is also liable to imprisonment. Yet the judgments of the County Courts in that class of cases have always been final; and yet gentlemen want to give three trials in this small class of cases, and are afraid great wrong will be done if we do not accede to it. I say, when cases of this kind are tried twice, the last trial ought to be final and conclusive.

MR. MCCALLUM. You heard the point made by Mr. Schell, in relation to accumulated rent.

MR. WILSON. There is nothing in the point made by Mr. Schell. The statute has nothing to do with it, for the statute may be altered or repealed. The whole amount of damages claimed must not exceed two hundred dollars in order to give the Justice's Court jurisdiction. If it does exceed that sum, then the Court has no jurisdiction. Now, the question here to be decided is, having given the Justices' Courts jurisdiction in this class of cases, shall the Justices have more than one appeal? I say, there is no sense in it; the ends of justice do not demand it.

MR. HALE. Mr. Chairman: I hope the amendment will not prevail. I had not intended to say anything in regard to this matter——

MR. TERRY. If the gentleman will allow me, I wish to offer an amendment to the amendment.

THE SECRETARY read:

"Strike out the words, 'and the judgment of the Superior Court shall be final,' and insert, 'An appeal may be taken from the judgment of the Superior Court, as in other cases.'"

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I hope the amendment to the amendment will prevail. I voted for the amendment offered by Judge Terry, to strike out this clause giving concurrent jurisdiction to the Justices' Courts and Superior Courts in those cases, but the committee has decided to retain the section as it was reported by the committee. Now, when a case of this kind is brought to the Superior Court and there passed to judgment, there is no reason that can be given why an appeal should not lie to the Supreme Court. These cases should be appealable the same as other cases. They may be oftentimes of very great importance. The truth is, we made a mistake when we conferred this concurrent jurisdiction; but the committee have seen fit to adopt it, and it now behooves us to guard it the best we can. I am of the opinion that these cases may, in many instances, involve the right and title to real property. Every lawyer knows how cases brought under the statutes may involve the title to real property. There is no question about it; and on top of that we are asked to deny the right of appeal. I hope this amendment to the amendment will prevail.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Stedman, West, Evey, and Brown.

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

Carried.

THE CHAIRMAN. The first question is on the amendment to the amendment offered by the gentleman from San Joaquin, Judge Terry.

Division was called for, and the amendment to the amendment was adopted by a vote of 65 ayes to 25 noes.

THE CHAIRMAN. The question is on the amendment as amended.

Lost.

MR. MCCALLUM. Mr. Chairman: I wish to offer an amendment to be added at the end of the section.

THE SECRETARY read:

"But in such case the Superior Court shall have also appellate jurisdiction, and this shall not impair the appellate jurisdiction of the Supreme Court."

MR. MCCALLUM. That expresses the idea of the majority of the committee, and gives the right of appeal to the Superior Court, and provides that it shall not impair the right of appeal to the Supreme Court.

THE CHAIRMAN. The question is on the amendment.

Division being called, the amendment was lost, by a vote of 45 ayes to 46 noes.

MR. FREEMAN. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Add, after the word 'dollars,' in line ten, 'and in cases to enforce and foreclose liens on personal property, when neither the amount of the lien nor the value of the property amounts to three hundred dollars."

MR. FREEMAN. Mr. Chairman: This is a provision which is very much needed. Statutes have been passed imposing liabilities for stock found trespassing upon the lands of others, and in those cases the jurisdiction was changed and given to the Justices' Courts. The Supreme Court decided that these cases were really to enforce a lien, and are therefore equitable in their nature, and must be commenced in the District Court. This amendment is to authorize Justices' Courts to take jurisdiction in that class of cases, because the costs and expenses attending a suit in the District Court are so great as to be more, a great deal, than the value of the damage.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: This matter is of some consequence to one of the great interests of this State—the farming interest. Now, in the southern portion of the State, they have attempted to take up stock that was trespassing upon their grain and upon their farms, and they were unable to do so, because the cases could not be tried before a Justice of the Peace, it being decided that they should come before a Court of equity. I am under the impression that this amendment covers that ground. This is a matter of no small magnitude, and we do not want to take any chances. There were laws passed intending to carry out this same purpose, but they failed of their object. I hope there will be some provision that will cover the ground, and I think this will.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I had an amendment formulated intended to cover the same point covered by the amendment of the gentleman from Sacramento, Mr. Freeman. The trespass Act which the gentleman speaks of has had considerable notoriety in our county, and has been inoperative, because the Supreme Court decided that these cases were cases in the nature of equity, and, therefore, Justices of the Peace could not have jurisdiction in cases of this kind, and the Act was, therefore, rendered ineffective. There is no reason why cases involving three hundred dollars, even if they do partake of the nature of equity cases, should not be tried in the Justices' Courts. I will read the amendment which I have drawn: "Add to section eleven: 'Provided, that Justices of the Peace shall have jurisdiction in such cases in equity as the Legislature may prescribe, in which the judgment, exclusive of interest, amounts to less than three hundred dollars.'" I will offer this amendment, because I think it is clear.

MR. ROLFE. Mr. Chairman: I am opposed to converting Justices' Courts into Courts of equity. I am opposed to giving them equity jurisdiction in any manner whatever. I think the Supreme Court laid down a good principle when it decided that the Justices' Courts had no jurisdiction in that class of cases. If a man's field is overrun with another's stock he has his remedy. The Courts at present give him his remedy, and there is no need of any such provision as this.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I hope the amendment of the gentleman from Kern will prevail. If a Justice of the Peace has sense enough to try a question of law involving three hundred dollars he has sense enough to try a question of fact. Now, sir, this declaration in the present Constitution, and the decision of the Supreme Court, have operated to the serious injury of litigants in this State. For instance, in the foreclosure of liens upon real estate, where the tax did not amount to more than sixteen dollars, it was held that the Justices' Court had no jurisdiction, and the government was, therefore, driven into a Court of equity. Now, if a man has a note against a party for less than three hundred dollars, he can sue in the Justices' Court. If it is secured by mortgage you go to the District Court, where the equity power is lodged. Now, I cannot see any sense in any such distinction as that, and it is a manifest injury to litigants. Therefore, I hope the amendment will prevail.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I hope the amendment will not prevail, and, sir, I don't see any analogy at all between the litigation of rights of this character, and the collection of a promissory note. As I understand it, this allows an action to be brought to foreclose a mortgage, and that leads to the determination of a great many intricate questions in equity, and may involve a mortgage securing a debt of twenty thousand dollars. I do not think my friend from Los Angeles would want to go before an ignorant Justice of the Peace with any such litigation.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. Chairman: I admit that there are certain portions of the amendment offered by the gentleman from Kern which do not apply to the original amendment. The amendment of the gentleman from Sacramento only allows Justices' Courts to have jurisdiction upon personal property, and that will cover the case of cattle, when there is a lien upon cattle. It is a very important matter, but I don't think

that in order to reach it, it is necessary to give Justices of the Peace general equity jurisdiction. Let it be limited to personal property, as the amendment of Mr. Freeman calls for. That reaches the whole evil, and you need not give Justices of the Peace entire jurisdiction in order to reach that evil. I cannot see any harm in the amendment. If you only give them the right to foreclose liens upon personal property, it is no very serious thing.

MR. SMITH, of Fourth District. Mr. Chairman: I withdraw my amendment in order to save a point.

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento.

Adopted.

MR. MILLS. I offer an amendment.

THE SECRETARY read:

"Strike out of lines one and two the following words: 'There shall be one Justice of the Peace elected for each township in the State,' and insert in line three, after the word 'each,' the word 'township.'"

REMARKS OF MR. MILLS.

MR. MILLS. Mr. Chairman: The object of this amendment is for the purpose of allowing the Legislature to determine the number of Justices of the Peace that may be elected in each county. I can see no reason why we should not allow the Legislature to determine the number of Justices of the Peace necessary. Many of the townships are very large. There are several villages in my county perhaps twenty-five miles apart. It is utterly impossible for one Justice of the Peace to discharge the duties of that county, if he is located in either end of the county. If a warrant was desired to arrest some person at one end of the county, you would have to go to Martinez to get it, and I presume it is so with many other counties in the State. It is utterly impossible to undertake to act on any such basis. Sometimes it may be necessary to have three Justices of the Peace in a county, and why place this limit in the Constitution? Why not leave it to the Legislature? This allows the Legislature to determine the number to be elected in the cities and towns, and I don't see why the Legislature should not be allowed to determine the number in the county.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: The amendment offered by Mr. Mills I believe covers the same idea I have tried to get in here. That will leave the Legislature to determine the number to be elected in each township. I am in favor of such an amendment, and my reasons are simply these: In the first place, the question may be in doubt as to whether it is good policy—as to whether we really should have more than one Justice in any of the townships in this State—and in the next place, it is a matter of still greater importance as to whether it is good policy to put such a provision in the Constitution. It is purely a legislative matter, and it seems to me to attempt to insert it here is one of the most serious mistakes we can make. We prohibit the Legislature from passing local laws, and yet, here in the Constitution, we are attempting to legislate for every locality in the State, without knowing anything about the wants of those localities. It is a matter that has no business to be mentioned in the Constitution, and ought to be left entirely with the Legislature. It will bring down more enemies to the Constitution than any other small matter I can conceive of. Men will readily understand the proposition when it comes right home to them; and when a man sits down and reads that he is deprived of a Justice of the Peace, and will have to travel twenty miles to transact his business, it will be sufficient for him to oppose it. It is a question of ten times more weight to the individual than great matters of political economy. They are personally interested, and they can all see and understand. I believe there are townships that can get along with one Justice of the Peace, but let the Legislature regulate that matter as the exigencies arise. To say that there shall be absolutely one Justice, and no more, is certainly unfair. If one is not enough to subserve the ends of justice, there ought not to be any constitutional limitation against having more. There ought to be as many as the Legislature, from time to time, sees fit to give. There are large townships in some of the counties, where one Justice of the Peace would be totally inadequate to do justice. Now, sir, I say the wisest course would be to leave this whole matter to the Legislature, where it belongs. We cannot tell how many Justices of the Peace will be required. And if we could, the State is changing all the time, and where one might be sufficient to-day, two might be absolutely necessary in a few years from now. It is one of those matters which ought to be left flexible. There should be no iron rule put in the Constitution, but this whole matter should be left to the Legislature to regulate according to the necessities of the various localities of the State. I hope, therefore, that the amendment will prevail.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: The reason which led the committee to make this change will suggest itself to everybody, or at least to those who have had any experience in watching the proceedings before Justices of the Peace. If Justices were salaried officers, I would have no objections to having a dozen in each township, as thick as telegraph poles. But Justices of the Peace in this State depend upon fees for their emoluments of office, and where there are two, each having jurisdiction in the same class of cases, and in the same territory, they are competing against each other, and they are almost absolutely controlled by attorneys who practice in their Courts. The evil has got to that extent that in a majority of cases where there are two Justices of the Peace, people don't go through the form of a trial at all. The suit is brought in the Justice's Court by the attorney who owns the Justice, and the defendant simply puts in an answer and lets the case go, and then takes an appeal to the County Court, where he tries it before a salaried officer, who is not indebted to any attorney. That will always be the case where you have two Justices with the same jurisdiction. They want business and will bid to get it; and in order to get it they must decide in favor of the plaintiff. I would like for some gentleman to tell me how many cases he has known where a Justice of the Peace decided in favor of the defendant.

MR. FILCHER. It is entirely within the power of the Legislature to accomplish that reform.

MR. TERRY. Why don't they act in the matter? This has been an evil of long standing, and there has been no attempt to correct it. The only way is to take away the temptation. If there is one man who has sole jurisdiction, he is not under obligations to anybody for bringing him business, for the business has got to come to him. But in ninety-nine cases out of one hundred, under the present system, the plaintiff gets judgment. Now, such a system will not be so apt to exist where you have no competition. It is provided that cities shall have a certain number; but I hope to see a provision that in cities of a certain size no Justice of the Peace shall receive any fees or perquisites. Let them be salaried, and let the fees be paid into the treasury as the fees of other officers are now paid in.

MR. DAVIS. We have townships in our county forty miles long, and I doubt whether one Justice will be sufficient to meet the ends of justice in such townships. Besides that, there is often a change of venue, and if we have but one Justice in a township we would have to travel one hundred and fifty miles. While I would oppose having two Justices, where one can do the business, I think there are townships where two are absolutely necessary. For that reason I shall support the amendment.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: As a member of the Judiciary Committee, I am very much inclined to cling to the report, more especially when I cannot see that an amendment will accomplish any good or useful purpose. But, having thought over this matter fully, I am convinced that it is necessary, in many instances, to have two Justices in one township. I could cite quite a number of instances where such is the case. In large townships, like some I have in my mind, it would be a very great inconvenience, and not in the interest of justice, to have but one Justice of the Peace. It would be so in many counties of this State where towns are remote, where they are ten, fifteen, or twenty miles apart, and yet form but one township. If that section should pass in its present shape, providing that there shall be but one Justice of the Peace in each township, it would be the means of having a great many vote against the Constitution who otherwise would vote for it, because they would feel that it was an act of great injustice. I hope, sir, that this amendment will be adopted, or else that we will adopt the section of the old Constitution.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: I hope that the amendment will be adopted. I am convinced that if we should limit the number of Justices of the Peace to one for each township it would be unsatisfactory to the people of this State. I will mention an example of it in the township where I live, in Modesto Township. Modesto is the county seat of my county. It contains two thousand five hundred people, and it is only one township. Now, sir, one Justice would not be sufficient for the purpose there. And I remember another township, about twenty miles long, and it has two small towns—one in either end of the township. It has been customary there to elect a Justice of the Peace in each town. It would be very unsatisfactory to the people there to limit them to one Justice of the Peace for the whole township. It becomes necessary, very often, when the Justice of the Peace is disqualified, to change the venue to another Court in the same township. There may be very strong reasons in many instances why one Justice of the Peace is insufficient to properly discharge the business of a township. I hope the amendment will be adopted.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: The evil of having two rival Justices of the Peace in one township, has come to be so great as to be generally recognized. It was so great an evil in San Francisco that they adopted a special system there, creating a Justice's Court, consisting of a number of Justices, so that when a case is brought into the Justice's Court no man knows where it is going to be tried. The cases are parceled out among the Justices. The trouble was, under the old system, whenever a man wanted to bring a suit he went and consulted a Justice of the Peace, and talked about the case to him, and if he was favorable to it he would bring the action before that Justice, and they invariably decided in favor of the plaintiff. Whenever you get two Justices in one township, of course there is always a contest as to who shall have the business. A gentleman from the interior, of large experience, stated before the committee, when this question was up, that it was a crying evil, that, if possible, ought to be remedied, and that we ought to frame the section in such a way that there would be but one Justice in each township. If you only have one Justice, parties will be compelled to bring their cases before him, and therefore it makes no difference which way he decides, so far as his own personal interest is concerned. Now, I think it must be conceded by everybody who reflects upon it, that this was a great evil which ought to be overcome. The object of the committee in framing this part of the section was to do away with these abuses. It is stated, upon the other side, that if this system is carried out the greatest inconvenience will result. Some of those evils will result in some instances, no doubt. But can they not be overcome? Are they evils which must continue to exist? If this system is adopted, I think not. Now, if a township is too large it can be divided by the Board of Supervisors of the county. I understand, under our system, that it is entirely within the power of the Board of Supervisors to subdivide the county into as many townships as they please.

It is attended by no expense at all. It is a question for local determination and local management. And why should not the Board of Supervisors, finding that a township is too large, divide the county up into smaller townships, and then each township will be entitled to one Justice of the Peace. That is a very easy means of overcoming the difficulty. That will overcome the difficulty mentioned by the gentleman from Nevada. Why not divide the large townships up into smaller townships, say into four townships; or, if two will do, divide one large township into two. This is a matter entirely within their own control. In regard to these towns spoken of here, like Modesto, it is expressly provided for in the section, that any incorporated town can have more than one Justice of the Peace, and under the system which we propose to adopt, any town can incorporate without going to any expense. Then they will be entitled to more than one Justice of the Peace.

MR. SCHELL. Would not the same objections you have raised to two Justices in one township apply to two Justices in a town?

MR. WILSON. No, sir; because you can cut the town into districts if you choose, by some dividing line, such as a street. That would avoid having two Justices of the Peace brought into rivalry. This section is intended to cure a very great evil. Before the Judiciary Committee there was but one dissenting voice that I recollect of. I say let us adhere to the system, and not permit Justices of the Peace longer to be brought into rivalry.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I think it would be a great public benefit if we could do something to elevate the character of Justices' Courts. Now, sir, I think one of the most disgraceful things in the world is the spectacle of two Justices' Courts grabbing for business like a couple of starving hyenas. It does seem to me that this is a matter of great importance, and there ought to be some remedy for this potent evil.

MR. EDGERTON. Is it true that the plaintiff always wins in the Justice's Court?

MR. McFARLAND. He is likely to win, because he has the choice of two men. He goes and talks with one of them about the case. If the opinion of one of them is not favorable, he goes to the other. If you have but one Justice in a township there will certainly be more dignity attached to the office, and that is what the committee have done. The business would be larger, because one would have it all, and a better class of men would be chosen to fill these offices. I agree entirely with the opinions expressed by the Chairman of the Judiciary Committee. I hope the report of the committee will be sustained.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. White, Evey, Howard, and Filcher.

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

Carried.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Contra Costa, Mr. Mills.

Division being called for, the committee divided, and the amendment was adopted by a vote of 55 ayes to 40 noes.

MR. WEST. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'elected,' in line three, down to and including the word 'county,' in line four, and insert the following: 'in townships, incorporated cities and towns, or cities and counties.'"

MR. WEST. The object of this amendment is to render these words plural.

THE CHAIRMAN. The question is on the amendment.

Division being called for, the vote stood, ayes 38, noes 22, and the Chair announced that no quorum had voted, and the motion was put again.

The amendment was adopted by a vote of 52 ayes to 32 noes.

MR. McCALLUM. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Add, after the word 'have,' in line seven, the word 'original,' and after the word 'Court,' add 'which shall also have appellate jurisdiction.'"

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: The amendment offered by Mr. Heiskell was to strike out the word "concurrent," and insert "original," which the Chairman of the committee pointed out would not do. Now, the word "original," before the word "concurrent," avoids the objections raised in regard to the other amendment. And this language is used in other Constitutions in similar cases. It is so used in the Constitution of Indiana. After the word "Courts," I propose to add, "which shall also have appellate jurisdiction," to cover the point of the objection urged by the Chairman of the committee, that it ought to be clearly expressed that the Superior Courts should have appellate jurisdiction in those cases. Now, if this amendment is adopted, it will read in this way—"except that said Justices shall have original concurrent jurisdiction with Superior Courts, which shall also have appellate jurisdiction," etc.

MR. REYNOLDS. I would suggest an amendment to his amendment by adding "undercurrent."

MR. McCALLUM. The gentleman ought to go round and explain the point of his joke. I think the point made by the gentleman from San Joaquin was conclusive that the plaintiff ought not to have the right to deprive defendant of an appeal. In section five it is expressly declared that the Supreme Court shall have appellate jurisdiction in all cases of forcible entry and detainer; therefore, taking the two sections together, this will give the Supreme Court appellate jurisdiction, and the jurisdiction of the Supreme Court is fixed by another section.

THE CHAIRMAN. The question is on the amendment.

Lost.

THE CHAIRMAN. The Secretary will read section twelve.

THE SECRETARY read:

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

MR. BELCHER. Mr. Chairman: I offer an amendment to the section:

"Add the word 'and' after the word 'Court,' in the first line, and strike out all after the word 'Courts,' in the first line, to and including the word 'prescribe,' in the second line.'"

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: The object of this amendment is to make these Courts the only Courts of record. As it is now, in the section, the Legislature may declare any Court to be a Court of record. When this report was made I saw no objection to it, but it has been considerably amended, and the Superior Court has been given appellate jurisdiction in all cases. Now, I do not think Municipal Courts, Police Courts, and Justices' Courts should be Courts of record. It is suggested to me that the amendment should include the word "only," and I accept the suggestion.

MR. TERRY. Mr. Chairman: I cannot see any objection to the section as it now stands. It is not to be presumed that the Legislature is going to declare all Courts Courts of record. The former section gives the Legislature the right to create inferior Courts in cities and towns, and the question of whether these Courts so created, shall be Courts of record or not, will depend upon the jurisdiction conferred upon them. If they are given jurisdiction of a certain class of cases they ought to be Courts of record, to keep a record of their proceedings. I see no danger in leaving the Legislature the right to determine this matter. I think it can safely be left to legislative wisdom.

MR. WILSON, of First District. This is the language of the old Constitution. I think the reason why the committee adopted it was that they saw no reason for departing from it. The old section provides that the Supreme Court, District Courts, Probate, and such other Courts as the Legislature shall prescribe, shall be Courts of record. Now we have the Supreme Court and Superior Courts only, and such other Courts as the Legislature shall prescribe. I say this in vindication of the committee.

MR. REYNOLDS. Mr. Chairman: The difficulty lies in this: what has been the experience in San Francisco? These inferior Courts have been created in such a manner, and with such powers, as that no lawyer could know, and no Court could ascertain from the law creating them, or the powers conferred upon them, whether they were Courts of record or not. As an instance of this, the Legislature created the City Criminal Court, and an exception was taken to the power of the Court, that it was not a Court of record. The case went to the Supreme Court, and the Supreme Court was unable to decide the case, though it was brought squarely before them. They contrived to get around it, for the truth was they could not tell, to save their lives.

MR. TERRY. Under this section no Court can be a Court of record unless so declared by the Legislature.

MR. REYNOLDS. We desire on that point to say that the Legislature shall not create any more Courts and make them Courts of record. The Supreme Court and Superior Courts are Courts of record, and they are sufficient.

MR. BROWN. Mr. Chairman: This matter is taking up considerable time. Now I cannot discover that there is any great danger in leaving this matter with the Legislature to determine what Courts shall be Courts of record. I cannot see any reason for not doing it. They certainly would not declare a Court to be a Court of record unless it was proper. If we are going to distrust the Legislature in all these particulars, we might as well not have a Legislature. This is certainly one of the matters that should go to the Legislature. I do not think it is wise for us to consume time discussing such matters as this, when the Legislature is fully as competent as this body to decide them. Where is the danger? Where is the risk in allowing the Legislature to say what Courts, besides those already created, shall be Courts of record? I don't think any gentleman will be able to point out wherein there is any great danger in leaving this matter to the Legislature. I think the committee has acted wisely.

THE PREVIOUS QUESTION.

MR. AYERS. Mr. Chairman: The gentleman from Tulare has covered the entire ground of this question, and I move the previous question.

Seconded by Messrs. Moreland, West, Evey, and Howard.

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

Carried.

THE CHAIRMAN. The question is on the amendment of the gentleman from Yuba.

Lost.

THE CHAIRMAN. The Secretary will read section thirteen.

THE SECRETARY read:

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the power, duties, and responsibilities of the Judges thereof.

MR. HERRINGTON. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Add to the section the following: 'But the jurisdiction and powers so conferred must not trench in any case upon the jurisdiction conferred by this Constitution upon any Court of record.'"

MR. HERRINGTON. I think it is requisite that a provision of this kind should be inserted. There is now a provision that the Legislature

may extend the jurisdiction of these inferior Courts, and it is possible that they may be established in such a way as to create a conflict of jurisdiction. For that reason I think such a provision as this is necessary.

THE CHAIRMAN. The question is on the amendment of the gentleman from Santa Clara.

Lost.

THE CHAIRMAN. The Secretary will read section fourteen.

THE SECRETARY read:

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment by the several Superior Courts of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

MR. BEERSTECHER. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Strike out all of lines one and two, down to the word 'county.'"

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: Although I subscribed to this report, yet I call the attention of the Committee of the Whole to the fact that section fourteen of the report, which seems to continue in office the present Clerk of the Supreme Court, the present County Clerks, and the present District Attorneys and Sheriffs. Section fourteen reads as follows:

"SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment by the several Superior Courts of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law."

It does not seem to me to be desirable to allow this power to remain in the Legislature. If this section is adopted it continues in office all the old officers until the Legislature meets and provides terms of office, fixes their duties, and provides for their compensation. The first two lines, down to the word 'county,' can be stricken out. Then the section will read:

"County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment by the several Superior Courts of one or more Commissioners," etc. Properly this provision belongs in the article on county and township organization. We will provide for it in that article. It is not necessary here. We do not want it here. If you adopt the section as it now stands you continue in office the old county officers.

MR. BELCHER. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Insert after the word 'compensation,' in line three, the following: 'which compensation shall not be increased nor diminished during the term for which they shall have been elected.'"

MR. BELCHER. Mr. Chairman: A part of this section is section eleven of article six of the old Constitution. I don't think it can be important, except in one respect: that these officers sometimes, after they are elected, want their salaries raised. I do not think that should be permitted. The Judges will probably have their salaries fixed. I think the Clerk of the Supreme Court should not have his salary increased or diminished during his term of office, neither should county officers. I think this provision should be inserted, in order that they will not go to the Legislature and ask to have their pay increased.

MR. LARKIN. I am in favor of the gentleman's amendment to strike out that portion of the section, and when we come to the article on cities and towns the matter of salaries can there be arranged.

MR. WILSON, of First District. Mr. Chairman: I cannot think that it is possible that this committee would strike out that part of the section, and I am almost ashamed to say anything against striking it out. That part of the section is copied from the old Constitution. It does not change the statutes as they now exist, which prescribe the duties of these officers. Of course we cannot undertake in the Constitution to define the powers and duties of Sheriffs and County Clerks, and other county officers. There are long chapters and sections in the Code necessary for that purpose, and these Codes will continue. If they do not conflict with the Constitution they continue until changed by the Legislature. There is nothing whatever in this provision which has any effect upon the tenure of office of these officers. It simply contains the same provision which has always been in the Constitution: that the Legislature shall legislate upon this subject. I hope the amendment will be voted down. The amendment of the gentleman from Yuba I have no objection to.

MR. WHITE. Mr. Chairman: It appears to me that the point taken by Mr. Beerstecher is well taken. The Legislature will meet some time after the adoption of this Constitution. It must then provide for the election of these officers, and this will necessarily continue these officers in office for two years. I hope this amendment will be adopted.

Division was called for, and the amendment of the gentleman from San Francisco, Mr. Beerstecher, was lost by a vote of 37 ayes to 53 noes.

The amendment of the gentleman from Yuba, Mr. Belcher, was adopted.

THE CHAIRMAN. The Secretary will read section fifteen.

THE SECRETARY read:

SEC. 15. No judical officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

MR. FREEMAN. Mr. Chairman: I move the committee now rise, report progress, and ask leave to sit again.

Carried, on a division, by a vote of 55 ayes to 43 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Judiciary and Judicial Department, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. SHOEMAKER. I move we do now adjourn.

Carried.

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

ONE HUNDRED AND SIXTH DAY.

SACRAMENTO, Saturday, January 11th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Hilborn,	Reynolds,
Ayers,	Hitchcock,	Rhodes,
Barry,	Howard, of Los Angeles,	Ringgold,
Barton,	Howard, of Mariposa,	Rolfe,
Beerstecher,	Huestis,	Schell,
Belcher,	Hughey,	Schomp,
Blackmer,	Hunter,	Shafter,
Boucher,	Inman,	Smith, of Santa Clara,
Brown,	Jones,	Smith, of 4th District,
Burt,	Kelley,	Smith, of San Francisco,
Campbell,	Kenny,	Soule,
Caples,	Kleine,	Stedman,
Casserly,	Lampson,	Steele,
Chapman,	Larkin,	Stevenson,
Condon,	Larue,	Stuart,
Davis,	Lavigne,	Sweasey,
Dowling,	Lewis,	Swenson,
Doyle,	Lindow,	Swing,
Dudley, of Solano,	Mansfield,	Thompson,
Dunlap,	Martin, of Santa Cruz,	Tinnin,
Eagon,	McCallum,	Townsend,
Edgerton,	McComas,	Tully,
Estey,	McConnell,	Turner,
Evey,	McCoy,	Tuttle,
Farrell,	McFarland,	Vacquerel,
Filcher,	McNutt,	Van Voorhies,
Freeman,	Miller,	Walker, of Tuolumne,
Freud,	Mills,	Waters,
Garvey,	Moffat,	Webster,
Glascock,	Moreland,	Weller,
Gorman,	Morse,	Wellin,
Grace,	Murphy,	West,
Hale,	Nason,	Wickes,
Hall,	Neunaber,	White,
Harrison,	Ohleyer,	Wilson, of Tehama,
Harvey,	Prouty,	Wilson, of 1st District,
Heiskell,	Pulliam,	Winans,
Herold,	Reddy,	Wyatt,
Herrington,	Reed,	Mr. President.

ABSENT.

Barbour,	Estee,	Nelson,
Barnes,	Fawcett,	Noel,
Bell,	Finney,	O'Donnell,
Berry,	Graves,	O'Sullivan,
Biggs,	Gregg,	Overton,
Boggs,	Hager,	Porter,
Charles,	Holmes,	Shoemaker,
Cowden,	Johnson,	Shurtleff,
Cross,	Joyce,	Terry,
Crouch,	Keyes,	Van Dyke,
Dean,	Laine,	Walker, of Marin.
Dudley, of San Joaquin,	Martin, of Alameda,	

THE JOURNAL.

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

Carried.

LEAVE OF ABSENCE.

Leave of absence was granted to Messrs. Holmes, Bell, and Nelson, for one day; to Messrs. Johnson and Cross for three days; to Mr. Shurtleff for two days.

Indefinite leave was granted to Mr. Walker, of Marin, on account of sickness.

PROPOSED AMENDMENT.

MR. HERRINGTON. Mr. President: I offer the following proposed amendment, on water and water rights, prepared by John F. Swift, of San Francisco.

THE SECRETARY read:

"ARTICLE —.

"WATER AND WATER RIGHTS.

"SECTION 1. The only property that can be acquired in any of the waters of this State, by appropriation or condemnation, is a use, and such use shall forever remain subject to regulation and control by the Legislature of the State for the common benefit of all.

"SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, city, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

"SEC. 3. Every person, company, or corporation engaged in supplying any city or town in this State, or the inhabitants thereof, with fresh water, shall supply such inhabitants with pure, fresh water for family uses so long as the supply permits, without discrimination as to persons, and at reasonable rates, and such city or town, in case of fire or other great necessity, free of charge.

"SEC. 4. Water rates shall be established annually, by ordinance, by the Board of Supervisors, or other governing body of the city or town where such rates are to be collected, in the same manner that other ordinances are passed, and not otherwise, which ordinance shall continue in force for one year from the time of enactment and no longer.

"SEC. 5. Any person, company, or corporation collecting water rates in any city or town in this State, otherwise than established by law, shall forfeit the franchise and waterworks to the city or town where such rates are to be collected, for the public use."

Referred to the Committee of the Whole.

RESOLUTION IN REFERENCE TO ABSENTEES.

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

THE SECRETARY read:

Resolved, That the Secretary of this Convention be and he is hereby instructed to report a list on each Friday of all delegates who are or may be absent more than three days, and that the per diem of such absentees shall not be allowed.

Resolved, That the Sergeant-at-Arms be and he is hereby instructed to report to this house the absence of any attaché each day, and that for three days' absence such attaché's place shall be declared vacant, sickness excepted.

MR. WILSON, of First District. Mr. President: I move that it be laid on the table temporarily. We are right in the middle of this report, and for my part, because of sickness, I shall have to ask leave of absence for several days.

The motion prevailed, and leave was granted.

JUDICIAL DEPARTMENT—FEES OF OFFICERS.

MR. WILSON, of First District. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the article on judiciary and judicial department.

So ordered.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section fifteen is before the Committee of the Whole.

MR. HILBORN. Mr. Chairman: I send up an amendment to section fifteen.

THE SECRETARY read:

"Strike out, after the word 'except,' in the first line, the words 'Justices of the Peace and.'"

THE CHAIRMAN. The question is on the amendment.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. Chairman: The object of this amendment is to deprive Justices of the Peace of their fees, and place them upon salaries. I believe this amendment will cure a radical evil in this State, and elevate the character of these Courts. There is no doubt but the present system of allowing a judicial officer to be supported by fees is as vicious as it can be. It has brought forth such fruits in San Francisco as to be repealed long ago. It is wrong for a judicial officer to depend upon fees for his support. It is a standing bribe for him to entertain unworthy cases, and as these Judges are nothing but men, it is natural that where there is any doubt as to whether the case should be entertained or not, they should resolve the doubt in favor of their own interests. The machinery of the Court is set in motion, the Constable is allowed to earn his fees, and a large number of witnesses are brought; all to enable the Justice to earn his three dollars. A cloud of witnesses are brought into Court, a jury of twelve men are taken from their business, and, in order to get the twelve men, thirty or forty men are summoned; the community is disturbed in order that this man may earn his three dollars, when, in fact, the case was not one which should have been entertained. If this amendment should prevail, the number of cases in the Justices' Courts would fall off one half at once, and the expenses of the Courts would be decreased in a like ratio. The character of the business would be at once elevated. If you place Justices of the Peace on a salary, it will do away with this rivalry to see who will get the most cases, and who shall have the most respectable practice, and instead of being a standing nuisance, these Courts will regain the respect of the people.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I do not think the gentleman realizes the magnitude of the enterprise he has undertaken, nor the impracticability of it. I desire to call his attention to this fact: in many counties there are, perhaps, twenty or thirty Justices of the Peace, and will be under the present system. They cost the people nothing. Now, put all these officers under salary, and you would bring forth a swarm of officers that would equal the cost of county officers.

MR. HILBORN. Leave the Board of Supervisors to fix the salaries. It is not necessary that they should receive a given salary. They may fix the salary at one dollar if they choose.

MR. TINNIN. If they are put on a salary they are entitled to a reasonable compensation. I don't care how small the salary is, it will greatly increase the expenses. I think the scheme is entirely impracticable and wrong, and the amendment ought to be defeated.

MR. LARKIN. If the gentleman's argument means anything it means too much. It would be necessary, in order to avoid the expense to litigants, to salary the lawyers, too, and also the Constables. The Constables' fees are more than the Justices'.

MR. HILBORN. The Constables want to make money and the Justices too.

MR. LARKIN. Generally they don't proceed with a case unless there is some cause. I hope this proposition will not prevail. It will open an expensive system for Justices of the Peace Courts, which will be very burdensome on some of the counties in this State. I think the Justices' Courts should be left as they are at present.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: In the twenty-fifth section of the legislative department, the twenty-ninth subdivision of that section, they have said that the Legislature shall not pass any local or special laws in the following cases: "affecting the fees or salaries of any officer." Now, if this section fifteen is passed without amendment, the general law would have to be that all Justices of the Peace would have to have salaries. That will break down the system which they now have in San Francisco. That system has been in operation there a number of years, and has proved, as I understand it, an excellent system, and has operated well. I am therefore in favor of the amendment of the gentleman from Solano. That system will not be allowed under this Constitution. Now, we want some amendment here. I am not afraid of these salaries amounting to enormous sums. I do not think they will exist. I think where a Justice has no business he will not require a salary. I know of cases where the Justice does not tend to the business on account of the salary. In our county there is a Justice way up the county, who had one case requiring the presence of a large number of persons. He had to keep them in his house. His brother did the cooking and he did the official part of the business. It cost him about fifty dollars for the expenses, and he received three dollars in fees. He kept them in his house and charged them nothing. Now, this is frequently the case. These men are men who do not hold the office because they desire any profit. Now, I think if Justices are paid a salary, it will be much better. Say twenty-five or fifty dollars a month, and in some cases a nominal salary. It will cost the county much less to pay them a salary than it costs under the present system. I think, when a man is called upon to try a case, he ought to be paid something. Under the present system he is paid nothing. I think he would be more likely to hold it for the honor, and in some cases a nominal salary of say one dollar would be better.

MR. WHITE. Mr. Chairman: I hope this amendment will not prevail. I think in some counties it will fairly swamp the county. The number of Justices' Courts are very great in some counties, and there is no possibility of regulating the salaries so as to make them reasonable, and at the same time not swamp the county. This idea of raising the dignity of Justices of the Peace by giving them salaries is all bosh. I don't think it would be very dignified to give them fifty dollars a year. I trust the amendment will be voted down.

MR. TOWNSEND. I call the gentleman's attention to that part of the platform on which he was elected, that "all public officers shall receive fixed salaries, and all fees shall be accounted for."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I think this subject is not receiving the attention that it ought to receive. I am sorry to have to say a word in relation to this matter, but in my judgment it is all important. I believe there are nearly one thousand townships in this State. There are about that many offices to be filled by Justices of the Peace under this Constitution, if it is adopted in its present shape. Now there is no question about it that the picture has not been overdrawn by the gentleman from San Francisco, Mr. Wilson. Gentlemen may talk as much as they please about economy, talk about saving money, but the person who has no prospect of more than three or four cases in a year in a township will accept the office at a nominal salary. The whole system is vicious in itself—*per se* vicious. The idea of feeing Justices of the Peace! Now I do not desire to revamp the arguments of the gentleman, which were true in every particular, and well and forcibly stated, as far as that is concerned. There is no doubt but what nearly every Justice of the Peace, outside, perhaps, of San Francisco and some of the large towns and cities of the State, are looked to and looked upon as attorneys always to one of the parties in each case, and that is but the natural consequence of this fee system. They try nearly all cases upon that theory and practice, upon the motion to strike out portions of the complaint or answer. I believe there are few if any cases known where a Justice of the Peace has been known to hold that a pleading was not good. Now, when he is dependent upon fees, as well observed by the gentleman from San Francisco, Mr. Wilson, of course he is anxious to keep the business in his hands. If he is salaried his anxiety in that business amounts to nothing. The gentleman was right when he said this was the most vicious system to be conceived of. Every case will be entertained on its merits, because they know that their fees do not

depend on the case. Whenever a case is entertained and examined, the Justice of the Peace, under the present system, presents his bill to the Board of Supervisors and it is paid. It makes no difference whether there is merit in the case or not, it is heard, and the Constable's fees are rolled up, and the county put to an expense that it never should have incurred. I remember one case which footed up three hundred dollars, in which there was not the slightest testimony to show that the defendant had the slightest connection with the transaction. And yet the county footed the bill. The party traveled a long distance when there was no real merit in the case whatever, and the case should have been dismissed upon hearing the first witness. In ninety-nine cases out of one hundred the case ought never to be tolerated at all. The viciousness of the system ought to be enough to condemn it. There is no danger of these salaries amounting to any exorbitant sum. We have Boards of Supervisors who ought to have sense enough to fix these salaries.

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

No second.

THE CHAIRMAN. The question is on the adoption of the amendment.

It was lost.

THE SECRETARY read section sixteen:

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

THE CHAIRMAN. If there be no amendments to section sixteen the Secretary will read section seventeen.

THE SECRETARY read:

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive from the State treasury, for their services, a compensation which shall not be increased or diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. The Superior Judges shall be divided into four classes, with the following annual salaries: those of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, shall constitute the first class, and shall each receive an annual salary of five thousand dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador, Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer, Santa Cruz, Solano, Tulare, Yolo, Kern, Yuba, and San Bernardino, shall constitute the second class, and shall receive an annual salary of four thousand dollars each, payable quarterly; those of the Counties of Calaveras, Fresno, Lake, Marin, Merced, Plumas, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Sutter, Tehama, Tuolumne, and Ventura, shall constitute the third class, and receive an annual salary of three thousand dollars each, payable quarterly; and those of all other counties in the State, not above enumerated, shall constitute the fourth class, and receive an annual salary of two thousand dollars each, payable quarterly.

MR. WILSON, of First District. Mr. Chairman: I desire to submit a correction on behalf of the Judiciary Committee, in the seventh line, where it says, "Superior Judges shall be divided into four classes;" insert before these words, "until otherwise changed by the Legislature." That amendment embodies the views of the Judiciary Committee. It was an error in the engrossment of the section. This will make it to read as it was adopted by the committee.

MR. BELCHER. Mr. Chairman: I propose an amendment.

THE SECRETARY read:

"Amend section seventeen by striking out 'Yuba' in the thirteenth line, and 'Sutter' in the seventeenth line, and insert after the word 'Sonoma' in the ninth line the words 'Yuba and Sutter.'"

MR. BELCHER. Mr. Chairman: You will observe that we have already changed the report so as to have one Judge for these two counties. This is to give them a Judge of the first class.

MR. ROLFE. It would be proper to say Yuba and Sutter jointly.

MR. OHLEYER. Mr. Chairman: In consideration of the influence and learning of Judge Belcher, I consented to have these two counties joined. Afterwards I thought it was uncalled for. I think, so far as Sutter is concerned, it is uncalled for. I believe if ever any county in the State was entitled to a Judge Sutter County is. In fact, either of these counties is as well entitled to a Judge as any other county in the State. There is no argument advanced in favor of the change, except that the county seats are close together. I believe each county in the State should have one Judge, who is to attend to the business of the county exclusively. I hope the Convention will not adopt the amendment.

MR. STEDMAN. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Strike out the word 'six' before the word 'thousand,' and insert the word 'five.'"

THE CHAIRMAN. Not in order at present. The question is on the amendment of the gentleman from Yuba.

Division being called for, the amendment was lost—ayes, 41; noes, 41.

MR. STEDMAN. Mr. Chairman: I offer my amendment.

THE SECRETARY read:

"Strike out the word 'six' before the word 'thousand,' and inseft 'five;' strike out the word 'five' and insert 'four;' strike out the word 'four' and insert 'three thousand five hundred dollars;' strike out the words 'three thousand dollars' and insert the words 'two thousand five hundred dollars.'"

MR. STEDMAN. Mr. Chairman: I do not desire to offer any argument upon that amendment. As will be seen by the reading of it, it is merely to change the salaries of the Judges. I do not think it requires any argument, and I submit it to the Convention.

SPEECH OF MR. EAGON.

MR. EAGON. Mr. Chairman: I hope this amendment will not prevail; and if I had my say, sir, so far as the Supreme Judges are concerned, I would make the salary seven thousand dollars instead of six thousand dollars. Now, sir, the great cry of the people is retrenchment and reform, say some gentlemen, and they contend that the people want a niggardly policy adopted in regard to the pay of judicial officers. I contend that such is not the case, and if gentlemen will look at this in a sensible light, they will see that it will have a tendency to degrade these offices, and prevent men who are competent from filling them. What man can take the position of Supreme Judge of this State and live as he ought to live on five thousand dollars a year? The salary is too low now. You cannot get gentlemen who are qualified to fill these positions unless you pay them; and let me say to gentlemen who come here for the purpose of degrading these positions, that they will not meet with favor when they go before the people. The people of California are not niggardly, sir, in the payment of salaries to their public officers. They are always willing to pay according to the services rendered. Do you suppose you can get the best and most competent men to fill these positions unless you pay them? I say, no. No man of ability can accept and fill the office of Superior Judge for the salary which this amendment proposes to pay. Gentlemen come to the Legislature upon the cry of retrenchment and reform, and they run wild upon the proposition, thinking that they are thereby giving satisfaction to the people in reducing down the salaries of public officers to nothing, and degrading these offices. My experience has been that instead of the people indorsing these men, I have never known, with one or two exceptions, any of these gentlemen to be returned to the Legislature by the people. The people do not ask it. The people ask that justice shall be administered by their judicial officers, and that they shall do it in a manner that will give satisfaction, and do justice to all alike. They demand that it shall be administered with intelligence, and not with ignorance. You are opening the door for filling these positions with men who are incompetent, because competent men will not accept them for the salaries which you propose to pay. What man is there in the State of California, who is qualified by experience and learning to fill the office of Superior Judge, who cannot make twice as much practicing his profession as this amendment proposes to pay? I hope this proposition will be voted down. It is little enough, as reported by the committee, and a portion of the committee were in favor of raising the salary of the Supreme Judges to seven thousand dollars, but they finally concluded to leave it at six thousand dollars, on account of there being no complaints made by the people at the salaries now paid.

I hope this amendment will not be carried. I think it ought to be raised instead of being reduced, and I know it will meet with favor throughout the country, and it will keep men out of these positions who are not competent to fill them. Such a proposition as this seems ridiculous to me. The Superior Judges are now getting salaries above what it is proposed to pay them here. They ought to be men of ability and learning; men qualified to fill the position with honor and dignity, and they ought to have salaries that would allow them to live respectably, at least. No one has complained about the salaries of District Judges, and yet the Superior Judges will have a good deal more work to do than the District Judges. They fill the position of County Judge, and do all the probate business, and I am not in favor of reducing the salaries down so as to bar out competent men. I trust that such a proposition as this will meet with but little favor at the hands of this Convention. I trust that this whole matter will be taken as the committee have reported it—not because I was one of the committee, but because I believe the committee better competent to fix these salaries than this house. It is not reasonable to suppose that the gentlemen who are upon that committee could go upon the farm and conduct the business as well as men who are farmers; neither could it be expected that farmers could fix the salaries of judicial officers as well as men who have given their lives to the study of the business, and understand it. I trust that gentlemen will look at this matter in the light of reason, and not in the light of demagogy, for it will avail them nothing. The people will not thank them for doing it.

MR. INMAN. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Strike out all the words down to and including the word 'each,' in line seven, and insert the following: 'The Justices of the Supreme Court shall, at stated times, during their continuance in office, receive from the State treasury, for their services, a compensation which shall not be increased nor diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution the annual salaries of the Judges of the Supreme Court shall be five thousand dollars; the annual salaries of the Judges of the Superior Courts shall be one thousand dollars each, to be paid out of the State treasury, and such additional sum as shall be fixed by the Board of Supervisors of the several counties of the State, which amount so fixed shall be paid out of the treasury of such counties. The Boards of Supervisors of the several counties shall fix said salaries at least three months next preceding the election of such Superior Judge.'"

THE CHAIRMAN. That is not an amendment to the amendment.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope, as far as the Supreme Judges are concerned, that their salaries will not be reduced below the amount of six thousand dollars. The people of this State have not, and do not demand the reduction of salaries, but they demand an economical administration of public affairs, by the public officers occupying official positions. The people have never objected to the payment of reasonable, even liberal salaries, but they have objected to the method of administering the public service. I am not surprised

that any gentleman as well versed in legal lore as the gentleman, as well acquainted with the wants of the people, a gentleman who has given such acute examination into the subject under consideration, as the gentleman, who has stated on the floor of this Convention that he was able to live for five dollars a week, should offer an amendment here to cut down the salary of our Judges.

MR. STEDMAN. I would like to state to the gentleman——

THE CHAIRMAN. Such remarks are out of order. The gentleman will take his seat.

MR. BEERSTECHER. It may be presumption for me to rise here and make any opposition to the views of the gentleman. I know it does not reflect the opinion of the members of the bar——

MR. McCOY. I ask the gentleman if his opinion is backed by his experience.

Mr. BEERSTECHER. What in, sir.

MR. McCOY. By your experience as a resident of this State.

MR. BEERSTECHER. I have known men to live in this State for twenty years and still not know anything. I have known men who have been here for eighteen months, who have traveled all over the State, to know more about the State than men who had been here twenty years. I do know, gentlemen, and I believe upon reflection this committee knows, that the people of this State have never objected to the payment of liberal salaries, but their objection has been to the waste of public money. I do not believe the people desire to have a man occupy the position of Supreme Judge of this State, and receive such a miserable salary that he can scarcely eke out an existence for himself and family, if he have a family. It is desirable that these men be placed upon a plane where they will not be influenced by outside influences. The officers of the judiciary should be rendered entirely independent by the payment of liberal salaries. There can be no personal desire, on my part, to occupy the position of Supreme Judge, because this committee has said that a man must be thirty-five years old to get there. I hope the amendment to cut down the salaries of Supreme Judges from six thousand dollars to five thousand dollars will not prevail. As to the amendment of the gentleman from Alameda, to pay the Superior Judges one thousand dollars each out of the State treasury, and the balance to be paid by the counties, for my part I do not care whether it prevails or not. San Francisco is willing, so far as I know, that the salaries should be paid out of the State treasury. If, however, the salaries are to be paid by the counties, San Francisco will be the gainer, because San Francisco pays more than her proportionate share of taxes towards the support of State government.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I favor the amendment of the gentleman from Alameda. I believe that amendment to incorporate the sentiments of the people, and the views of those men who voted for this Convention. At the organization of the State government the Governor received ten thousand dollars. It was afterwards reduced to seven thousand dollars. This Convention has determined that six thousand dollars is enough for him. The salary of the Supreme Judges has been six thousand dollars since the organization of the Government. Five thousand dollars to-day for a man in a position of this kind is more than ten thousand dollars was in eighteen hundred and fifty-five and eighteen hundred and sixty. There is that difference in the country. Five thousand dollars will employ the talent, and the best talent of the State, for the position of Supreme Judge. One thousand dollars, more or less, is not going to make a man honest, nor keep him honest. You will elect your Judges for twelve years. A Judge will receive sixty thousand dollars. If the term was cut down to four years, the same arguments would not hold good. From information I have ascertained, three quarters of the lawyers are barely making a living, and some of them the best men in the profession. The country is full of them, and there is no money in the business. The majority of attorneys throughout the State are starving. Pay them in proportion to what they can make in their business throughout the State. There are few lawyers in this State making more than five thousand dollars a year. I am willing that the State should pay one thousand dollars, and the counties the balance. The Boards of Supervisors should be allowed to determine what salaries they will pay. It will bring the Government home to the people. It will enable them to determine what the pay of public officers shall be. I think the gentleman's amendment is correct. I think it is demanded by the people.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I do not consider myself competent to pass upon the whole report of the committee, but as far as this item of salaries is concerned I believe I understand it, knowing where the money comes from. I remember very well ten years ago when the Legislature of this State provided that the salary of the Supreme Judges should be six thousand dollars. We thought that enough at the time. Judge Sanderson thought it enough at that time. That was the figure he would take it for. Now, it is well known to every gentleman here that five thousand dollars to-day is more money than six thousand dollars was then. That investment then would not make a man a living, and there are plenty of men who are living well on it to-day. A salary of five thousand dollars would represent a capital of forty thousand dollars now. It is a higher salary than six thousand dollars was then. Times have changed. The State of California is coming down from the flush times of eighteen hundred and fifty, and all classes must be content with smaller profits, and content to pay less money. We were fast drifting into bankruptcy, I might say, and I believe if any one thing will cause this Constitution to be adopted, it will be the fact that we have established a system of economy. That system ought to be extended to the salaries of Judges as well as to the salaries of other officials. This Convention has cut down the salary of the Governor and other State officers, and I see no reason why the salaries of judicial officers should be left at the old figure. Certainly there is no reason why they should not be cut down in the same ratio as we have cut down other officers. As to the ability that would be gained by paying high salaries, that might and it might not be so. Money will not always buy brains. It is not always the best man who is able to secure the majority of a nominating convention. The best men do not always carry off the prize, by any means. It is sometimes the man who surrounds himself, and calls to his aid, the best political wire-pullers. It is the one who is sharpest in making political trades. And if the salary is high, so as to make the office an object, that class of men are more apt to enter the contest. I hope that members will look at this matter favorably. Now, if these salaries are paid out of the State treasury, the contest for additional Courts will be renewed in the Legislature, and it won't be five years before there will be one hundred Superior Judges in this State. If these salaries are paid out of the county treasury, instead of Santa Clara and Alameda coming in for two Judges, they will get along with one.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: It seems to me that this amendment is something remarkable. Why should you be so penurious? Do you desire to drive our Judges into a hash house to live? Now, sir, the idea of sending the Superior Judges of the State to the Board of Supervisors. Why, he would have difficulty in finding the Board in some of the counties. Now, what position will a Judge occupy towards the Board of Supervisors? In many of the counties of this State there are what are called "Court House rings." Now, suppose that the Board of Supervisors should go contrary to law, and the Judge is called upon to bring them back to the right path. Is he not under their thumb? If he gives a decision contrary to them, will they not reduce his salary? What kind of a position will the Judge occupy as far as his living is concerned?

MR. STEDMAN. I would like to ask you a question, whether you don't believe a Judge of the Supreme Court can live on five thousand dollars a year?

MR. REDDY. We do not propose to make them live in any such way. We propose to give them salaries that they can live comfortably on.

MR. STEDMAN. I will ask you if they ought not to live on fifteen dollars a day?

MR. REDDY. I have no objections to the gentleman asking questions. It is about the best argument I can make. Any more questions?

MR. STEDMAN. After awhile.

MR. REDDY. Can you make any suggestions as to the means of reducing the cost of living? If you have any suggestions to make on that kind of political economy I will be glad to hear them, and I have no doubt other gentlemen will be.

MR. STEDMAN. I leave that to the gentleman.

MR. REDDY. As the gentleman is posted to a wonderful degree in the mysteries of cheap victualing, I would like to hear from him upon that question.

MR. STEDMAN. That is not the question before the Convention.

MR. REDDY. I do not know of any man in this State who has got the thing down any finer, unless I might except some of the Chinese companies. Now, sir, with reference to the salaries of Judges. The gentlemen who are supposed to know most about it say that salaries are not too high. I think they are not too high. As far as the Superior Judges are concerned, they are to get one thousand dollars from the State, and the balance is to be fixed and paid by the Board of Supervisors. Who is going to accept these positions on any such terms, when they do not know what whim the Board of Supervisors may take? They don't know whether the Board of Supervisors will fix it high enough so they can afford to take it or not. All over the country there are complaints about the manner in which justice is administered in the County Courts of the State, because the salaries are too low to induce first-class men to accept the office. These offices are only sought after, as a rule, by men who are incapable, which is shown by the number and class of appeals that come to our Supreme Court from these counties. Some of the most ridiculous blunders are made by these County Judges. Instead of being economical to employ this class of men, it is a dead loss to the State, because of the loss of time and the increasing of the expenses of the Supreme Court. I do not think there is any economy at all in trying to fill these offices on any such terms as have been proposed here. I am sure, if the State is to pay anything at all, it ought to pay altogether, and not subdivide it; not send to the State for a part, and to the county for a part. Don't make this whole system ridiculous.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: It is easy for a lot of rich farmers, who monopolize the rich farms of the State, to come here and suggest low salaries for judicial officers, who have no capital besides their salaries. All he has is his yearly income. These are responsible positions, and we ought to have responsible men for them, and men of character. We know that where large private interests are to be looked to, and great responsibility attaches, the salaries are fixed in proportion. And what responsibility is there that is equal to the responsibility which devolves upon a Judge? They have not only the property of one individual in their keeping, but the property of the whole State. More than that, the life and liberty of every citizen in the State. And yet you want to pay such men the ordinary hire. I suppose you could get men to take the position of Superior Judge for two thousand dollars a year. I suppose you could employ men at that price. But look at the immense interests that are involved, and see whether it is safe to do it. I think the salaries of Superior Judges are too small. You are dividing up the State by counties, and in the small counties paying very small salaries. And yet in a few years some of these counties may develop into first class counties. Take the County of Inyo, which is now a small

county, and yet in three years more it may have millions of dollars worth of property involved. That is likely to be the case anywhere in the State. Now do you, with these immense interests involved, wish to take men from the class that are willing to work for small salaries? Six thousand dollars is certainly not too much for a man who is capable, who has character, a man of learning and integrity, and qualified in every way to administer upon these immense interests. I suppose, however, there is no use to argue these things. There are certain men who will overlook all these things, and do almost anything if they think it will bring them a little popularity. My friend to my left, Mr. Larkin, I do not think ever gets off a single sentence without the word "people" in it. If you will watch any of his speeches you will hear the word "people" forty times. [Laughter.] I for one do not fear the people. I am here to do what is right and just and best for the whole State, and not to make popularity with any particular class. The people sent us here to do what is right. They trusted in our judgment to do it. When we do what is right we will please and comply with the wishes of the people. And if it don't please them we will have done our duty anyway. I hope gentlemen will not vote to cut down salaries simply through fear of unpopularity. Gentlemen should not be so afraid of that. The people will indorse what is right.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I feel compelled to rise and protest against the assumption of my colleague, Mr. McFarland. He assumes that the farmers come here desiring to cut down the salaries of Judges. What are the facts in the case? The author of the proposition is a lawyer.

MR. BEERSTECHER. Mr. Stedman is no lawyer. I repudiate and scorn the idea.

MR. STEDMAN. I thank the gentleman for his explanation.

MR. CAPLES. The gentleman said so in his speech. I declare that the farmers have not done what they are charged with having done. But one farmer has spoken in favor of this amendment. I deny that the farmers come here desiring that the Superior Judges shall have a beggarly salary. The farmers have made no such declaration. Why, what would the gentleman say if some absurd proposition should be offered by a member of his profession, if I should get up and assert that the lawyers were responsible for it, that the lawyers had done so and so? No, sir, I deny the imputation.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I regret very much that any attempt has been made to change the salaries of the Judges as recommended by the Committee on the Judiciary. That committee is composed of nineteen members, selected from various parts of the State. It is a representative body, and capable of taking a judicial view of this subject. There was considerable division of opinion in regard to salaries, some claiming that they should be fixed higher. I think no member of the committee desired lower salaries, save one. Finally, the committee concluded that if the salaries were fixed as they are fixed in section seventeen, it would satisfy every one, and nobody could raise any objection; that the amounts were fixed so low that if there was any objection it would rather be on the ground that the salaries were inadequate. I propose now to offer a few considerations why they should not be reduced, and I could present many reasons why they should be increased. In the first place, we claim to be a great and enlightened country, and a great commercial State. We have what we claim to be a grand system of jurisprudence. The more the country advances in civilization and enlightenment, the more intricate necessarily becomes the system of jurisprudence. I have not time to refer to ancient history to show that when a nation advances to a high degree of civilization, the jurisprudence becomes advanced also, and more intricate in detail. A lawyer is required, under section twenty-four of this reported system, to be thirty-five years of age to enable him to be a Judge of the Supreme Court, and thirty years for the Superior Court. In order to master the system of jurisprudence which prevails in the United States, he should devote his life to the study of the law; it is to it alone, and daily and constant labor, which makes a profound lawyer. I care not how talented he may be naturally; learning can only be acquired by hard work and constant study. As well could a man without study expect to equal the great civil engineers of the country who have accomplished such wonderful results, as to be capable of being a Judge without careful and incessant labor.

The position of Judge demands the highest skill and learning in the profession. For these positions, highest of all, we should have men of the highest character; men of integrity and unswerving honesty, as well as men of the highest learning and experience in the profession. Such is the typical Judge, and such is the man the people of the State want to occupy this position. When we find such a man, are we to give him the same compensation as one who never went through such a course of labor and study, and who does not possess the same qualifications? The people of California want Judges who are able and honest, men of character and standing in the community, and men of the highest skill in their profession. Even upon the point of economy, such a man is cheaper at six thousand dollars a year, than a man of less skill, honesty, and learning would be at two thousand five hundred dollars a year. If it were only possible for the members of the Convention to see the Courts as I have seen them, to see the administration of justice as I have seen it for twenty-five years, they would comprehend in a moment that it is greatly to the interests of the State, in an economical point of view, as well as in any other respect, to have the highest skill and ablest men of the profession, at the highest rates. What Judges will we get at low salaries? Men will accept Judgeships at low salaries because they cannot do better, because they are not skilled in their profession, and the result will be swift injustice, or slow dragging trials, infinite blunders, reversals and new trials granted, and in the end the State will pay three times more than it would if we had men learned, able, prompt, quick, intelligent, and thoroughly honest. Their decisions would not be so generally reversed, nor cases sent back so frequently for new trials. In point of economy alone we could better afford to pay good men ten thousand dollars. It is most expensive to the people to have incompetent persons occupying these positions. Men soon know when a dishonest person is on the bench, and such will often be approached. When a competent and upright man is on the bench, no such attempts will be made. The State will retrograde in point of intelligence and official integrity by having unskilled and incompetent lawyers advanced to these positions. The Supreme Court itself will be lowered in dignity by having cheap Judges on the bench. Will any person here say that he employs the cheapest lawyer to attend to his business in Court? And why not? Why not employ those men who are willing to work the cheapest in order to get business, upon the same principles that you want to employ them to sit upon the bench? Why not select your Judges by calling for sealed proposals for the lowest terms men will take? If you have a house to build, do you want a man who does not understand his business, or do you want skilled labor? Do you not seek for the best and most skillful men, and is it not cheaper in the end? I have had some experience in house building myself, and I have found it much more expensive when I have not secured the best workmen. It is invariably so in the end, and it is to the grand end we are now looking.

Great learning and long experience are the best qualifications for the bench. By this system a Judge is excluded from any other office during the whole term of his judicial career. For twelve years he is incapacitated from holding any other than a judicial office. At the end of the twelve years, when he retires from the bench, he finds himself out of business, without any fortune accumulated, and is compelled to go to work and build up business anew. Business grows up slowly, from day to day, and a good law business is not acquired without some effort. When upon the bench, no Judge is building up a business. He must start anew, on retirement from the bench, and build up a business the same as a young lawyer just admitted to the bar. This position as Judge does not tend to bring him any clients as a lawyer. He is cut off from all connection with his former clients. He will have lost all his clients. They will have transferred their business to other attorneys. He will have been exclusively engaged upon the bench. His habits of life will have become judicial, and it will be difficult for him to become an advocate again. His position on the bench will have unfitted him, in a measure, for active duty as a practicing attorney. It is taking twelve years of the very best years of his life. He sacrifices twelve years of his life, at a time when he is best capable of making the most money out of his profession, and of establishing a large and continuing business. That the salaries of the present Supreme Judges are too high has been asserted by members of this body, on this floor. We have fixed them at six thousand dollars. We have been paying the District Judges in the larger districts of the State six thousand dollars, as will be seen by referring to the Political Code. No complaint about these salaries has been heard from the people. I know, as far as the District Judges of San Francisco are concerned, that there is no body of men who work harder. They are earnest and laborious in the administration of justice. They work persistently, and still they are not able to keep up with the calendar. The Court calendars are all behind now, and I know there are gentlemen on the bench who have actually impaired their health by their close attention to their duties. It is an absolute fact that there is more ill-health among the Judges than among any other class of officers. There are several Judges now who are suffering from infirmities caused by too close an application to business. I do not know how it is in other districts, but I speak of San Francisco, where I am especially familiar with the business. It is bad policy, in point of economy, to place these salaries too low. They are all right now, as fixed by the report of the committee, and I think this section was intended to place them at the very lowest rate that could be considered at all reasonable.

Look at England, and the policy which there prevails. She pays high salaries, and when a man retires from office he is pensioned for life. Not that I would be in favor of imitating that policy, but I mentioned it merely to show the contrast between that system and ours. There is another thing to be considered: Judges have brought before them cases involving millions of dollars. Is it wise to put down the salaries so low that they will be subject to temptations? It is certainly very bad policy. All men are human, Judges no less so than other men, and if we cut down the salaries so low that they cannot live, they will be more likely to listen to outside influences, and be more easily tempted, than if they were rendered independent by a reasonable salary.

The amendment of the gentleman from Alameda affects San Francisco more than it does other counties. That county bears more of the expenses of the State government than any other county, in proportion to inhabitants. That consideration, however, does not affect me in the slightest degree. The question with me is, what is the best system to secure an active, honest, learned, and efficient judiciary? What is the best system for the whole State? I am for the best, and for paying a fair price for it. That is the only consideration that moves me. The people will sustain us if we act upon that principle. If we leave this to the Boards of Supervisors there will be constant applications on the part of the friends of the Judges for an increase of salary. There are many reasons why such a plan would not work well. We know by long experience that it is bad policy to change these salaries. I am sorry, but I shall have to disagree with the gentleman in this respect. The salaries fixed in the report of the committee should be adopted.

REMARKS OF MR. INMAN.

MR. INMAN. Mr. Chairman: My reason for offering this amendment is in regard to the classification of the counties. I find some

counties in the third class that ought to be in the second class, and some in the second class that ought to be in the third class. The reason I propose to cut down salaries is that the people demand it, because of the inability to pay. It is very nice to talk about too low salaries. I contend that five thousand dollars annually, for twelve years, is good pay. Ten years ago business was good of all kinds. The people were able to pay; but now it is different. I do say that the Board of Supervisors are the proper ones, and the proper place to fix these salaries. It will bring the matter home to the people. If you deny the proposition that the Board of Supervisors are not qualified to regulate the salaries, then you deny the principle of self-government. As a proposition, I think the Board of Supervisors should be allowed to fix the salaries of every county officer. Besides, these Superior Judges are going to take the place of the County Judges, and they become county officers, and I don't see why the Board of Supervisors are not qualified to fix their salaries. While we are adding two more Supreme Judges, if we do not cut down salaries, we will certainly add to the expenses of the judiciary. This system adds some thirty-five thousand dollars over the old system, while it is a good one. We certainly must cut down the old expensive system, otherwise we had better abandon it. That is my objection to it. I am satisfied if we shall make some reduction it will be very acceptable to the people. I deny the fact that money buys brains or honesty. A man can be just as honest on three thousand dollars a year as he can on ten thousand dollars. Money buys corruption and dishonesty. Honest men do not sell themselves. The rich man is not always honest, neither is the poor man. It is not the man who gets the highest salary. For twelve years at five thousand dollars a year would be sixty thousand dollars, and any man ought to live and make money on that. He is a fixture in the office almost. I hope that amendment will be adopted.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I do not think there is any economy in a Cheap John judiciary. I have seen it tried, and if the people of this country demand anything, they demand Courts of integrity that will not yield to improper influences. That is what they demand, and they are sensible in demanding that, for the judiciary is the sheet-anchor of the Government. It is about the only set of officials of this Government that has not been corrupted and debased, and I am for keeping it in a position where it can remain pure. Now, sir, the Judges are State officers and ought to be paid by the State. To make the State pay one thousand dollars, and make the Judge dependent upon the Supervisors for the balance of his salary, would be to make him subservient to the politicians of the county. None of these salaries are fixed too high, and when it comes to the fourth class, if any gentleman moves to raise it, I shall vote for it. I remember when I was a boy that they had a practice of making the schoolmaster board round. This is about the position the Judge would be placed in if we leave it to the Board of Supervisors to fix his salary. The proposition is perfectly monstrous, and would degrade and debase this department of government, because you destroy their independence and fearlessness by making them too dependent. And the system of low salaries will prove an evil instead of a blessing. John Randolph said, on the proposition to reduce salaries in Virginia, that it was a proposition to provide Judgeships for lawyers who were incapable of making a living at the bar, and that is true. We do not want a lot of cheap lawyers on the bench, we want an independent honest judiciary. It is a thing for the benefit and protection of the people, from the highest to the lowest, and therefore it ought to be the care of the Government to place it upon a high and independent plane. My friend Caples stated the thing truly when he said the farmers do not demand a judiciary poorly paid and poorly organized. They have sense enough to know that great interests depend upon a proper judicial organization, independent and fearless Judges. I am for long terms, also, because then Judges are not always pandering to public sentiment and public opinion in their decisions. I recollect a story told of an Arkansas Judge, who, when he had an important case to decide, used to adjourn Court and go around and take a drink with the boys, to learn who the parties were and where they came from, and then he would go back and decide the case. Now, a judiciary that is dependent on the whims of the Board of Supervisors would be something in the same fix. Let us pay men what they need to live on; what their talents are worth, what they can earn in their profession, and then you will get men fit to fill these positions, and you will get your money's worth. And you will get more than that. You will get efficiency and honesty, and capacity in the very place above all others that these qualities are necessary. It is a mistake, sir, this attempt to save a few pennies in the administration of justice.

SPEECH OF MR. CASSERLY.

MR. CASSERLY. Mr. Chairman: Nobody is a better friend to economy in the administration of government than I am. Generally speaking, an economical government is an honest and pure government. But, sir, there are two kinds of economy; one is the true, reasonable economy, and the other the false economy, which, for the most part, is a fraud upon the State, and sure to produce evil results. Now, sir, I am one of those who do not believe that the most important thing in the administration of justice is that it should be cheap. The real important thing is that it should be upright, sensible, conscientious, and speedy. As a mere question of economy, it would be a very serious mistake, in my opinion, for us to reduce the salaries of Judges. Every lawyer in this body, and there are a good many here, will, I think, bear me out when I say that one incompetent, idle Judge, costs the State more than five Judges who are honest and capable, as a Judge should be. Now, sir, we are attempting to cheapen the salaries of our Judges. A cheap lawyer, as everybody knows, is the dearest lawyer in the end; and so it will be if you undertake to reduce to a low standard the salaries of our Judges. No man, in his senses, goes to a poor lawyer; he employs a good lawyer, and generally he goes to the best lawyer, when the matter in hand is one of considerable importance to him. Now, sir, I put it to the common sense of every man who has had any experience in these matters, to look at his own experience and apply the same principle here. I put it to my friends on this floor, if the proposition to reduce the salaries of Judges below the figures fixed in the report of the committee, is not fraught with evil and danger? The people of California are a free-handed, liberal people; they are not a mean people; they do not demand that the public officers shall be put upon a niggardly salary. I am not hunting for cheap popularity, and if I was, I am not certain but what I am on the really popular side of the question. The kind of cheap popularity which gentlemen talk about is not permanent or lasting. I am in favor of the report of the committee; I think the salaries there fixed are none too high. In the State of New York, when the new Constitution was made, it raised the salaries of their Judges. I think the Chief Justice of the Court of Appeals, of New York, has a salary of twelve thousand five hundred dollars a year, and New York, as we all know, is by no means as dear a place to live in as this. The term is extended to fourteen years, and I believe there has been no complaint about the increased salary or the extended term. Now, let us adhere to the proposition of the Judiciary Committee; let us give our Judges enough to live upon. Doubtless there are plenty of lawyers in this State who would be glad to take these positions at these reduced salaries, but we are not anxious to have any such men on the bench.

SPEECH OF MR. WEST.

MR. WEST. Mr. Chairman: I believe the question is upon the amendment of the gentleman from San Francisco, Mr. Stedman. I agree fully with the statement of the gentleman, that we should make these salaries fair and reasonable, in order to be able to secure good men to fill these positions; and that is one of the reasons why I am in favor of the amendment of the gentleman from San Francisco. The facts have been, sir, that while the people of California have been a grand and enlightened people, while they are a liberal people, as the gentleman says, they have been one of the most afflicted people on the face of the earth. Their ideas have not kept pace with the altered condition of affairs. The days of forty-nine have passed, but the ideas of forty-nine still remain, to a great extent. And the time has come when we must come down from these exalted ideas to a fundamental basis. We can no longer maintain the style of forty-nine, because we have not the means to do it. Everything else has come down, and salaries must come down too. Now, sir, it is a fact that must be apparent, that official salaries in California have been placed at such rates as to engender corruption. Aspirants to these positions have spent thousands of dollars to secure nomination and election. Why have they done so? Because the profits and emoluments of the office enable them to do so. And, in my opinion, the more you increase these salaries beyond a fair and just compensation, the more you will encourage corruption and scheming. Sir, I do not believe that brains and capacity are as scarce as some gentlemen would have us believe. Nor do I believe that by raising the salaries you will secure the best men to fill these offices. Honesty is not for sale to the highest bidder by any means. History shows that the very best men our country has afforded commenced their official career on low salaries. Some of the brightest ornaments on the United States benches to-day are men who commenced on a salary of one thousand eight hundred dollars a year, as Circuit Judges, and they were very well satisfied too. Now, we are not asking our Judges to come down to any such low figures; we are offering them fair and reasonable salaries, even liberal salaries. We offer the Supreme Justices five thousand dollars a year, for a term of twelve years, which would be sixty thousand dollars for the term. If that is not a munificent salary, I would like to know the reason. Now, I believe it is an axiom that Judges hardly ever die and never resign. We have been admonished here that the Judges overwork themselves and destroy their health. I believe that Judges are the longest lived people in the country, and I am glad of it. But I say there is no foundation for any such sympathy as this which is sought to be manufactured for them. I believe, under all the circumstances, that a salary of five thousand dollars is ample for the Supreme Justices. I believe it is a much greater income than our best lawyers can earn in the same length of time in their profession.

REMARKS OF MR. STUART.

MR. STUART. Mr. Chairman: I do not know as I can throw any light upon this question. If there is any set of men in the State who ought to be in favor of a well paid judiciary, it is the farmers. There are very few farmers who have not, some time or other, been involved in tedious and expensive lawsuits, and there is not a farmer who has had any experience but what has seen the trouble and expense which has to be encountered when there is an ignorant or incompetent Judge on the bench, or a corrupt one. The people who own the land are directly interested in this question, and the matter of expense in obtaining the right kind of men ought not to be considered at all in dealing with this question. I think the committee have fixed these salaries at the right figure, and as a farmer I am in favor of that report.

REMARKS OF MR. HALL.

MR. HALL. Mr. Chairman: I am in favor of the report of the committee, so far as the salaries of the Supreme Judges are concerned, for all the reasons that have been submitted to the Convention so fully and forcibly. I think that a salary of six thousand dollars per annum is certainly little enough. If we had no other or further reasons than that the State receives an equivalent in the services rendered, we might fall back upon the calendar which I hold in my hand, showing over three hundred cases for one term. Now, this Court is required to hold

six terms a year, and the labor is simply enormous, and it is astonishing to me that they can get through with as much of it as they do. So much for the salaries of the Judges of the Supreme Court.

I do not think the salaries, as fixed in section seventeen, for Superior Judges, are too high. I hope it will be retained as it now stands. The Legislature is still left with power to make a change in that respect, according to the correction made by the Chairman of the Judiciary Committee, and if it shall be found that the salaries are too great, the Legislature may proceed to reduce them. I have but this to complain of: that in so far as the County of San Joaquin is concerned, the salary is not, as I had occasion to say, proportionate to the services required in that county. I have already read a report of the general business of that county, and I am satisfied that the Superior Court will have to be employed at least three hundred days, out of the three hundred and sixty-five, in order to dispatch the business of that county. The salary of the Judge, therefore, will fall under the standard of salaries established throughout this section. Take the standard of other counties and other classes, and the salary of San Joaquin is too small. It is this point of injustice of which I complain. Now, this section provides that the salaries shall be paid out of the State treasury. Now, take the County of San Bernardino, which has a Judge with a salary of four thousand dollars. The County of San Bernardino, in respect to population, wealth, and amount of business, has perhaps three hundred or four hundred per cent. less than the County of San Joaquin. Taking the salary provided for the County of San Bernardino as a standard, and the salary of the Judge of San Joaquin County ought to be twenty thousand dollars, or twenty-five thousand dollars, instead of five thousand dollars, as fixed in the section under consideration. Now, the result is this: that we are only allowed one Judge, while the County of San Bernardino is entitled to one Judge with a salary almost as large. I am in favor of the amendment offered by the gentleman from Alameda, in respect to that portion which provides for the payment of the Superior Judges by the several counties. But it does not go far enough. To that part which provides that the Board of Supervisors shall fix the amount of these salaries I do not object. I am in favor of paying these salaries entirely out of the county treasury. I hold that it is unjust to establish salaries in the Constitution for these officers—county officers, as they are—while to some counties are denied the number of Judges to which they are entitled according to the standard of wealth and population. For that reason I would like to see an amendment adopted which would provide that the Judges of the Supreme Court and of the Superior Courts shall severally, at stated periods during their continuance in office, receive a compensation, which shall not be increased nor diminished during their continuance in office; and the Supreme Court Justices shall be paid out of the State treasury, and the Judges of the Superior Courts out of their respective county treasuries.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I believe in a case which requires culture and skill, that which is best is cheapest. I agree in the general remarks which have been made to that effect. There is no prudent man who would go in search of the cheapest lawyer; so no prudent people will search for the cheapest Judges. I am therefore in favor of a fair and reasonable compensation for the judiciary. At the same time I admit the whole force of the argument that at the time the salary of Supreme Justices was fixed at six thousand dollars, that amount of money had no more producing power than five thousand would have now. I believe the action on the pending amendment will determine whether we are to get through with this report, or whether we are to be involved in a controversy which will last considerable time, the result of which may not be at all satisfactory. A great many suggestions will be made as to raising salaries and lowering salaries, and this same question of increasing the number of Judges in certain counties will come in. I understand that the question is now in this shape: I would like to ask the Chairman of the Judiciary Committee if that provision will affect the fixing of these salaries for the first term. This section provides that the salaries fixed shall not be increased or diminished during the term for which they shall have been elected.

MR. WILSON. No man's salary can be increased during his term of office.

MR. MCCALLUM. Then the Legislature would have no power in the matter until the first term has expired, so they must stand until the terms shall have expired—six years for the Superior Court Judges, and twelve years for the Justices of the Supreme Court, except those who draw the short term. Now, sir, I contend that the amendment offered by my colleague is a solution of the whole matter. There is precedent for it in several of the States. I find in Georgia that the same system prevails—the Judges are paid by districts. The same is true in the State of New York, where the Judges are paid by cities. In the State of Nevada the Judges are paid by the districts by which they are elected. So we have abundant precedent for the amendment proposed by my colleague.

MR. WILSON, of First District. How many States have that system?

MR. MCCALLUM. I cannot state exactly. In glancing over the Constitutions I find the States which I have mentioned have that system, and I presume others have it which I have not noticed. I cited these States merely to show that there is precedent for a provision of this kind, not for the purpose of showing how much they are paid. Now, it is to be remembered that these Superior Court Judges take the place of the County Judges as well as the District Judges. The County Judges have always been paid by the counties, and that is an argument in favor of paying these substitutes by the counties also. [illegible] very good feature is this: that it will do away with the disputes w[illegible]n place here in regard to the number of Judges a county [illegible] plausible arguments were made in favor of Santa Clara [illegible] Joaquin Counties. Now, I think those counties shou[illegible]ges as they are willing to pay for. Let them have their own way in their local affairs. We have heard so much about local self-government; why not apply the principle here? Why not provide that they shall have as many as the business of the county demands? The principle of the amendment proposed by my colleague is the correct one. Perhaps it may not be adopted. Perhaps it can be improved upon, but it is the true theory, that the counties shall pay the Superior Court Judges. It will be an additional argument why such little counties as Alpine should combine with other counties and elect one Judge.

REMARKS OF MR. MCCONNELL.

MR. MCCONNELL. Mr. Chairman: I have taken pains to see what salaries are paid in some of the other States. I find that the Chief Justice in the State of Delaware receives one thousand two hundred dollars; Associate Justices, one thousand dollars. In Florida the Chief Justice receives four thousand five hundred dollars; Associate Justices, three thousand dollars; the Circuit Court Judges, three thousand five hundred dollars. In Illinois, the Supreme Court Justices receive four thousand dollars; Circuit Court Judges, three thousand dollars. In Iowa the Supreme Court Justice receives two thousand dollars; the District Judges, one thousand six hundred. In Kansas, one thousand five hundred dollars. In Maryland, Chief Justices, three thousand five hundred dollars; Judges of the Circuit Court, two thousand eight hundred dollars. In Michigan, Judge of the Circuit Court, one thousand dollars. In Nebraska, two thousand dollars; Oregon, two thousand dollars. In Texas, the Chief Justice gets four thousand five hundred dollars; Associate Judges, three thousand five hundred dollars. I find, also, that in the State of West Virginia, the Chief Justice gets two thousand dollars; the Circuit Judges, one thousand eight hundred dollars. In the State of Wisconsin, the Chief Justice gets one thousand five hundred dollars. I know, that many years ago, the Virginia Supreme Judge got one thousand two hundred dollars, and we all know what kind of material they had on the bench there. I have no doubt but there are lawyers in this State who can make more money at the bar than they could in these positions. The salary would be no inducement, of course, to such gentlemen as Judge Shafter and Judge Belcher. My friend from San Francisco, Mr. Wilson, who can make fifty thousand dollars a year in his profession, of course could not afford to accept such a position as that at the rates proposed in this report. But there are hundreds of lawyers in San Francisco who are glad to work for fifty dollars a week in a lawyer's office.

MR. WILSON. I can find you plenty of men who will take the positions for nothing.

MR. MCCALLUM. I don't want that kind of men. It is a notorious fact, that these offices, like all offices in the State, he who is the best worker gets it. There are plenty of men who would retire from practice. It is a fact, that five thousand dollars will purchase more now than ten thousand dollars would twenty years ago. Now, I want to see these officers fairly and reasonably paid, but I think that five thousand is enough. I hope the amendment will prevail. In case that does not, then I hope the amendment of the gentleman from Alameda will prevail.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I wish merely to express my opinion, and say that I am in favor of the report of the committee, and opposed to the amendments. The idea expressed by the gentleman from Alameda, that men will retire from business for the purpose of taking positions on the Supreme Bench; that men who desire to retire from active business and active life, will take these positions upon the bench, either in the Supreme Court, or in the Superior Courts of San Francisco, is one that I am not able to comprehend. Such an argument as that is fallacious, and for one I do not comprehend the force of it. It is an attempt to induce this Convention to place these salaries below what would be a fair figure. Now, sir, we do not employ professional men for the labor performed, but for the effect produced. We do not employ distinguished lawyers, as architects, as civil engineers, or mechanics of the higher grade, for the amount of labor they do, but for the effect they produce. If you are taken sick, and your body is racked with pain, you send for a good physician. He examines your case, writes a prescription, you send it to the drug store, have it filled, and take the medicine, and you are cured. It cost the physician perhaps thirty minutes to come and prescribe for your disease, and he charges you twenty-five or fifty dollars. Is that for labor performed? No, sir, it is for the effect produced. It saved your life; perhaps saved your health and your active capacity for labor for many years. So with the lawyer; so with the architect; so it ought to be in selecting Judges. We ought to have the highest ability in the State, and in order to get it we must expect to pay for it. The standard must not be the absolute amount of work performed, but the effect produced. We must take into consideration what it cost the man in time and labor to produce that effect. If we undertake to fix the salaries of Judges on the basis of actual routine labor performed, we will make a very great mistake, and one which will result disastrously to the people themselves. You will not get the best men, and if you do not, then you will have a failure in the administration of justice. It is true, that in the State of Oregon the salaries of all the officers were cut down. I happened to live in the State when the Constitution was adopted. It is true, that the salary of the Chief Justice was cut down to two thousand dollars; the salary of the Secretary of State was cut down to fifteen hundred dollars: and so on, through the list of State officers. That was done in obedience to a kind of economical insanity which was abroad in the community. They have had enough of it since, and have gradually worked their way back to r[illegible]cent salaries for their State officers. And so it will be found [illegible] his State. If you undertake to cut down the salaries bel[illegible] it will be found to work badly, and the people will

soon have cause to regret it. It seems to me that all the argument that is necessary to secure the adoption of this report, has already been set forth, and I will not consume any more of the time of the Convention in arguing the matter.

MR. WILSON, of First District. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Judiciary and Judicial Department, have made progress, and ask leave to sit again. The hour having arrived, the Convention will take a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and quorum present.

SALARIES OF JUDGES.

MR. HUESTIS. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the article on Judiciary and Judicial Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section seventeen, with the amendments, is before the committee.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I have listened patiently to this discussion. This question is one that has been discussed from the inception of the Government down to the present time. There is no doubt but the purchasing price of money has been constantly decreasing, from the beginning of the Government down to this time. It is vastly less now than it was at the time these illustrations were given. It is more now, in this State, than it was twenty years ago, however. I recollect when the Governor of Virginia got four hundred dollars; the Secretary of State, two hundred and seventy-five dollars—it was all he earned; the Judge of the Supreme Court got one thousand dollars. You could get board for one dollar and a half a week, in first class hotels—that is all I paid in the New York House. In Wisconsin the salary was reduced so low that Judge Jackson was compelled to resign because he could not live on his salary; he could not support his family, so he resigned, and went to practicing law again. At that time you could buy wood for one dollar a cord; you could buy fresh eggs for six cents a dozen; corn was cheap, and good whisky eighteen cents a gallon; and yet this man was not able to support his family on the salary. Now, all these things are changed, and money has no such purchasing power. If there is any place in the world where we must have efficient men it is in the judicial department. If you cut the salaries down, as you propose to do by this amendment, the people will suffer by it. Such a reduction as this will cost the State ten thousand dollars, where it costs one thousand now. The learned, able, and efficient Judge will decide his cases promptly, and no time will be lost; on the other hand, your cheap Judge will take a long time to decide a case, and the result will be that the people will suffer by it. I hope that this Convention will adopt the report of the committee. We have wasted enough time, and in order to get a vote, and avoid any further discussion, I move the previous question.

THE PREVIOUS QUESTION.

Seconded by Messrs. Howard, West, Ayers, and Evey.

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

Carried.

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

MR. EVEY. Mr. Chairman: I call for a division of the question.

THE CHAIRMAN. Division of the question is called for, and the first question will be on reducing the salary of the Supreme Court Justices from six thousand dollars to five thousand dollars.

The amendment was lost, by a vote of 33 ayes to 59 noes.

THE CHAIRMAN. The next question is on striking out five thousand dollars, and inserting four thousand dollars.

Lost, on division, by a vote of 32 ayes to 59 noes.

THE CHAIRMAN. The next question is on striking out the words four thousand dollars in the fourteenth line, and inserting the words three thousand five hundred dollars.

Lost.

THE CHAIRMAN. The next question is on striking out the words three thousand dollars, and inserting the words two thousand five hundred dollars.

Lost—ayes 18.

THE CHAIRMAN. The question is on the amendment to the amendment, proposed by the gentleman from Alameda, Mr. Inman.

Lost.

MR. BLACKMER. Mr. Chairman: I offer an amendment to section seventeen.

THE SECRETARY read:

"Amend section seventeen as follows: Strike out the word 'Kern,' and insert the words 'San Diego,' and strike out the words 'San Diego,' and insert the word 'Kern' in place thereof."

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: In looking over the classification of the counties as presented by the report of the committee, I notice that there are many inequalities, and among them one which I desire to correct by this amendment. Now, sir, it is stated by the committee that the basis upon which this classification was made was the population of the several counties, as shown by the vote of eighteen hundred and seventy-six. Of course, it would not be fair in making an adjustment to go back to the census of eighteen hundred and seventy when we have any other statistics, because so many counties have changed materially since that time, and the amount of business to be done in the Courts could not be determined by the census. Now, sir, if population was made the basis, I submit that it is but fair to take the very latest statistics that can be obtained. Whether that can be obtained by the vote of eighteen hundred and seventy-six, or by something else, does not matter. But certainly any one acquainted with the Counties of San Diego and Kern, must admit that the population of San Diego County is in excess of that of Kern County; and so on that ground I can see no possible reason why this exception should have been made in regard to the two counties. It certainly works an injustice to San Diego County, which county I have the honor to represent, and I can see no necessity for placing Kern County in a class where it does not belong. Now, according to the statistics of eighteen hundred and seventy-seven, the population of Kern County was set down at nine thousand, while the population of San Diego County is set down at twelve thousand. I have every reason to believe that these figures in the Statistician in regard to San Diego County are correct, or very nearly so. About a year and a half ago we took some pains to ascertain what the population of the county was, and it was the opinion of the very best judges that it was not less than twelve thousand at that time. Now, I cannot see why Kern County, with a population of seven thousand, should be put in ahead of my county, which has a population of twelve thousand. I do not believe it is just. If the classification had been made strictly according to population, I would not have said a word; but this is a great injustice upon the face of it, and it is my duty to make an effort to correct it, and get my county in the place where it belongs. I do not see how there can be any defense made to such an act of injustice as this is.

MR. AYERS. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Strike out 'San Diego' in the third class, and place the words 'San Diego' in the second class."

MR. AYERS. I offer that in that shape for the reason that I do not know what might have been the reasons which induced the committee to place Kern County in that list, and I wish merely to place San Diego in the list of second class counties instead of the third.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I am convinced that the committee had some just reason for doing as they did do. The amount of business of Kern County, and also the vote of eighteen hundred and seventy-six, were no doubt taken into consideration. These things were taken together as the basis for the action which the committee took. They thought it sufficient to justify them in the action they took in the matter. And I think they were, too. And when the committee have investigated the matter and come to a conclusion, I do not propose to undo what they have done without some good reason for so doing. I will leave the matter for the gentleman from Kern to explain.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I must admit I am a little surprised at the gentleman from San Diego. It seems to me the amount of litigation is based more upon property than upon the amount of population in a county. Now, by the statistics of eighteen hundred and seventy-seven I find that the taxable property of Kern County is over five million dollars, while that of San Diego is about four millions. I did not hear all that the gentleman said upon the subject, but if he referred to the vote of the two counties, I think I can make it very plain that the vote of Kern is more than that of San Diego.

MR. REDDY. You think it ought to depend upon the amount of property the people have as to whether they shall have justice properly administered or not.

MR. SMITH. I think it depends more on property than upon population. Now, the vote of eighteen hundred and seventy-six shows San Diego to have sixty-two votes more than Kern. But it was estimated that there were fully two thousand men, sheep and cattle owners, herders, who could not get to the polls to vote at that particular time. They had their flocks and herds out in the mountains, and could not get home. The vote of that year was less than usual. The Great Register showed about twelve thousand five hundred voters at that time. Aside from this consideration there are others. In fact, there is no county in the State, outside of the very largest counties, that have as important and as much litigation as Kern County. At the last term of the Supreme Court there were only three cases less from that county than from the County of Sacramento. San Diego had seven cases; and if the records could be looked into it would be found that the cases coming from Kern are above the average in importance and the amount involved, of any cases in the State. Forty thousand and one hundred thousand acres of land is a large case. A majority of the cases in Kern are large. There are attorneys both from San Francisco and Sacramento who will bear me out in this statement. I have nothing to say against San Diego County. I have not gone as far as the gentleman has, for I have not attacked his county.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I am unable to see the force of the gentleman's argument, that we should grade justice in accordance with wealth. The people of San Diego may be poor, but honest. [Laughter.] The people of Kern may be wealthy, but no more honest. The people

of San Diego may be poor, and yet their individual rights, as applied to the individual, are just as sacred to them as though they were millionaires. Justice, I say, ought to be brought home to the door of every man, regardless of his wealth. There may be large cases, cases involving millions of dollars in some counties, and there might be other cases only involving hundreds of dollars, and the points of law involved might be just as intricate, and the rights of the parties just as sacred in the one as in the other. It is just as important to me, though I live in an humble cottage, if I am dispossessed from my cottage and turned into the street, as it is to the millionaire to be turned out of his palace. It is just as important that I should have the right of appeal to the proper Court, as it is that the millionaire should have the right. Now, I say, that the true basis is population. Of course, so far as actual figures are concerned, we have only the census of eighteen hundred and seventy to go back to. If we take the vote of the last election, we shall find by the election returns that Kern County did not have near so large a vote as San Diego.

MR. SMITH. Only sixty-two difference.

MR. ROLFE. The official returns shows one thousand five hundred and five in San Diego County, while Kern County had only one thousand two hundred and fourteen votes—three hundred difference. Now, these voters in Kern may have been off taking care of their flocks and herds. I do not know but they may have been away from home in some other counties. We all know that in these mountain counties there are more or less voters who do not get to the polls to vote. Now, I see by the report of the Clerk of the Supreme Court, that in the last four years, Kern County has had a greater number of cases in the Supreme Court than San Diego. But that is not a proper criterion. In the next four years San Diego may have four times as many as Kern. I know, from my own personal knowledge, that during the four years previous to eighteen hundred and seventy-four, the number of cases that went to the Supreme Court was far in excess of the number that went up in the subsequent four years. Who knows, but in the next four years, it may be largely the other way, and some other county, which figures low in this list, may figure very high? Why, one wealthy man—and the gentleman says they have a good many wealthy men in Kern—one wealthy man, who owns half the county, may find it necessary to institute fifty suits, and half of them may go to the Supreme Court in one year. That may be the case in any of these counties where they have wealthy men. Therefore, while I have no prejudice against the County of Kern, while I would do it no injustice, I say, that to take San Diego, and place it in a class below that in which Kern is placed, is a discrimination which is not justified by reason or common sense. Therefore I shall vote for the amendment.

MR. BLACKMER. I desire to accept the amendment of the gentleman from Los Angeles, Mr. Ayers.

MR. HOWARD, of Los Angeles. Mr. Chairman: I wish to say one word. I have been in the habit of attending Court in San Diego County, and I know that it is a very important Court. The present District Judge of that county and San Bernardino is a very fair young lawyer, of honesty and integrity, and very industrious, and probably under the new system would be retained. I am not in favor of driving him off the bench, by cutting the salary down below living rates. I hope the amendment will prevail.

THE PREVIOUS QUESTION.

MR. WINANS. Mr. Chairman: As this is a local question, and as the delegates from these counties have had their say, I move the previous question.

Seconded by Messrs. Ayers, Howard, Stuart, and Moreland.

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

Carried.

THE CHAIRMAN. The question is on the amendment of the gentleman from Los Angeles, Mr. Ayers.

The vote resulted, on division, in 54 ayes to 17 noes. No quorum voting.

The question was put again, and on division being called for, the amendment was adopted, by a vote of 61 ayes to 21 noes.

MR. REDDY. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Insert after the words 'San Bernardino,' in line thirteen, the words 'Inyo and Mono.'"

REMARKS OF MR. REDDY.

MR. REDDY. Mr. Chairman: The object of this amendment is to place these two counties in the list of second class counties. The character of the litigation in both of these counties is as important as any in the State. I do not see why Inyo and Mono should not be entitled to four thousand dollars as well as San Francisco, or any other county in the State. A Judge who is not worth four thousand dollars a year is not worth much of anything. It is also well known that in the mining counties there is to-day as much litigation pending, and of as much importance, as in any of the counties of the State. The interests involved are simply immense. Some of the richest mines in the State are involved. Now, we don't want cheap Judges to decide these cases. The people demand that men learned in the law shall decide these questions, and I don't see why a Judge in San Francisco should be paid five thousand dollars a year, while the Judges of Inyo and Mono are paid so much less for deciding the most important litigation in the State; where living is more expensive, where the duties are more arduous. Taking the criminal business, the probate business, and all together, and there is enough to keep the Judge busy all the time. There is no economy in having inexperienced and incompetent Judges. It delays business, piles up work on the Supreme Court, and harasses and annoys litigants, besides putting them to a great deal of unnecessary expense. That has been shown repeatedly by gentlemen in their arguments here, and it is not worth while for me to repeat all of the reasons. Therefore, I ask as a matter of justice that these counties be placed where they belong.

MR. TINNIN. I offer an amendment.

THE SECRETARY read:

"Amend the section by inserting after the word 'Tehama,' the word 'Trinity.'"

MR. TINNIN. We have a county one hundred miles long, and there is a great deal of litigation there. Therefore I ask that this amendment be adopted.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: If we desire to have any classification at all, we must adhere to the system as offered by the committee. Inyo and Mono are in the fourth class, and to take them out of the fourth class and place them in the second class I don't think would be doing justice.

MR. REDDY. Allow me. Would it be right if Inyo and Mono suffer by reason of the report of the committee, to adopt that report, and deprive them of what they are entitled to?

MR. BEERSTECHER. I don't know that they are entitled to it. It has not been shown that they are entitled to it.

MR. REDDY. I am satisfied that it has not been shown to you, and I am satisfied you don't know anything about it.

MR. BEERSTECHER. How much does your County Judge get?

MR. REDDY. The County Judge gets fifteen hundred dollars a year. In Mono County I think he gets five hundred dollars.

MR. BEERSTECHER. And you desire to take from him five hundred and give him four thousand dollars.

MR. REDDY. We have a District Judge who receives a salary of five thousand dollars per annum.

MR. BEERSTECHER. How many terms does he hold?

MR. REDDY. Two terms a year, because he cannot hold any more and get around.

MR. BEERSTECHER. Inyo had seven hundred and eighteen votes in eighteen hundred and seventy-six, and Mono one hundred and seventy-eight votes.

MR. REDDY. The population of Mono County now is about ten thousand. Where there were hundreds on the assessment roll then there are thousands now.

MR. BEERSTECHER. The matter as it presents itself to my mind is whether we are to have any classification of Judges or not. If this committee desire not to have any classification, well and good. It makes no difference to me. But if we expect to have any classification of Judges, it must necessarily be by districts, and certainly every county cannot be in class number one, nor in class number two, nor in number three, or number four. There must be some counties in the fourth classification, and if we are going to have any at all, I think it would be proper to adhere to the classification made in the report of the committee, and let that stand until the Legislature sees fit to change it. I would have no objections to giving the gentleman's counties a Judge with a salary of four or five thousand a year, but it will destroy all such thing as classification, and other small counties will have just as much right to come in for high priced Judges as Inyo and Mono. Other gentlemen on this floor can come in and make the same demand, and urge the same reasons, with just as much justice.

THE PREVIOUS QUESTION.

MR. HOWARD, of Los Angeles. I think time enough has been spent, and I move the previous question.

Seconded by Messrs. Ayers, Evey, Larkin, and Murphy.

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

Carried.

THE CHAIRMAN. The first question is on the amendment of the gentleman from Inyo.

Division was called for, the committee divided, and the vote stood: ayes, 34; noes, 37; no quorum voting.

The question was put again, and the amendment was adopted, by a vote of 44 ayes to 37 noes.

THE CHAIRMAN. The question is on the amendment of the gentleman from Trinity, Mr. Tinnin.

Division was called for, and the amendment rejected, by a vote of 35 ayes to 48 noes.

MR. MURPHY. I move an amendment.

THE SECRETARY read:

"Strike out all after the word 'quarterly,' in line fifteen, and insert, 'and those of all other counties not enumerated above, shall constitute the third class, and shall receive an annual salary of three thousand dollars each, payable quarterly.'"

MR. MURPHY. This strikes out the fourth class altogether, and makes all the others in the third class, with a salary of three thousand dollars.

MR. REYNOLDS. I offer an amendment to the amendment.

MR. McFARLAND. Mr. Chairman: I move the committee rise, report progress, and ask leave to sit again.

Lost.

THE SECRETARY read the amendment to the amendment:

"Add, after the word 'Sonoma,' in line nine, 'and all the Justices of the Peace in this State.'"

THE CHAIRMAN. It is out of order.

MR. WALKER, of Tuolumne. Mr. Chairman: I offer an amendment to equalize the whole thing.

THE SECRETARY read:

"Strike out all after the words 'dollars each,' in the seventh line, and insert the following: 'The Superior Court Judges shall receive an annual

salary of three thousand five hundred dollars each, payable quarterly, except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, who shall receive four thousand five hundred dollars each.'"

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Ayers, Reddy, Howard, and Stuart.

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

Carried.

THE CHAIRMAN. The question is on the amendment of the gentleman from Del Norte, Mr. Murphy.

Lost by a vote of 39 ayes to 43 noes.

THE CHAIRMAN. The question is on the amendment of the gentleman from Tuolumne, Mr. Walker.

Division was called for, and the vote stood 33 ayes to 30 noes.

No quorum voting.

MR. HOWARD, of Los Angeles. I move the committee rise, report progress, and ask leave to sit again.

Lost on a standing vote—ayes, 33; noes, 57.

THE CHAIRMAN. The question is on the amendment of the gentleman from Tuolumne, Mr. Walker.

Division was called for, and the amendment adopted, by a vote of 44 ayes to 42 noes.

MR. WILSON, of First District. Mr. Chairman: I move an amendment.

THE SECRETARY read:

"Add, after the word 'each,' in line seven, 'until otherwise ordered by the Legislature.'"

MR. WILSON, of First District. This amendment just adopted fixes the salaries permanently, and for all time, when they should in fact be flexible.

MR. AYERS. Would not this be understood to apply only to the Judges first elected?

MR. WILSON. No, sir; the Legislature could not change it.

MR. McCALLUM. I propose to offer an amendment.

THE SECRETARY read:

"Strike out, in line three, the words, 'from the State treasury,' and add, after the word 'elected,' in line five, the following: 'The salaries of the Justices of the Supreme Court shall be paid by the State; the salaries of the Judges of the Superior Courts shall be paid by the counties for which they shall be respectively elected.'"

REMARKS OF MR. McCALLUM.

MR. McCALLUM. Mr. Chairman: That proposition——

MR. HOWARD, of Los Angeles. I rise to a question of order. That proposition has been made and voted down.

MR. McCALLUM. That proposition has not been voted down. The proposition that was voted down was that of Mr. Inman, and was this: that the State should pay the salaries of the Superior Court Judges to the extent of one thousand dollars each, and that the Supervisors of the different counties should fix the salaries as to the balance; and also that the different counties should pay these salaries. Therefore, that proposition involved two features that are not involved here, namely: that the Supervisors should fix the salaries, and that the State should pay one thousand dollars toward each salary. I have presented the proposition plain and distinct and simple, that the different counties shall pay the salaries of the Superior Court Judges. That is entirely a different proposition, upon which I hope to have a full vote. We have now provided that three thousand five hundred dollars shall be the salary in all cases except those counties enumerated. Upon computation, it will be found that we have increased the expenses above the system reported by the Judiciary Committee, and above the present cost, about one hundred thousand dollars. A gentleman made a computation here yesterday, and found that the report of the committee increased the expenses about forty-four thousand dollars. Now, sir, we have increased it about one hundred thousand dollars. I propose that if this matter is to go before the people, that we shall know—that there shall be some special responsibility of those persons—who shall be mainly responsible as to their particular counties. I am aware that we cannot evade our responsibility by throwing the responsibility upon the local delegations, but I do think that is where the responsibility belongs. County Judges have heretofore been paid by the counties, and the Superior Judges take their places, and why should not both be paid by the counties? If any gentlemen then desire to increase their Judges, or increase their salaries, let them speak for their own constituents, and not for the State at large. As it is now, people will cry out against the extravagances, and it will be the means of making many votes against the Constitution.

MR. HOWARD, of Los Angeles. The fallacy of the gentleman's argument consists in this: he don't avoid the increase, if there is any, by putting it upon the counties instead of the State. What is the difference in point of principle? If it is too much for the State to pay, it is too much for the counties to pay.

MR. McCALLUM. My object is this: that if you leave it for the counties to pay, the gentlemen will not demand the same class of salaries that they do when it comes out of the State treasury.

MR. HOWARD, of Los Angeles. You might with the same justice, and the same reason, require the counties to pay their members of the Legislature as to require them to pay their Judges. I hope the amendment will not be tolerated.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. Chairman: I hope this amendment will be promptly voted down, for the reason that these are State Courts as much as the Districts Courts were. All of the business of the State is done in these Courts. The prosecutions of criminal offenses are made in the name of the people of the State, and the State should therefore pay the salaries of the Judges. I oppose the amendment for another reason. It is well known that a very large number of counties pay in scrip, and this scrip is sometimes worth as low as forty-five cents on the dollar. That would reduce the salaries of some of these Judges below a living rate. That is the case in many of the counties, particularly the mining counties. Our property has depreciated in value, and some of the counties are deeply in debt, and for some time to come salaries will have to be paid in county scrip, and the result will be that the Judges in these counties will not have an equal show with other Judges of the State. I think these salaries should all be paid by the State. They are State Courts; all the State business is transacted in these Courts.

MR. SMITH, of Kern. I think we can do more satisfactory work Monday morning, and I therefore move that the committee rise, report progress, and ask leave to sit again.

Carried—ayes, 44; noes, 22.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Judiciary and Judicial Department, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. EVEY. I move that the Convention do now adjourn.

Carried.

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

ONE HUNDRED AND EIGHTH DAY.

SACRAMENTO, Monday, January 13th, 1879.

The Convention met pursuant to adjournment, at nine o'clock and thirty minutes A. M., being called to order by Assistant Secretary Thornton, in the absence of the President, President pro tem., and Secretary.

MR. THORNTON. Gentlemen: The first business in order is the selection of a Chairman.

MR. HUESTIS. I nominate Mr. Tinnin.

Mr. Tinnin was elected unanimously.

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

PRESENT.

Andrews,	Hale,	Pulliam,
Ayers,	Harrison,	Reed,
Barry,	Harvey,	Reynolds,
Barton,	Herrington,	Rhodes,
Beerstecher,	Hilborn,	Ringgold,
Belcher,	Hitchcock,	Rolfe,
Bell,	Holmes,	Schomp,
Biggs,	Howard, of Los Angeles,	Shoemaker,
Blackmer,	Howard, of Mariposa,	Shurtleff,
Boucher,	Huestis,	Smith, of Santa Clara,
Brown,	Hughey,	Smith, of 4th District,
Burt,	Hunter,	Soule,
Campbell,	Jones,	Stedman,
Caples,	Kelley,	Steele,
Charles,	Kenny,	Stevenson,
Condon,	Keyes,	Stuart,
Cowden,	Kleine,	Sweasey,
Davis,	Lampson,	Swenson,
Dowling,	Larkin,	Swing,
Doyle,	Lavigne,	Thompson,
Dudley, of Solano,	Lindow,	Tinnin,
Dunlap,	Mansfield,	Tully,
Eagon,	Martin, of Santa Cruz,	Turner,
Edgerton,	McCallum,	Tuttle,
Estee,	McComas,	Vacquerel,
Estey,	McConnell,	Van Voorhies,
Evey,	McCoy,	Walker, of Tuolumne,
Farrell,	McFarland,	Waters,
Fawcett,	McNutt,	Weller,
Filcher,	Moffat,	Wellin,
Freeman,	Moreland,	West,
Freud,	Morse,	Wickes,
Garvey,	Nason,	White,
Glascock,	Neunaber,	Wilson, of 1st District,
Gorman,	Ohleyer,	Wyatt.
Grace,		

ABSENT.

Barbour,	Herold,	Overton,
Barnes,	Inman,	Porter,
Berry,	Johnson,	Prouty,
Boggs,	Joyce,	Reddy,
Casserly,	Laine,	Schell,
Chapman,	Larue,	Shafter,
Cross,	Lewis,	Smith, of San Francisco,
Crouch,	Martin, of Alameda,	Terry,
Dean,	Miller,	Townsend,
Dudley, of San Joaquin,	Mills,	Van Dyke,
Finney,	Murphy,	Walker, of Marin,
Graves,	Nelson,	Webster,
Gregg,	Noel,	Wilson, of Tehama,
Hager,	O'Donnell,	Winans,
Hall,	O'Sullivan,	Mr. President.
Heiskell,		

LEAVE OF ABSENCE.

Leave of absence was granted for one day to Mr. Larue; for two days, to Messrs. Chapman, Prouty, and Herold; for three days, to Messrs. Lewis and Wilson, of Tehama; and four days, to Mr. Heiskell; and for one week, to Mr. Townsend.

THE JOURNAL.

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

So ordered.

SALARIES OF JUDGES.

MR. WILSON. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. Tinnin in the chair, for the purpose of further considering the report of the Judiciary Committee.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question before the Convention is the amendments offered by the gentleman, Mr. Wilson, and the gentleman, Mr. McCallum.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I am in favor of the amendment offered by the gentleman from San Francisco, Mr. Wilson, and I am opposed to the amendment offered by Mr. McCallum. Now, the Judge has to devote all his time to the duties of his office, whether the business be large or small. He cannot attend to any other business. It is well known that under the old system the County Judges could do considerable business, besides attending to the duties of the office. They could practice law in the other Courts. But the Superior Judge is the only Judge in the county, and is debarred, necessarily, from practicing law at all, because any case he undertook to engage in must come before his own Court. I do not think it is right for the people of a small county to be compelled to pay the salary of the Superior Judge, when so much of the time of that Judge is occupied in attending to the business of the State. He has to deal with cases in which people from all parts of the State are engaged. You have all seen many such cases. You will find many lawsuits which involve the rights of parties living in distant parts of the State. A great deal of business is brought in the Courts of San Francisco which does not properly belong there, and a great many citizens of San Francisco have litigation in the various counties of the State. All of which goes to show that these Courts are State Courts, having jurisdiction all over the State, and having power to decide cases of litigants who reside in different parts of the State, and therefore the Judges should be paid by the State. I do not understand that any of the large counties have objected to it. I think San Francisco ought to be willing to have them paid out of the State treasury.

MR. HILBORN. Mr. Chairman: We have adopted, in the legislative department, a prohibition against all special legislation upon the salaries of State officers. Now, supposing when the Legislature meets they want to change the salary of the Superior Judge of Inyo County. Here is a prohibition which you have already adopted against fixing that salary. How is it ever to be changed. Certainly not without a special law upon the subject.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I wish to say one word in regard to the amendment proposed by the gentleman from Alameda, Mr. McCallum. It seems to me the very worst policy in the world to require the counties to pay the salaries of these State officers—for they are State officers in reality. To throw this upon the counties is a burden they ought not to be compelled to bear. It may be disproportionate to the larger counties, as is the case with my own county, but they ought not to object in the interest of the whole State. The onus will be very little upon the larger counties, and it will assist many of the interior counties to carry on their county organizations until they shall be filled up by population. There would be perpetual applications to the Legislature to reduce salaries. It seems to me that the matter is one that properly belongs to the State, and that these salaries ought to be paid by the State.

MR. STEELE. Mr. Chairman: I hope the amendment will not prevail. It is unjust to these four or five little counties. People who go off into pioneer homes are doing a great deal in developing the resources of the State, and they are entitled to some consideration at the hands of the State. It is very unjust to compel them to pay for these Judges. I think the people of the State can well afford to pay these salaries out of the State treasury, and it is only justice to these counties.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: As an additional reason why I think the amendment should not prevail, I think the Superior Judges should receive their salaries as the present District Judges receive theirs—out of the State treasury. When paid by the counties, the salaries will have to be fixed by the Board of Supervisors, and they are just as likely as any individual to engage in litigation. It may be necessary for some individual to prosecute the Board, in relation to the action of the Board, and if the salary of the Judge is to depend upon the action of these Supervisors, he will be placed in a very unpleasant situation when such cases come to be tried before him, to say the least of it. He will have to sit and adjudicate upon the interests of his friends and patrons. It is no more proper that this should be the case, than it is in regard to individuals: and if this Board is to stand as his friend and patron, directly or indirectly, in the matter of his salary, then it is equally proper that individuals of the community should contribute towards his salary, and that he should know that certain persons are especially friendly and have aided in his support. I have known one such instance in the case of a Justice of the Peace, and I cannot say that it worked well. I discovered an instance in which a Justice of the Peace, in addition to his fees, received a little subscription made up by about eight of the chief citizens of the place. They subscribed, I think, two or three dollars a month each, to be paid monthly. That was done as an inducement for him to run for the office. The same thing might be done in respect to Superior Judges. It is true his salary cannot be increased or diminished during the term for which he is elected, but it is generally known who will hold the office during the next term. It is generally understood that the incumbent will stand for reëlection. I think it would be wrong to hold out any such inducements.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: If these salaries are to be paid by the State, there will be constant applications to the Legislature of this State to change salaries, where they were two thousand dollars and three thousand dollars, to be placed in the higher class. This conflict occurred here the other day, when applications were made to change. That conflict will always occur in the Legislature unless a uniform salary is fixed in the Constitution for the Judges of the State. To avoid that ending in the legislative halls, to avoid these importunities by the Judges and their friends, it will, in my humble opinion, be necessary to fix a uniform scale of salaries, to be paid by the counties. I believe it is better. I believe that system will suit the people better. If you put them at three thousand five hundred dollars, let them all be the same, then there will be no conflict in the Legislature to change the grade of these salaries. If it is desired to let the State pay two thousand dollars, then let the balance be paid by the counties. It may be determined six months in advance of the Judge's election by the Board of Supervisors, or by the Legislature, and the law providing that it shall not be changed during the term for which he is elected, it will not be possible to tinker with his pay by the Supervisors. I believe that this policy should be pursued in order to avoid the contests that will occur and have occurred; though the old Constitution prohibited the changing of salaries, the Judges would go to the Legislature nearly every session of the Legislature, and ask for a change in their salaries.

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

Adopted.

THE CHAIRMAN. The question is on the amendment offered by the gentleman, Mr. McCallum.

MR. WHITE. I am opposed to the counties paying it, because it is a great deal more than these small counties ought to be compelled to pay. It is wrong to force any county to pay its Judge three thousand five hundred dollars. I trust this amendment to make the county pay will not be adopted.

MR. McCALLUM. Suppose the delegations here find that these counties have to pay these salaries, do you think they will ask for them to be put so high.

MR. WHITE. No, sir. We want the State to pay if it is to be three thousand five hundred dollars. We don't want any such salary for our county.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I look upon these Judges as entirely State officers. The law requires, and the Constitution provides, that they may hold Court in any county in the State, under certain directions. It is a fundamental principle that every Judge deciding upon a case shall be entirely impartial; have no interest whatever in the case. Now, some of the counties in this State, as has been said here, are quite low in funds. They are almost bankrupt. Now, the rate of pay of the Judges would depend in some measure upon the financial condition of the county. In some of these counties, if the Judge should receive his pay from the county treasury, he would only get fifty cents on the dollar for his warrants. Now, in a great many instances cases come up involving the legality of certain taxes. In a case of that kind, the Judge would have a personal inducement to decide in favor of the legality of the tax, because it would have a bearing one way or another on the value of county warrants. This is one of the cases in which the Judge would not be entirely impartial. I don't say there is any Judge who would be biased in this way, but it is one of the fundamental principles that he should not be. Human nature is weak, at best, and I think this is a decided reason why this money should not be paid out of the county treasury. They are State officers, and take the place of the District Judges, who have always been considered State officers, and they should be paid by the State.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: Before a vote is taken on this amendment, I wish to say that my idea in offering it was this: I notice that there is a disposition here, so long as the State at large is to pay these salaries, for every county to ask an increase of salaries, generally by asking for the raising of the grade of Judges for their counties. Finally, the proposition was agreed to, that all salaries should be three thousand five hundred dollars each, except certain named counties. The result of that is, that this other system will cost in round numbers about three hundred thousand dollars a year. Now, it occurred to me, that if the counties should be required to pay, the delegates here representing those counties will occupy an entirely different position in such cases from what they occupy now when the State is to pay. The gentleman from Santa Cruz says, if they are to pay three thousand five hundred dollars, that it is too much. I don't know anybody that will have a better right to say what they shall be paid than the delegate from that county, and my idea is, that we will have no difficulty in fixing a rate of salaries whenever we decide that they shall be paid by the counties.

MR. McFARLAND. From your own experience, do you believe there is any danger of the salaries of Judges being too high?

MR. McCALLUM. I cannot say that I believe that it is hurtful to

fix salaries too high. That is my judgment of it. But I am here rather in a representative capacity; not as representing my own views. But I am satisfied that the main question which will be discussed, ouside of what may be the benefits of this new system, will be the question, whether it costs more than the old system. And I will say further, that as the present system costs a quarter of a million of dollars, I believe we ought to have a speedy and good administration of justice for a sum not exceeding the present cost. As it now stands, it will cost about three hundred thousand dollars. I do not believe that there will be any such demand for an increase of salaries on the part of delegates if we provide that the counties shall pay the Judges. Whenever it comes down to individual responsibility, there will be no such demand.

MR. WHITE. Is it not fixed that we shall pay them three thousand five hundred dollars a year?

MR. McCALLUM. That has been fixed in the Committee of the Whole. If the counties have to pay, then it will remain with the delegates from those counties to say what these salaries shall be. That is the way that will work. The gentleman from Santa Cruz says his constituents do not want to pay so much, and I imagine this Convention is not going to go against their judgment.

MR. WHITE. The delegate from San Benito agrees with me that two thousand five hundred dollars will do. Mr. Wyatt agrees with me that two thousand five hundred dollars is enough for Monterey County.

MR. McCALLUM. If the counties have to pay, the delegates from those counties will name the amount they are willing to pay. Then this system will not cost any more than the present system. I don't say that it is too high, but I do say that there should be more immediate responsibility about the matter. As to being State officers, in some sense they are and some they are not. Our District Judges were considered State officers, and our County Judges were considered county officers. These Superior Judges will be elected by the counties exclusively, and they are in one sense county officers, taking the place of the County Judges. As far as Alameda County is concerned, we are willing to pay for two Judges, ten thousand dollars. I believe we had better pay for our own Judges than to pay our proportion of all the Judges, because we would probably save five thousand dollars by the operation. As far as the amendment adopted in the Committee of the Whole is concerned, I do not regard anything as fixed in the Committee of the Whole. We will have a chance to unfix it again.

MR. HERRINGTON. Is an amendment in order?

THE CHAIRMAN. No, sir.

MR. McCALLUM. I wish to state that the delegates from San Joaquin County have stated to me that they are very anxious to have two Judges for that county; that their business requires it, and that they are willing to pay for them; and at the same time the Convention does not seem willing to allow them an extra Judge.

MR. HERRINGTON. Mr. Chairman: I desire to offer a substitute to the amendment.

THE SECRETARY read:

"Strike out all after the word 'each,' in line seven, and insert: 'The Superior Judges shall each receive an annual salary of one thousand dollars, to be paid out of the State treasury, and such additional compensation as shall be fixed by the Boards of Supervisors of the respective counties, to be paid out of the county treasury.'"

MR. SMITH, of Fourth District. Mr. Chairman: I rise to a point of order.

THE CHAIRMAN. State your point of order.

MR. SMITH. This has already been voted down. A motion was made and carried to strike out these words and insert others in their place, and a motion to strike them out again is not in order.

THE CHAIRMAN. The point of order is well taken. The amendment is ruled out of order.

AN APPEAL.

MR. HERRINGTON. I hope the Chair will not decide that point of order in a hurry.

MR. WILSON. I understand the point of order to have been already decided.

THE CHAIRMAN. Yes, sir.

MR. HERRINGTON. Then I most respectfully appeal from the decision of the Chair, and then I can discuss the question.

The appeal was duly seconded.

THE CHAIRMAN. The gentleman has offered an amendment striking out portions of the amendment that has been voted upon and adopted by this Convention, in regard to the salaries of Judges. The Chair decides that he cannot do so. From that decision of the Chair the gentleman appeals. The question is on the appeal from the decision of the Chair.

MR. McFARLAND. This very identical amendment has been voted down.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: What the gentleman says is true. I admit every word. I admit that some portions of that section consists of words that have been adopted by the committee. But I submit that the amendment now pending seems also to change these very words that have already been adopted. I understand the object of the committee to be to complete the section by fixing the amount of compensation, and as I understand it, those things may be changed as often as the Committee of the Whole desire, until the whole section is complete. And it is right that this should be so, and that we should have a chance to complete the section. The other proposition that was voted upon embraced the salaries of Supreme Judges, while this proposition leaves out the Supreme Judges altogether, and therefore I consider it a separate and different amendment——

MR. HUESTIS. I ask the Chair to enforce order in this hall. There is so much noise and confusion that nobody can hear a word that is being said.

THE CHAIRMAN. Gentlemen will keep order on the floor.

MR. HERRINGTON. It looks to me as if the members were more interested in their private affairs than in the proceedings of this Convention. Now, I do submit that if this proposition had been voted upon alone, without embracing the salaries of the Supreme Justices, that it would have been carried; and I say that such a proposition as this is strictly in order at this time. I, myself, voted against the proposition before presented, on that account, and there are others here who did the same thing. I think the gentleman to my left is in favor of this amendment in preference to all others.

MR. WILSON, of First District. I move that the appeal be laid upon the table.

Division was called for, and the vote to table the appeal stood: ayes, 45; noes, 26.

No quorum voting.

The question was put again, and the motion to table prevailed by a vote of 45 ayes to 32 noes.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Alameda, Mr. McCallum.

Division being called for, the amendment was lost, by a vote of 23 ayes to 57 noes.

MR. BLACKMER. I desire to ask the Chair if an amendment will be entertained by way of a substitute for the entire section?

THE CHAIRMAN. Yes, sir.

MR. BLACKMER. I offer a substitute for the entire section:

"The Justices of the Supreme Court, and the Judges of the Superior Court, shall severally receive, at stated times during their continuance in office, from the State treasury, such compensation for their services as may be prescribed by law, which compensation shall not be increased nor diminished during the term for which they shall have been elected; and the salaries of Judges of the Superior Courts for the City and County of San Francisco, shall not exceed five thousand dollars per annum, and the salaries of Judges of the Superior Courts of the remaining counties of this State shall not exceed four thousand five hundred dollars per annum. The annual salaries of Justices of the Supreme Court shall be six thousand dollars until such compensation shall be fixed by the Legislature; and the Judges of the Superior Courts of the City and County of San Francisco, the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, shall receive a salary at the rate of four thousand five hundred dollars per annum, and those of all the other counties at the rate of three thousand dollars per annum."

MR. WATERS. Mr. Chairman: I rise to a point of order.

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

MR. WATERS. It is this: The committee have already affirmatively amended this section in conflict with this amendment. If the committee can make one amendment one moment, and another another, we will never get through. It seems to me we ought to know what we are going to do.

THE CHAIRMAN. The point of order is well taken. The amendment is ruled out of order.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I am sorry that the Chair ruled quite so quick. I believe that it is customary for questions of order to be discussed; therefore, I claim my right to discuss this point——

MR. ANDREWS. Mr. Chairman: I rise to a point of order. The discussion of the gentleman is not in order. There is nothing before the Convention, because the Chair has decided the point of order, and no appeal has been taken.

THE CHAIRMAN. The point of order is well taken.

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

THE CHAIRMAN. The Chair decides the point of order raised by the gentleman from Shasta to be well taken, and from the decision of the Chair the gentleman from Los Angeles appeals.

MR. WEST. Mr. Chairman: The decision of the Chair is in violation of the well recognized rules of parliamentary bodies, that a substitute remains as an independent proposition until the original proposition under discussion is amended by its friends and perfected to their satisfaction; that the friends of a proposition should have a right to perfect it, and then, that at any time before the final vote is taken, a substitute is in order, and may be entertained by the Chair and voted upon by the body.

MR. WATERS. May I ask the gentleman a question?

MR. WEST. Yes, sir.

MR. WATERS. Has not Rule Thirty-two entirely done away with that law?

MR. WEST. I am not aware that it has.

MR. WATERS. The question was raised at the beginning of the session, and Rule Thirty-two covers the point, when it says that a substitute shall be deemed to be an amendment, and treated in all respects as such.

MR. WEST. The substitute was offered to take the place of the whole matter, and it has been held that a motion to strike out or add takes precedence of a substitute, which is temporarily on the table until the other is disposed of. There is no rule that I know of that excludes a substitute at this stage of the proceedings.

MR. WATERS. Was not that before Rule Thirty-two was adopted?

MR. GRACE. I move to lay the appeal upon the table.

Division being called for, the motion to lay the appeal upon the table resulted in a vote of 44 ayes to 30 noes—no quorum voting.

The question was put again, and the motion to table was carried, by a vote of 49 ayes to 29 noes.

THE CHAIRMAN. The Clerk will read section eighteen.

THE SECRETARY read:

SEC. 18. The Justices of the Supreme Court, and the Judges of the Superior Courts, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.

MR. MORSE. Mr. Chairman: I offer an amendment to section eighteen.

THE SECRETARY read:

"After the word 'office,' where it first occurs in the second line, insert as follows: 'or public employment;' and after the word 'office,' where it occurs a second time, insert the words 'or employment,' so as to read as follows:

"SEC. 18. The Justices of the Supreme Court, and the Judges of the Superior Courts, shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected."

MR. REYNOLDS. Mr. Chairman: I offer a substitute for the section.

THE SECRETARY read:

"SEC. 18. Justices of the Supreme Court, and Judges of the Superior Courts shall not be eligible during the period for which they may be elected or appointed to their respective offices, to any position in the gift of the qualified electors or of the Legislature."

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Section eighteen here is copied from the old Constitution, and the amendment, which I offer as a substitute, is calculated to avoid the very question that arose here in the beginning of the session, as to the eligibility of a member who had been elected as a delegate while holding the office of District Judge. I find, in looking over the list of Constitutions, that almost every Constitution in the United States has a provision similar to this; some of them like our own, but some of them may have met with the very difficulty we met with the very moment our Convention was called to order. In Wisconsin they can hold no other office or public trust, except a judicial office, during the term for which they are elected. They introduce the words "public trust," in addition, "or any position in the gift of the qualified electors, or of the General Assembly." I copied that language. That excludes the possibility of electing Judges to a Constitutional Convention hereafter, or to any other office that will lead to an abuse of power. That will reach the case of Judge Fawcett, or any other Judge, and prevent them from becoming candidates for any position whatever. I will not go into any argument upon that case, for that would be useless. But we all know—and especially lawyers know—how powerful is the position of a Judge. Why, it was said here in that discussion that there was no candidate here for that seat when it was questioned. Who ever heard of an attorney being a candidate to oust the Judge before whom he is practicing? No one ever did. He would antagonize the Judge, and he doesn't dare to do it. How necessary, then, is it that we shall fix a rule that shall be inflexible. We want to avoid the plea that this is only an agency of the people—or employment. I think the substitute will fully and clearly cover the point, and I do not think any member of this Convention needs to be convinced of the necessity of such a provision.

REMARKS OF MR. SMITH.

MR. SMITH, of Kern. Mr. Chairman: As far as my judgment and understanding of the matter is concerned, I have arrived at the conclusion that the State Constitution has no power over the matter; that a Constitutional Convention is called by a power higher than the Constitution. But I am in favor of the point intended to be secured by the proposition, and by the two amendments which have been sent up. I think it is a great evil to allow a Judge of any State Court to sit as a member of a Convention. Now, I have had occasion to look over this matter, and I have come to the conclusion that the Constitution may regulate the calling of a Convention, may regulate the proceedings of a Convention, but it has no authority to say that any elector of the State may not sit as a member of that body, for the elector so elected draws his authority from the people, whose power is higher than that of any Constitutional Convention. I don't think this amendment covers the point which it is intended to cover.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I may be mistaken, but I think this point is covered by an amendment which has already been adopted by the Committee of the Whole. I refer to section two of the report of the Committee on Future Amendments, which says that the members of a Constitutional Convention shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. Now, I suppose a District Judge would not be qualified to sit as a member of the Legislature. I disagree with the proposition of the gentleman from Kern. Any provision that can disqualify a District Judge from being a member of the Legislature, will disqualify him from sitting as a member of the Convention.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I hope this Convention will adopt this provision as the committee have reported it. It is the very same language we have been living under ever since the State commenced, and it seems to me that section might be allowed to go as it is. It seems to me that the great evil of law making, either in constitutional conventions or legislative bodies, is the desire which every man has to put in something to remedy some little matter that has occurred in his own personal experience. Now, these gentlemen have some case in their mind's eye, and are trying to find a remedy for it. We have here one hundred and fifty-two delegates elected to this body, and only one Judge has been elected, and that under peculiar circumstances, because it was the almost unanimous wish of the people. What are these gentlemen afraid of? I think it speaks rather well for the Judges of the State that they are so afraid of the people electing them to these offices. Now, the Legislature has the power to prescribe qualifications for members of a Constitutional Convention, and if they desire to do so, they can say that Judges shall not be eligible. This matter is in the hands of the people. Are these gentlemen so afraid of the people whose friends they pretend to be? Now, sir, it does seem to me that this section is all-sufficient, and ought to be passed as it stands. I can see no danger in giving the people the right, every twenty-five or thirty years, if they desire, to elect a Judge to a Constitutional Convention. I can see no danger in it. Why not allow this language to remain as it is? Why tamper with and tinker every section of the Constitution? Let the Legislature and the people determine this matter for themselves.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: If the lessons of experience teach anything, in my judgment they teach that this is a very proper amendment to have in the Constitution. Whatever may be said about the legal questions involved, I don't imagine there are ten men on this floor who do not believe, as a matter of expediency, that no Judge should be elected to a Constitutional Convention. And it has been most thoroughly illustrated in a case we have had before us. A gentleman was elected as a member of this Convention, and from his position must vote upon a bill which, if it carries, abolishes the very office which he holds.

MR. DUDLEY. I raise the point of order that it is out of order to attack Judge Fawcett. That matter has been disposed of.

MR. MCCALLUM. I say I would be the last to make an attack upon any one, and there is no attack upon any one here; the attack is upon the system. When the Constitution was made in eighteen hundred and forty-nine, it was submitted to a vote of the people and agreed to, and it was provided that no Judge should be eligible to any other position. I do not know of any public position which, in point of expediency, so much requires that a Judge should be excluded from as a Constitutional Convention.

MR. ROLFE. Will you look at this section two of the report of the Committee on Future Amendments, to which I referred a moment ago.

MR. MCCALLUM. That is the very point I was coming to. That is the place in which such amendment ought to be placed, whether this covers it or not. And I desire to take this opportunity to enter my solemn protest against the oft repeated declaration made here, that our Constitutional Convention cannot, in ordinary matters, direct and control a future Convention. I can very well understand why we cannot say that this Constitution shall not be amended in half a century. That would bind nobody to say that some particular provision in the bill of rights, for instance, should not be amended. To say in the ordinary course of legislation, that certain persons shall not fill the position of delegates to a Constitutional Convention; in other words, to say, as in this article on future amendments, that members shall possess the same qualifications as members of the Legislature—to say that such provisions cannot bind anybody, is to say that nothing we can do is to bind people in the future. I therefore protest against any such expressions. The amendment in the report of the Committee on Future Amendments seems to cover this point, and I think that is the place for it. I think the gentleman from San Francisco, Mr. Reynolds, will admit both propositions—first, that this is the place to put it, and next, that the amendment reported by that committee covers the point fully.

MR. REYNOLDS. The section read by Judge Rolfe does not cover the point which my amendment is intended to cover. It would apply to a member of a Constitutional Convention, but it would not apply to such a case as this, where the Legislature appointed a District Judge a member of the Police Commission. We don't want any such transactions; we want to cut them all off. And now, in reply to the gentleman——

THE CHAIRMAN. The gentleman will take his seat.

MR. REYNOLDS. I ask leave to withdraw my amendment. I have been to the desk of the gentleman and read his amendment, and I wish to withdraw mine.

THE PREVIOUS QUESTION.

MR. WEST. Mr. Chairman: I believe that this subject has been sufficiently discussed, and I therefore move the previous question.

Seconded by Messrs. Howard, of Los Angeles, Wyatt, White, and Evey.

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

Carried.

THE CHAIRMAN. The question is on the amendment offered by Mr. Morse.

Adopted.

MR. HILBORN. Mr. Chairman: I wish to offer an amendment to section eighteen.

THE SECRETARY read:

"Add at the end of the last amendment the following: 'No member of this Convention shall ever be eligible to a judicial office.'" [Laughter.]

MR. REYNOLDS. Mr. Chairman: That amendment is entirely superfluous. There is no danger of any member of this Convention being elected to a judicial office, or any other office. [Laughter.]

THE CHAIRMAN. The question is upon the amendment.

Division was called for, and the amendment rejected, by a vote of 25 ayes to 54 noes.

THE CHAIRMAN. The Secretary will read section nineteen.

THE SECRETARY read:

SEC. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

MR. BROWN. Mr. Chairman: I offer an amendment to the section.

THE SECRETARY read:

"Strike out the word 'may,' in line two, and insert the words, 'it shall be their duty to.'"

MR. BROWN. Mr. Chairman: I am under the impression that this

should not be a matter of indifference; neither should it be left in that form. It is true that no great evil may result if this word "may" is left here, but I think the Constitution should be clear and explicit as to what the duties of the Judge shall be in such matters.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I hope that amendment will pass. There is a very large number of cases in which it is wholly unnecessary for the Judge to state the testimony. Every lawyer has observed that. If you compel the Judge to state the testimony, he must go through the entire testimony of the case in every instance. This will occupy a great deal of time; many times to no good purpose.

MR. BROWN. I had not intended it to apply to testimony, but only to the law. I withdraw the amendment.

MR. HERRINGTON. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"After the word 'may,' in line two, insert the words, 'except in criminal prosecutions for libel.'"

MR. HERRINGTON. Mr. Chairman: That question has been decided once adversely to this amendment; but that does not prevent me from offering this amendment at this time. Without offering any lengthy argument here, I think the sentiment of this Convention is, that such an amendment as this is necessary.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I hope the amendment will pass. The gentleman has stated that the Convention has already decided affirmatively against this proposition. But, sir, since the adoption of the Fawcett amendment the press of this State has unanimously expressed itself in disapproval of that amendment; and I say, it will greatly weaken the Constitution should that amendment be permitted to remain. It is not necessary now for me to repeat the reasons which I gave before, why the Constitution should remain as it was before. But I hope we may save ourselves on this question, by adopting the amendment which has been offered.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: I hope that no such amendment as that will be adopted here, for the reason that it will be inconsistent with the action already taken here. It has been said that there is a peculiar relationship between the parties before the Court in a criminal prosecution for libel. The Judge has nothing to do with the facts. He may state the testimony and declare the law. But these gentlemen ask more than that; they ask that the Judge shall not be allowed to charge the jury as to the law or the fact. That he shall not declare the law. If we do say so the Judge will be forbidden to read that clause of the Constitution which declares that if the matter alleged to be libelous be true, and was published with good motives, the defendant shall be acquitted. If the Judge cannot declare the law, I say it forbids from reading to the jury in his charge that very matter in the Constitution. It is a vital and necessary safeguard to the defendant in a trial for libel. It seems to me it would be utterly inconsistent, that the Court should be deprived in any case of the right to charge the jury in regard to the law of the case. That is constitutional law; it is statute law. The jury would remain in ignorance as to the law, because the Judge cannot declare it, and the attorneys could not declare the law. The jury is bound to remain in ignorance as to the law of the case which they are called to determine. There is no danger in the section as reported of the Judge undertaking to charge the jury as to questions of fact. This is a provision which has always prevailed, that the Judge may, if he deems it necessary, state the testimony, and leave the jury to judge as to the weight of the testimony, and that the Judge may declare the law to the jury. If that power is taken away from him the Court will be worthless.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I hope the amendment will pass, and for these reasons: If the section should remain as it now stands, taken in connection with the Fawcett amendment, it would simply make the law of libel to this effect: that the Judge would have the right to state to the jury and instruct them as to whether the publication in question was libelous or not. It would take away from the jury the right which our Constitution has heretofore conferred upon them, of determining the law and the fact. It is true, the Fawcett amendment says the jury may render a general verdict, but the jury are bound to render a general verdict and pass upon the facts as presented to them, and upon the law as delivered to them by the Court. Suppose the Court instructs, as a matter of law, that the matter charged is libelous, the jury necessarily has to follow the Judge. He was not permitted under the old law to say whether the article charged as libelous was libelous or not. Under this clause the Judge says: "Gentlemen of the jury, I charge you as a matter of law that this publication is libelous." What are the jury to do? They have then simply to pass upon the fact of publication—upon the fact whether it was published with good motives and for justifiable ends. I hope we shall at least have the same liberty in future that we have had for the public press. I know this, that if we make an attack upon the public press of the State our Constitution will most certainly be defeated.

MR. MCFARLAND. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Add, after the word 'libel,' the words 'or murder.'"

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: If we are going to abandon the rule of not having special legislation, either in the Constitution or anywhere else; if we are going to except any one crime from the general law of the State, I do not see why the crime of murder should not be excepted. Certainly it is the most important crime committed, and it is the most dangerous crime known. The man charged with murder has his life at stake. Now, life ends all. There is nothing dearer than life. If we are going to make an exception in favor of any class of criminals, why not make it in favor of the men whose lives are at stake. If the Judge is going to declare the law in all cases except one, I think that one should be the crime of murder. Now, what reason is there in God's world that a man charged with libel should be shielded any more than the man charged with murder. This provision of the Constitution stands just as it always did, that the Judge shall have power to state the testimony and declare the law. He has no power to charge the jury upon matters of fact, but he has upon matters of law. Now, if we are going to except one crime, why not twenty. Why select the crime of libel from all other crimes. Is there any reason for it? Is there any possible ground upon which this exception is based? If an exception is to be made, why not make it in favor of the crime of murder, or of treason, or of some other important crime? The gentleman from Alameda is entirely mistaken. The Court has no more right to tell the jury that in that case the man is guilty, than he has in any other case. No more than he would have in a case of murder. In both cases the Court merely states what constitutes the crime. What constitutes the crime of embezzlement, or the crime of murder, or arson. The Court simply states what the crime is and what constitutes the crime. Now, why should not the Court have this right in one case as well as in another. If we are going to except any class of criminals, why not except the higher grades, such as treason or murder. If this exception is going to carry I hope the crime of murder will be added.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: If I were to judge from the character of this last amendment, I should say that the gentleman from Sacramento was ambitious to supersede to the functions of the "little joker." He is not serious in the proposition which he has submitted to this body, and I hope the proposition of the gentleman from Santa Clara will be adopted, pure and simple. There is nothing that we have done in this Convention that has raised such an opposition to the Constitution as the Fawcett amendment, and it has justly raised it too. I think it is a very dangerous innovation—dangerous to the liberty of the press, and therefore dangerous to the liberties of the people. In government experience is worth something, and experience shows that for the liberty of the press it is necessary that it should stand on exceptional grounds. I am in favor of perpetuating the ancient law and ancient usage. We have lived prosperous and happy in this State for twenty-five years under this law, which gave the jury the right to judge of the law and the fact. Why change it? It is the law of England at the present time. When this subject was before the Convention on a former day, I read a leading English case in which the Court held that the Judge had no right to bind the jury by his opinion of the law, although he might express his opinion of the law. Why change it? Why, at this late day, attempt to tamper with the liberty of the press? Gentlemen, I warn you that all propositions to take from the jury the right to determine the law as well as the fact are dangerous, and are entirely opposed to public sentiment in this State.

SPEECH OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: During the whole discussion of this subject, when the bill of rights was before the Convention, I had not a word to say, for I believed the good sense of the Convention would spurn such an amendment as the Fawcett amendment afterwards. And, sir, I believe so still. I have faith in the intentions of a large majority of this body. I believe they came here to make a good Constitution and one which the people will adopt—one which may be adopted upon its merits. Since a majority of the Convention were in favor of the so called Fawcett amendment, I reasonably infer that they lean in that direction.

Now, I know there is among the people of California a prejudice against the public press. There is a growing feeling that the liberty guaranteed to the press is being abused. I agree with that sentiment, and yet I do not think that because it is abused in exceptional cases, it is wise policy to curtail that freedom. Now, a newspaper necessarily makes enemies. It takes a lively interest in politics, and it is often the case that it has had occasion to oppose the election of the very Judge before whom the charge of libel is to be tried. In such cases as that there must necessarily be some feelings of prejudice on the part of the Judge. I say it is dangerous to leave so much power in his hands as this section confers. The case ought to be left to twelve of his fellow citizens, to decide the whole case on its merits. Where a libel is charged, it is natural that twelve entirely disinterested citizens of the community would be more apt to render a just verdict, after considering the motives. Where it is left to him to explain and declare the technicalities of the law, I think it is dangerous. Individually, I have no objections to the most stringent libel law, as I do not anticipate any experience in libeling men. I would be in favor of a retraction law, because I believe a man who is not willing to retract a thing when it is shown to be wrong—to have done an injustice to a man—is not fit for the management of a newspaper. But so far as this section is concerned, we have got along well enough under the old law, and this proposed innovation will not accomplish any great good, and it may do a great deal of harm. I believe there is a strong element in this State, which has a strong representation on this floor, who would like to defeat any Constitution which we may make, and especially if it was a better one than the old one. They prefer things as they are. We have had to bring against it the opposition of the railroad and other monopolists. We have brought down upon it the displeasure of the land monopolists and banks, and the moneyed interests of the country generally. In order to do our duty we have had to bring down the opposition of the hoodlum classes; and now these gen-

tlemen seem to desire, in order to defeat the new Constitution, to bring down upon it the united opposition of the press of the State. I say, sir, we cannot afford to bring on such a conflict as that, unless there is some great reform to be accomplished by it, which there is not. Where is the man who can stand here and show that any great good will be accomplished by the adoption of this amendment? Who can show that by the adoption of this section we will remedy any great abuse? I say these abuses have existed, and will exist, and such a provision as this will not stop them. We cannot afford, for the purpose of reaching isolated instances, to curtail the liberties of the press of the country. The press is the palladium of our liberties, and must not be muzzled. It is the great check and safeguard against official corruption in this country. Leave it as it is, to stand before the law as others stand. This would be a dangerous move, and one that we cannot afford to make.

A POINT OF ORDER.

MR. EDGERTON. Mr. Chairman: I rise to a point of order. When the report of the Committee on Preamble and Bill of Rights was before the Committee of the Whole, section nine was amended by the amendment offered by Judge Fawcett, and covered the precise amendment now before this committee. That amendment provided that the jury might find a general verdict, as in other criminal cases. Now, sir, I think it is not competent for the committee at this time to alter or change that amendment. That is my point of order. We have adopted Cushing's Manual here where there is no express rule. There is no express rule here. You will find on page seventy, paragraph nine hundred and eighty-three, that it says, whatever we agree to, either by adopting or rejecting an amendment, cannot be afterwards altered or amended. Therefore, this proposition to annul and change that provision in the preamble and bill of rights cannot be entertained. It could not be directly done; and how can it be done indirectly? I think it is clearly out of order. It is in violation of an express rule which governs this body.

THE CHAIRMAN. The point of order is not well taken.

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

MR. JONES. Mr. Chairman——

MR. AYERS. Mr. Chairman: The gentleman has spoken once upon this question.

THE CHAIRMAN. No, sir.

MR. AYERS. I rise to a point of order.

THE CHAIRMAN. State your point of order.

MR. AYERS. The gentleman from Los Angeles, Mr. West, moved the previous question before Judge Jones addressed the Chair.

THE CHAIRMAN. The Chair didn't hear it.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: I believe there is a misapprehension here in regard to the motives upon which it is desired to defeat this amendment. It is not, so far as I know, and I speak for myself, a matter which will at all hamper or abridge the liberty of the press, or interfere with it in any way. In the exercise of these functions, the press is liable to say things which may not be entirely true. But my experience and my observation has been that when such errors are discovered, men have been ready to accord the individual injured his rights by making the correction. And I do not consider that the liberties of the press are at all abridged by retaining this section as it is. If we leave this section stand as it is, and the section of the bill of rights as it is, the two will be perfectly harmonious, and it will make the administration of justice in this State uniform and harmonious, which I consider of very great importance. It is certainly necessary that it should be so. It is indispensable that the administration of law should seem to the minds of men to be without respect to persons or individuals, and I hold that the occupation of newspaper publishing has no need to be exempt from the general provisions of law applying to all other persons.

Now, sir, I spoke of the exact practical effect of this amendment here, and I have heard no answer to that, and I say that the amendment proposed to be inserted here to section nineteen, does in effect declare that in suits for libel, it is not within the power of the Judge to state to the jury what libel is. He has no right to instruct them as to what constitutes the crime of libel. It would be the same with regard to the crime of murder, if the amendment of the gentleman from Sacramento should be adopted, and that amendment is no more inconsistent than this one. The Court, in a trial for libel, could not inform the jury that citizens of this country may freely write and speak their sentiments upon all subjects. He could not inform the jury that in criminal prosecutions for libel the truth may be given in evidence, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted, because that is part of the law of libel, and the Judge is forbidden to declare the law to the jury. The fundamental law of the land is a part of the law of libel, but the Court is forbidden to charge the jury to that effect. Undoubtedly that was not contemplated by the mover of the amendment, but I say that must be its effect; for, if you forbid the Court to declare the law, there is no other power that can declare it to the jury, and the jury must remain in ignorance of it. Now, that is inconsistent with a true administration of the law. There is no criminal offense to be tried in this State in which the jury should know the law, unless it is libel. If there be any law in regard to it the jury ought to know it. If there be no law there should be no trial. In regard to the objection that it will bring additional opposition to the Constitution, that is a consideration which ought not to enter into this discussion at all, unless it be in a case that is manifestly unjust, because we came here to do the right. Moreover, gentlemen are mistaken when they assert that it will bring down the press of the State upon the Constitution. When this subject was before the Convention before, there were a number of papers that indorsed the Fawcett amendment.

MR. AYERS. Has there been any such except the Record-Union of this city?

MR. JONES. Yes, the Stockton Herald and Independent, and the Daily San Francisco Post.

MR. AYERS. No, sir; no, sir.

MR. JONES. I understand from a gentleman connected with the Post, that they were in favor of it, but that while the editor-in-chief was away an article crept in criticising it.

MR. WEST. I believe this question has been sufficiently discussed, and I move the previous question. I see the Chairman of the Judiciary Committee desires to address the Convention, and I will withdraw it in his favor, if he will renew the motion.

MR. AYERS. I insist upon the previous question; if the gentleman withdraws it I will renew it.

THE CHAIRMAN. The previous question has been moved. The question is: Shall the main question be now put?

Lost.

MR. MCCALLUM. I rise to a question of order. The section goes over for one day.

THE CHAIRMAN. No, sir; that rule has been changed.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: As Chairman of the Judiciary Committee, I desire to say a few words upon this subject of libel. The committee, in adopting the proposed system, which made some changes, attempted to follow the old Constitution as closely as possible in other respects. Section seventeen of article five of the old Constitution provides that "Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law." The Committee of the Whole adopted that section without a dissenting voice, and now ask the Convention to adopt it. That has always been constitutional law and has already been adopted, as part of the bill of rights, by this committee. It is to be regretted that the question of libel has been made here. There is no utility or propriety in thrusting that question upon us at this time, for, should the amendment prevail, there will be a conflict between this section, as amended, and the section of the bill of rights referred to; the discussion must, therefore, in that event, be renewed in Convention. The gentlemen proposing this amendment have had their day in Court. When the question first arose, they made an able and earnest contest here. Why renew the contest now, when it must at last be determined in Convention? Besides, there is scarcely a quorum present. It is to be hoped that the amendment will be withdrawn, so that the questions involved may be postponed until the necessity of final action arises in the Convention; however, if it be not postponed I insist that the section as reported should be adopted, not only because it is a portion of the old Constitution, but also because it is right in itself. If I may be permitted to refer to myself, I will frankly say that I have no grievances against the press, and no quarrel with any gentlemen of the press; I have no enemies among them to punish. Fortunately or unfortunately, criminal libel cases have formed no part of my practice: I have neither prosecuted nor defended, and am without feeling in the matter. I claim to be impartial, and only act on my judgment of what is right and proper.

In reference to the section referred to, that "Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law," it need only be said that that is a great rule in our system of jurisprudence. The jury has its appropriate function, and so has the Judge. The jury determines questions of fact, and the Judge questions of law, and this has been so since the organization of the State; and the same principle prevails throughout the United States, and, I believe, without an exception. This is as old as the common law, and the wisdom of ages approves it. Although the Court instructs the jury, in a criminal case, upon the law, yet the jury finds a general verdict—guilty, or not guilty—which involves the whole matter. In civil cases there are special instances in which juries are required to render special verdicts on particular points, but there can be no special verdict in a criminal case; the whole matter goes to the jury, and its only verdict is a general one. The jury passes upon the whole case, and is supposed to be enlightened by the Court upon matters of law; still its verdict covers the whole matter and is general. There is no good sense in the proposition that the jury shall judge of the law. No man is qualified for the bench unless he has studied jurisprudence as a science. To render himself eligible as a Judge he must pursue the study of the law for years. What wisdom is there in a provision, that a jury selected from trades and vocations which do not instruct them in matters of law, should in any one class of cases be released from the obligation of receiving instruction in matters of law from the Judge? Why should we depart from a system which has been in vogue since California has been a State? Thus far it has been satisfactory, and why change it?

Before we interpolate an amendment here which shall select the crime of libel from all other crimes and make it a class by itself, to be treated, prosecuted, and tried differently from other public offenses, we should have good reasons for the change. Why, then, I ask, should we single out this one class of crimes from others in the criminal code and give it privileges and advantages over those others, and apply to it different modes of trial and different rules of law? Shall it be said that the freedom of the press demands it? There is no stronger advocate of the entire freedom of the press than I am. I seek for it liberty in the widest sense, but at the same time all should be held liable for the abuse of that freedom, as all individuals pursuing other vocations in life are held responsible. When a man is tried for that public offense called libel, there can be no reason why the trial should not be conducted in the same mode, by the same legal machinery, and upon the same principles and rules of evidence, as apply to other public offenses. The press, in its pride and independence, ought not to ask privileges and immunities not possessed by and accorded to others. The press is well able to take care

of itself, and it is a surprise that some of its members on this floor should seek aid and protection from the government, and not be willing to stand upon an equality with all others. The press, breathing the true spirit of independence, needs no privileges, and should scorn special benefits and advantages. To ask aid, is to confess weakness. The high-minded, self-reliant, and free press of the country does not seek so unenviable a position. It is willing to stand on the broad platform of equal rights for all before the law.

MR. STEDMAN. I wish to ask the gentleman a question. Is it not a fact that every paper in the State has asked a repeal of this amendment adopted in the bill of rights, except that scurrilous well known ring organ, the Record-Union? Is there any other paper?

MR. WILSON. It is also a fact that when Jesus Christ was led to the cross there was a vast majority against him in that locality, and the cry of "Crucify Him!" "Crucify Him!" indicated the sentiment of the masses around Calvary. That, however, amounts to nothing in the solution of the question on principle. A vote of any body of men may determine their views, but is not always a test of the soundness of a doctrine or the wisdom of their action. If it be true that a class of newspapers, or all of the newspapers, favor a particular measure, it does not aid us in determining upon principle and reason what is right and for the public interest.

All pious readers of the New Testament will remember the outcry against St. Paul by the silversmiths who made silver shrines for Diana of the Ephesians, which "brought no small gains unto the craftsmen." Demetrius, the chief and leader, called his fellow-craftsmen together and said: "Sirs, ye know that by this craft we have our wealth," and announced to them that by reason of the preachings of Paul against idolatry that "this, our craft, is in danger to be set at naught." This was responded to with cries of "Great is Diana of the Ephesians." Do any of the proprietors of newspapers think that their business in libeling their fellow men is in danger? Has libeling brought them "no small gains?" Is it from this that their craft has its great wealth? Will the suppression of libels bring their craft in danger of being "set at naught?"

The proposition that I advocate is likely to be misrepresented, and the supporters of it will probably obtain their full share of abuse. I assumed that risk, however, when I accepted a place in this Convention, and I shall none the less fearlessly and earnestly perform my duty as I understand it. I again repeat that there is neither justice, reason, nor policy in establishing any privileged class—all accused of public offenses should stand equally before the law.

MR. GREGG. If that amendment passes, let me ask you, would it not be special legislation?

MR. WILSON. Yes, sir, in principle it is the worst kind of special legislation. We declare in some of the provisions of this new Constitution against special legislation, and thus make that principle a prominent feature. Now, the gentleman from Placer says he would be in favor of a retraction law; but the majority of the public journals of the State are against that proposition. I think it sound policy, and that a retraction law would be desirable, but is there any doubt of its opposition by a great portion of the journals of the day?

A great error is entertained by some here as to the effect of the English statute referred to. The case of The King v. The Dean of St. Asaph, tried before Mr. Justice Buller in seventeen hundred and eighty-four, caused great discussion on the law of libel. Not only Buller but Lord Mansfield held that the jury, in the absence of facts or circumstances establishing justification or excuse in matter of law, could only find as to the fact of publication and the truth of the innuendoes, and that the question of libel or no libel was a question of law for the Court. The jury in that case, under instructions from the Court, found the defendant guilty of publishing only, leaving the Court on that to render judgment or not as the Court should determine the other questions involved. It was because of the discussions following this that the Act of thirty-second George the Third, chapter sixty, was passed, entitled "An Act to remove doubts respecting the functions of juries in cases of libel." The effect of this Act was that the jury was clothed with the power to render a general verdict of guilty or not guilty on the trial of the indictment or information, and could no longer be required or directed by the Court or Judge to find the defendant guilty on proof of the publication by defendant of the alleged libel in the sense ascribed to it by the prosecution. It will be thus seen that the object and effect of the Act were to elevate the case to an equality with other criminal cases, in which the jury always rendered a general verdict. The jury by this Act has merely the right to determine the law and the facts under the direction of the Court precisely as in other criminal cases.

Our Constitution should, in this respect, agree with those of other States of the Union. They have placed prosecutions for libel on the same basis as other criminal cases; but in all such cases the Court retains its accustomed power and duty to instruct the jury in matters of law. The jury, however, has the absolute power of rendering a general verdict of guilty or not guilty.

This Convention has already made several concessions to the proprietors of public journals. On motion of the gentleman from San Joaquin, Judge Terry, they are granted a privilege never before possessed, and that is of trial only "in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause." This is a very important concession to the press.

Libel being one of that class of public offenses called misdemeanors, has not been hitherto appealable—the decision of the criminal Court of general jurisdiction being final. This committee has recommended an appeal in such cases. The fact that there was no appeal was one of the strongest views urged against the "Fawcett amendment." It was urged that the Superior Courts being the Courts of last resort in such cases, the Judges of those Courts could gratify their prejudice and malice with impunity, as libel was not subject to review on appeal. As the committee has decided such an appeal shall be given, the argument based on that view falls to the ground. With these concessions the press should be satisfied. I regret that this discussion has been thrust upon this committee at this time, for the contest will be renewed in the Convention when we reach the section of the bill of rights on the same subject. The committee should report this section under discussion as it stands, and pass its final consideration to the Convention itself.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I can see no analogy between the crime of murder and that of libel, as pictured by the gentleman from Sacramento. They are entirely distinct. The reasons have been stated before on this floor why newspaper publishers occupy a different position in the community; that they necessarily have, by reason of their position, to look after, and fearlessly arraign public vices. They are, therefore, constantly subjected to trials for libel. If they do not do that they fail of their duty, and the people will sit down upon them, and for the purpose of affording them the necessary protection in the discharge of their duty, this amendment has been offered. I wish to say, also, that we wish, when we get into Convention, to make this extend to the Fawcett amendment, and then there will be no inconsistency between the two articles. Now, sir, if you are going to allow the Judges to determine the law, you will recollect that in libel cases there are some minute questions, partaking both of law and of fact, that have a direct bearing upon the ultimate result. The jury are as well able to judge of the motives which caused the publication as the Judge. And especially will that be the case if we should have Judges who are prejudiced from any cause against the defendants. We know very well the opposition and enmity which falls upon the fearless newspaper publisher, and the prejudice, and antagonisms, and opposition of men in power. It is to protect fearless newspaper publishers in such cases that we are striving to have this amendment adopted. The Judge, from his position on the bench, if he is allowed to instruct the jury, may work great injury to the defendant.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I am in hopes, sir, that the amendment offered by the gentleman from Santa Clara will be adopted. The Chairman of the committee protests against a change of the Constitution in relation to the section now pending. I regret that the gentleman should have been in favor of a change when the Fawcett amendment was adopted. I think the committee has made a very grave mistake in adopting the Fawcett amendment. I think the step was taken hastily, and it is our duty, when we make a mistake, to retrace our steps as speedily as possible. It seems to me, sir, that the gentleman from Alameda, Judge Campbell, stated the case very clearly, and his reasoning cannot be controverted, when he stated why there ought to be an exception in the case of libel, and that was that it would be in the power of the Court, in all cases, to charge the jury that the defendant had been guilty of libel, leaving them to find only the bare fact of publication. I think we made a very serious mistake in circumscribing the power of the jury, as the committee have done. I think that was the greatest mistake this Convention has been guilty of, and now, to increase the power of the Judge, I think, is a step in the wrong direction. It is a step that will not meet the approbation of the people of this State. The people of California have great confidence in juries, as the American people always have had. They are willing still to depend upon the jury, and I think we have taken a wrong step, and I hope the Convention will take this, the first opportunity which has been presented, to retrace that step.

THE PREVIOUS QUESTION.

MR. HUESTIS. Mr. Chairman: From my recollection of the debate on the Fawcett amendment, these are the same arguments over again. I do not believe this Convention can afford to squander any more time on the matter, and I therefore move the previous question.

Seconded by Messrs. Avers, West, Evey, and Howard.

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

Carried by a vote of 58 to 20.

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

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from Santa Clara, Mr. Herrington.

Division being called for, the amendment was adopted by a vote of 50 ayes to 33 noes.

THE CHAIRMAN. The Secretary will read section twenty.

THE SECRETARY read:

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

THE CHAIRMAN. There being no amendment, the Secretary will read the next section.

SUPREME COURT REPORTER.

THE SECRETARY read:

SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary of two thousand five hundred dollars, payable quarterly.

MR. GRACE. I move that the committee rise.

Lost.

MR. ROLFE. Mr. Chairman: I move to strike out section twenty-one. The reason I move to strike it out is that it is entirely unnecessary in the Constitution. This is one among many things that had just as well be left to the Legislature. I am sick and tired of having matters

of so little importance as this thrust upon this Convention, when so many weighty matters are waiting our attention.

MR. MCCALLUM. Now, we have something to think about during recess, and I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Judiciary and Judicial Department, have made progress, and ask leave to sit again. The Convention will now take a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., Mr. Tinnin in the chair.

Roll called, and a quorum present.

JUDICIAL DEPARTMENT—REPORTER OF DECISIONS.

MR. HILBORN. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. Tinnin in the chair, for the purpose of further considering the report of the Committee on Judiciary and Judicial Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the motion of the gentleman from San Bernardino, Mr. Rolfe, to strike out section twenty-one.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: I hope that motion will not prevail. At present there is no provision in the Constitution for the appointment of a reporter, and the law has provided for a reporter of the decisions of the Supreme Court. Up to last Winter, or up to the last session of the Legislature, the Judges, under the law, were authorized to appoint the reporter. At the last session of the Legislature that law was changed and the appointment was given to the Governor. At present, then, under the statute, the Governor has the appointment of this reporter. Now, sir, the reporter of the decisions of the Supreme Court should be appointed, in my judgment, by the Judges. There is no one so competent to select the reporter as the Judges themselves, whose opinions he reports. Now, this section would not have been suggested by the committee if it had not been for the fact that the Legislature had changed this appointment from the Court to the Governor, and all of them recognized that this was an appointment that the Judges always ought to have. At present, also, the statute gives the reporter of the Supreme Court a salary of six thousand dollars. Now, this is a large salary, and in giving this appointment to the Judges—the making a provision for it—the committee thought it should be reduced to two thousand five hundred dollars. Strike this out, and you leave the Legislature to give this appointment to the Court, or to the Governor, and to fix his salary at one sum or another, leave it as it is, at six thousand dollars, or reduce it to three thousand dollars, or two thousand five hundred dollars, or change it from time to time as the Legislature may think best. Now, I think this is one of those provisions that ought to be inserted in the Constitution. It is proper that the salary should be limited. It is proper that the Judges should have the appointment. The section puts it where it has always been up to the last session of the Legislature, and fixes the salary at a moderate sum. I hope that this section will be retained.

MR. HOWARD. Mr. Chairman: I move to strike out all after the second line, so as to leave the salary and its regulations with the Legislature; for this regulation ought to go beyond this, if we attempt to regulate it at all. If you give the reporter the copyright, two thousand five hundred dollars is too much. I know from some experience. Where the reporter is required to furnish a sufficient number for the use of the State, a small salary and the copyright is sufficient.

MR. HILBORN. Section sixteen provides that all opinions shall be free for publication by any person.

MR. HOWARD. That does not change the fact. That is, a publication in a newspaper. The man who held the office, if he had the copyright, would practically have the monopoly of the whole business.

MR. LARKIN. Mr. Chairman: I believe that the Supreme Court should have the appointment of the reporter. And as to the salary provided, I think it would be better to amend it so as to read: "not to exceed two thousand five hundred dollars," leaving the Legislature to reduce it any time that they see fit. I will offer an amendment, to the effect that it shall not exceed two thousand five hundred dollars, and leave the rest of the section as it is.

MR. WYATT. I hope the motion of General Howard will not prevail. I think that is the most meritorious part of the section. The whole section is in the nature of legislation, but probably it is proper, because the present salary allowed by the Legislature to the Supreme Court Reporter is six thousand dollars, and, in my opinion, it is outrageously high at that figure. I think the suggestion is a good one, that it shall read so that he shall not receive any greater salary than two thousand five hundred dollars. If it is left in that way, it will never be increased by the Legislature, or attempted to be increased; but if the two thousand five hundred dollars is stricken out, and the reporter is still continued in the hands of the Legislature, then they will have the salary five or ten thousand dollars a year, as it can be lobbied through the Legislature.

MR. WEST. Mr. Chairman: I hope that neither of these amendments will be adopted. I think that the motion to strike out would result in leaving the office just where it is now, and the amendment of the gentleman from Los Angeles would leave the Legislature to vote up and vote down the salary as they saw fit. I think by retaining this section in the Constitution we would avoid all that jobbing. I hope the section will not be stricken out. I am in favor of the adoption of that section just as it is.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I hope the section will not be stricken out, and that the amendment will not prevail. Now, it is evident that it was the object of the committee in introducing this section here to contrive, as far as possible, to take this appointment of Supreme Court Reporter out of the hands of the Governor by fixing the salary, and from some influence, or a compromise, I know not what, I believe they have fixed the salary much too low at two thousand five hundred dollars. There are but few men, there are but few lawyers, who are capable of properly performing that duty; and while the appointment of that officer ought to be in the hands of the Justices of the Supreme Court, I think there ought to be a salary attached to it which will be sufficient to command the services of the best lawyer in the State, capable of performing that duty. It will readily be understood that next in importance to the decisions of the Supreme Court is a speedy and a good report of the decisions. The Judges ought to be at liberty, after noticing the qualifications of the different members of the bar, noticing their capacity for condensing and fixing upon the point in the case and clearly stating it, after ascertaining who of the various members of the bar are the best calculated to perform that duty, they ought to be able to appoint him, and the salary ought to be sufficient to command his services. Two thousand five hundred dollars is not enough for the purpose. I should like to have it amended so as to strike out lines three and four, and insert as follows: "He shall for four years after the adoption of this Constitution, and until the Legislature shall change the same, receive an annual salary of three thousand dollars, payable quarterly." That, Mr. Chairman, is one half of the salary at present paid by the Legislature. Now, cut it down one half for four years, and see if we can get good services for that price; and at the end of that time let it be changed, if necessary. After running four years I do not think there is any danger of the Legislature running it up to six thousand dollars. That is the amendment I would like to see adopted to this section. I do not think two thousand five hundred dollars is enough. A member of the committee suggests to me that some of the members of the committee strove to have the figure fixed at three thousand dollars, so it seems, as I first thought, that two thousand five hundred dollars was a compromise; and I think, on candid consideration, this committee will arrive at the conclusion that we ought to adopt three thousand dollars.

MR. WHITE. Mr. Chairman: I think my friend from San Francisco has got a little demoralized on salaries, in consequence of the high salaries that have been voted here the last week, and I hope his amendment will not be adopted.

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

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the amendment offered by Mr. Howard, to strike out lines three and four of section twenty-one.

The amendment was rejected.

THE CHAIRMAN. The next question is on the motion to strike out section twenty-one.

The motion was lost.

MR. REYNOLDS. I now offer my amendment.

THE SECRETARY read:

"Strike out lines three and four, and insert as follows: 'He shall for four years after the adoption of this Constitution, and until the Legislature shall change the same, receive an annual salary of three thousand dollars, payable annually.'"

MR. REYNOLDS. I will not occupy but a moment. My friend White, of Santa Cruz, is of the opinion that I am badly demoralized on the subject of high salaries. I guess not. I do not see that I have been in favor of high salaries anywhere in this committee, or any other committee, or on the floor of this Convention, but I do comprehend the fact that a competent reporter of the decisions of the Supreme Court is only less necessary than a competent Judge to render these decisions. And while I do believe six thousand dollars is an extravagant salary, and it looks as though there was something crooked in the business when I read in the statute that he gets six thousand dollars; yet I do appreciate the fact that such an officer must devote his whole time to the business, and he should be a good lawyer, too, as good as there is in the bar—I might almost say—as good as there is on the bench. To get such a man we must pay a good salary. That is all I care to say in behalf of the amendment.

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

THE SECRETARY read:

"Amend section twenty-one, line three, by inserting after the word 'of' the words, 'not to exceed.'"

MR. GORMAN. I second the amendment.

MR. LARKIN. Mr. Chairman: The reason for that amendment is the same given by the gentleman from Los Angeles, Mr. Howard, that the Legislature ought to have the right to change this salary if they desire at any time. They can lower it but they cannot go above two thousand five hundred dollars.

MR. REYNOLDS. My amendment is——

MR. WEST. I rise to a point of order. My point of order is, that he has already spoken twice.

THE CHAIRMAN. The point of order is well taken.

MR. REYNOLDS. I rise to a point of order.

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

MR. REYNOLDS. I will. My amendment is to strike out——

THE CHAIRMAN. The Chair decides that is not a point of order.

MR. REYNOLDS. I have a right to state my point of order in my own way.

THE CHAIRMAN. The Chair decides that the gentleman has no right to discuss his amendment. The gentleman will take his seat.

MR. REYNOLDS. Mr. Chairman: I rise to a point of order.

THE CHAIRMAN. The gentleman must take his seat.

[Cries of "Call the Sergeant-at-Arms."]

THE CHAIRMAN. The gentleman must take his seat.

MR. REYNOLDS. Have I the floor to state a point of order?

THE CHAIRMAN. The gentleman has——

MR. REYNOLDS. Have I right to state my point of order?

THE CHAIRMAN. You will state your point of order without arguing your amendment.

MR. REYNOLDS. My amendment is to strike out lines three and four and insert. Now, the amendment which the gentleman from El Dorado sends up is an amendment to line three, and I raise this point of order, that his amendment is not in order as an amendment to my amendment.

THE CHAIRMAN. The Chair decides the point of order not well taken.

MR. REYNOLDS. I appeal. I insist that when I have offered an amendment——

THE CHAIRMAN. Does the gentleman appeal from the decision of the Chair?

MR. REYNOLDS. I do.

MR. HUNTER. I second the appeal.

THE CHAIRMAN. It requires three.

MR. SMITH, of San Francisco. I second the appeal.

MR. FARRELL. So do I.

THE CHAIRMAN. The Chair decides that the point of order is not well taken, for the reason that the amendment of the gentleman from El Dorado precedes his.

MR. REYNOLDS. Mr. Chairman: I desire now to state briefly why I take this appeal, and with due respect to the Chair there can be no doubt upon it at all. My amendment goes to line three, of section twenty-one. It is to strike out lines three and four, and insert in lieu thereof certain words. Now the gentleman from El Dorado does not send up a substitute for any amendment; he does not send up a substitute for the section; but he sends up an amendment to an amendment, and I insist that an amendment to a line that I have stricken out is not an amendment to an amendment, and is not in order.

THE CHAIRMAN. The question is: Shall the decision of the Chair stand as the judgment of the committee?

The decision of the Chair was sustained.

MR. McCALLUM. I wish to vote intelligently upon the amendment of the gentleman from El Dorado. I think there is some misapprehension about the copyright. It is well known that the Supreme Court decisions are now being published in volumes by persons who, of course, claim no copyright. Now, if it is true, as General Howard assumes, that the reporter of the Supreme Court has the copyright of these decisions, two thousand five hundred dollars would be too much.

MR. HOWARD. I do not assume that, I merely say that should be the law.

MR. McCALLUM. Do you understand that is the law?

MR. HOWARD. No; not at present.

MR. McCALLUM. If the Supreme Court Reporter has no copyright, it appears to me it is very questionable whether an able and efficient reporter can be had even at the price named in this section, to say nothing about a reduction under the amendment offered by the gentleman from El Dorado.

MR. HOWARD. I moved to strike this out because I think the regulation inadequate and insufficient as it now stands.

MR. McCALLUM. That is the way it appears to me. I think we had better not adopt the amendment of the gentleman from El Dorado. At three thousand dollars it would be one half of the present compensation, and I am very doubtful if we could have an efficient Supreme Court Reporter even at that salary. I am in favor of salaries being fixed so that we can command the services of competent men. I think it is doubtful whether we could do that even at three thousand dollars. If the reporter had a copyright, that would be an entirely different thing, but there is none, as I understand it.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from El Dorado, Mr. Larkin.

A division being called for, the vote stood 45 ayes to 31 noes.

THE CHAIRMAN. No quorum voting, the Chair will put the question again.

The amendment was adopted, on a division, by a vote of 52 ayes to 35 noes.

MR. JONES. I send up a substitute for section twenty-one.

THE SECRETARY read:

"The Justices of the Supreme Court shall appoint a reporter of the decisions of the Court, who shall hold his office and be removable at their pleasure, and whose compensation shall be prescribed by the Legislature."

MR. WEST. I rise to a point of order. My point of order is this: That, having incorporated an amendment into the section, we cannot, by a substitute, extract that amendment from it, according to the ruling of the Chair.

THE CHAIRMAN. The Chair decides the point of order well taken. The Secretary will read section twenty-two.

JUSTICES OF THE PEACE.

THE SECRETARY read:

SEC. 22. The Judges and Justices of the Peace shall not practice law in any Court in the State during their continuance in office.

MR. HILBORN. Mr. Chairman; I send up an amendment.

THE SECRETARY read:

"Amend section twenty-two as follows: Strike out all of the section up to the word 'shall,' in the first line, and insert as follows: 'The Justices of the Supreme Court and the Judges of the Superior Court.'"

MR. HILBORN. Mr. Chairman: My objection to the section is that it does not prohibit the Justices of the Supreme Court from practicing law, but it does prohibit the Justices of the Peace. Now, I cannot see why the Justices of the Supreme Court and the Judges of the Superior Courts should practice. They are amply provided for. Not so with Justices of the Peace. This would prevent lawyers from occupying the position of Justices of the Peace.

MR. JONES. Mr. Chairman: I hope the amendment will not be adopted, for this reason: that I do not want to see men sitting as magistrates and holding parties to answer in the Superior Courts, and then going into the Supreme Court as the attorneys of these parties, to defend them, and maintain that the charges were not properly laid. It would put a Justice of the Peace in an improper attitude, and it would appear worse for him if he should appear in aid of the prosecution.

MR. BARTON. Mr. Chairman: I send up a substitute to section twenty-two.

THE SECRETARY read:

"The Judges and Justices of the Peace shall not practice in any Court or cause, except where they are defendants or respondents, during the term for which they hold the office of Judge."

MR. BELCHER. I would suggest that the gentleman should make it read, "except where they are parties to the action." A Justice might have occasion to sue.

MR. BARTON. I will accept that amendment.

MR. McFARLAND. Mr. Chairman: It seems to me that the last amendment is entirely unnecessary. It is not practicing law for a man to go in and defend his own case. It seems to me that under the section a man may practice when he is a party. I think the amendment is entirely useless. I hope that the amendment of the gentleman from Solano will prevail. I think Justices of the Peace ought to be allowed to practice law, and it would be a beneficial thing to allow attorneys in certain portions of the State to hold that office. Of course, no Justice of the Peace would practice in a case that had once been before him. The Legislature might prohibit a Justice of the Peace acting in the case where he had acted as Justice, but it does seem to me that it would have a tendency to improve the character of a Justice's Court if they were allowed to practice.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope the amendment will not prevail—neither of the amendments offered. I do not believe that a person sitting as a Judge, regularly elected for that special purpose, and not being Judge merely in a particular case and for a particular purpose, but being regularly elected and occupying a judicial position—I do not believe that such a man ought to be allowed to practice law, because if he be allowed to practice law he will be called upon for legal opinions. Everything is against allowing a Judge to be a practicing lawyer outside of his own Court. Now, in my opinion, the section needs but one slight alteration, and if the amendments are voted down I will make a motion to strike out the word "the" in the first line, so that the section will read: "Judges and Justices of the Peace shall not practice law in any Court of the State during their continuance in office."

MR. HILBORN. Would that allow Justices of the Supreme Court to practice? They are called Justices.

MR. BEERSTECHER. I have no doubt that the Chairman of the committee would consent to have it read "Justices of the Supreme Court and Judges and Justices of the Peace." I think that it ought to include every character of judicial officer who sits in a Court and dispenses justice, and I hope that the pending amendments will be voted down and the Chairman of the committee will make that alteration so as to include the Justices of the Supreme Court.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I do not think that I have ever heard any class of men spoken of in lower terms than the Justices of the Peace, in this body. In fact, I heard so much said in regard to their incompetency, that I almost thought that some one would introduce a clause to prohibit Justices of the Peace throughout this State. The great object should be to elevate, if possible, the standard of Justices of the Peace and make their Courts respected. It was contended when another section was pending here that Justices of the Peace understood no law points, consequently were incompetent, and incapable of performing the duties which were given to them by the Constitution of this State heretofore; that the office was terribly behind the age, and that the Justices themselves were behind the age, and incompetent to decide either questions in equity or law. Now, it does appear to me, that by allowing lawyers to be Justices of the Peace, and allowing Justices of the Peace to practice law, that there would be some improvement in this respect. They would all the time be connected with law matters; and in addition to that, we find that very few lawyers would take this position, because they could make more by practicing, and it would be thrown entirely into the hands of those men who never studied law at all. It does appear to me, that by allowing Justices to practice law, the standard of Justices would be improved to a very great extent. They would be thrown into an element where they would come in contact with law and with law questions, and it seems to me that upon this ground alone the amendment offered by the gentleman from Solano is a good one.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I believe that the committee intended to include Justices of the Supreme Court. It may be that they are not included, on account of the use of the word "Judges." There is one matter, it seems to me, that the committee overlooked, and that is, the Judges of such inferior Courts as the Legislature may estab-

lish. If a Justice of the Peace shall not be allowed to practice, it seems to me that these Judges should not be. I have an amendment which I propose to offer when I get an opportunity, which will read as follows: "Justices of the Supreme Court, Judges of the Superior Courts, and Judges of such inferior Courts as the Legislature may establish," to be inserted where the word "Judges" is now, so as to read: "The Justices of the Supreme Court, Judges of the Superior Courts, and Judges of such inferior Courts as the Legislature may establish, and Justices of the Peace, shall not practice law in any Court of the State during their continuance in office."

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: There can be no possible necessity for such an amendment. The word Judge covers all Judges of Courts of record. There is no Court of record, and there can be no Court of record, where the presiding Justice in it is not a Judge, and the word Judges, that we have used here, covers all the Justices of the Supreme Court, Judges of the Superior Courts, and of all Courts that may be established by the Legislature. Now, there can be no necessity for having any other word than that Judges shall not practice. That covers all Judges of Courts of record. Now, if you say that the Justices of the Peace shall not practice, you have covered it all. The only question there can be, is whether you want to exclude Justices of the Peace or not. If you do wish to, then the section is complete as it is. If you do not wish to exclude Justices of the Peace, then that part of it should be stricken out. But, so far as I see, it seems to me that it is right as it is. I can see some impropriety about having Justices of the Peace following a case tried before them to the Superior Court on appeal. If a Justice is practicing law, he might have clients in his practice that would appear before him in other cases. It might affect the judgment of some men. Again, where a case came before him, he might say to himself: If I decide the case for the plaintiff, the defendant may employ me to try the case again. He might expect to be employed, by one party or the other, to take the case on appeal to the Superior Court.

MR. BARTON. Mr. Chairman: I hope that amendment will be voted down. We often see very ridiculous scenes presented in the interior of this State. We see a system of jugglery going on that does not speak well, to say the very least of it. We see the Justices of the Peace hobnobing with the farmers—those who are having litigation—going on the bench, playing Judge. We want to put a stop to some of this jugglery. The idea of a Justice of the Peace taking a case on both sides. In many cases he advises, counsels, and draws up documents for both plaintiff and defendant. We want this thing stopped.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I do not remember to have ever seen a Justice of the Peace try a case on appeal from his own Court. There may have been such cases, but I do not see how an appellate Court could permit such a practice. That evil I do not apprehend, but if there ever has been such a practice it ought to be remedied by legislation. But I say I never knew a Justice to try a case on appeal from his own Court. I would ask if any other attorney has ever known such a thing. It has been assumed here in this argument. If there is any such thing—really I do not think there is any such thing, for I do not believe any Superior Court would ever permit it—it ought to be provided against by legislation. But if it is proper to put such material into the Constitution of the State, then be consistent in it, and go into the details and specify that Judges of a Court shall not practice in such cases as they have tried. But I suppose such things are not necessary to be provided against in the Constitution of the State.

I think the amendment of the gentleman from Solano ought to be adopted. The amendment of my friend Mr. Barton seems to be unnecessary, so far as practicing in their own cases is concerned, because there is a provision in the bill of rights which gives parties the right to practice in their own cases, and there is no necessity of making that exception which that amendment seems to contemplate. But to say that no Justice of the Peace shall practice law in the State of California is substantially to say that no lawyer shall hold the office of Justice of the Peace. If not, why not? A Justice's Court extends, generally, to the boundaries of his township; for certain purposes, to the boundaries of the county. The Superior Court Judges issue processes throughout the whole State. The Supreme Court Judges are State officers, and of course their jurisdiction extends throughout the State. But why should not a Justice of the Peace in one township in a county be permitted to practice law in other townships. If it is important that he should not be permitted to practice in his own township let the Legislature make such a provision. But to state in the Constitution that a Justice of the Peace shall not practice law, is to state something which I have been unable to find, on an examination of the Constitutions of other States, has ever been put into the Constitution of any State before. It is something that raises up an opposition to the Constitution. It is saying that attorneys who are holding the position of Justices of the Peace must resign their positions, and in the future not accept the office. I think it is a benefit to a community if lawyers will accept this position. The best Justice we have in Alameda County is an attorney. We have several of them who are attorneys. They are gentlemen, sir. They do not do those things which a gentleman's sense of honor would indicate to him he ought not to do. I have read that Thomas Jefferson, after being President of the United States, accepted the office of Justice of the Peace, to give dignity to the position. Sometimes a lawyer retires from an active practice, but at the same time he may take some cases. He may have had a large practice and desire only to have a limited practice, and he would be the best kind of material for a Justice of the Peace. But you say: No, if you are a Justice of the Peace you must not practice any where in the State; you must take no case whatever. I think it is a species of legislation that ought not to be placed in the Constitution of our State.

MR. WEST. Mr. Chairman: In justice to the lawyers of the State of California I hope this amendment will be adopted. I cannot see why the lawyers should be proscribed. There are not enough Judgeships to go round, and unless we permit them to be elected Justices of the Peace the balance of them will not be able to get handles to their names. Very respectable attorneys who have retired from the turmoils of active practice, I think, accept the office of Justice of the Peace, and they make very good and efficient Justices, and they are ever after called Judge. They educate the people up to a higher standard. I hope these amendments will be adopted.

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

The amendment was adopted.

MR. MORELAND. Mr. Chairman: I send up a substitute for section twenty-two.

THE SECRETARY read:

"No Judge of a Court of record shall practice law in any Court of this State during his continuance in office."

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

The substitute was adopted on a division, by a vote of 60 ayes to 17 noes.

THE CHAIRMAN. The Secretary will read section twenty-three.

THE SECRETARY read:

SEC. 23. A Grand Jury shall be composed of twelve jurors, and a concurrence of nine shall be necessary to the making of a presentment or the finding of an indictment.

MR. CAPLES. Mr. Chairman: I send up a substitute for section twenty-three.

THE SECRETARY read:

"The Grand Jury shall be composed of seven jurors, and a concurrence of five shall be necessary to the making of a presentment or the finding of an indictment."

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I have very great respect for the report of the Judiciary Committee. I have supported its recommendations down to this section. That committee is composed of some of our ablest lawyers. They took time and deliberation for the formulation of the various sections that they have reported, and in my humble judgment they have done their work well, and I have been sorry to see the spirit arise that has been exhibited in the legion of amendments that have been offered to every proposition. In my judgment the report was so worthy, so able, that it ought to have been accepted as a whole.

MR. EDGERTON. Will the gentleman allow me to call his attention to what has already been done by the committee in the article on preamble and bill of rights. It is there provided that a Grand Jury shall consist of not less than eighteen. Mr. Chairman, I renew the point of order which I made this morning.

MR. CAPLES. I have this to say: If I am wrong in offering this amendment, then the report of the committee is wrong.

MR. EDGERTON. It ought to be stricken out, certainly.

MR. CAPLES. Certainly, if that be the case, but the action is not final, and I shall insist, at the proper time, on correcting what I consider a very great blunder. I believe that it would be the part of wisdom in this committee to reduce the number; and to put so high as fifteen would be, in my judgment, a very great blunder indeed. The committee have improved upon that by recommending twelve, and I merely desire to say, in this connection, that, while I have great respect for the committee and for their report, yet I cannot forget that lawyers, as such, are greatly given to the force of precedent.

MR. WILSON, of First District. Will the gentleman allow me to ask him a question? When the Committee on Judiciary and Judicial Department reported this section the report of the other committee had not been acted upon. Now, would it not be better to leave that standing, and strike out section twenty-three?

MR. CAPLES. I think it would, having once acted upon the other. I withdraw my amendment.

MR. FREEMAN. Mr. Chairman: I move to strike out section twenty-three.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section twenty-four.

AGE OF JUDGES.

THE SECRETARY read:

SEC. 24. No one shall be eligible to the office of Justice of the Supreme Court unless he be at least thirty-five years of age, and shall have been admitted to practice before the Supreme Court of the State; and no one shall be eligible to the office of Judge of the Superior Court unless he be at least thirty years of age, and shall have been admitted to practice before the Supreme Court of the State.

MR. SHURTLEFF. Mr. Chairman: I have a substitute for section twenty-four.

THE SECRETARY read:

"No one shall be eligible to the office of Justice of the Supreme Court, or of the office of Judge of a Superior Court, unless he shall have been admitted to practice in the Supreme Court."

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. Chairman: That leaves it right where it is in the present Constitution, and requires no qualification as to age. I hope that the substitute will at least have a fair support from the Committee on Judiciary itself. I see nothing in the history of this State that requires that there should be a limitation upon the age of those who are to be eligible to that office. One of the members of the Judiciary Committee, who I am sorry to see is absent now, held the office of Chief Justice when he was only twenty-nine years of age—at least of Justice, and

he was made Chief Justice when thirty-one. Another distinguished jurist of this State, long since passed away, Hugh Murray, was called to the Supreme bench at the early age of twenty-seven, and officiated as Chief Justice at twenty-nine. I think that attorneys know that Hugh Murray was one of the most brilliant jurists of this State, young as he was. Now, if we look further, and see how these matters have been in other States, we shall find that many of the best legal minds have been promoted to important positions when young. Levi Woodbury, of New Hampshire, was Chief Justice of the State of New Hampshire at the age of twenty-seven, and was afterward made a Justice of the Supreme Court of the United States. He was a man of signal ability, and doubtless in the various positions that he afterward held his experience while on the bench of the Supreme Court of New Hampshire was of benefit to him and to the people. James Medill, of the State of North Carolina, was called to the bench at the age of twenty-six. Hugh L. White, of Tennessee, was made a Justice of the Supreme Court at the age of twenty-eight. Stephen A. Douglas was a Judge of the Supreme Court of Illinois at the age of twenty-eight. Young men, comparatively, have been put upon the bench of the Supreme Court of the United States. Judge Story was appointed there by Mr. Madison, when only thirty-two years of age. I think, therefore, it is unwise to make this limitation. Nobody claims that young men have been put in to the detriment of public interest. We hear no complaint, and I think it would be unwise to make this restriction. I believe in giving the young men a chance. Martin Van Buren, when a little boy playing marbles and flying his kite in the streets of Kinderhook, told his comrade he was going to be President of the United States. He rose quickly to the position of State Senator, then became Attorney-General, and then Governor of the State of New York, then Senator in Congress. He was then appointed Secretary of State by General Jackson and then Minister to England; then was elected Vice-President, and finally reached the goal of his ambition and became President of the United States. I glory—what American does not glory—in the success of the young boy of Kinderhook. It is due to these boys, these young men, that the path of honor shall be left open to them, and I shall not consent, for one, to placing anything in their way. [Applause.]

MR. WHITE. Mr. Chairman: I wish to say a word in favor of the young men. This is not the first, it is the third attempt to strike at the young men. There is no instance in the State where young men have been elected to office and failed in the discharge of their duties on account of their age, and I am opposed to putting any barrier in their path of advancement. I trust and hope that the older men of this Convention will not adopt such a measure as this that cuts the young men off from all hope of occupying this honorable position until a certain time. I trust the amendment will be adopted.

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

The amendment was adopted.

ELECTION OF JUDGES.

MR. CAMPBELL. Mr. Chairman: I desire to offer an additional section.

THE SECRETARY read:

"Separate ballot boxes shall be provided for the reception of votes for Judges of Courts of record, who shall be voted for upon ballots different from those used in voting for other officers."

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: The reason why I offer this additional section is this: At the first election under this Constitution, should it be adopted, we shall have to vote for a very large number of officers. Heretofore we endeavored to separate the judicial election from the election for other State officers; but it was found that the people would not take enough interest in these separate elections to make it worth while to continue that system. Still, at the same time, it is desirable that you should withdraw the election of these judicial officers as far as possible from the vortex of party politics, and by voting for them on separate tickets, though at the same time and at the same election, the judicial ticket will be placed in such a position that it will be separately considered, to a large extent, by the voters. Now, for instance, in the City of San Francisco they will have to vote for twelve Superior Judges and seven Supreme Court Judges at the first election. In the other parts of the State there will be eight or nine names upon the judicial ticket. It ought to be considered separately; it ought not to be crowded in with the other State officers. It ought to be considered as being, to a certain extent, apart from politics. I know that is my own practice in relation to such matters, and I hope that the practice will become more general, so that when we take up our judicial tickets we will take them and compare them together, and vote for the best men as far as possible, and that irrespective of party. I therefore offer this additional section, as I think it will conduce to this end.

THE CHAIRMAN. The question is on the adoption of the additional section offered by the gentleman from Alameda, Mr. Campbell.

The amendment was rejected on a division, by a vote of 34 ayes to 47 noes.

MR. BELCHER. I move that the committee rise and report back this article to the Convention, with the amendments, with the recommendation that the usual number of copies be printed.

MR. EAGON. Mr. Chairman: I ask that we return to section eight. I have an amendment to offer to that section which I know will meet with no opposition.

THE SECRETARY read:

"Add to section eight the following: 'but this section shall not be construed as prohibiting the local Judge from holding Court at the same time.'"

MR. EAGON. Mr. Chairman: Now, in cases of that kind, it is always in some case that the local Judge is, perhaps, disqualified on account of his having been engaged in the case prior to his election as Judge. The object of this amendment is, that while the Judge pro tempore is trying such a case, the local Judge may hold Court in other cases at the same time and facilitate business. They cannot do it under the section as it is. The Supreme Court have held that the local Judge cannot hold Court at the same time.

MR. EDGERTON. For instance, this Sixth Judicial District Court is a unit; it cannot be at two places at the same time.

MR. FAWCETT. Mr. Chairman: I think that amendment will produce incalculable confusion if it is put into the judicial system. Now, the Courts of the counties are organized on certain basis. We will suppose that one Court is open for a particular county; there are cases on the calendar in which the Judge is disqualified, and he calls in another Judge to sit in these cases. The two Courts could not go on at the same time without producing the greatest confusion. No facilities would have been provided; there would be but one Court-room, there would be but one Clerk, there would be but one set of officers, but one set of records, and it would be almost impossible to organize and hold two Courts at the same time; there would be but one calendar, and preparations would have been made generally for the holding of but one Court at the same time.

MR. AYERS. Mr. Chairman: I rise to a point of order. My point of order is, that we have already passed this section, and that it is not competent for the committee to go back to it now.

THE CHAIRMAN. The Chair would not have entertained the motion if there had been any objection. The Chair entertained it because there was no objection. The Chair decides the point of order not well taken.

MR. EDGERTON. I ask for the reading of the amendment.

MR. MCCALLUM. The gentleman from Amador said that he had an amendment to which there would be no objection. After the amendment was presented then objection was made. That was the first opportunity there was to make objection. Therefore objection was made to entertaining the motion. That makes a great deal of difference.

THE CHAIRMAN. The Chair does not understand it so. The question is on the adoption of the amendment.

The amendment was rejected.

MR. BELCHER. I now renew the motion that the committee rise and report this article, with the amendments, back to the Convention for adoption.

The motion prevailed.

IN CONVENTION.

Mr. Tinnin in the chair.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the article on judicial department, have made amendments thereto, and report the same back to the Convention with recommendation that it be adopted.

MR. BELCHER. Mr. President: I now move that nine hundred and sixty copies of the article with the amendments be printed.

MR. ROLFE. Will the gentleman give way until I make one motion. My motion is, that we refer the report of the Committee on Judiciary and Judicial Department back to the Committee of the Whole, with instructions to amend section four so that appeals shall not lie to the Supreme Court from cases in equity arising before Justices of the Peace. If the Chair will permit me I will state that on motion of Mr. Freeman an amendment was adopted to section eleven, which gave equity jurisdiction in cases under three hundred dollars in regard to personal property. Now, if gentlemen will refer to section four they will see that it provides that the Supreme Court shall have appellate jurisdiction in all cases in equity. Now, I do not suppose that it was the intention of this Convention when they adopted that amendment to section eleven, that it was intended that an appeal should go directly from a Justice's Court to the Supreme Court.

MR. BELCHER. I rise to a point of order. As I understand it, this report has been acted upon by the Committee of the Whole, and has been reported back to the Convention, and it is not in order now to go back and amend it. The amendments necessary must be made in the Convention when it comes up.

MR. ROLFE. The same thing was done when we had section twenty of the report of the Committee on Corporations before us.

THE CHAIR. The point of order of the gentleman is well taken, for we would have to reconsider the vote before we could go back with it.

MR. BELCHER. I now move that four hundred and eighty copies of the report and amendments be printed.

MR. EDGERTON. I move to amend, that nine hundred and sixty copies be printed. There are about a thousand lawyers in San Francisco who are sending after copies now. So far as the cost is concerned, four hundred and eighty copies cost almost as much as nine hundred and sixty.

MR. BELCHER. I accept the amendment.

MR. GRACE. If it is true, as the gentleman says, that there are a thousand lawyers in San Francisco that will be sending for copies, the gentleman can send one copy to a lawyer, and nine hundred and sixty of them can get together and have as many copies published as they want.

MR. EDGERTON. The additional cost would amount to nothing, and there might be some needed at a sand-lot meeting. I have no objection to their having them.

The motion prevailed.

RIGHT OF SUFFRAGE.

MR. EAGON. Mr. President: I move that the Convention resolve itself into a Committee of the Whole, Mr. Tinnin in the chair, for the

purpose of further considering the report of the Committee on Right of Suffrage.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section one.

THE SECRETARY read:

SECTION 1. Every native male citizen of the United States, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the election district in which he claims his vote ninety days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, that no idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector; *provided*, that the Legislature may by law remove in whole, or in part, the disabilities to exercise the elective franchise on account of sex.

THE CHAIRMAN. There are two amendments to section one pending. The gentleman from San Diego, Mr. Blackmer, moves to amend by striking out the word "male," in the first line. Mr. Tinnin moves to amend by striking out all after the word "elector," in the eighth line.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I have taken great interest in this subject. I had intended to offer some remarks in advocacy of woman suffrage. To undertake, however, to discuss such a question, and particularly the unpopular side of it, under the ten minutes rule, would be utterly vain and idle. I will content myself, therefore, by stating, generally, that I am in favor of woman suffrage. I shall vote now for the amendment of the gentleman from San Diego, Mr. Blackmer. I would prefer an amendment prepared by myself, which proposes to introduce the change gradually; but there would be no time to argue its provisions. I believe that government derives its just powers from the consent of the governed; that representation in the Legislature is an inherent right, "formidable only to tyrants;" and that the people are the source of all political power. Women constitute nearly one half of the people. As a rule they are neither criminals, lunatics, nor foreigners. Most of them are native-born citizens of good character and repute, and of the Caucasian race. How, then, does it come, sir, that they have no more political rights on this free American soil, on which they and their ancestors were born, than Chinamen or State prison convicts? Is there any right, or justice, or decency, in a law which gives the elective franchise to the most ignorant, debased, and brutal man in the land, whether born here or abroad, and denies it to Mrs. Stanton, a cultivated and intellectual woman, descended from revolutionary forefathers, and able to go before a committee of the United States Senate and make an argument on constitutional law that would have done credit to any gentleman on this floor or in this nation? No gentleman here will undertake to argue the affirmative of the question. But customs and prejudices, handed down from sire to son for generations, are hard to overcome by argument and reason. At least, it cannot be successfully done in ten minutes. I therefore leave this question, at least for the present.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. Chairman: As Chairman of this committee I have a few words to say, and I will start out by saying that I am opposed to both of the amendments. I am opposed to striking out the word "male" in our present Constitution, or in this. I, however, am not averse to leaving this matter to the Legislature, that they may decide upon a question of so much importance as this is. I have but very little to say in opposition to either of these amendments. I believe that the Legislature is the proper place to decide upon a question of this kind. There are many good reasons why the suffrage should be extended to women; these are good reasons, in my judgment, why it should not. I am in favor of a full and fair discussion of this question by the friends and the enemies of the proposition. It has been conceded upon almost every proposition in this Convention that a full and fair discussion should be had upon the question. This, sir, is somewhat a new proposition to the people of the State of California. There are gentlemen here who are in favor of striking out the word "male" in the Constitution, and extending the suffrage to women. I am anxious to hear those gentlemen. They are anxious to make their statements to the Convention, and I think that it would be but just to them and the cause they advocate, to give a portion of them, at least, full time to present their views to this body, that we may know what we are voting upon, and know the reasons these gentlemen have to offer. I would willingly give up the time that is allotted to me, to any gentleman who desires to speak on this question. No man can attempt an argument upon a question like this in the short time allotted by our rules. I hope that the time will be given to certain gentlemen who desire to speak upon this question. It will not take long, and there will be but very little difference of opinion except as to this one point. I hope that they will have the time allowed to them. I will give away the half hour allowed me, and any gentleman who wishes the floor can have my time. I concede the half hour allowed me to Judge Steele.

REMARKS OF MR. STEELE.

MR. STEELE. Mr. Chairman: I do not know that I shall care to occupy half an hour, but I will say what I have to say as briefly as possible. I am in favor of the amendment offered by the gentleman from San Diego, Mr. Blackmer. In regard to the importance and magnitude of this subject, it needs only to be said that it vitally concerns the interests and political rights of one half of the citizens of this commonwealth. I am in favor of this amendment, because I believe it is right and just, and as it should be; and if I succeed in making this as clear to the committee as it is to my own mind, this word "male" will be stricken from this section. Sir, the word "male," as used in this section, has a double signification to my mind, indicating not only the distinction of sex, but also that garb of ignorance and prejudice with which man has clad himself as with a coat of mail, thereby rendering his reason and conscience impervious and almost impregnable to the advocates of equal rights and privileges.

In the first place, sir, one half of the people—and I assume the better half—who constitute and compose the citizens of this great State, are not males, but females; not men, but women, who, with the males, are equally interested in the peace and prosperity of the country; in the happiness and well-being of the people; in the justice and righteousness of the laws by which their country is governed; in the economy and purity of the administration; in the purity of the press and the free institutions of the country. And yet, sir, woman has no voice in the selection and election of the officers. Her's is the life of the slave to obey; his the self-asserted right to command. Her's is the right to pay taxes, to be tried at the tribunal and punished as a felon under laws which she has no part or lot in making, and yet she is one half of the human family.

MR. LINDOW. I move the previous question.

THE CHAIRMAN. The gentleman from San Luis Obispo has the floor.

MR. MCCONNELL. Judge Steele is evidently sick.

MR. STEELE. I am sick and not able to speak farther.

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: As has been said, it is a matter of impossibility to present the arguments upon this question in ten minutes, but I will endeavor not to occupy the attention of the committee any longer than that. I shall confine myself strictly to a few reasons why, in my judgment, this matter has not been adjusted upon the basis of right previous to this. This is not a new question. It is only new in this particular phase, in this country particularly, in the effort to extend the right of suffrage to women. In the early history of this country suffrage was not universal among men, but there were qualifications that were essential to the exercise of this right: and not only in this country but in others the right of suffrage has been extended beyond the limits which it formerly occupied. There is one thing in connection with this that we ought to look at; one reason why this demand has always been acceded to. Sir, Magna Charta, that great charter of liberty to the English people, and indirectly to the people who speak that language all over the world, was wrung from the hands of King John at the point of the sword. And again, when, in 'thirty-one-two, the measures which culminated in the passage of the reform bill in the English Parliament were agitating the people, it was said that the whole country quivered upon the very verge of destruction. There was a revolution around this demand, and for that reason it was granted. So it was in this country when the demand came for the extension of this right to those who did not have the property qualification. These men came before the country with the demand in one hand and a possible revolution in the other, and for that reason it was granted. But, sir, there is no menace in this demand; it is simply a question of right. It is a demand for justice because it is the best policy. And shall we deny it because it does not come with force? There is no justice in that.

It is said, however, that it is degrading—that the woman will be degraded thereby. Mr. Chairman, shall we adopt the principle that self-government is degrading? Will the gentlemen upon this floor admit that doctrine? I do not mean by politics, but I mean by self-government. Is self-government degrading? No gentleman will contend that it is. But, sir, it is said that the women are not able to undertake this, that they are the weaker sex; that they should be dependent. Why, Mr. Chairman, governments are made for the weak. And shall we say that because they are weaker they shall bear all the disabilities of the government, while they who are stronger shall be protected? That argument cannot hold. But, sir, the point of resistance that we generally meet is, that women cannot fight, and when they have made that statement they fall back with perfect security in the belief that that argument cannot be overthrown; well, I leave it for the gentlemen to decide from their own experience, whether they can or not. I should be inclined to take the view that they can, but others may feel differently. In the first place, is fighting all there is to be done in this country? And if they cannot fight, I beg to ask the gentleman if there is nothing done in those troubled times, when war sweeps over the face of the land, that women can do better than men and if women do not always come up and do the work that they can do? And further than that, though they should stay at home, they are the sufferers, twice told, beyond those who take up the fight and go into the excitement and the rush of the battle. The government must be supported, and it is in times like these that the women of this and other countries have shown their value. Look at our own terrible struggle. There came these angels of mercy to the camps and hospitals, and they did what no other hands could do. Look at the greatest heroes of the wars of the world and tell me who of them all did as much as Miss Florence Nightingale? And yet we are told women can not fight, and that answers the argument. There is another consideration. Voting is a contrivance to do away with a necessity for fighting. Governments derive their just powers from the consent of the governed. If women are governed they must give their consent or there is no just government. How can they give their consent? The ballot is but an authoritative expression of the will of the people in regard to public measures and public men. Why, then, should we say that one half of the community shall be deprived of the privilege of giving that expression, and that in an authoritative manner, in regard to public measures and public men? But, sir, I must hurry over all this part of the question. This is not entirely an experiment, but a principle of gov-

ernment that has already been tried in one portion of our country, and while reports have been circulated that in this, Wyoming, it has not been a success, yet, sir, I think that is only a one-sided and prejudiced argument. The facts of the case are, and the proofs can be had, that it is a success. First, I propose to read an extract from a letter written by Chief Justice Kingman, of Wyoming, dated December twenty-sixth, eighteen hundred and seventy-two:

"It is now three years since the Act was passed giving women the right of suffrage and the right to hold office in this Territory, in all respects the same as other electors. Under this law they have been elected and appointed to various offices, and have acted as jurors and Justices of the Peace. They have very generally voted at all our elections, and have taken some part in making the nominations; and although there are some among us who do not approve of it as a principle, I think there is no one who will deny that it has had a marked influence in elevating our elections, and making them quiet and orderly, and in enabling the Courts to punish classes of crime where convictions could not be obtained without their aid."

In another part of the letter, he says:

"There is another matter in which we have been greatly benefited by this law, and that is the change it has wrought on election days, and its influence at the polls. Formerly our elections were scenes of drunken revel and noise, of fighting and riot. But when the women came to vote they were always treated with the attention and respect everywhere shown to women in the United States. If there was a crowd around the polls they always gave way when a woman approached, and were silent and orderly while she deposited her vote and went away."

In regard to women serving on juries, he says:

"There are comparatively so few women here, and those are so generally kept at home by domestic duties, that the Courts have been unable to obtain as many of them for jurors as was desirable; but those who have served have uniformly acquitted themselves with great credit. Not a single verdict, civil or criminal, has been set aside where women have composed a part of the jury. This has not been the case, by any means, when they have not been present."

THE CHAIRMAN. The gentleman's ten minutes have expired.

["Leave!" "Leave!"]

MR. HOWARD. I object.

MR. STEDMAN. Mr. Chairman: I am on the other side, but I cheerfully yield my time to Mr. Blackmer.

MR. ROLFE. If necessary, I will yield mine, although I am on the other side.

MR. TULLY. The gentleman can have my time.

MR. AYERS. And mine, too.

MR. KENNY. And mine, too.

MR. BLACKMER. Gentlemen, I thank you, but I will endeavor to be brief. I only regret that I did not know that these gentlemen would be so kind to me, or I certainly would have gone on with the argument from the beginning, as I had somewhat prepared myself with a few notes to do. But I will not occupy, much longer, the attention of the committee. I wish, first, to call attention to an extract from the annual message of Governor Campbell, of Wyoming, in eighteen hundred and seventy-three. He says:

"The experiment of granting to women a voice in the Government, which was inaugurated for the first time in the history of our country by the first legislative assembly of Wyoming, has now been tried for four years. I have heretofore taken occasion to express my views in regard to the wisdom and justice of this measure, and my conviction that its adoption had been attended only by good results. Two years more of observation of the practical working of the system have only served to deepen my conviction that what we in this Territory have done has been well done, and that our system of impartial suffrage is an unequalled success."

Now, in answer to the position of the Alta, that it is not a success, I desire to read what was said by one who was there as an eye witness at the last election in that Territory. It is a quotation from a speech delivered by Miss Hindman, of Colorado, who visited Wyoming during the last election:

"The day before election she had interviewed many prominent citizens on the success of woman suffrage. One politician said one of the greatest objections to suffrage was that the women would not stick to the party; they scratched their ticket in a very disgusting manner. The testimony of the best people of the city was, that the best ladies of the city voted, all reports to the contrary notwithstanding. In Cheyenne there were two polling places, at one of which the women generally voted. This poll was in a room of the principal hotel, where ladies could come and go without molestation. The speaker said, if she was any judge of human nature, the countenances of the voting ladies indicated a high degree of culture and refinement. Each lady had her ticket ready when she reached the polls, and after voting it, went away without any disturbance.

"The women did scratch considerably, and consequently, in a close district, one man ran nine hundred votes ahead of his ticket, simply on account of his high moral character. Not one vote was challenged, so much did the men have confidence in the honor of the ladies. Instead of roughs, the poll was surrounded by gentlemen. Not an oath was uttered, no tobacco was used, and the gathering was most orderly. Cheyenne is sometimes considered the worst town in the United States, and the orderly voting, and the almost entire freedom from corruption, are due almost entirely to the woman suffrage. Formerly, irresponsible persons were in a majority, and imposed burdensome taxes on the people. Now, the wives, mothers, and sisters of property owners counteract the influence of the floating population. The speaker closed by declaring that a mere visit to the Territory during election time would convince the most prejudiced that woman suffrage, in its practical bearing, could not be otherwise than successful, and that she hoped to live to see the day when the elective franchise would be extended to the women all over the United States."

Now, Mr. Chairman, it is said by many that we have no right, or that we ought not to agitate this question now, because there has not been any great pressing demand made upon this Convention for this change; but, sir, I beg to call attention to the fact that we have had petition after petition sent up here upon this very question from many portions of the State. I had the honor to present one that contained almost a thousand names. And besides that, it seems to me that we are here to find out not what has been done in other States, not what has been done in this State, not to say what the present Constitution determines, but to find out what ought to be done, and when we have found that out we must give them that right, no matter what stands in the way. My constituents knew when they sent me here that I would advocate this measure when it was presented; and although it may be the fact that a majority of them, being all men who are qualified to vote, might vote in opposition to it, yet, sir, I believe it is my duty, as I believe it to be a matter of right and justice, to advocate this measure.

Mr. Chairman, equity knows no sex. It is a strange thing in our country, that no matter how wise or intelligent a woman may be, she is deprived of all political right, of all voice, of all authoritative expression, as to government and governmental measures; while in other countries control may be vested in one hand, and that the hand of a woman. Look at our mother country to-day, governed by one, and that one a woman; and yet if that very woman to-day should come to this State of California, and throw off her allegiance to our mother country, make herself a resident, and be naturalized in this country, as she may be under our laws, she would not be allowed to step up to the polls and vote for a man even for an educational office in this State, and yet in her own country she is the peer of any statesman they have. And yet men are content to say that they should have no voice in our own country, not even the simple opportunity to go, in her own quiet way, to the ballot box, and express her opinion in an authoritative way, as do men. There is no justice in an aristocracy of sex. There is no reason in it. They are taxed without representation, and taxation without representation, a hundred years ago, was considered tyranny. They are governed without their consent, and that same thing fell under the same ban one hundred years ago.

We are told, sir, that they will be represented, and that those who have the ballot will certainly provide such governmental measures as will be for the best interests of women as well as for themselves. But, sir, that has been the argument with the men in power forever. It was the argument of the mother country when the colonies were struggling. They said that the measures that were provided for the government of this country would be those that were the best for ourselves and the best for them. The governmental class says, we shall provide just measures because they will be just for us.

But, sir, that programme does not work for the weak. They are not always satisfied, and if not, their only opportunity for showing their disposition to object is lost. They are amenable to the laws; they must be punished for their violation; and, by the way, that is the only place, in a political sense, in this country, where they are equal. If they disobey the laws that are made without their consent they may be punished. And, sir, they are put upon a level in this country with no class of people but the despised Chinamen. It is true, politically they stand in the same position occupied by aliens who have no right to become citizens. They are a class disfranchised, and, sir, it is inconceivable in any government professing to be a republic, for any one class to hold the political power and the other have no voice in it. The instance has never been known in any country of a political class holding supreme power without abusing it, and it is so here; and it must always be so. Women are in a condition of political servitude, as much so as any class has ever been in this country. Politically they are serfs and servants, while a man, sir, may be an imbecile or a criminal and none question his right to a voice. A woman may have all the virtues that adorn humanity, but because her sex differs from ours she must be forever our slave. Because we are physically the stronger—and that is the only secret of the question—because we are physically the stronger, we must forbid her the right to a voice in our government. If circumstances had been reversed and the ballot had fallen to the lot of women, while physical strength had remained as it is, do gentlemen suppose that men would have so long been contented without the use of the ballot? No, sir. They would have appeared, as they always have done in the demand for an extension of this right, with the demand in one hand and a revolution in the other. How contemptible, then, to deny to them this right simply because they are the weaker, for there is no other argument. Shame upon such cowardly tyranny! Shame upon the indecency of such discrimination against the weaker and better half of the human family!

Mr. Chairman, this is a question that we must meet. If we do not meet it now, we must meet it in the near future. It is coming up the steps of time, and this old world is growing brighter; and if we are true to ourselves; if we are true to the trust that is imposed upon us; if we look to see, not what is, but what ought to be, we shall help to bring on this golden time when man and woman shall be equal before the law; when those who are governed shall be those who have a voice in that government; when those who are taxed shall be those who have a right to say for what purposes they shall be taxed. And we must do it now. We should not wait until this gets to be a popular movement. It is only the coward who waits for an opportunity; he who is brave makes it.

SPEECH OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: As the author of the minority report, it will be deemed proper that I should have something to say. I am not here to indulge in any after-dinner speech, in compliments, spread-eagle, or otherwise; but I am here to perform a solemn duty, to speak

the truth, and I will do it, though the heavens fall. I am here, sir, to defend the virtue of woman, the honor of man, the experience of mankind, and the eternal decrees of the God of the universe. What is it, Mr. Chairman, that is demanded of us here? What! the ballot for the women? Is that it? No, sir; that is but the beginning of an end; that is but the entering wedge; and I appeal to the intelligence of every gentleman present to sustain me in the charge that every assemblage, every convention, of the devotees of this lunacy, have proclaimed that equality for the sexes was what they demanded. Equality; not merely the right to vote, because the right to vote carries with it all the co-relative obligations of citizenship; because the elector is entitled to hold office; to engage in anything, to engage in everything. If she may vote, she may go down to all the dirty, vile trickeries of primary politics; may hold office, and may do anything and everything that man does. And that is exactly what they claim and what they demand in every Convention that they ever held in the country. And while I may not have time to refer to the authorities to prove this, I shall be compelled to appeal to the intelligence of gentlemen upon this floor to sustain me in the assertion, that what they demand is equality; the right to do whatever men do; the right to be as bad as men are. And I declare in the presence of this assemblage and high heaven, that all my own experience goes to show that the inevitable result of such a policy would be to drag her down from the high, and exalted, and God-given relation that she now occupies, into the very filth and mire of degradation and human infamy.

Mr. Chairman, what is the common experience of mankind in regard to this matter? What is the experience of six thousand years of humanity in the struggle for existence? It is plain as the noonday sun that the society of to-day is but the evolutionary process, or the results of that evolutionary process, that we call human experience. For thousands of years mankind have, under various conditions, been making the struggle for existence, and the society that exists to-day, governmental, social, religious, and otherwise, is simply the result of that evolutionary process. It is not the arbitrary dictation of one man; it is the result of the force of nature, the struggle for existence in which man has been placed. I desire, Mr. Chairman, as illustrating the truth of what I have said, to read from an English authority. I read from the "Science Monthly," quoting from the "Quarterly Journal of Science," and from an author of great standing; he says:

"There is in particular one question now agitating human society, which seems particularly to require such treatment. Every one knows, that of late years a movement has sprung up to secure for women as contradistinguished from men, certain rights, liberties, and powers, of which it is contended they have been arbitrarily and wrongfully deprived. To define this movement, and to formulate distinctly the demand of its supporters, is a scarcely possible task. Innovators and agitators of all kinds enjoy the advantage that they cannot be tied down to any fixed set of propositions by which, and by whose logical consequences, they are prepared to stand or fall. On the contrary, if one ground is found untenable another is instantly taken up; what satisfies one champion of the cause is rejected by another; and what to-day is accepted as final—as in the case of the anti-vivisection movement—is to-morrow proclaimed a mere installment, and made the basis of fresh demands. Perhaps we may best describe the movement as an attempt to obliterate all—save the purely structural—distinctness between man and woman, and to establish between them a complete identity of duties and functions in place of that separation which has, more or less, hitherto always existed. That certain speakers and writers, not content with mere identification, go on to inversion, and would assign to men the particular tasks now allotted to women, though a significant fact, need not detain our attention. It is no use laughing at this agitation as the outcome of a mere crotchet. In certain states of the moral atmosphere crotchets spread just as do epidemics—which they closely resemble—in certain conditions of the physical atmosphere and other surroundings of man. Who would attempt to deal with the cholera or smallpox by ridicule, how pungent and incisive soever?"

So it appears that in England, as well as in the United States, the demand is for an utter abolition of all distinctions of rights, immunities, privileges, and obligations; that women shall be made men; that men shall be made women. That is the demand.

Now, Mr. Chairman, one word in regard to the arguments made upon the other side of this question, and they may be all concentrated in a quotation from the Declaration of Independence, as near as I have heard them. It is the old cry. Let us see what there is in it. Taxation and representation should go together. Now, what did the fathers mean by that? Did they mean that all men should hold the ballot in their hands, to say nothing of all women? Why, Mr. Chairman, at that time universal suffrage was unthought of. Suffrage was confined to the few, to the privileged class, and the idea of women voting had never been conceived of at that time. Was it that all men, not to say all women, should hold the ballot, that the fathers objected to the tax on tea? Certainly, every gentleman who knows history knows that if the colonies had been represented in the British Parliament by a constituency composed of one third, one fourth, or one tenth of what we would call the male citizens of the colonies, nobody would have raised an objection. They were taxed without representation. What was meant? That the colonies were entitled to the privileges of British subjects; that is, to be represented in Parliament. Not by men or women—not by all men—because, as I have before said, the idea was unknown. Universal suffrage, or what we call manhood suffrage, did not exist, and never had existed at that time.

One word in regard to the genesis and philosophy of manhood suffrage. Why should man hold the ballot, and why should not woman hold it? What a man earns is his own. I state it as a dogma. What is political sovereignty? It is the fruits of the sword. It has always been the fruits of the sword. Take our own country as an illustration. How do we find it? The colonies came here from Great Britain, not demanding sovereign rights, not demanding the right to go back and undo society and reconstruct it. By no means. They came here as the humble servants of his Britannic Majesty, seeking to benefit themselves and their posterity. But when they were denied the representation of British subjects—and I wish again to call attention to what constitutes the rights of British subjects—it was not that all men should vote, to say nothing about women; it was at that time that a certain select number, both in Great Britain and the colonies, as a privileged class, voted. Then, Mr. Chairman, we find that political sovereignty, that power that we represent with the ballot, is the creature of the sword; was won by the sword. The fathers, when they rebelled, did they win that sovereign power by a declaration that governments derive their just powers from the consent of the governed? If they had depended upon such ammunition as that they would very soon have been cinched. They relied upon something more substantial—upon powder and lead, upon the sword—and they won that political sovereignty that we enjoy, and that the ballot-box represents to-day. Has it been indicated since? Certainly. The sword won it, and the sword has defended it. Now, right here we get the key to manhood suffrage. And allow me to say in this Convention, that property, as property, never has voted anywhere. They claim that women should vote because they sometimes have property. I deny that property ever voted anywhere. It does not vote to-day. The tramp, begging his grub on the road, casts one ballot, and so does Governor Stanford, and no more. And why is this so? Everything that exists in this world exists by virtue of a cause. Let us go back and see what that cause is. It is not because he has got property that he is allowed the franchise, because we know that we have provided in the Constitution that even the tramp who begs his grub upon the roads shall have the ballot. Why? Because the sovereign authority represented by the ballot is sustained by the sword that he is able to wield. The Government may and does call upon him for military support.

THE CHAIRMAN. The gentleman's ten minutes have expired.

[Cries of "Leave;" "Leave."]

MR. CAPLES. The Government demands of him that support, and enforces it if needs be, upon which depends the perpetuity of that sovereign power represented by the ballot. And right here is the philosophy, the equity, the justice, and the common sense of universal or manhood suffrage. But, while we discuss the philosophy of this manhood suffrage, we see that it had no application to women. And why not? Simply because the eternal fiat of God and nature has decreed that they are not so constituted. They lack the physical power, the physical courage, the endurance—not to say that it would interfere with and defeat the great end of creation, the reproduction of our species.

Now, gentlemen have much to say in regard to the oppression of women. Now, I want to know where it comes in. Sometimes they pay taxes. They do not vote, consequently they are oppressed. Are they oppressed when they are not permitted to pay a poll tax? Are they oppressed when they are not permitted to work upon the roads? Are they oppressed when they are not permitted to enter the ranks of the army, to defend the flag that protects them? Is it then that they are oppressed? Are they oppressed when the lady comes into the car door and the gentleman gets up and surrenders his seat to her? Is it then that they are oppressed? When they are wronged, immediately every manly arm is outstretched to defend them, and the privilege of defending themselves is taken out of their hands. Is it then that they are oppressed? I cannot see any oppression in this. Is it not a fact that their sex itself is a title of nobility? I assert that such is the case. In our free land, from the Atlantic to the Pacific, the fact is that her sex is the equivalent to a patent of nobility. She is everywhere respected, honored, and cherished as a being above, infinitely above man, in all the moral attributes. Is this oppression, that she should be so regarded?

I deny, Mr. Chairman, that there is one scintilla of truth in the assertion that woman is oppressed. Men shield and protect and defend her as a being better than themselves. Yes; I say better than themselves. Show me that man who does not treat and respect his daughter and his wife above, infinitely above, his sons—show me such a man—and I will show you a brute. No, sir; it may be true in some cases; it may have been true in some ages, and I know that it is true in some barbarous nations, that women are oppressed. And in this connection I may be pardoned for telling an anecdote that occurred to me when I was a boy. I met an Indian and his wife—his squaw—in the woods where I was hunting. The woman had on her back a load of pumpkins, nearly enough for a mule to carry, and her papoose strapped on top of the pumpkins. I says to the buck: "You take that load off your squaw's back and carry it." "No, no," he said. I had a rifle, and I told him I would put a hole through him if he did not do it, and I made him take it and pack it off. In that instance I admit that the woman was oppressed. But is it true of our men? Is it true of the American people? I denounce the assertion as the very concentration of everything that is false. Is it not notorious to every gentleman on this floor that our people here in California always have been in the habit—and I plead guilty to the charge myself—of educating our daughters up to a higher standard than we have our sons. I have no doubt that every gentleman present who is in moderate circumstances will do the same thing, because of that tenderness of regard that we feel for her because she is a woman. Mr. Chairman, I desire, in illustrating the folly of this crusade against society, against nature, and against God, to quote again from that high authority to show that it is a rebellion against nature, against humanity, and against God. He says:

"It would be ridiculous to suppose that all these diversities, structural and functional, are objectless, and do not imply a corresponding diversity of duties. This accordingly we find to be the case: the male, at least in all species which form unions of any degree of permanence—whether monogamous or polygamous—defends and protects the female and her

young ones. Thus, if a herd of elephants is menaced, the most powerful tuskers take their station on the side where danger appears, while the females and the young are placed as far as possible out of harm's way. If bisons are attacked by wolves, the bulls form a circle, inclosing the cows and calves. A similar order is adopted by wild horses. A gorilla will encounter any danger in defense of his mate, and even among baboons the old males will face an approaching enemy, while the weaker members of the troop make good their escape. A lion has been seen in the same manner covering the retreat of his lioness and her cubs."

What I wish to show from this is that man in his present condition and the present state of society is but the result of that higher development that we see illustrated in a lower degree in those classes of animals that are the lowest in the scale of existence. If we take for example the lower orders of creation we learn from their habits something of that primal condition in which man existed prior to the date of histories. Everywhere we find that the intention of the male is a protector and defender. Why is this so? Simply, Mr. Chairman, because it is the law of the great Creator and the law of our being. And if it were possible for the folly of this age to reverse and undo that which nature and nature's God has done, what would be the result?

Now, Mr. Chairman, while I admit that it is within the province of human folly to go so far as to reverse the order of nature, I know, and every gentleman knows, that while we may not repeal the laws of nature, we may violate them. And if we do we must reap the reward; we must receive the penalty. These great laws are not arbitrary, but are the outgrowth of human interests and human experience, and of the struggle of mankind for existence. I deny, Mr. Chairman, that there is anything arbitrary in the condition of society as it exists here and elsewhere. There is nothing arbitrary about it. It is simply the outgrowth of human interests, growing out of the struggle for existence; and in that connection I desire to read from the same author, showing that any attempt to reverse these conditions upon which mankind exists now, or defying, or outraging, or attempting to override the aggregate and the concrete experience of mankind, would result in retrograde action. He shows most conclusively, although I have not time to read it all, that any attempt to reverse these conditions that we find existing now would be retrograde in action; that the tendency would be to send us backward instead of forward in the march of progress. He says:

"We have, therefore, in fine, full ground for maintaining that the 'woman's rights movement' is an attempt to rear, by a process of unnatural selection, a race of monstrosities—hostile alike to men, to normal women, to human society, and to the future development of our race. We know that the modern 'honorary Secretary' is always ready to exclaim, 'Let heaven and earth perish, so my crotchet may be realized!' But we would bid him ask himself whether the end is worth the means."

Now, Mr. Chairman, I desire to talk frankly upon this subject. Why should we ignore the experience of the human race and attempt to set up an abnormal condition of things that have never existed before? Where is the argument? Well, they go at us with the old Declaration of Independence. I have shown, I hope, Mr. Chairman, that there is absolutely no ground for assuming any parallel in this case. I have shown that the suffrage that was meant at that time not only did not mean women, but did not mean all men. I have shown the reason and philosophy and design of manhood suffrage. I have shown that political power rests upon the sword, is maintained by the sword, and that men alone are capable of wielding that sword. Is this true, or is it not? Can you point to a single instance in the history of any sovereignty that has ever existed by virtue of any other power but the sword? Can you point to any power, any political sovereignty, that ever existed save and alone by the sword? Perhaps our fathers thought that they had established a government sustained by the consent of the governed, resting upon the consent of the governed, that it might exist in that form. Did they believe so? Certainly not. They made preparations to defend it with the sword, and they have defended it with the sword, and if it had not been defended by the sword would it have existed to-day? Who will say that it would have existed to-day? Where would be that power that you represent at the ballot-box to-day but for that sword that has maintained it from the time of the Revolution down to the present day? Do we believe we can maintain it in the future by any other means than the same means that has sustained political power to the present day?

MR. MCFARLAND. I would like to ask the gentleman if he holds that the right to vote depends upon skill in wielding the sword? If that be so, I know a little actress who can run the gentleman through the ribs in two minutes.

MR. CAPLES. The right to vote, the power of sovereignty, does rest right squarely upon the basis of the ability of men to wield the sword. It is true we cannot make distinctions, and say because one man is physically weak and another is physically strong, that therefore the strong man shall vote twice and the weaker one vote once. Neither would it be just to say, taking manhood suffrage as a basis, that a man physically disabled, or an old man, should be disqualified. He may have been disabled in various ways, but at some time or other he owed a duty to the Government to sustain it with sword. But the gentleman would say some men never were, perhaps, capable. But, sir, we cannot make exceptions; and I remind the gentleman that no human system that ever was devised was perfect, or could do exact justice; and I think I have heard the gentleman use that very remark himself. Whether I have or not, I heard it from others, and it is eminently true. It is utterly impossible to do exact and mathematical justice in all cases. It is beyond the skill and ingenuity of man to do it; and it has been wisely said that imperfection adheres to every work of man. But the rule, I say, is a good one. I say, that the philosophy of manhood suffrage is based upon solid grounds; because what would hold wealth up; what would hold sovereignty up; what would hold political rights, the Constitution, and the Government itself up, without the sword to maintain and defend them? It would not exist five years, one year, one month. All human experience proves that all political power is the creature of physical force.

Now, Mr. Chairman, in conclusion, I desire to say, in regard to the report of the committee, that it is in the worst possible form in which the question could have been presented. Why, sir, it would be better, if we were going to commit this folly, to put it in the Constitution, and not leave it for the Legislature. It would attract a corrupting and demoralizing lobby in perpetuity, through all time. Such would inevitably be the result, because we all know that our people are too sober yet to commit this great folly. But in the course of time, no telling. As this authority says, it is a disease that is spreading, and we do not know but what in time we may reach that stage and state of folly. But until that time, we should have a corrupting, degrading, demoralizing lobby, forever besieging our Legislature about this supposed right.

Now, in regard to this great central idea. Would it degrade and corrupt women to be made men—to be invested with this right? Let us, for a moment, consider the matter deliberately. Let us bring it home. Let every man take it to his own door and see what it looks like; bring it up to his own eye, so that he can see it. Imagine, my friend, this state of things. Your wife, a candidate for the Legislature, stumping the county; your daughter locked up in the jury box all night; you, with the newspaper, reading the account of the canvass in which your wife was engaged against John Doe; and John Doe, not being a very gallant man, and a little given to scandal, begins, first, to assert that she is not exactly like Cæsar's wife. Next time he pronounces, boldly, that she is no better than she should be. You, at home, rocking the cradle with one hand and holding the newspaper with the other, and reading this scandal that is being circulated in the newspapers in regard to your wife. Do you like the picture? [Laughter.] Wouldn't you wish yourself in the bottom of perdition? Wouldn't you wish you never had a wife—never had a female child?

MR. BARTON. Serves you right.

MR. CAPLES. Serve me right? I should not have allowed my daughter to go, or my wife? As I before remarked, Mr. Chairman, the ballot carries with it the correlative obligations of citizenship, and that is what they claim. It is what is claimed in every Convention, and in every platform that is put out; equality of rights, of obligations, privileges, and immunities; and they certainly cannot dodge it. But let us look a little further and see what the result may be. Your wife is elected to the Legislature and your daughter is elected Constable, and you are at home taking care of the babies. [Laughter.] Your wife is having a good time sitting here among the members, and if you are lonesome you come up here to see what is going on. You see a bevy of gallant gentlemen around your wife paying great attentions to her. It may be that you will think this all right, and it may not. [Laughter.] I will leave that for gentlemen to imagine for themselves. But the point is here, that it is impossible, that it is not in the nature of things, that women could or would avoid the wreck. Now, gentlemen who are disposed to be gallant and make nice speeches in defense of ladies, cover up the truth with something that will sound nice. They are too true. Their virtue is of inestimable value. They are behind impregnable ramparts, and we are easy on the subject. It was once said that those men who were so liberal in their religious views, were so simply because they had no religion; and I think that gentlemen who have not got any wives, any sisters, any daughters, any mothers, or any intimate relatives, may feel exactly this way. But I put it to my friends, and I put it to every gentleman on this floor, to bring it home to himself and see whether he is willing to trust to that kind of sophistry and flattery conveyed in the declaration that women are too incorruptible, and that they are not to be corrupted. Why, what are the facts, gentlemen? Is there no such thing as fallen women? With all the safeguards that society has placed around them; with all the care, and with an entire removal from the degrading effects of politics, are there no fallen women? I would to God there were not.

MR. BLACKMER. Do you propose to prohibit a fallen woman from voting and allow male criminals to vote?

MR. CAPLES. That reminds me of an anecdote, but I am not at liberty to tell it now. I could tell the gentleman privately an anecdote that would illustrate it far better than anything I could say here. It is true we have our Troy Dyes. We have criminals of every grade, and we cannot prohibit them from the exercise of the right of suffrage until we have convicted them. Then we do propose to take away from them the ballot. But I will remind the gentleman that it is a legal maxim that every man is innocent until he is proved guilty. When he is proved guilty we take it from him, and I say never give it to him again—never!

No, Mr. Chairman, the truth, and every man must and will realize it if he will bring it home to himself, is, that good, high, holy, and pure as our women are—and there is no man living upon the earth who has a more reverential respect for them than I have—I had a mother, I have a wife, and daughters, more than the other gentleman, I have no doubt—perhaps I have been more blessed in that respect than others have, and I can bring it home to myself—I own, as a matter of fact, that I have been infinitely more careful about the purity of my wife and daughters than I ever thought it necessary to be for myself and my sons. Is not this the experience of every man? Show me that man who has not more care and regard for his wife and his daughters than he has for himself and his sons. I hope he is not on this floor, Mr. Chairman. I cannot conceive of any heresy that the human mind ever conceived of so dangerous, so utterly repugnant to every sense of refinement, feeling, and honor, as this last and latest heresy. Why, what would be the result? We all know that there are causes that while they do not disturb the purity of the great class of our women yet do drag others down into the mire of infamy. Shall we by deliberate policy increase the dangers? Why, gentlemen, if time permitted to read a discussion here

by Mr. Cook, a member of the Ohio Convention, in which he was the champion of this lunacy, and he drew a most brilliant picture of the purity and excellence of women, and finally declared: "Cannot you trust her—she who alone can say whether your heir shall be your own?" Opening right at your feet a yawning chasm, deep, dark, impenetrable, into which man may be precipitated.

MR. BARRY. Mr. Chairman: Considering the fact that the gentleman from Sacramento has occupied so much time upon this question, and as I am satisfied that we cannot get to a vote this evening, I move that the committee do now rise, report progress, and ask leave to sit again.

The motion prevailed.

IN CONVENTION.

Mr. Tinnin in the chair.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Right of Suffrage, have made progress, and ask leave to sit again.

MR. STEDMAN. Mr. President: I move that the Convention take a recess until seven P. M.

ADJOURNMENT.

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

The motion prevailed.

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

ONE HUNDRED AND NINTH DAY.

SACRAMENTO, Tuesday, January 14th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Harrison,	Reynolds,
Ayers,	Harvey,	Rhodes,
Barry,	Herrington,	Ringgold,
Barton,	Hilborn,	Rolfe,
Beerstecher,	Hitchcock,	Schomp,
Belcher,	Holmes,	Shafter,
Bell,	Howard, of Los Angeles,	Shurtleff,
Biggs,	Huestis,	Smith, of Santa Clara,
Blackmer,	Hughey,	Smith, of 4th District,
Boggs,	Hunter,	Smith, of San Francisco,
Boucher,	Jones,	Soule,
Brown,	Joyce,	Stedman,
Burt,	Kelley,	Steele,
Campbell,	Kenny,	Stevenson,
Caples,	Keyes,	Stuart,
Charles,	Kleine,	Sweasey,
Condon,	Lampson,	Swenson,
Cowden,	Larkin,	Swing,
Crouch,	Larue,	Thompson,
Davis,	Lavigne,	Tinnin,
Dowling,	Lindow,	Tully,
Doyle,	Mansfield,	Turner,
Dudley, of Solano,	Martin, of Santa Cruz,	Tuttle,
Dunlap,	McCallum,	Vacquerel,
Edgerton,	McComas,	Van Dyke,
Estee,	McConnell,	Van Voorhies,
Estey,	McFarland,	Walker, of Tuolumne,
Evey,	McNutt,	Waters,
Farrell,	Miller,	Weller,
Fawcett,	Moffat,	Wellin,
Filcher,	Moreland,	West,
Freud,	Morse,	Wickes,
Garvey,	Nason,	White,
Glascock,	Neunaber,	Winans,
Gorman,	Ohleyer,	Wyatt,
Grace,	Pulliam,	Mr. President.
Hale,	Reed,	

ABSENT.

Barbour,	Hall,	O'Donnell,
Barnes,	Heiskell,	O'Sullivan,
Berry,	Herold,	Overton,
Casserly,	Howard, of Mariposa,	Porter,
Chapman,	Inman,	Prouty,
Cross,	Johnson,	Reddy,
Dean,	Laine,	Schell,
Dudley, of San Joaquin,	Lewis,	Shoemaker,
Eagon,	Martin, of Alameda,	Terry,
Finney,	McCoy,	Townsend,
Freeman,	Mills,	Walker, of Marin,
Graves,	Murphy,	Webster,
Gregg,	Nelson,	Wilson, of Tehama,
Hager,	Noel,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence for one week was granted Mr. Finney.

Leave of absence for the balance of the week was granted Mr. Wilson, of First District.

Indefinite leave of absence was granted Messrs. McCoy and Eagon.

THE JOURNAL.

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

So ordered.

AMENDMENT TO RULES.

MR. WYATT. Mr. President: I send up a notice.

THE SECRETARY read:

"I hereby give notice that, on to-morrow, I shall move to amend Rule Two, so that it shall read as follows:

"The Convention shall take a recess each day from half-after twelve o'clock M. to two o'clock P. M., and on Tuesdays, Wednesdays, and Fridays, from five o'clock P. M. to seven o'clock P. M."

ABSENTEES.

MR. WELLIN. Mr. President: On Saturday there was a resolution presented and temporarily laid on the table, at the request of Mr. Wilson, so as not to interfere with the consideration of the report of the Committee on Judiciary. I now move that the resolution be taken from the table.

The motion prevailed.

THE SECRETARY read:

Resolved, That the Secretary of this Convention be and he is hereby instructed to report a list on each Friday of all delegates who are or may be absent more than three days, and that the per diem of such absentees shall not be allowed.

Resolved, That the Sergeant-at-Arms be and he is hereby instructed to report to this House the absence of any attaché each day, and that for three days' absence such attaché's place shall be declared vacant, sickness excepted.

MR. CAPLES. I would like to inquire of the gentleman what per diem he refers to? I am not aware of the existence of any per diem. It seems to me that this is fishing for something that has no existence.

MR. GRACE. I move that this matter be indefinitely postponed.

MR. WELLIN. Mr. President: I know that some gentlemen are always ready to make a motion to cut off debate, but I believe this motion is debatable. I was under the impression for the moment that it was not. I presume there is nothing in these resolutions that require much talk. We have, from day to day, a large number of absentees, and I believe that we should stop issuing certificates to them. I used the word per diem in the resolutions. You are issuing certificates which may some time be worth money. We do not know whether they will or not. But if they are the State should not be called upon to pay two or three weeks per diem to men who are not here. I believe that those who stay away should not be paid. I understand also that some of the attachés desire to leave this Convention. Now, perhaps they have a perfect right to leave, but they have no right to receive pay if they do. If they desire to go and abandon their posts, why, let them go. We can succeed in getting along without them. But I think it is only fair to the people of the State that we show some regard for the proper expenditure of their money.

MR. GRACE. Mr. President: I do not wish to speak on this resolution, and I do not intend to; but the gentleman insinuated that I wished to cut off debate. He, nor no other gentleman has ever heard me say that I was in favor of moving the previous question. I have always been in favor of investigating every subject that comes up here. I hold that this is a deliberative body. I have said that I believe the previous question being moved in Committee of the Whole was a disgrace to this Convention and to our civilization. I say that it should not be done in Committee of the Whole. I throw that back to the gentleman. He is mistaken. The reason I made the motion to indefinitely postpone the resolution, was that I believe it to be a buncombe resolution. I do not know that we are getting any per diem. I do not see why we should absolutely fool away the time of this Convention with such resolutions.

THE PRESIDENT. The question is on the motion of the gentleman from San Francisco, Mr. Grace, to indefinitely postpone the resolutions.

The motion prevailed, on a division, by a vote of 51 ayes to 34 noes.

AMENDMENT TO RULES.

MR. McFARLAND. Mr. President: I move to take up the amendment to Rules Fifty-five and Fifty-eight, of which I gave notice.

THE SECRETARY read:

"I hereby give notice that I will move to amend Standing Rule Number Fifty-five, so that it shall read as follows:

"'FIFTY-FIVE—COMMITTEE OF THE WHOLE.

"'In forming a Committee of the Whole Convention, the President may preside or appoint a member to preside. When propositions or resolutions relating to the Constitution shall be committed to a Committee of the Whole Convention, they shall be read in Committee of the Whole by sections. All amendments shall be noted and reported to the Convention by the Chairman. After report, the proposition or resolution shall again be subject to amendment before the final question is taken: but any report, proposition, or resolution may be considered in Convention without having been committed or referred to the Committee of the Whole.'

"I also move to repeal Standing Rule Number Fifty-eight."

MR. McFARLAND. Mr. President: The amendment I propose to Rule Fifty-five does not change the rule at all, except that propositions may be considered without being referred to the Committee of the Whole. It seems to me that there are a great many reports here on which it would be better, after a limited consideration in Committee of the Whole, to dispose of in Convention. The majority of the Convention will always have it in their power to remain in Committee of the Whole as long as they please. A majority of the Convention, after discussing a matter to some considerable length in Committee of the Whole, might be in favor of reporting it back and finishing the action in the Convention, where the action will be final. I think it will add very much to the expedition with which business can be transacted, leaving, of course, the matter always in the power of the Convention to remain in Commit-

tee of the Whole as long as they please. I move, therefore, that the amendment to Rule Fifty-five be adopted. Rule Fifty-eight provides that all propositions shall be considered in Committee of the Whole.

MR. BEERSTECHER. Mr. President: I hope the motion of the gentleman from Sacramento, Judge McFarland, will not prevail. The gentleman says that if his motion prevails we will get along faster. There is such a thing as making haste too fast. We know that in a number of instances matters have been passed upon in Committee of the Whole that have subsequently been changed. We know, further, that matters have been passed upon in Committee of the Whole, that now stand as the sense of this committee, that, when we come into Convention, will be changed; that our opinions have been materially modified. There is no reason why we should go out of Committee of the Whole into Convention, and immediately vote there, under the impulse of the moment, what we have determined upon in Committee of the Whole. Just as soon as there is no further new business to be done, then we go into the Convention and vote upon these matters finally.

MR. MCFARLAND. It does not follow at all that we have to vote immediately. I do not propose that we vote upon it in Convention immediately after going out of Committee of the Whole.

MR. BEERSTECHER. I look upon the matter as dangerous—as extremely dangerous—not only in its effect, but in precedent. We are departing from an established usage. Every day some one makes a motion to amend, or change, or alter some of our standing rules, and we will keep doing this until we get into deep water, where it will be hard and difficult to extricate ourselves. The object of this motion is that matters can be brought up in Convention which have not been discussed in Committee of the Whole, and, under the impulse of the moment, matters may be rushed through. We might have hasty legislation that we might repent. I do not think we have any right to prejudice our action in this way. I hope that the standing rules will be adhered to, and that the motion will be voted down.

MR. HOWARD. Mr. President: From this proposed amendment I see nothing but confusion, and I move that it be laid on the table.

The motion prevailed.

RIGHT OF SUFFRAGE.

MR. STEELE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Right of Suffrage.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section one and the pending amendments are before the committee.

SPEECH OF MR. STEELE.

MR. STEELE. Mr. Chairman and gentlemen of the committee: Yesterday when I attempted to speak upon this question I was suddenly taken sick, and not able to finish my speech. I beg the indulgence of the committee while I make a few remarks, and if there is no objection I will proceed.

Mr. Chairman and gentlemen of the committee: I am sorry to see the disposition manifested on the part of some of this committee to choke this question down. The question under consideration is one of the most important that has been before the Convention or this committee for discussion—for it involves human rights—the political rights and privileges of one half of the citizens of this commonwealth. I am, sir, in favor of this amendment to strike the word "male" from this section, because I believe it is right and just, and as it should be. If I succeed in making the reasons for this belief which is within me as plain and conclusive to the majority of this committee as they are to my own mind, this amendment will prevail, and this word "male" will be stricken from this section. Why, sir, this word "male," as used in this section, it seems to me, has a double signification—indicative, not only of one of the sexes, but also of that garb of ignorance and prejudice with which man has clad himself as with a coat of mail, thereby rendering his reason and his consciousness impervious to the shafts of argument and logical reasoning which woman and the advocates of her equal political rights and privileges have been hurling against it, as against a wall of adamant, for the past quarter of a century. In the first place, sir, one half of the people, and by common consent the better half, who constitute and compose the citizens of this commonwealth, are not males, but females; not men, but women, who with the males are equally interested in the peace and prosperity of the country, in the happiness and well-being of the people, in the justice and righteousness of the laws by which the country is governed, in the economy and purity of the administration of the government, in the perpetuity of the liberty and free institutions of the country. But woman has no voice in making the laws by which she is governed, or in choosing the officers by whom the laws are executed. Hers is the right of the slave to obey; his, the self-asserted right to command; hers the right to pay taxes—if she is so fortunate as to have any property—without representation, to be tried as a criminal, and punished as a felon, by laws which she has no part nor lot in forming. And yet, sir, she is one half of the human family, of the genus homo, possessed of a marked and distinct individuality, an ego, a self-hood. She is the half without which the other half who claim the right to be the governing half could not exist. Each are dependent and interdependent the one upon the other, the two constituting and forming one perfect sphere, one entire whole; corresponding to the positive and negative forces which permeate and pervade, animate, and dominate the entire domain of force and matter. Yes, sir, the female is necessary to the existence and well-being of the male—from the very nature of things the one could not exist without the other. They are both the equally beloved, and equally, though differently, endowed children of the great loving father and mother. I do not believe, sir, that the overruling powers of this universe are an infinite male, or man, and a bachelor at that, on the one hand, and an infinite devil on the other; the latter, whether man or beast, tradition has failed definitely to reveal. In part, at least, to the influence of this man-made theological dogma of the past ages, and upon which human laws and governments, in a measure, are based, may be attributed the abject, subjugated, and helpless condition of women in the past ages of the world. Said a Paul, and in so saying, he only gave utterance to the learning and sentiment of the age in which he lived: "If a woman would know anything let her ask her husband, a man, for it was a shame for a woman to speak in public," and he might have added with equal truth, it was a shame for her to appear in public.

Happily, the world, or the more enlightened portion of it, has outgrown this pernicious doctrine, and woman is taking part in public affairs to-day as never before. But there are still lingering, tangible traces of man's belief in woman's inability to govern herself, or assist in the government of the State; lingering traces of the barbarism of the past ages, which still cling, with the tenacity of a death-grip, to our law and theology, which can only be obliterated from our statute books and our creeds by extending to woman, equally with man, the use of the elective franchise. And why not? History answers back from the depths of barbarous ages: Why? I believe, sir, that the overruling powers of this universe are a great, loving father and mother, who have equally endowed their earth-children, male and female, with attributes of divinity, based upon principles of eternal, indestructible, and reciprocal justice. This idea is in consonance with an humanitarian age, and the spirit of an enlightened progress—an idea which is entertained and promulgated by many of the best speakers and writers and most profound thinkers of the age. But man is ambitious, aggressive, and self-asserting. He would compass heaven and earth for the means to gratify his ambition; would clutch it *all* in his grasp, and appropriate it to his own selfish purpose and aggrandizement. He would wade through seas of blood and oceans of human tears to place himself on the throne of empire, and sway the scepter of arbitrary rule over a subjugated and enslaved people, woman included. Man's inhumanity to man, and woman, too, has caused countless millions to mourn. But woman, full of the spirit of human love and sympathy, follows in the path of man; she visits the sick and wounded on the field of battle and in the hospital; she binds up the wounds of the wounded, conveys the cooling, healing, draught to his fevered lips, attends him by day, watches over his couch by night, with the tender care of a sister or mother; if he recovers, she rejoices with him and sends him on his pathway of labor and duty; if he dies, like an angel of light and mercy she inspires his last moments with hopes of a better life beyond the grave; closes his eyes in death; catches the last feeble accents from his faltering lips, and conveys the tender message to the dear ones at home. Yes, *she* binds up the wounds he inflicts, assuages the grief, and dries the tears he causes to flow. With an unselfish, unwearied, and undying love and devotion, she consecrates herself to man and their mutual offspring. The domain of man seems to be that of intellectual force and physical power. Her's the realm of human love and sympathy, of social refinement, intellectual and moral purification and elevation. Without her this world would be either an aching void or a Pandemonium—a *Hell*. But *with* her, if man will only allow her to aid and assist him to the full extent of her ability and power, it may, and ought to become, a Paradise—the seat of art and learning and social refinement; nay, of the summation, the consummation of all the virtues—*human sympathy and love of kind*.

With Americans, sir, it is a favorite doctrine that Government derives its just power from the consent of the governed; that taxation without representation is tyranny and oppression too grievous to be borne, to right which an appeal to arms and the arbitrament of war would be justifiable if milder means will not prevail. That the people are the source and fountain of all political power in the State; that the individual citizen is the constituent element of sovereignty; hence, that the right to vote—the form through which sovereignty is expressed or exercised under our government—is an inherent, an inborn right, which attaches to the individuality, the personality of the citizen or sovereign. Government may prescribe rules regulating the method of voting or exercising sovereignty; but it cannot justly abolish or deny the exercise of that right to a single citizen, except as a punishment for crime, nor then even, except by due process of law. For if Government may deprive a citizen of the right to vote without just cause, it may disfranchise a community or a nation, and set up an aristocracy or a monarchy at its own sweet will, which would be subversive of the very fundamental idea of sovereignty in the people—a doctrine which is diametrically opposed to the theory upon which our Government is based. Directly opposed to the idea of a government by the people for the people; an assumption, sir, which, if followed out to its legitimate results, would land us in the arms of a monarchical government and the exploded doctrine of the divine right of kings. It was formerly supposed that the person of the king was the embodiment of the political power of the State. His will was law, and his edicts, backed by the entire power of the State, required and exacted unquestioning obedience from his subjects.

But our Government is based upon a different principle, and proceeds upon a different theory. With us, government means that delegated power which the people have set up as a matter of convenience through which to exercise a portion of their sovereign power for the better protection and security of the reserved rights of all the citizens, whether high or low; noble or ignoble; rich or poor; male or female. While a monarchical government elevates, ennobles, and enthrones the king at the expense of the rights of the people, our Government acknowledges the citizen as the sovereign, and by the proper restraints of law, by the education and development of the inherent power of his being, strives to prepare him for the proper expression of his duties and privileges as

a sovereign or citizen. Now, sir, no one will deny, not even Dr. Caples himself, that woman is a citizen of this commonwealth, and under the Government entitled to the enjoyment of the rights, privileges, and immunities which inure to the citizen. That being true and granted, how, I ask, can you justly deny her the right of suffrage? But it is objected, that to mingle in the "dirty pool of politics" would degrade woman and drag her down from her high estate. If politics is a dirty pool, who made it so? Certainly not woman, for she has had nothing to do with politics, and that is the main reason why they are dirty. But if politics are so contaminating and corrupting to good morals, why not save good men from participating therein? "The polls is not a decent place for woman." Well, no place is decent where woman does not go. When you take your wife and daughter aboard the railroad cars, the cars at once become decent. A smoking car is attached to the train, and a place provided where the male biped can smoke, and chew, and squirt tobacco juice on the floor and over the seats; where they can exhale and inhale the combined fumes of whisky and tobacco to their hearts' content. They can revel therein without fear of molestation from woman.

"But refined women will not vote." Many refined women go on missions to foreign countries, teach the freedmen in the South, visit barrooms to secure their husbands from the degrading influences and associations of strong drink; go to the Five Points in New York on errands of mercy and reform; they visit the hospitals and the dissecting room. Surely, if they visit all these places with impunity, they may venture to attend the polls and cast a ballot for the person whom they may wish to represent them in the Legislature or any other department of the Government. "The best women will not vote." Then, surely, they are not the best women, for, when the time comes, the consciences of the best women will not allow them to stay away from the polls. What loyal woman would not gladly have voted at the reëlection of Abraham Lincoln? "Bad women will vote." So will and do bad men vote, but bad women will not vote openly as bad women; vice in women, by instinct, seeks to hide itself and passes under another name. She will imitate virtue when voting, rely upon it. "Women will vote as their husbands." But many women have no husbands, nor living fathers. Is it not, after all, that woman is different from man, that she denies his right to vote for her and represent her; to judge her in Court, and spend her tax money? "If women vote it will divide the family." But such is not the experience in Wyoming, where women have been voting for the last ten years. Families and nations have quarreled over religion much more than they ever did over politics. If a woman may be allowed to choose her religion, why not her party as well. "Women don't want to vote." Some of the most intelligent of them say they do, and for my part, I had rather believe them, than what the men say, for I think they know better what they want than men do. Some of the members object to this amendment extending suffrage to women, because it would load down the Constitution, an objection which only goes to the policy and not to the right and justice of the question. How do they know it would load the Constitution. Besides, is it not fair to suppose that the thousand and more active and determined men and women throughout the State, who favor woman suffrage, would overcome the apathy and indifference of the many who think they are opposed to it without any, or a good, or sufficient reason therefor. In which event it would become an element of strength instead of weakness, in the new Constitution. These objections only tend to show the utter futility and weakness of all the arguments which have been or can be urged against woman suffrage by the other side.

THE CHAIRMAN. The gentleman's time has expired.

MR. BIGGS. Mr. Chairman: I desire to give my time to Mr. Steele.

MR. LAVIGNE. I object.

THE CHAIRMAN. There is an objection; the gentleman can not proceed.

MR. VACQUEREL. Mr. Chairman——

MR. GRACE. I rise to a point of order. There was an argument, as I understood——

THE CHAIRMAN. The gentleman from San Francisco, Mr. Vacquerel, has the floor.

SPEECH OF MR. VACQUEREL.

MR. VACQUEREL. Mr. Chairman: I will not sustain this amendment, on the grounds of humanity; that word cannot be used in this hall where the whipping-post has been established, but I will try to show the necessity of adopting Mr. Blackmer's proposition. I will start from a material standpoint; and, sir, if I raise my voice in this question, it is because the Burlingame treaty and the Fifteenth Amendment of the Constitution of the United States order it. Section five of the treaty says that citizens of China shall enjoy the same privileges and immunities as citizens of the most favored nations. Now, what are the privileges granted? One is the privilege of naturalization, and from that privilege comes all the rights of citizens. Further, article six says that nothing therein contained shall be held to confer naturalization upon citizens of China. It is all very well, but if nothing in that part confers naturalization, is there any word that prevents the conferring of citizenship whenever Congress shall be or feel so disposed? If ever any man, in the year eighteen hundred and fifty-nine or eighteen hundred and sixty, had said, not down South, but in New York, that negroes would vote to-day, and that they would become citizens, would not that man have been treated as a lunatic? And still, negroes vote to-day, in spite of all the laws that existed against them in those times. If we search further, sir, reading page three hundred and eighty-two, section two thousand one hundred and sixty-nine of the Revised Statutes of the United States, as amended in eighteen hundred and seventy-five, under the title of "Naturalization," we will find that it says:

"The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity, and to persons of African descent."

Of course Congress has not permitted Mongolian naturalization so far, but Messrs. Chin Lan Pin, Mint Cook, and Bee are certainly prepared. It is only a matter of time when Congress will see that we have passed laws restrictive upon Chinese. I am afraid that, with a stroke of the pen, all our work will be destroyed. Now, gentlemen, I hope I am mistaken, but I am afraid I shall be proven right. Does this section specify that it shall only apply to the races mentioned? No. It applies to those, but it does not say that it cannot apply to others, and, therefore, in my humble knowledge, I fail to see, in any of the recited articles, any law that prevents Congress from admitting Chinese to citizenship. Then, supposing "Mr. John" does get naturalized, he certainly will fall under the Fifteenth Amendment. On account of race or color, it says. Does that amendment specify what race, what color? No. To-day it only applies to white and black; but, sir, I have learned in my youth that there were other colors, and I ask you, gentlemen, where is the word or the law that prevents another color from voting when the people of that color shall have been admitted to citizenship?

Now, Mr. Chairman, as women have been the perdition of men in olden times by eating an apple, I will readily forgive them that sin if by their votes they can save men, not from perdition, but from starvation. Looking in the report published by the special committee on Chinese immigration, and taking the City of San Francisco as an illustration, the Chinese population of said city is one fourth—say, then, forty or fifty thousand—of which, in a few years, at least the half would be voters, say twenty-five thousand. Now the voting population of San Francisco is about thirty thousand, and they are divided in three parties, if not more. Those twenty-five thousand Chinese would always be masters at the polls, and us, where will our strength be? But if you allow ten or fifteen thousand women to vote, will they not overbalance the Chinese power and give us the majority?

Now, sir, it has been said that only low class women would vote. I want to know what is the meaning of such word. Because a woman is poor is she low? I hope, gentleman, that you do not think that poverty is a crime. When I hold for the right of suffrage for women, I hold it for all women, rich or poor, in whatever class of society they belong. I do not make any allusion to those miserable wretches that have lost their claims to the name of woman. I hope you do not think I am so uncivilized as to compare those degraded instruments of vice to our mothers, or sisters, or wives, or daughters. When I say women I do not say vampires.

I do not stand here to praise women—flattery is unknown to me. I do not speak through any influence whatsoever. Republics and empires have been saved through different causes, but not one yet has had the honor of having been saved by women. Well, let California have the glory of having been saved by them. Now, sir, I take more interest in the vote which will be cast on this question than any other; the record of this vote will prove if really those who pretend they are opposed to Chinese are in earnest. I offer you, gentlemen, a legal and constitutional way to prevent the Chinese power in this State. Will you listen to it? If the Chinese don't go yet, let us apply a remedy that in case they could vote their vote would be of no power, and this vote will show if men are in earnest in their denunciations, and it is a sound political measure, which cannot do any harm and may prove to do a great deal of good. I speak as a man that feels the truth of his assertions, and, believing that I am voting for the welfare of the people, I will sustain the women suffrage, and hope the amendment will be adopted.

SPEECH OF MR. GRACE.

MR. GRACE. Mr. Chairman: I do not rise particularly for the purpose of going over the many and convincing arguments which this subject of female suffrage is susceptible of, and I don't hardly see where, in this day and generation, any necessity for such arguments can exist.

To the American people the subject is no new one, having been vigorously agitated and discussed for the past twenty-five years, and the old and stereotyped objections are equally familiar to us. They have been, and I doubt not will still further be given to us in our consideration of the question here. Gentlemen will tell us that there is no well developed demand from that part of our people whom this enfranchisement would bring into a share with us in the performance of the noblest office of citizenship; that they, as a class, are making no effort for a share in the political management of our country; that they would not avail themselves to any considerable extent of the privilege if it was granted; that the exercise of this political duty, if it was given them to perform, would have the effect of lowering the tone of our morality; that it would have the effect of destroying, in a great measure, the purifying and elevating influence of woman in her domestic relations, and her higher duties to humanity in her character of wife and mother; and finally, that, as from the higher and more binding obligation of her duty to the family circle, she should be protected from the probable contamination which would result from her mingling in the dirty pool of politics, so she is equally to be preserved from this additional duty of citizenship on account of her physical incapacity.

I say, Mr. Chairman, the time for resisting the performance of our duty in relation to this question, upon the excuses offered by any of these old-fashioned arguments, has gone by, and gentlemen must now come squarely up to the question and go upon the record, as refusing the extension of a privilege to a class whose right to it they cannot deny.

The history of the agitation upon this question goes far to refute, in itself, many of the arguments which are used against it. It will be seen that it is not merely a movement for women, but by them; and as a test of the character and ability displayed by them thus far, I am perfectly within bounds in saying, that in all the Conventions held in the various parts of the country, the quality of the speaking and character of the proceedings have compared more than favorably with those of any other popular movement.

Now, sir, a word or two with reference to these old objections, which

I have in part recited. Supposing the fact to be true, in the fullest extent ever asserted, that the women are not desiring any change, does that prove anything? If it proves that the American women ought to remain just as they are, it proves equally that the Asiatic women should remain as they are also, for they, instead of murmuring at their seclusion and restraints, pride themselves on it. The vast populations of Asia do not desire, and probably would not accept political liberty, nor, as we well know, will our native Indians accept civilization, which does not prove that either of these things is undesirable, or that they will not at some future time enjoy them.

It is the old plea—"there is no complaint"—which is not true in any sense of the word. I never knew a woman in my life who did not, or would not, wish the right for herself individually, and it is ridiculous to assume that because all are not joining in the cry for it that they therefore oppose it, for it requires unusual courage for a woman to proclaim herself as favorable to woman's enfranchisement, until at least there is some prospect of obtaining it. The comfort of her individual life, and her social consideration, depends on those who hold the undue power. Her position is like the tenant who votes against his own political interests to please his landlord; and in her case, the custom being inculcated from childhood as one of the peculiar feminine graces, is the only reason why the demand from the other side of the house for release from their political bondage is not as widespread as humanity.

No, sir; custom hardens human beings to any kind of degradation, but in the case of women it is peculiar, for no other inferior class that I have ever heard of thought their degradation was their honor. But if no such demand will or does exist, why make laws which prohibit the existence of their right. It never has been thought necessary to make laws compelling people to follow their inclinations. As to the hardening influence which association with public affairs would bring upon woman, it is all humbug to talk in this day of our civilization, for the idea of guarding women from the hardening influences of the world can only be effected now by excluding them from society altogether. No, sir. Just so surely as every landmark in the long march of civilization and enlightenment has been accompanied with, and in a great measure attributable to a corresponding extension of the rights of women, so in this case, if this crowning act of justice should be done, it would mark the destruction of the many sloughs of depravity with which our political life is associated.

As to the other argument, that it will interfere with the domestic life; that the maternity question forbids it; no sound reason can be advanced. I deny the right of this Convention, or any law-making power in the world, to say to women, you must be mothers or nothing; or, that having been mothers once you can never be anything else. Neither women nor men need any law to keep them out of a business, if they have become engaged in another, with which it is incompatible. Nine tenths of the males in the world are engaged in lines of business which precludes their engaging in public life as completely as if they were excluded by law, but that is no reason why they should on that account be prevented by law from engaging in public life, much less is it a reason why the remaining one tenth should be excluded also. No, sir; the whole of this branch of the argument falls into just this proposition: that if women must be forbidden politics, because maternity disqualifies them for it, they must be forbidden every other career in life, in order that maternity may be their only refuge. But even this argument fails in the large and increasing numbers of single women, to whom it is unjust in every sense of the word, to say: You shall not, if you so decide, devote yourself to public life, and forswear the obligations of the married relation. Mr. Chairman, in every phase of the question there is not one sound objection to this claim. We set out in our glorious old Declaration of Independence, "We hold these truths to be self-evident that all men are created equal." I don't imagine there is a man in this chamber who holds for a moment that the term "men" there used, was intended to apply to one sex only, for all know that it is in its broad generic sense it was used, and meant the whole human family. Nor will any one assume that the other declaration that "Governments derive their just powers from the consent of the governed," means the consent of one half of mankind only. In addition there is the other forcible application of the old principle of "taxation without representation," which, if it means anything in the other cases when its violation has justified bloody revolution, should apply here. As a question of justice the case is too clear for dispute, and, as to expediency, I am convinced that the more thoroughly it is examined the stronger it will appear. Personally——

THE CHAIRMAN. The gentleman's time has expired.

[Cries of "Leave!" "Leave!"]

MR. HOLMES. I object.

MR. STEDMAN. Mr. Chairman: I move that the gentleman have an extension of five minutes time.

THE CHAIRMAN. The motion is out of order. There is an objection made and the gentleman cannot proceed.

MR. STEDMAN. I understand that it can be done by a vote of this committee.

THE CHAIRMAN. No, sir. The gentleman is out of order. It cannot be done by the committee without unanimous consent.

MR. STEDMAN. All right.

MR. GRACE. I would like to make one remark on a question of privilege.

THE CHAIRMAN. There is no question of privilege in Committee of the Whole.

MR. WELLIN. I move that the speech be printed in the daily Journal.

MR. REYNOLDS. Mr. Chairman: If I were to address this committee upon this subject I should take the opposite side to the gentleman from San Francisco, but that he may have an opportunity to express his views I will yield the floor to him for my time.

MR. WATERS. I object.

REMARKS OF MR. RINGGOLD.

MR. RINGGOLD. Mr. Chairman: I rise merely to place myself on record on this question, and do not intend to make any speech. My colleague, Mr. Grace, has taken the wind out of my sails by using my argument, and I shall not go over it again. I do not desire to drag a woman up to the polls if she does not desire to go there. But give her the right to vote; and if there is only one woman in the land that desires to vote on election day, I am in favor of giving that woman the elective franchise, for the reason that I am opposed to taxation without representation. I believe that this clause as it stands here is a libel upon the sentiment of equality. It is a standing bar upon the claims of representation. Why, Mr. Chairman, the lady that I board with pays one thousand two hundred dollars a year taxes. She has about fifty males boarding with her, and I do not suppose in the aggregate that they pay one hundred and fifty dollars a year. But at the same time, on election day they go up to the polls and deposit ballots which affect her property. That woman has not got a voice in it at all. For this reason I consider the proposition here a fraud. I will not say anything more than that I am in favor of the amendment as offered by the gentleman from San Diego, Mr. Blackmer.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. Chairman: It is with extreme reluctance that I rise to speak on this all-important question. I would not do so now were I sure as to the passage, or ratification, of the new Constitution. We are all aware that the Convention was called by a small majority of the people of the State of California. We are, furthermore, all aware that on many sides we have arrayed great opposition to this new instrument. We have arrayed against it all the men engaged in stock operations, the insurance companies, the brokers, the corporations, and nearly all the mining associations, so that we cannot afford to put anything else in the Constitution that will array another class against this new instrument. And, sir, I venture the assertion that this provision at the end of section one will imperil the ratification of this new Constitution. I do not intend to impugn the motives of any gentleman who has advocated the passage of this provision; but, sir, I am well aware—I feel confident—that it will endanger this new Constitution. I hope, sir, that what I am now saying will not be interpreted as opposition to woman's suffrage. I hesitate at this moment to put myself upon record. I think I am as charitable to the women as any gentleman upon this floor, and I think my love and admiration for them is not exceeded by any gentleman, not excepting Mr. Tully himself. [Laughter.] But, sir, at this moment I do not think we can afford to give the women a chance at the expense of this new Constitution. My sense of duty impels me to vote against any provision that will array against this new Constitution that large element of the people of this State who are opposed to woman suffrage. Therefore, I hope the provision will be stricken out.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. Chairman: We are considering the expediency of granting women the elective franchise. The principles of republican government must rest upon individual rights. Self-government is founded on intelligence and virtue. If it is man's intention of man that he should rule by intellect, and not by brute force, then he will concede the same to woman. The most intelligent women of our land ask and demand the right of suffrage. Man himself believes that all his possibilities are not yet brought into action. Neither are all woman's possibilities. Her power should have as wide and free a range as his. Man meets her claim, not by summing up the advantages that shall accrue to her, to the government, to society, and to the race, but by summing up trivial objections against it. One cry is that she is outside her sphere when she casts her ballot; and it is amusing sometimes to hear this cry go up from that effeminate class of men that stand behind dry goods counters and peanut stands. It would be better, perhaps, if women could invade their sphere and be made more independent. It was once said that for girls to study mathematics was out of their sphere, but recent events have determined that women, that the females in our schools, academies, colleges, and universities can take the highest honors in the higher mathematics. I have been a teacher, and I must say that from my experience in my profession that females take a higher rank than males in education, and in the reasoning powers stand at least upon an equal plane.

As to woman's sphere, who fixed it? Her sphere, like ours, is all her own, from choice. Who fixed the sphere of Rosa Bonheur to put the landscape upon the canvas? Who fixed the sphere and gave the strength and muscle to Miss Lawrence, who lately walked one hundred miles in twenty-five hours? Is there a gentleman in this Convention who can do it? Who fixed the sphere of that woman who swims down the Thames twenty miles in less than twelve hours? Here is the development of the physical. Who fixed the sphere of Elizabeth, of England; Joan of Arc, of France; Catherine, of Russia, and Isabelle, of Spain?

It is urged, also, that women should not vote because her physiological structure is not like that of man. You might as well say that woman does not vote because she does not wear pants. It is said that there are times that woman, owing to her physiological structure, could not go to the polls. That may be; but is there ever a full male vote cast?

Others say that women should stay at home and train their children; that the highest position is to bear and raise children. I suppose, then, the father has no parental obligations. He gets the children and of course has some responsibility, and I do not see why a woman cannot take perhaps fifteen minutes once a year and go to the polls and vote.

Another objection is that the polls are not a fit place for women to visit. Men go there and chew tobacco and drink and fight. The law that we have now has done away with these vile practices. A person cannot go within one hundred feet of the polls without he is going to

deposit his ballot. The dram shops are closed on election day; and if it were not so the presence of women at the polls would banish all these vile practices. Woman's presence has a refining and civilizing influence. I remember in the early days of California, in eighteen hundred and fifty-two, on the Yuba River, there was a bar where about three hundred men were at work. One married man had his wife with him, and her presence at any time checked the oath upon the lips of the rough miner. A woman could go arm in arm with her husband, her father, brother, relative, or friend to the polls.

Another objection is, that politics will make strife in the family. Not in a family that is devoid of strife. For my part, it would be a matter of pride to me when my wife could go to the polls and vote, and I should use no restraint upon her action. Again, it is objected that women would act upon impulse. Why, sir, many men have risen to prominence on account of the judgment and instruction of their wives. I know a distinguished United States Senator now whose wife assists him in the preparation of his best speeches, and he is proud of her. He is in favor of woman suffrage. His wife is a lady graced with all the requirements of her sex, and professionally versed in political economy. Women act, it is said, from impulse, and I remember noticing in a paper the other day, that man rejects religion because he, forsooth, uses his reason, and woman receives religion because she has only an emotional nature. Now, look at our Sabbaths. Man, it is said, uses his reason. Go down K street, and you will see the dram shops crowded with men; they visit the dance houses; they visit the places of prostitution. Woman goes to church. But you say there are abandoned women. Yes, there are; but for every abandoned woman there are a hundred abandoned men. It is no wonder that our poor girls, when a seamstress can make but fifty cents a day, may be tempted, in her necessity, to do that which men would do for but a moment's gratification. And he who makes and breaks the laws fixes the stigma of shame upon her. He considers that he owns woman; she is his mere toy, his mere plaything. There never was but one man whose robes woman could safely touch, and whom woman could adore, and He was virgin born; He could stand with the daughters of Sinai and raise——

THE CHAIRMAN. The gentleman's ten minutes has expired.

[Cries of "Leave."]

MR. SWING. I object.

MR. WATERS. I object.

REMARKS OF MR. LINDOW.

MR. LINDOW. Mr. Chairman: Of course it is hard to speak on this question. Now, I cannot say that the woman shall vote. I won't take only about three minutes; I only want to reply to that gentleman who made the remark yesterday, that women could not fight. [Laughter.] Mr. Chairman, I think contrary, because I tell you what they do. They don't want to work. People have got girls; the first thing is she must have a piano, because she shall not work. They all want to bring her up so she don't need to work, and there is just where it is. If she should have the right of suffrage and go on the polls, she would not go as a Workingman. She would say: "I want to be what we call a Republican, or Non-Partisan. What you want?" "We vote with the Workingmen." "I don't want to work, because I have a Chinaman: he does my work. I don't go with the Workingmen, I go to the Non-Partisan." Her husband says: "You will? Well, then you vote against me when it comes on the polls." First thing he knows she fight him right over the head. [Laughter.] Then I want to see where is the gentleman that says that they cannot fight. [Laughter.] She takes the poker and knocks his head off. [Laughter.] Fight! I guess so. I am against woman suffrage. I don't see why you go to work and destroy the family in that way; there is no cause for it whatever. Give the women all the protection from the laws she wants, but let them stay at home when it comes on the election.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: At the proper time I propose to offer an amendment to strike out all after the word "provided" in line eight, and insert: "After the United States census of eighteen hundred and eighty, the Legislature shall provide that if a majority of the resident women of this State, excluding Chinese and Indians, over twenty-one years of age, as shall appear by said census, shall, at the next regular election, vote in favor of female suffrage, all resident women over twenty-one years of age shall be entitled to vote at all elections in this State."

Mr. Chairman, I propose to say only a word in relation to this matter. I have never in my life encountered a dozen ladies or women who wanted to vote. My own impression is that nine tenths of the women in California are opposed to female suffrage; but I say this, that if a majority of American women in California desire the ballot I am in favor of giving it to them. But I am not in favor of any of this claptrap demagogism. Now, my amendment provides this: that when a majority of the women of this State, appearing upon the next census, vote for the right of suffrage, that they shall have it. But I am not in favor of that thing being taken by default. Now, then, it will be perceived that every woman who does not vote will be counted in the negative. I put it in that shape, because my opinion is that seven eighths of the women of this State would not go to the polls to vote, either for or against female suffrage, and I am not in favor of bestowing it upon them unless they desire it. When they desire it it will be time enough, I think, to give it to them. I shall not go into any argument upon this matter in relation to the right of suffrage by women. I propose to submit it to them, because they are the best judges of the effect upon them socially and politically. My own opinion is that they would not gain by exercising the right of suffrage; that they will lose socially, and they would gain nothing politically. That is my opinion of the matter; but if a majority of them—if it can be shown by their votes that a majority of them in this State think differently—then I am willing that it should be conceded to them, but not until then.

Now, sir, I am in favor of enlarging the employment of women. I believe that the education of the young should very largely be confided to their trust, and various other employments should be open to them; but I do not see that they are to be benefited by the exercise of the right of suffrage. However, if they think differently, they are the best judges of that matter. But I am not in favor of leaving this to the Legislature, because they, from session to session, would be besieged by applications coming from this and from that class of ladies not entitled to a just consideration upon such a subject. In other words, I think it would be mostly by the strong-minded, and not by the modest retiring women, whose votes, I am inclined to think, might improve the suffrage of the country. But I am not in favor of the proposition of the gentleman from San Diego, to strike out the word "male," and I do not think the ladies want "male" stricken out any way.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I do not rise to make a speech upon this subject, but simply to read an article touching on the subject of woman suffrage in the Territory of Wyoming. I believe that in those characteristics of refinement, morality, virtue, and intelligence that go to make up civilization, woman occupies a higher sphere than man, and yet there are duties for which man is peculiarly qualified, and which, from the course of nature, he is better qualified to perform. I believe that women occupy in many respects a higher position than men, and I, for one, do not wish to drag them down from that exalted sphere. I would not have women stoop to the duties that we necessarily have to perform. As the gentleman from San Diego has alluded to the result of experience with woman suffrage in Wyoming, I wish to read an extract from the Indianapolis Journal, which I feel would be pertinent. It gives the views of Captain S. H. Winsor, now a citizen of Indianapolis, and it shows that there is a diversity of opinion on this subject:

"The representative of the Journal yesterday encountered Captain S. H. Winsor, of this city, who lived several years in Wyoming, and asked for some information concerning the operation of woman suffrage in that Territory. Captain Winsor is an educated and observant gentleman. He was Receiver of the Public Land Office at Cheyenne, and was a resident of the Territory when the woman suffrage law took effect, and for several years afterwards. The substance of his views is as follows:

"'I regard woman suffrage in Wyoming as an utter failure, and I think it is so regarded by the best men and women of the Territory. So far as can be discovered it has accomplished no good results, while it has certainly worked badly in many respects. For about two years after the law was passed nearly all the women in the Territory used to vote, my wife among the rest. But after this experience the better class became disgusted with the operation of the law, and quit voting. As an instance of how female citizenship worked in one case, I remember a jury trial where the defendant was charged with rape and murder. The jury consisted of six men and six women. After the trial had progressed about two weeks one of the women was taken sick. The trial was postponed several days on her account, but she was unable to resume her duties, and a new jury was ordered, and a new trial from the beginning. During the same trial I knew of three mechanics, and hard workers men, whose wives were on the jury, and who, in consequence of this fact, had to quit work and stay at home to take care of their children.

"'As an instance of the demoralizing influence of politics on women, I remember seeing a lady, the wife of a candidate for office, standing at the counter of a beer saloon drinking beer with a parcel of colored men. I could mention her name, but will not. She was from Ohio, and was well educated and entirely respectable, but she was so intensely interested in her husband's success that she resorted to this means of getting votes for him. I saw this same lady and a school teacher of Cheyenne in their buggies driving colored men and women, and even known harlots, to and from the polls. In such way as this I regard the operation of the law as demoralizing to women. There may be others who differ with me, but I simply give my views of several years' experience of the law. I may add that my wife, who enjoyed the elective franchise during the period of our residence in Wyoming, entirely accords with these views.'"

MR. STEELE. Mr. Chairman: I believe I have a right to speak to the amendment.

THE CHAIRMAN. The amendment of the gentleman from Los Angeles has not been entertained yet. He merely read it.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: It is not likely that I will detain the committee long. I desire to place myself upon record upon a question that I think after a little members who now do not place themselves in favor of it, will, as it becomes stronger. I wish to do it now, because it might be said here, after that, when I believed in woman suffrage, I was afraid to raise my voice in favor of it. Now, I am not afraid to be in favor of a proposition that the greatest writers have been in favor of for perhaps fifty years past. Mr. Mill, from a political standpoint, is in favor of woman suffrage. Mr. Buckle favors it from a historical standpoint. Herbert Spencer, from a philosophical standpoint, is in favor of it. And all these great writers have placed this matter among the great truths of civilization. Now, it may be said by the average Californian, that this is mere theory; but those who have read the respectable authors upon these great truths, to any considerable extent, will find that all the great truths that modern civilization has accepted were first called theories. They were in advance of their time when first given out, and it was necessary for the people to grow up to them. And this will have the same history. It is slowly permeating not only one class, but all classes of people. You will find that the sen-

average number of women believe in this that you will find among men. I do not see why the Legislature should not have the power to extend the right of suffrage to women. It is not likely that the Legislature will do it any sooner than public opinion will sustain it. I do not think that the Legislature is dangerous in this respect, and I believe that this question should be left for the people to settle through the Legislature, without the necessity of amending the Constitution. Now, I have lived where woman suffrage has been allowed—in the Territory of Idaho. Of course, there is a different civilization in Idaho, but I think that you will find all over the country men circulate around in very much the same ideas and the same customs. Now, in Utah, extending the right of suffrage to women has changed the minds of the people of the United States upon various questions. In the first place, the Gentiles were in favor of it, because they believed that women would vote against polygamy. They found out that they were mistaken in that respect—that they voted stronger for polygamy than the men did. Why is that? Because the devotional nature of those women was the ruling cause in that instance. Now, if we extend the right of suffrage to women, we will throw into the ballot the best element. If ever this great republican power should begin to crumble, its great pillars to fall, I should look to the women as the last ones who would leave it. Go into all the departments of life in which woman has a chance to declare her peculiar characteristics, and you will find that they always give strength to what they sustain. Go into the churches. So it is in all matters that are good, that are strong, that are enduring, woman stands out stronger and brighter than the stronger part of creation, and she will throw this into our hands in the ballot-box.

MR. LAMPSON. Mr. Chairman: Believing that we have occupied enough time upon this subject, I move the previous question.

The main question was ordered.

THE CHAIRMAN. The first question is on the adoption of the amendment offered by the gentleman from San Diego, Mr. Blackmer, to strike out the word "male" in the first line.

The amendment was rejected.

THE CHAIRMAN. The next question is on the amendment offered by the gentleman from Trinity, Mr. Tinnin, to strike out all after the word "elector" in the eight line.

The amendment was adopted, on division, by a vote of 69 ayes to 27 noes.

MR. WALKER, of Tuolumne. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Amend, by inserting after the word 'law,' in line six, the following: 'Provided, that in an election for officers, or teachers of public schools, that women, who are mothers, or who have the guardianship of children, and have the foregoing qualifications, shall be eligible to vote at such elections.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

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

THE SECRETARY read:

"Amend, by inserting after the words 'United States' in the first line, the words 'every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro;' and by inserting the word 'male' before the word 'naturalized,' in line two."

MR. CAMPBELL. Mr. Chairman: The object of that amendment is simply this: there is a question in the minds of certain gentlemen whether the section in its present form embraces that class of people who became citizens, not under the naturalization laws of the United States, but by virtue of the treaty with Mexico—it is to meet that case. The other one, in adding the word "male" before the word naturalized, it is done out of abundant caution, to make the section perfectly harmonious.

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

THE SECRETARY read:

"Add after the word 'elector' in the eighth line, the following: 'Provided, that every unmarried woman, having such qualifications of age, residence, and citizenship as are prescribed in this Constitution for male voters, who has, or may hereafter be the owner of property to the value of one thousand dollars, shall be entitled to vote at all elections in this State; and every married woman having such qualifications, who is or shall be the owner of separate property, to the value of two thousand dollars, shall be entitled to vote at all elections in this State; *provided*, that the Legislature shall have the power to extend the elective franchise to any or all other women having the above named qualifications of age, residence, and citizenship.'"

THE CHAIRMAN. That is not an amendment to the amendment. The question is on the adoption of the amendment offered by the gentleman from Alameda, Judge Campbell.

The amendment was adopted.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I now offer my amendment. It proposes to introduce woman suffrage gradually. I will ask the Secretary to read it.

THE SECRETARY read:

"Add after the word 'election' in the eighth line the following: 'Provided, that every unmarried woman, having such qualifications of age, residence, and citizenship as are prescribed in this Constitution for male voters, who is or may hereafter be the owner of property to the value of one thousand dollars, shall be entitled to vote at all elections in this State; and every married woman having such qualifications who is or shall be the owner of separate property to the value of two thousand dollars shall be entitled to vote at all elections in this State: *provided*, that the Legislature shall have the power to extend the elective franchise to any or all other women having the above named qualifications of age, residence, and citizenship.'"

MR. McFARLAND. Mr. Chairman: This proposes to introduce woman suffrage gradually. I believe that woman suffrage is as certain to be an accomplished fact in the near future as the abolition of African slavery was to be an accomplished fact twenty years ago. In my judgment it will be better to introduce it gradually. I think that a rule which at the start would admit those women who have given the most attention to public affairs and the elective franchise, and providing for its gradual extension to the others, would be a rule that would introduce this change with the least disturbance and with the fewest of those evils that necessarily accompany all important changes. As women have not had the right to vote, of course they have not given the same attention to the acquisition of that kind of knowledge which enables them to vote intelligently.

Now, a rule that would admit, in the first place, those who from peculiar circumstances are the best qualified to vote, it seems to me, would be the best method of introducing this change. Now, I have introduced a property qualification. I do not do that, sir, on account of the intrinsic value of a property qualification, but simply because it is the only rule that I can think of that can be worked practically so as to introduce this change gradually. Women, sir, who have property, are those, in the first place, who are the most entitled to vote, because to them alone applies the maxim, that there should not be taxation without representation. Then again, women who have had control of property to any considerable extent, have necessarily had their minds attracted, to a greater or less extent, to the laws of business and the public laws of the country; and I believe they would be, in the first place, the best qualified of all women to exercise this franchise. When that had been done, and the Legislature given the power to extend it to any or all women, the attention of women generally would be drawn to the subject, and they would commence to prepare themselves for the exercise of that duty.

Now, sir, there is only one other method that I can think of, and that is to adopt an educational standing. I have always been of the opinion that the qualification of voters should be determined by their education. In the first place, what should their standing be? Would you say that a person should have a classical education, or that a person who could read some sentences in a book, or write their name, should be entitled to vote? What standard will you adopt? In the first place, who is going to be the judge? Would you have a select committee of school ma'ams and politicians to decide who were entitled to vote? That would be a power too great and dangerous to put into the hands of any one. The right of a man to vote should not depend upon some other person. There is the objection to an attempt to establish an educational qualification. There are many men born and raised in this country who can neither read nor write, who still have a very clear idea of the politics of this country. I believe this would introduce this change gradually, so that all the women would be educated up to the point of understanding their rights and intelligently taking part in the public affairs.

MR. BLACKMER. Will the gentleman allow me to ask a question? Why he makes a distinction between married and unmarried women in regard to property?

MR. McFARLAND. Mr. Chairman: The married woman having separate property, of course has the advice and counsel of her husband towards the management of it. She is not quite so apt to pay the same attention to it as the single woman who stands alone in the world. The latter is already prepared for the ballot, whereas the balance of your women, those whom you teach simply the graceful accomplishments of the sex, who have no ambition to attend to public affairs, or to understand the laws of the country, who are merely ornaments in your households, have never acquired this knowledge to a sufficient extent to vote intelligently. I have no time to discuss the general question.

The greatest objection, and the one that, gentlemen, will stick in your face all the time, is the one included in the amendment offered by the gentleman from Los Angeles. They get rid of the question by saying, "As soon as women want to vote I am willing that they should vote." If it were true that they did not want to vote, it would be no position to take, logically. The principle of law is to compel people to do duties that they desire to shun. They do not pretend to say that no women want to vote, because the petitions on the desks of members prove that many of them do; but they say that a majority of them do not want to vote. How do you know that they do not want to vote? How do you know that a majority of them do not want to vote? It has never been authoritatively decided, and if the amendment was adopted it would not be a fair test, and for this reason: These gentlemen who oppose woman suffrage would tell their wives and daughters: "You ought not to want to vote. You are going out of your sphere. It is not ladylike, and if you want to vote you lose my respect." And then they turn round in the next breath and tell you they will not give the women the right to vote, because they say they don't want to. It would not be proper to call that reasoning.

THE CHAIRMAN. The gentleman's time has expired.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: I must say, that owing to the previous question, not even the Committee on Right of Suffrage, of which I have the honor to be a member, had an opportunity to defend the action of the committee in the matter, and I now desire to say a word on the question presented by the gentleman from Sacramento, Judge McFarland. I concede that I entertain what I believe to be an unpopular opinion in this State on that subject, and what I know to be an unpopular opinion in this Convention. I believe that woman has a right to demand the suffrage, and I believe further that whenever woman does demand it that it ought to be granted. I admit that I am in doubt whether a majority of women do demand it; and if such an amendment

as that suggested by the gentleman from Los Angeles can arrive at that, I believe it would be a proper solution of the question. That is my opinion as to the abstract question. If I had an opportunity or felt at liberty to vote personally upon the question, I would have voted for the amendment of the gentleman who moved to strike out the word "male." I am here, however, as a representative. I believe that three fourths of the constituents whom I have the honor in part to represent are opposed to it. I believe that three fourths of the voters of the State are opposed to it; and although the sentiment has been often expressed, I do not remember to have heard it expressed in this Convention at all, yet I recognize the duty of acting in a representative capacity upon questions of such magnitude. Therefore, I could not vote for the amendment of that gentleman, because in doing so I would not reflect the sentiments of my constituents, and because they had no question of this kind in any political platform, so far as I know, nor did any candidate, so far as I know, make it an issue in the canvass. Besides, I believe if we put it into the Constitution it would defeat it. I would be willing to go, however, just as far as would be proper under the circumstances.

I believe that the proposition of the committee was correct. It laid down a flexible rule. The Legislature might confer this right. Perhaps that was asking too much; but I do think that to allow it by a two-thirds vote would be a proper provision in this Constitution. As to the amendment offered by the gentleman from Sacramento, which he admits is a renewal of the proposition in a modified form, I am opposed to it, because it makes a property qualification in the one case which does not exist in the other. If there was any qualification for voters outside of those provided in our Constitution, I would make that a qualification of intelligence and education. Although I can see in many cases, as in the case supposed by the gentleman from Sacramento, it would be difficult, yet in most cases it would be a safe rule. If I were in favor of any qualification it would be that. If the amendment of the gentleman from Los Angeleles should be presented I think it would be the proper solution of the question. It provides that the Legislature shall submit the question to the women themselves, and if the majority of the women of the State, as indicated by the census, should vote in favor of woman suffrage, it would be a full and complete answer to the proposition that the women do not want it. But I must say in this connection that there is one point that the gentleman from Sacramento overlooks, as to whether the women do want this, and who would vote. In the absence of such a test as that suggested by the gentleman from Los Angeles, it is impossible to say; but I will say further that from what I have heard on the subject from that sex, my judgment is that a majority of them do not desire it. I will say further, that even if they desired to vote, or would vote upon the question of conferring the right upon them, it is an open question whether a majority of them would vote after the right were conferred upon them. While I admit that among those who advocate woman suffrage there are many of the most intelligent and estimable ladies, yet I cannot say that if all the minority would vote that they would be the best class. It is an open question. I think, however, that the amendment of the gentleman from Los Angeles would solve the question whether they desire to vote, because that would test it upon that very question itself; and if they do so generally vote as to carry the proposition, it would indicate that the vote would be so general, that we might say that they would vote as a class. As to the effect of their voting, if they should generally vote, I entertain no doubt that it would elevate the standard of our politics. I believe they have as much intelligence, I believe they would be better qualified—I know they would be better qualified than many whom our almost universal suffrage system has permitted to vote. I believe that their aspirations are purer and better. I believe, among men, there is no more interest in property, than women feel in property; and as to the family relations, as to their children, there is no class of people who take the interest in politics affecting their families that the mothers of the land do. I cannot, therefore, vote for the amendment offered by the gentleman from Sacramento. If the amendment of the gentleman from Los Angeles shall be presented, I shall take pleasure in voting for that; and if that cannot be adopted, I propose to offer as an amendment to add after the word "Legislature," in the eighth line, "by a two-third vote of each branch."

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I wish simply, like the other gentlemen, to leave my record. I concede that the gentleman from Nevada, Mr. Wickes, has correctly characterized what has been said, as trivial considerations that are offered in place of reasons. But when gentlemen, like my friend, Mr. Freud, whose genius I admire, are obliged to assign as a reason why women ought to be excluded from this right, that it is going to jeopardize the ratification of this abortion that they are going to send out, it is time that we should have the purity of women represented here and elsewhere too. I cannot see any reason whatever for submitting this question to the Legislature. I can tell gentlemen that the child is born to-day that will see this right granted. Some of us here to-day will live to see it. Coming events cast their shadows before. I have stood up in this State and been hissed for simply enunciating the fact that all men were created equal. I predicted that the institution I condemned would die, and it is dead to-day; and I tell gentlemen here to-day that this injustice that has been practiced so long has got to end. Men will reason upon it. They will think upon it. There will be opposing interests that will make other women less timid, and then the truth will prevail against this prejudice that has so long existed. Why, the gentleman from Placer reads us a statement from Indianapolis by a Captain somebody. Well, he may be a Captain, but it does not need anything but this letter to write him down an ass; and sage, wise gentlemen take for granted statements which are disputed by every intelligent man who has lived in Wyoming. They are statements, too, that do not amount to anything if they were true. If it is true, it is nothing but one of the instances that are all the time occurring throughout the land.

The question is: What is the general result? No man can be true to his mother or his wife but who will be obliged to believe that purity would be created by bringing either one or the other to the polls. Our politics, in these times, are nothing but a mass of corruption, from top to bottom. The merits of controversies are all lost sight of in the abuse of candidates. It is time a better element was introduced. It is true women have not yet been trained in political economy, but she instinctively perceives the right and shuns the wrong. You cannot take one out of a thousand that will not be a better citizen than the average voter; she instinctively sees the right; she shrinks from wrong without being told even of its character. I think, sir, that gentlemen might pause and reflect upon this subject. I know that this Convention is going to vote down the proposition, as a matter of course. I believe that the gentleman from Sacramento, Mr. McFarland, is right, and you may make up your minds to accept it. The time will come when they will go to the polls, and no man can go to the polls and vote with them without being elevated by their presence. It is so in Wyoming, according to the best authorities. The gentleman from Los Angelos concedes a fact and then denies its application. He says distinctly that the women of this State are the most competent to judge whether they ought to have the right. Well, sir, that is conceding the whole ground. What greater statesmanship is required than to solve that question correctly? Yet, the gentleman gives the women this power. I hope his amendment will be offered, and that we shall submit the question to the women themselves.

MR. HOWARD. I will offer it.

MR. SHAFTER. I hope that he will submit to some modification of it. If some do not want to vote, why should we deprive women who do want to vote of that privilege?

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I, for one, most heartily indorse the objection interposed by the gentleman from San Francisco, Mr. Freud. I hope that these amendments will not be adopted, because it will have a tendency to load down the Constitution. Although it has been charged that the work of this Convention is an abortion and the members abortionists, I, at the same time, do not believe it. I believe that we are here trying to make a good Constitution, and I believe that Constitution ought to be adopted. [Applause.] My friend says he does not. Hence he has no objection to weighting it down. I have. There have some great reforms gone into this Constitution that we hope will be adopted by the people. The gentleman from Marin says that no man can be true to his mother or wife who does not maintain the doctrines that he does.

MR. SHAFTER. I said no such thing.

MR. ESTEE. I understood him to say that no man can be true to his mother or his wife that did not favor this proposition. I appeal to the reporter's notes if it is not true. I deny that he has a right to say that others are not as capable of judging of these matters as he or any person standing upon this floor.

MR. McFARLAND. I would like to ask the gentleman if he is in favor of woman suffrage?

MR. ESTEE. I am opposed to woman suffrage. You should have known from what I said.

MR. McFARLAND. I could not tell.

MR. ESTEE. Mr. Chairman: I would state that the gentleman, from the beginning of this Constitutional Convention, has invariably told us that nothing we could do would be adopted.

MR. McFARLAND. I never said a word of the kind, either in public or private.

MR. ESTEE. I appeal to the history of this Convention.

MR. McFARLAND. You may appeal to that.

MR. ESTEE. I believe whenever the women of the State are in favor of woman suffrage that they ought to have it. I am willing to be governed by the majority, but I maintain that it is not necessary to put this question into this Constitution, and thereby bring in foreign issues which are not pertinent to the questions before the people, and which the people do not want to consider now. Let the matter be submitted as a separate and distinct proposition, and then, if the women want it, for one, I say, let us try it. But I claim that this question has never been discussed by the people; that the people who elected us here had no idea that it would be one of the questions that we would pass upon. If submitted to the people in this Constitution it would excite a discussion that would imperil the whole instrument. Were I not opposed to woman suffrage, I would oppose dealing with this subject at this time, and in this manner. I would not object to allowing the people to vote upon it, but placing, as it is placed here, requiring the people to vote for or against it, in the adoption of this Constitution, I am opposed to it.

I am for home rule. I believe that the wife and the mother performs her duty most eminently at home. However unpopular that sentiment may be, I still believe that home is the place for the wife and the mother. I believe that the wife and the mother have not been studying politics. I believe that, admitting that they were even brighter characters than the men, and I do not see any marked difference between us—I think they are probably very near alike on matters of intellect, at least—they have got no instruction in these subjects, and therefore I agree with the gentleman from Sacramento, to this extent, that it would raise a question too marked in its effect upon the public policy of the State.

Now, sir, my chief objection to all these amendments is, that it will imperil the Constitution, because there are a large number of people who will be opposed to a Constitution with these provisions in. My second objection is, that the people of the State have not discussed this subject, nor are they prepared at this time to instruct their delegates in this Convention upon these questions. Therefore, I hope that all amend-

ments of this character will be voted down, for I feel sure that if it were inserted in the Constitution the Constitution would be voted down, notwithstanding the many good and valuable provisions that might be found elsewhere in it.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: I do not rise for the purpose of making a speech, but merely to let this body know right where I stand. I am a representative of the City and County of San Francisco, and I intend to do my duty intelligently and honestly, as far as I am capable. I do not want it to be said that this honorable body did not know where I stood. I was cut off for want of time from stating my position, and I desire to state it now. I am not in favor of striking the word "male" from the Constitution now, and I would not consent to that, because I believe it would be to load the Constitution down and defeat it. I am, at the same time, satisfied that it would be right. The provision I was in favor of was the provision reported by the committee, to give the Legislature the right to remove the disabilities. The people will elect the Legislature, and this matter will be discussed before the people. I say that it is not a new question. It has been discussed for the last twenty-five years, all over the country. If the representatives of the people should desire to remove the disabilities, I cannot see any heinous crime—I cannot see wherein it would be wrong—to give them the right to remove the disabilities.

I tell you, Mr. Chairman, that before twenty-five years have passed, every American woman of the age of twenty-one will have the right of suffrage. I do not care how many men get up and try to blackguard it down. I have not seen one gentleman on the opposite side attempt to get up here and make one single, solid, substantial argument, or show one good reason why women should not vote. I cannot see any good reason or cause why you should oppose the law. It has never been considered necessary to pass a law to compel people to do things that they want to do. You say women do not want to vote. Then why are you so crazed about it? One gentleman takes up a paper, or clips a piece from his own paper and reads it, giving the ideas of some vagabond in Wyoming. I have been there in my travels around the world, and I know that the people there are satisfied with woman suffrage. That society was made up of miners—it might be called the hardest class of people from the Territory of Idaho, from Nevada, and Montana. It was the first rush that went down there of the thieves, gamblers, and lewd women. Woman suffrage was put to the severest test, among the hardest class of people that ever inhabited the Rocky Mountains. It was giving it no fair test; but I have conversed with gentlemen from there, and they say that it does work well; and when an intelligent gentleman gets up on this floor, and cites you to an instance where there was a jury half women, and one woman got sick, ain't that enough to defeat any measure in a Constitution? That is the reason why you should oppose giving them the right of suffrage. Is not a man, sitting on a jury, liable to be taken sick and die? Because a woman happened to be taken sick, is that any reason why her whole sex should be disfranchised? But if the majority of women do not want to vote, does that deny the right? Does that have anything to do with the justice of the thing? I am now in favor of Mr. McCallum's amendment, that he suggested. I do not believe in Mr. McFarland's. I do not like General Howard's plan. They would have to vote under restraint. It takes courage for a woman to come out for woman suffrage. Her friends and relatives have an undue power over her, and try to make her believe that it is humiliating, and that she ought to be ashamed to vote. They could go to the polls just as easily as they go to church or to the theater, because our election days in California are the most quiet days we have in California. There is no gentleman here who can get up and show one good, fair, square argument against it.

REMARKS OF MR. STEELE.

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

THE SECRETARY read:

"Add, after the word 'elector,' in the eighth line, 'provided, that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from conferring the right of suffrage upon female citizens of the State, under the same restrictions as male citizens.'"

MR. STEELE. Mr. Chairman: I presume it is well understood by the gentlemen of this committee that I am in favor of woman suffrage, and I am perfectly willing to declare it at any time, and under any circumstances. All the objections that have been urged have merely been objections that have gone to the policy, or to the practicability of the plan, or to something of that character, and have not touched the groundwork of the subject at all. The gentleman from Placer, Mr. Filcher, read in your hearing a newspaper letter written by some person—a man, of course—claiming to be acquainted with the practical working of woman suffrage in Wyoming, saying it is about being abandoned there, having proven a failure. I presume, from the tenor of his letter, that he was some unfortunate fellow who had been defeated for an office in that Territory by the woman vote. A case or two of that kind has occurred, I am credibly informed. Now, Mr. Chairman, for the purpose of refuting the charges put forth in that letter, I wish to read an extract from an address delivered before the Massachusetts Legislature, January eighteenth, eighteen hundred and seventy-six, by the Honorable John W. Kingman, of Wyoming, for four years Supreme Judge of that Territory. The speaker drew a vivid picture of a far-western Court-room, such as has been so frequently described in the newspapers:

"This has been changed by the presence of women. Lawyers took their heels off the table, and quit whistling and expectorating; the Judge put his legs and feet under the bench where they belonged instead of on top of it; the attendants and spectators came better dressed; the room was kept neat and clean. Since leaving the bench he had practiced at the bar, and unqualifiedly would prefer, both as Judge and advocate, to have a mixed jury, and he believed that the prevailing opinion among all classes."

To show the good effect of woman's vote, Judge Kingman instanced a recent municipal election in Laramie City, where the best men of both parties had united in the nomination of a People's ticket:

"The saloon-keepers, knowing that the Sunday law against the sale of liquor would be rigidly enforced if this ticket was elected, got out another ticket the night before election, sent out runners to meet the floating population coming from the mines, gave them liquor and free lunches, and rolled up a very large vote. Finding themselves in danger of defeat, the law and order party sent to every home to notify the ladies how the case stood, and in the afternoon the women turned out and worked against the saloons, among them many of the wives of the saloon-keepers and candidates, and they elected the temperance ticket by a handsome majority. Without the women the reformers would have been beaten two to one. I do not believe that suffrage causes women to neglect their domestic affairs. Certainly such has not been the case in Wyoming, and I never heard a man complain that his wife was less interested in domestic economy because she had the right and took an interest in making the community respectable. In the election referred to, the wife of a keeper of a billiard saloon notified her husband that she should do her best to defeat him, and did so. But so far from quarreling with her, he said she was 'perfectly right,' and expressed the opinion that his wife was the better man of the two."

Judge Kingman related several instances of the conversion of the public men of the Territory to the cause, and the way in which they had come to regard it as one of the settled principles of the polity of the Territory. The general influence of woman suffrage has been to elevate the tone of society, and to secure the election of better men to office, and thought their experience refuted the objection that women unsex themselves.

"The effect of the exercise of political rights upon women themselves of course cannot yet be fully apparent, but I think I see already a marked change in our women, and it is a change for the better. The women are not less womanly, nor, in the slightest, less feminine in their conduct, but they appear more earnest, more serious, less devoted to fashion and frivolous pursuits. I have never known or heard of domestic unhappiness caused by political differences, although I have known of many instances where husband and wife worked for different tickets. Men were not less respectful toward women, but usually more so than in other sections. There is a class of men who feel bound to be respectful toward women if they ever expect to be candidates for office. The female voters are nearly equal to the men in large towns where twelve hundred or fifteen hundred votes are cast. The Swede and German women nearly all vote, but the native American predominate. At first only a few women voted, but at the last two elections they had voted almost unanimously, and more uniformly than men."

He believes the women had as full a knowledge of the public measures pending as the men, and often they were more fully informed than the men. He thought they got a higher and better public sentiment by the political representation of women. Judging from his experience he did not know of any objections to woman suffrage, and he believed it would be the safer course to pursue to give woman that right. This testimony, sir, coming from the source it does, is entitled to credence, and fully refutes the assertions of the aforesaid letter writer. In addition to this, we have the corroborating testimony of Miss Hindman, of Colorado, given before the recent annual meeting of the American Woman Suffrage Association. She visited Wyoming at the time of the last election, and ascertained that the best women of Cheyenne City voted at that election. Some of the politicians objected to women voting, because they would not stick to party, but scratched their ticket in a very disgusting manner.

The progress which woman has made within the last twenty-five years is apparent to all. Then she was only fit to teach a few small children in the Summer season at a dollar a week. Now, more than one half of the teachers in this State are women. Some of the best schools are taught by them, and the salaries they receive as teachers is nearly or quite equal to the wages paid to men teachers in the same grade of schools. In Boston a woman superintends the schools, at a salary of four thousand dollars a year. A few years ago a woman was hardly known to speak in public, except at Quaker church. Now, women are preachers, lawyers, and doctors, and earn money on the lecture platform as do men. They have proved themselves equal to every duty of a public nature they have attempted to perform. They have attacked the Chinese wall which men erected, to seclude them from all the public and profitable vocations of life; have stormed the "wall" along the line; have made many a breach in it, carried many a fort, and spiked the guns. And now they come here to this Capitol, the citadel of the political power of the State, and lay siege to the very bulwarks of constitutional law; and by logical argument, by appeals to your reason, to your love of justice and humanity, they ask you to strike from this section and the Constitution that hateful, that exclusive word "male," and enfranchise women. Will you not stand up by her side, take her by the hand, and with her fight all the battles of life manfully and courageously, and receive her into full communion in the State as she does you in the family? Or will you continue to deny the right of suffrage, the right to participate with you in the affairs of State, to woman, who was the playmate of your childhood, the fond associate of your youth, the beloved, the wooed, the betrothed of your manhood, the mother of your children—the wife, the sister, the mother, the daughter, the companion, the helpmeet of your life? Possibly the learned doctor on the other side would not like to hear his wife speak in public. More than likely she would not care to hear him, unless he would make a better speech than he did against woman suffrage here in the committee yesterday.

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

Seconded by Messrs. White, Freud, Jones, and Huestis.

The main question was ordered.

THE CHAIRMAN. The first question is on the adoption of the amendment offered by the gentleman from San Luis Obispo, Mr. Steele.

The amendment was rejected.

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

The amendment was rejected.

MR. HOWARD. Mr. Chairman: I believe my amendment is in order now. I send it up.

THE SECRETARY read:

"Add, after the word 'elector,' in the eighth line; 'Provided, after the United States census in eighteen hundred and eighty, the Legislature shall provide that if a majority of the resident women of this State, excluding Chinese and Indians, over twenty-one years of age, as shall appear by said census, shall, at the next regular election, vote in favor of female suffrage, all resident women, over twenty-one years of age, shall be entitled to vote at all elections in this State.'"

MR. STUART. Mr. Chairman: I move to amend the amendment by inserting after the words "twenty-one years of age," the words, "and shall have paid, within one year, a State or county tax."

THE CHAIRMAN. The question is on the adoption of the amendment to the amendment.

The amendment to the amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment.

The amendment was rejected.

MR. BLACKMER. Mr. Chairman: I move that the committee now rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Right of Suffrage, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

RIGHT OF SUFFRAGE.

MR. STEDMAN. Mr. President: I move that the Convention do now resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Right of Suffrage.

So ordered.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section one is before the committee.

MR. STEDMAN. I offer an amendment to section one.

THE SECRETARY read:

"Strike out the word 'ninety' and insert the word 'thirty.'

REMARKS OF MR. STEDMAN.

MR. STEDMAN. Mr. Chairman: This section provides that a foreign-born citizen, or person who wishes to become a citizen of the United States, he must take out his papers ninety days before he can vote. Now, sir, I think it is not right, I think it is not just, and I would like to have any gentleman of the committee tell me where he finds such a thing as this in any other Constitution in the United States. I have failed to find it. I find in New York there is such a restriction as this, but the limit is only ten days. In Pennsylvania there is such a restriction, but it is only thirty days. I cannot find it in any other Constitution in the Union, and I have looked at all of them, and I can see no reason why we should place such a provision in here. It is not in the old Constitution. I believe that the article on suffrage was a good one.

Now, sir, when Abraham Lincoln issued his call for troops, the Irishman, the German, the Italian, the Frenchman, walked side by side with the American. They were not then asked for their papers. They were accorded the privilege of fighting for this country. Side by side with native-born Americans they fought to put down the rebellion. Side by side they fell, and side by side they returned home, some of them crippled for life. So I say let us place no further restriction upon them in regard to this matter of voting. Let them walk up side by side with American-born citizens and cast their vote. The restriction of two years' residence in the United States is enough. I think the moment the foreigner takes out his second papers he should be allowed to vote. Why, sir, have not some of our foreigners remained in the United States for years before taking out their papers? Why, then, should we require them to take out their papers three months before they can vote? It is wrong, and I protest against it. I offer this amendment and hope it will be adopted.

MR. FARRELL. Mr. Chairman: I offer a substitute for the section.

THE SECRETARY read:

"Every male citizen of the United States of the age of twenty-one, who shall have been a resident of the State six months next preceding the election, and of the county sixty days, and of the election precinct or district in which he claims his vote thirty days, shall be entitled to vote at elections which are now or may hereafter be prescribed by law; *provided*, that no idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector."

REMARKS OF MR. FARRELL.

MR. FARRELL. Mr. Chairman: The substitute which I have offered contains three points distinct from the other. First, it dispenses with that discrimination which the section as reported has made against naturalized citizens; second, the alteration of the time of residence required in the State and county, leaving it as it stands in the old Constitution; third, it cuts out that provision which enables the Legislature to provide for woman suffrage. The proposition involved in the first change puts our foreign born citizens exactly upon the same plane with the rest of the native born, just the moment they become citizens, and I think there can be no question as to the propriety of it. The naturalization laws of the United States require certain conditions of the foreigners who settle in our land and desire to become one of us, among which are the renunciation of all foreign allegiance, and a residence of five years. Now, the argument which seeks to impose additional conditions, and of a further time, after he has fulfilled all these conditions and received his papers, is not sound in any sense, and is not worthy the name.

MR. HOLMES. If I go to that county, I have to live there ninety days.

MR. FARRELL. No, sir. It takes five years and ninety days before he can vote. The United States Government wisely makes certain requirements as essential to citizenship, among which is a residence on the part of a foreigner seeking citizenship of five years. That time is required to give him an acquaintance with the laws and customs of the country; in order that he may be qualified; in order that when he is permitted to exercise the duties and privileges of an elector he may do so intelligently and understandingly. And I insist that the limitation set by the laws of the United States is sufficient to determine all that is necessary in converting an alien into a citizen. To require more is a manifestation of prejudice against foreign born citizens. Some gentlemen may say that it is intended more particularly to prevent frauds, and a wish to naturalize just before election days. But I insist that none of these frauds can be guarded against by the proscription of a part of our people.

Upon the second point, requiring certain length of residence in the election district in which the person claims his vote, I am more positive, and I speak more particularly as the representative of the people I represent here. I am in favor of requiring sixty days in the county; but to require sixty days residence in the election precinct in the City and County of San Francisco would have the practical effect of disfranchising ten per cent. of the voters. The election precincts, numbered from one up to forty, consist, many times, of a single block. A man could scarcely move across the street without losing his residence, and this disfranchisement will invariably fall upon the poorer classes—upon the poor laborer, who is forced to reside in a tenement, and subjected to frequent removals. The clause in relation to female suffrage I have stricken out. I do not intend to discuss that question. I am simply of the opinion that there is no considerable public sentiment which demands female suffrage. When such a demand is made it will be time enough to consider the question seriously.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: It appears to me that there is no discrimination whatever with regard to the length of time required, as between American born and foreign born citizens of the United States. It says "every native male citizen of the United States, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years," etc. This includes native male citizens of the United States, and also those of foreign birth. And there is no discrimination whatever.

MR. STEDMAN. Do you say that these words, "naturalized citizens," apply to American born citizens?

MR. BROWN. No, sir; but both native born and naturalized citizens are coupled together in this section, and if you have ever studied the thing, you must see it is very plain. The same rights are granted in this respect to foreigners who are naturalized that are granted to native born citizens, and I don't think that there is any gentleman of foreign extraction that desires, in reality, anything more.

MR. STEDMAN. I will ask you another question. You say it applies to native born citizens. "Every native male citizen who shall have become such ninety days prior to an election," is the way it would then read.

MR. BROWN. That is all right, sir.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: It does seem to me that after a man acquires the right to exercise the right of suffrage and cast a ballot at an election, if, according to the policy of this country, being a native born, he have a right to exercise that right of suffrage when he arrives at the age of twenty-one years, why we should not frame a constitutional provision extending that time for ninety days longer. Or, in other words, oblige a person to be not only twenty-one years old, but to be twenty-one years and three months old before he can exercise the privilege of suffrage. If a person, being a native born American citizen, arrive at the age of twenty-one years and thirty days four days before a Presidential election, he, by virtue of this provision, by virtue of this section, if it go into force, could not vote until the next succeeding Presidential election. What reason is there, when the law says a man shall have the right to exercise the right of suffrage when he has arrived at the age of twenty-one, that we should step in, and, by a constitutional provision, put off that right for three months longer, and, in many instances, deprive the possessor thereof of the power of exercising that right which is acquired by his arriving at the age of twenty-one years? This is a section, too, that when it comes to be construed in the Courts will be open to considerable doubt. It is vague. It is not clear. It says that every native male citizen of the United States, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, etc. Now, is it every native male citizen who shall have become such ninety days prior to any election? It is a question whether

this ninety days restriction applies to the naturalized citizen, or whether it has reference to both naturalized and native born citizens. It occurs to me as having reference merely to naturalized citizens, because in that connection the words "made such" mean something. A person may be a citizen, and yet not be possessed of the political privilege of voting. In the formation of this Government the States delegated to Congress the power to pass naturalization laws. This power vested exclusively in Congress, and ever since it has been the policy to allow foreigners to become citizens of the United States, and exercise the elective franchise, after a residence of five years. That is the law to-day, and has been the law for a number of years, and what sense or justice is there in putting a provision in here requiring a residence of an additional ninety days? A person must be here five years; and if he arrives at the age of eighteen, he must be here three years. What sense is there in requiring ninety days longer? It does not seem to me just, and certainly is not in harmony with the theory of government, which has prevailed for years, in requiring a five years' residence. I am in favor of the amendment of the gentleman from San Francisco, Mr. Stedman. I am also in favor of the amendment of the gentleman from San Francisco, Mr. Farrell. The substitute of Mr. Farrell is the proper substitute, and ought, in my opinion, to be adopted instead of the section as it now stands.

MR. HUESTIS. Mr. Chairman: In my judgment, sir, this section is intended to correct abuses growing out of the practice of rushing to the Courts a few days before election by persons seeking to become citizens. I think it is a good provision, and it is one which will receive the hearty indorsement of the intelligent, moral elements of this State, and therefore, I hope the section, as reported by the committee, will prevail.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. West, McConnell, Evey, and Huestis.

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

Carried.

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

Lost.

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

Division was called for, the committee divided, and the amendment was lost—ayes, 35.

MR. MILLER. Mr. Chairman: I offer an amendment to the section.

THE SECRETARY read:

"Add to the section, 'Provided further, that no person hereafter convicted of the embezzlement or misappropriation of public money while holding office, or employed in the public service, shall ever exercise the privileges of an elector, or hold any office whatever in this State.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

Adopted unanimously.

MR. SHURTLEFF. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend section one by striking out the word 'district,' in the fourth line, and inserting the word 'precinct.'"

MR. SHURTLEFF. Mr. Chairman: The object of that amendment is to insert the word "precinct," which has more local significance than the word "district."

MR. CAPLES. I am opposed to the amendment. This term was discussed in the committee, and it was agreed, and I think with good reason, that the term was indistinct and indefinite. It may mean a judicial district, or it may mean a Congressional district, or some other district; we therefore decided to use the word "precinct."

MR. FREUD. If the gentleman will allow me, it is "district" in the section now, and the gentleman moves to insert "precinct."

[Laughter.]

MR. CAPLES. My understanding was certainly that it was agreed to in the committee. If that be the case I am in favor of the amendment. The word "district" is liable to be misunderstood.

MR. SWENSON. I move to strike out the words "election districts," and insert the word "counties."

MR. STEDMAN. Mr. Chairman: I am in favor of the amendment to the amendment, but I am strenuously opposed to the amendment of the gentleman from Napa, Dr. Shurtleff. A resident of San Francisco may lose his residence by simply moving across the street, on changing from one hotel to another. I must say that the amendment is a very foolish one, and I hope this Convention will show their good sense and vote it down.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I can heartily indorse the amendment of the gentleman from Napa, and I wish to state the reasons in a very few words. It is true there are instances in San Francisco where citizens would lose their votes. But let me here say to you, that designing politicians, who are desirous of carrying certain districts, could make use of such a law as we would have under some of these amendments, to do so. They could get men to move across the street, from one precinct to another, a few days before the election, register there, and where there is such a large floating population, it would be almost impossible to identify them. It is well known to every gentleman on this floor that it has been done in the past, and I hope that all the guards possible will be thrown out. When people come to know this law they will be guided by it, and not move until after the election.

MR. FARRELL. Suppose a man leaves the First Ward and moves to the Eleventh Ward, inside of thirty days, would he still be allowed to vote in the First Ward?

MR. ESTEE. Yes, sir; it has been held so.

MR. FARRELL. I know a man who was refused in the Eleventh Ward and went down to the First Ward, and he was not allowed to vote there.

MR. ESTEE. I do not think he ought to be allowed to vote there. That is the very objection I make. I say I believe we should throw these guards around, in order to guard the purity of the ballot-box; that in order to do so we should adopt such an amendment as that in order to compel people to reside long enough in a precinct to establish their identity, and enable us to ascertain whether such persons are entitled to vote or not. It does away with these colonization schemes. There are times, as the gentleman says, when certain migratory persons will lose their votes. But it will be of great utility to the people of that city.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. I hope the amendment proposed by the gentleman from Napa will be adopted. I am opposed to the amendment of the gentleman from San Francisco. To say that a man who has lived in the county ninety days may vote in any precinct would be wrong. I speak from experience a little in this matter. We wanted to elect a Board of Trustees in San Diego, and there was quite a struggle as to who should be elected, and colonization was resorted to. It was detected, but they carried the wards. Now, it is for the purpose of preventing just such things as this that we want this proposition adopted.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I think this is a dangerous piece of business now presented in this amendment. I think it arises from a misapprehension. I may say, as a member of the committee, that there has been a misuse of words in one particular. If gentlemen will turn to section one of the article on right of suffrage in the present Constitution, they will find the language used is "county and district." The committee have used the words "election district." Now it has been the practice heretofore that a party living in the county could vote in a precinct, even if he had only been living there one day. He can vote in his precinct. He must be a resident of the district and county. That was the practice. I see a good deal of force in the argument made here that if a person changes his residence within ninety days he cannot vote. It is unreasonable that if he changes his residence he should lose his vote. I am not willing to go so far. To say that a citizen moving from one part of the city to another shall be precluded from voting, is a sentiment which I shall not adopt. This is the way it reads if we construe it in the usual way. What does it mean? I suppose it may mean "precinct," the same as the gentleman's motion means, but that is a matter that is open to judicial construction. Now, sir, on that point it might involve contested elections, and I am not disposed to change the phraseology of the present Constitution. Therefore, I propose to vote against this amendment, and if the time comes I shall move to make it read precisely as it does in the present Constitution. We have already provided something against frauds, by inserting ninety days instead of thirty. But when you come to make the extension three months because a man has removed from one ward to another, it seems to me very absurd. I think the amendment ought not to be adopted, and that the phraseology in the present Constitution should be adopted, because it has received judicial construction. The law now says that a party must be a resident of the district, which does not mean precinct, and he has got the right to vote in the place where he resides on the day of election. The Constitution as it is is more plain and comprehensive than the present, and I hope it will be allowed to remain.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: There seems to be some obscurity in the language used in the present Constitution, and also in the language of the report of the committee. I refer to the words "county" and "district;" and though there seems to be found no decision bearing on the question, from the discussion in this committee there seems to be some uncertainty as to how these words should be construed. I am in favor, in part, of the amendment offered by the gentleman from San Francisco, because I think it would tend to remove the obscurity. By inserting the word "county" instead of "election district," it would have no reference whatever to any election district or precinct. If I could get a chance I would offer an amendment that would forever set at rest any question that might arise. It is as follows: I would strike out from and including the words "election district" in line four, and including the word "days" in line five, and insert as follows: "of the county ninety days, and in the election precinct in which he claims his vote blank days," leaving it to be filled up by the committee. Then it would read that he would have to be a resident of the State one year next preceding the election, and of the county ninety days, and of the election precinct in which he claims his vote, blank days, say thirty days. If I get an opportunity I will offer this amendment, which will set at rest all doubts; and because the pending amendments will leave a little of this obscurity, is the reason why I shall vote against them.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: Would it be in order to offer a substitute?

THE CHAIRMAN. No, sir; not at present.

MR. WELLIN. I hope that the amendments will be voted down until we get to the amendment of the gentleman from San Francisco, Mr. Reynolds. I certainly differ with some of the gentlemen who have spoken here. According to the report of the committee, it seems to me that a hardship will be worked upon two classes of citizens; that is to say, naturalized citizens, who must have taken out their papers three months before an election, which is making an addition of three months to the usual term of five years; and it also works a hardship upon young men who become of age just before an election, and so lose their votes

for that year, by adding three months to their term. I am perfectly willing to throw all possible safeguards around the ballot box, for that is where our strength and our freedom lays, but I will vote for no measure that will throw stumbling blocks in the way of those who are entitled to exercise the elective franchise. I think such a provision would work a serious hardship. There are a great many people who have to change their residence and move from one part of a county or city to another, and under this provision they will be cut off from voting. I hope the section, as reported, will either be voted down or amended so as to make it reasonable.

MR. CAPLES. Mr. Chairman: I am opposed to all these amendments, and as the Chairman of the committee is absent——

THE CHAIRMAN. The gentleman has spoken once. The question is on the amendment of the gentleman from San Francisco, Mr. Swenson.

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from Napa, Mr. Shurtleff.

Division being called for, the amendment was adopted, by a vote of 58 ayes to 35 noes.

MR. REYNOLDS. Mr. Chairman: I now offer the amendment which I have just read.

MR. TINNIN. I rise to a point of order. He is striking out what has just been adopted. The word "precinct" has just been adopted. I rise to that point of order.

THE CHAIRMAN. The point of order is not well taken. He moves to strike out that language in connection with other language.

MR. REYNOLDS. I preserve the word "precinct" there, but I wish to avoid this obscurity.

MR. STEELE. The words "thirty days," have been voted upon once.

THE CHAIRMAN. No, sir.

MR. REYNOLDS. I have no wish to consume the time of this committee. The object of this amendment is to use language that is well understood, and to use the political subdivisions of the State instead of "election districts." If this amendment be adopted it will make the matter perfectly plain, and will avoid all difficulties.

MR. VACQUEREL. Mr. Chairman: I wish to offer an amendment.

THE SECRETARY read:

"Strike out in line eight all after the word 'provided,' and insert: 'whenever the Courts shall grant to Mongolians the right of citizenship, the Legislature shall remove all disabilities from exercising the elective franchise on account of sex.'"

THE CHAIRMAN. Not in order. That matter has been acted upon. The question is on the amendment offered by the gentleman from San Francisco, Mr. Reynolds.

REMARKS OF MR. LARKIN.

MR. LARKIN. The word "district," as used in the old Constitution, applied directly to the districts existing at the time, that then existed. Now, to use the word in this Constitution might mean a railroad district. It might mean a senatorial district. I think a residence of ninety days ought to be required in the county, and not in the railroad district and congressional district, and thirty days in the precinct. That will protect any county from fraud. The people who live along the mountains engaged in stock raising, will, a great many of them, be disfranchised, if the election shall be held in November. They could not be at home three months previous to an election. They could be at home thirty days. I desire to protect, as far as possible, elections. I have seen frauds committed by transfers from one county to another; but there is no danger at all when you limit the residence to ninety days in the county. There is no danger when you require a person moving from one precinct to another, to live in the precinct thirty days. I believe it is to the interest of the people of this State to protect voters. I believe thirty days in the precinct is enough.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I am opposed to this carpetbag system of voting; it is a system that will allow a man to go from one district to another and vote for Supervisors. I have seen the evils of this system. There are cases where Supervisors are to be elected where great interests are involved—perhaps the county printing, or something of that kind—and parties who are interested in the result will pay the board of men thirty days, to get them to move across the line for the purpose of voting. Now, sir, this thing has resulted in great evil to the people of this State, and has created general dissatisfaction. I believe the report of the committee is right, that every person should reside ninety days in the place where he lives before he can properly understand the necessities of the community. He may have removed from a community that is entirely different from the one to which he has moved. Thirty days are not enough to enlighten him on the surroundings. We place too little value on the right of suffrage in this State. This is one of the great and growing evils of this country; it was the means through which Rome lost her liberties. We are now drifting into the same condition, and it will be stopped if people who exercise the right of suffrage are compelled to live longer in the communities, in order that they may understand the necessities of the country.

MR. STEDMAN. I ask you if it is not a fact, that in several States foreign born citizens are allowed to vote in less time than is required by the United States to make them citizens—in Colorado, Nebraska, and other States?

MR. TINNIN. I say it is a very great mistake for these States to adopt such a rule. I don't care whether they are native born or foreign born citizens. A native born citizen has no right to vote until he has lived there long enough to understand the wants of the community.

MR. VAN DYKE. Mr. Chairman: Is an amendment in order? If so, I would move to insert in line four, between the words "years" and "next," "and of the county ninety days;" in line five, strike out "ninety" and insert "thirty."

THE CHAIRMAN. Not in order at present. The question is on the amendment offered by the gentleman from San Francisco, Mr. Reynolds.

MR. VAN DYKE. I wish to explain what this amendment is, so that members will understand it when I come to offer it. It would read like this: "Of the State, one year; and of the county, ninety days next preceding the election; and of the election precinct in which he claims his vote, thirty days."

MR. REYNOLDS. That is precisely my amendment.

MR. VAN DYKE. No, sir. "County" comes in after the word "year."

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I am opposed to that amendment. It is well known by every gentleman here that we should guard the ballot box. I think no evil will result to voters if we require ninety days in the precinct. The gentleman proposes now to make it thirty days. I would have no objection to sixty days. But I do not want any colonization in this State. No, gentlemen, that is not what we want. I am sorry to say it, but I know that men have been colonized in this State, and will be again unless we prevent it. It would work no greater hardship on a native born citizen than a foreign born. I want to protect the ballot-box from frauds, and to do so a man ought to be required to remain in the precinct at least sixty days before he can vote. I think the amendment of the gentleman from Napa was entirely sufficient, and makes the section all that any person should require. The great hue and cry has been the colonization of voters, and every gentleman knows it. It is not necessary to allude to it here. It has caused more trouble, and more contested elections, and more confusion and discord, than all other causes. Now, there is no gentleman here but knows, as has been cited by the gentleman from Los Angeles, that you can colonize in certain districts to elect certain gentlemen in a city or town. That is the case in cities like Sacramento or San Francisco. Great frauds can be perpetrated in this manner. They can go out of the towns and live for thirty days in the county precincts if it is necessary to carry certain districts. Gentlemen upon the floor know that perfectly well. I have seen two carloads leave one part of the county for the purpose of voting taxes upon another. I want to protect the ballot-box from these things. In order to protect the right of franchise, it is necessary that they should remain ninety days before they are entitled to vote. If they move out of one precinct into another, they do so voluntarily. They know what the law is, let them abide by it. I do not care how hard the law is, it is the duty of every man to obey it. If gentlemen undertake to colonize voters under this provision, they will find it a very difficult task.

THE PREVIOUS QUESTION.

MR. TULLY. I move the previous question.

Seconded by Messrs. Larue, West, Evey, and Wyatt.

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

Carried.

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

Division being called for, the amendment was lost by a vote of 44 ayes to 51 noes.

MR. MCCALLUM. I offer an amendment.

THE SECRETARY read:

"In line six insert: 'Provided, that no native of China shall vote at any election.'"

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: This requires a word of explanation. This is offered for no other than a strictly legitimate purpose. This section, as it now stands, says every male citizen of the United States, and every naturalized citizen thereof, etc. This section, as it now reads, would permit Chinese to vote in case they should become naturalized. There have been a very considerable number of them naturalized in some of the Eastern States. It has been going on for ten years, and very little notice has been taken of it.

MR. STEELE. I would like to ask a question. Would it have any effect upon the law of the United States, provided it should declare that they shall become citizens? Would our Constitution have any effect upon it?

MR. MCCALLUM. The State of California may declare what foreigners may vote. Citizenship is one thing, the right of suffrage is another, and does not necessarily extend the right to vote. Now, suppose the Supreme Court of the United States, if this question should come before the Court, should decide that the Chinese are entitled to naturalization. My legal proposition is that the State of California may declare that the Chinese shall not vote. In other words, that no native of China may vote. There is nothing which prohibits the State of California, or any State, from regulating the franchise, except the Constitution of the United States, and that provides simply that no one shall be prohibited from voting on account of race, color, or previous condition of servitude. As to nativity, some may be excluded and others given the right. It was in view of that that I thought we should adopt an amendment like the one I have proposed. I have thought over the various forms, and have tried to put it in the best form, and it appears to me that this is about the language that should be used.

MR. SMITH, of Fourth District. Why don't you include the Chinese that are born here in this country?

MR. MCCALLUM. I think we could not go so far on account of the Constitution of the United States. I think this is the proper amendment. The Constitution says that persons born in the United States shall be citizens. I say it would be a very serious omission if, hereafter,

when the question arises, it will be shown that we have given them the right to vote by our own Constitution. I propose to insert these words, but I will willingly give way to any gentleman who will use any better language to express the same idea. The State has the right to regulate the franchise in any way not precluded by the Constitution of the United States.

MR. SWENSON. I move an amendment.

THE SECRETARY read:

"Insert, 'provided, no elector shall be considered to have lost his residence in one precinct until he shall have gained it in another.'"

MR. ESTEE. He might lose it for cause. He might be sent to the Penitentiary, or to the Insane Asylum.

MR. ROLFE. This amendment of the gentleman from Alameda, it seems to me, would include a great many of the Caucasian race. We all know there are a great many Englishmen domiciled in China, established in business there. They could not come into this country, if they are born there, and be naturalized. We had better consider this matter carefully.

MR. McCALLUM. That very difficulty occurred to me. Can you suggest some proper phraseology to avoid it?

MR. ROLFE. I would suggest, "Asiatic Mongolians." Why not use that word?

MR. AYERS. I would ask the gentleman if it could not be remedied by saying—"not born of American or European parentage?"

MR. McCALLUM. I had thought of that, but it might suggest the idea that this is made on account of race.

MR. SWENSON. Mr. Chairman: I desire to perfect my amendment so it will read:

"Provided, no elector shall be considered to have lost a residence in one precinct until he shall have gained another, except otherwise provided in this Constitution."

MR. TINNIN. Mr. Chairman: I desire to call attention to the fact that under this amendment a person can leave the State and go around the world and still be a voter.

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

MR. HOWARD, of Los Angeles. I hope that amendment will be adopted.

Division being called for, the committee divided, and the amendment was lost—ayes, 25.

THE CHAIRMAN. The question is on the amendment of the gentleman from Alameda, Mr. McCallum.

Adopted.

MR. REYNOLDS. I wish to offer an amendment.

THE SECRETARY read:

"Strike out from and inclusive of the words 'election precinct,' in line four, to and including the word 'days,' in line five, and insert 'of the county ninety days, and of the election precinct in which he claims his vote, sixty days.'"

MR. REYNOLDS. The object is exactly the same as that which I offered before. It is the same amendment, except I have changed the word "thirty" to "sixty," in order to meet what appears to be the views of the committee.

MR. BIGGS. I do hope the Convention will vote that down. We have been laboring here in order to remedy this great evil, in order to satisfy the great mass of voters of the State. I hope the gentleman's amendment will be voted down. We must keep and protect the ballot box sacred.

MR. SMITH, of Fourth District. Mr. Chairman: It seems to me that the section as it stands will disfranchise one third of the voters of this State, by providing that they shall reside in the precinct ninety days. Now there is no one more opposed to colonization than myself. I have seen the evil of it, but I do think it can be prevented if we fix the limit at sixty days. It is not necessary to disfranchise so many voters in order to guard against this. Laboring men and mechanics, as a general thing, cannot live in one place as long as ninety days. They are not so well established, and they form a very large portion of the voters of this State. It seems to me this is a blow directly at them, whether intended or not.

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

Division was called for, and the amendment was lost, by a vote of 38 ayes to 47 noes.

THE CHAIRMAN. The Secretary will read section two.

THE SECRETARY read:

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

MR. HERRINGTON. Mr. Chairman: I call attention——

THE CHAIRMAN. If there is no amendment to the section the Secretary will read section three.

THE SECRETARY read:

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

MR. HERRINGTON. I wish to offer an amendment to section one.

THE CHAIRMAN. Not in order.

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

No second.

THE CHAIRMAN. The Secretary will read section four.

THE SECRETARY read:

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

THE CHAIRMAN. If there is no amendment the Secretary will read section five.

THE SECRETARY read:

SEC. 5. All elections by the people shall be by ballot.

MR. McCALLUM. I move that the committee rise, report back the article, and recommend its passage.

MR. ANDREWS. Mr. Chairman: I wish to offer a new section.

THE SECRETARY read:

"The Legislature may, by law, provide for the registration of voters, and may make such laws applicable to such subdivisions of the State as may be proper."

REMARKS OF MR. ANDREWS.

MR. ANDREWS. I offer that amendment for the reason that I suppose it will be held, under the language adopted here, that the Legislature may pass laws for the registration of voters. That being the case, I want it so that counties that do not desire a registry law may be exempted. A registry law in my county would be a very great burden.

MR. BIGGS. Would not that be local or special legislation?

MR. ANDREWS. It is legislation such as may be wanted in certain sections of the State. I heard the gentleman from San Francisco, Mr. Estee, say that the Legislature could make a registry law applicable to certain counties, and exempting other counties from the operations of the law.

MR. ESTEE. I did not intend to say so. I intended to say that I was in favor of the Legislature regulating the registration of voters in this State. But I do not think, under the provision prohibiting special legislation, that this can be adopted. I think it will conflict with that clause.

MR. ANDREWS. I do not understand that it is necessary for the rule to be uniform throughout the State. If I had the matter in my own hands, I would say that the Legislature should have no power to pass any registry law. It would work a very great hardship; it would be an outrage upon our citizens. It would be impossible for me to compute the expense that would attend a registry law in our county. It would exclude a large number of legal voters from the privilege of voting. It would exclude one hundred legal voters where it would shut out one illegal voter. Another reason why I believe there should not be a registry law, particularly in the section of the State where I live, is, that it would add so much to the expense. The history of the registry law in this State is, that it has been constantly evaded. This is the very means by which the State was carried at the last Presidential election. I am opposed to any such a law.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I don't propose to discuss this question, but I have a few words to say. The legislative committee and the Committee of the Whole have made ample provisions in this matter. This would be entirely illegal and special legislation. It has been admitted by the most distinguished men that the way to purify our elections is to have a registry law, and have that law rigidly enforced. My friend seems to think that we lost the Presidential election on account of the registry law. Now, if there is anything that will prevent frauds it is this law. He says the expense will operate very heavily in his county. It is a well known fact that the Assessor is allowed to register men at the time he goes around assessing their property. I think my friend is very much mistaken, and I would be very sorry to see anything done to impair the usefulness of the registry Act.

THE CHAIRMAN. The question is on the adoption of the new section.

Lost.

MR. LARUE. I move that the committee rise, report back the article to the Convention, and recommend that it be adopted.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Right of Suffrage, and now report the same back, and recommend that it be adopted.

MR. McCALLUM. I move that four hundred and eighty copies be ordered printed and laid upon the table.

So ordered.

WATER AND WATER RIGHTS.

MR. TINNIN. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Water and Water Rights.

So ordered.

IN COMMITTEE OF THE WHOLE.

Following is the article on water and water rights, as reported by the committee:

SECTION 1. All water appropriated, or that may hereafter be appropriated, for sale or rental, is hereby declared public, and subject to the control of the State.

SEC. 2. The unappropriated waters of the lakes and rivers of this State are declared to be public property, and may be appropriated by individuals, associations, or corporations, subject to such conditions and restrictions as the Legislature may impose.

SEC. 3. The Legislature shall enact laws permitting the appropriators of water and the owners and occupants of land to construct levees, ditches, canals, flumes, and aqueducts, or run their water through natural channels, for agricultural, mining, manufacturing, milling, domestic, drainage, reclamation, or sanitary purposes, across the land of others.

CONTROL OF THE WATERS OF THE STATE.

THE CHAIRMAN. The Secretary will read section one.

THE SECRETARY read:

SECTION 1. All water appropriated, or that may hereafter be appropriated, for sale or rental, is hereby declared public, and subject to the control of the State.

SPEECH OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: The use of water for the purpose of irrigation and mining was, until the last twenty-five or thirty years, practically unknown to the American people. And when we attempt to grasp this subject in a political sense, and place it under legislative control, we are embarking on a new era. We stand upon the shore of an unknown and unexplored sea. Irrigation, it is true, has existed at a remote period in the past. But when we attempt to apply the experience of past ages to our own Government, we find that it cannot be fully applied to this free Government, for the reasons that Governments that have brought forward and completed great irrigation schemes were arbitrary Governments, Governments where citizens had no privilege, no right to the water, as against the Government. Under our system of government the rights of the citizens are paramount in a great sense, in many respects, to the Government. In other words, the rights of the citizen, under our Government, cannot be invaded.

The first historical account we have upon which we can rely, in relation to the use of water for irrigation, commences at the time the Egyptian kings dug their canal. From that time up to the present—a period of over three thousand years—the Egyptian Government has laid out and completed one of the most perfect systems of irrigation known in that part of the world. It is true that they were aided and assisted by nature in the enterprise. The great valley of the Nile was made by debris brought down from the mountains, and deposited along the banks. The climate and peculiar conditions aided them in the perfection and completion of the system. The valley of the Nile is, to a great extent, a rainless country. The climate is subject to few changes; in fact, the rise of the river and the change in the climate each year is the exact counterpart of that occurring the preceding year. Through these means the Egyptian Government has completed a system of irrigation that is the wonder of the world, a system of artificial canals, embracing eight hundred or nine hundred in number, and with an aggregate length of about nine thousand miles. A large number, something like one hundred, of these canals are navigable. Under this great system the Government of Egypt was enabled to do something that cannot be done in other parts of the world. They are able to estimate what the amount of the crop is going to be. The farmer knows before he sows his seed what his return is going to be. So thoroughly is the system understood, so perfect is this system of irrigation which has been carried forward and completed. The Government has established stations at convenient points, and as soon as they have indications of a rise they immediately telegraph to all parts of the valley, and dams and dikes are immediately put in readiness to control the water; and when it shows sufficiently high, the flood-gates are opened, when the water passes from one section of land to another. The annual flood occurs about the last of June. The Egyptian officer, when the gauge marks twenty-five feet, proclaims "high Nile," because he knows how much land will be submerged. If it marks nine feet, he proclaims "low Nile," because he knows how much land will fail to produce. If the Nile marks twenty-three or twenty-four feet, he proclaims "good Nile," because he knows there will be abundant harvests, and the Government can prepare for the distribution and shipment of the crops.

Now, I will refer to India, which is next in importance to Egypt. The streams there are not so well suited for purposes of irrigation as the Nile. These streams are affected by monsoons, and hence they are not regular in their distribution. But in some portions even the floods are confined by great dams and embankments, for the purpose of irrigation. Some of these dams are of enormous height. I speak of this to show how enormous the expense would be in this State to establish a general system of irrigation. These banks and dikes are of great length and height. The English Government, it is true, has had something to do with the irrigation schemes of Egypt. They have completed some of the great works laid out there, and repaired others. But while the English Government was willing to aid in these schemes, they compelled the people to pay for the support which they gave them. We find where the English Government has carried on any of these works they have demanded and received in return two fifths of all the products of the land. Now, what would the farmers of this State say if the Government should propose to establish a general system of irrigation, and take two bushels of grain out of every five?

I will next briefly review the irrigation system of Italy, in the valley of the Po and in Lombardy. The waters of the principal streams there have their rise in eternal beds of snow. These schemes were carried out by quasi-corporations. But the Government at the present time controls the entire system and regulates the sale of water. The waters of these streams flow from beds of snow in the mountains. They are clear and carry but little sediment or debris. The statistics show that in the ninety days during the growing season nearly every other day, on an average, is a rainy day, and it would seem to the practical mind that this would be sufficient moisture, but we find that they have a full system of irrigation for the purpose of renovating, renewing, and strengthening the land. Now, sir, if these streams, flowing from clear snow, are good for the purpose of renovating the exhausted lands of Italy, what would be the result that would come from the waters of Bear River and Yuba River running over the poorer lands of the Sacramento valley? And I firmly believe that in the end this will be the result of the great debris question. The mud and silt of the Bear and Yuba will be utilized to advantage upon this land, and make it as productive as the best alluvial soil near the rivers. But, sir, the question to be considered here is, as I understand it, to determine whether it is right and proper and in good judgment for the State of California to embark in a general irrigation scheme. That is what the committtee has been considering. So far as I understand the committee, the opinion seemed to be that it would not be feasible for this State to engage in a general system of irrigation. It would not be advisable, because we are not in a condition to enter upon this great enterprise. It is an enterprise that would cost an immense amount of money. From the investigation I have made I am satisfied that it would cost not less than three or four hundred millions of dollars to even start this great enterprise—such a general scheme as would be necessary. Now, it is political economy, as I understand it, when a great enterprise is to be inaugurated, to ascertain where the money is to come from to carry out the enterprise. Three or four hundred millions would be required to start such a scheme, and would the General Government be so liberal as to furnish that amount of money. Experience has certainly convinced every member of this body that such a thing would be impossible at the present time. We have in our midst an undesirable population, and we have attempted for a long while to get Congress to aid us in expelling them, and we all know the result. The General Government would not furnish it. The next question is, if the General Government will not furnish it, can we get it from the State? Is the State in a condition to furnish that amount of money? If we tax only the lands benefited, we could not possibly raise such a large amount of money as would be necessary. It would have to be a tax upon the whole State. Would the farmers of San Diego, Los Angeles, Santa Barbara, Ventura, Santa Clara, Humboldt, Mendocino, and the miners of the State of California, submit to such a tax? Certainly not. And I believe the party, or body of men, who would attempt to force such a tax upon the people of this State would be hurled from power and treated with scorn and contempt. The indignation of the people would know no bounds if such a burden were to be forced upon them. I say, then, sir, that it would be impossible, under any circumstances, for the people of this State to raise the necessary amount of money to engage in this great scheme.

We have no precedent to guide us in this case. Egypt is a peculiar Government. It is an absolute Government, and has been so. The individual has no right as against the Government. The Government controls life and property, and everything pertaining to the individual, and when they choose to demand labor, they get it. When the Government of Egypt chooses to demand labor, the laborers have no choice but to come forth and do the work. All they have to do is to send out the officers and they come. We find, as late as eighteen hundred and eleven, the rulers of Egypt desired to complete a certain work, and they ordered out twenty-four thousand men for that purpose. Those men had to work, and they did. The only pay they get is their food and clothing. Thousands of these men died annually from exposure, so great was the stress upon the Government.

The next country I shall notice is India. The rulers of India occupy about the same position towards the people as those of Egypt. The rulers have absolute and undisputed power. They, like the people of Asia, are a people who know nothing of human rights, and they lead a life of bondage and poverty. Their only idea is to struggle for an existence. They don't know anything about the word independence. The citizens do not claim any rights against the Government—only the right to live. Under this system of government, with that condition of people, the great irrigation schemes of those countries were perfected. There is a difference in Italy. There the individual has more rights; but the Government has power to some extent to hold the reins over the people, by charging them for the water they use.

Now, in regard to wages, that is a question that will come up in the solution of this matter. The wages in Egypt are from eight to twelve cents a day; in India, from six to eight cents; in Italy, from fifteen to thirty cents. Contrast that with the wages paid in this country, and see if this State can afford to embark in such an enterprise. I do not believe there is any great number of delegates here who would for a moment consider such a proposition. The committee have made their report very broad, in three sections, and in accordance with the decisions of the Supreme Court of the United States in the Elevator cases, and in accordance with the decisions of the Courts in this State.

MR. HALE. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"The use of all water now appropriated, or that may be hereafter appropriated for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law."

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman: My object is to more aptly express the sentiment of the committee, as I understand it, and, in my judgment, the most important feature of this report is contained in the first section. I call the attention of all members who have ever lived in the mining regions of the State to the matters of which I am about to speak. The action of the Federal Government will be borne in mind in relation to the appropriation of the waters of the State. There came into use practically a code of laws, which came to be recognized as such. It will be remembered, sir, that the appropriations of the waters in this State began in the mining regions. Of course I do not allude to those appropriations made for the use of cities and towns. Of later years it has been extended to the agricultural portions of the State, and I have no doubt in the future this will be one of the most important uses to which the waters of this State will be put. I was about to call attention to the practical feature of this section. As I said, the first appropriation of water was made in the mining regions of the State. These lands belonged to the government of the United States, and their occupancy by citizens of this State was without the sanction of the Federal Government. The State undertook to give these parties a right, and did so,

as far as it could in the exercise of its police power. These occupants were situated in this wise: the only law which the Courts could recognize was the old common law of the preëmption of title by reason of possession. From that arose the rule that he who was first in appropriating either the water or the land had a superior right. That was the condition of things which existed. It gave peace and practical security to this State, and to the settlers on the public lands, until eighteen hundred and sixty-six, when Congress, in answer to earnest solicitation from the members of this State, inaugurated this legislation, that he who was first had the right. Then for the first time these rules became the law of the land. Under that rule he who was first had the right to the water. Under these various Acts of Congress great rights have been acquired. Great and mighty interests have grown up under the present laws, and these interests ought to be protected. There are two distinct phases of this question which I wish to call attention to. One is the security of the rights of those parties who make these appropriations, and the other to secure the public against oppression from their use.

At this point, time was called under the rule, and the gavel fell.

MR. TINNIN. Mr. Chairman: So far as the amendment offered by the gentleman is concerned, I don't see that it is any different from that presented by the committee. In fact, it is a distinction without a difference. We declare that water, when offered for sale or rent, is public, and subject to the control of the State. The gentleman declares, in his amendment, that it is public, and subject to legislative control. I can see no necessity for his amendment. It is the same thing as has been recommended by the committee. The State is the sovereign. As far as the two propositions are concerned, I can see no new feature in it.

MR. HERRINGTON. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"The only property that can be acquired in any of the waters of this State by appropriation or condemnation is a use, and such use shall forever remain subject to regulation and control by the Legislature of the State for the common benefit of all."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: Now, sir, that is a declaration of a principle as old as the common law. It is desirable to fix the rights that can be acquired in the waters of the State by appropriation and condemnation only. To say that the waters of the State already appropriated, or that may be hereafter appropriated, shall be declared to be subject to legislative control, is remarkable. I believe it is a rule as old as the law of nations, that no nation can grant away the right to the waters, and the use of the waters, in its domain.

MR. TINNIN. Do you believe that Congress has the right to pass any laws regarding the public domain in this State, and the right to the water, or the use of the water?

MR. HERRINGTON. I do not believe the Government of the United States possesses the power to grant any private right in any lake, river, or any other water in this State, or in any State in the Union. We have a right in this Constitution to declare what rights may be acquired in the waters of this State. There never has been any higher degree of proprietorship in the waters of the State than a use. That is all. And there is no one that can acquire any other different property in it, except he appropriate it, and the extent of that appropriation goes only to that which he uses personally. It is precisely like the breath he breathes. So long as he is breathing it, it is his. So long as he drinks the water and uses it, it is his. So far as property in it is concerned, it is his only to that extent. But for all other purposes, it is simply a use. There can be no higher property acquired than simply a use. It stands in the same position exactly. This is simply a declaration that no other or higher right can be acquired. I submit that this amendment ought to prevail. It is short, it is terse, and right to the point.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: We have heard considerable in regard to the history of water and waterworks in other countries. This of course is entertaining to us. It is a pleasing argument. It is entertaining to know how things are conducted in other countries, and what has been accomplished there, and we learn to some extent the means which have been brought to bear in carrying out these purposes, but we are more particularly interested in our own State. The water interest in this State is one of great magnitude to us. Now, it is evident that there are different views taken with regard to water. There are different views taken with regard to rights concerning water. But in the midst of all this it is necessary for us to examine strictly what is true law, and we must understand in these matters that we must adhere to the law, and that it is hardly the province of a Constitutional Convention to make retroactive laws, laws which will affect property which has already been acquired under previous laws and previous decisions of the Courts. These I consider to be the great principles which ought to be taken into consideration at once in connection with this subject. We should remember that we can take no man's property that he has acquired in a legal manner. But we hear it said here that water is not property. And we hear it urged that there is nothing in connection with it except the use. Now, is not this a very fine distinction? Why, the use of the water is to all intents and purposes the appropriation of the water itself. Is not the water appropriated? Is not the water turned? It is urged that water is not property. I have not time to read authorities upon this proposition, but you will find in the nineteenth of California decisions sustaining the doctrine that water is property, and that it is not only the use which is taken, but the water itself. That is, that a man has a right to waste or destroy it, just the same as he has a right to kill his own horse if he chooses. He has a right to purchase land with the water. It is all property, and he purchases it, and takes possession of it. In the decision to which I refer it is declared to be property—personal property, when taken from a stream and diverted. There is no mistake about it. There is nothing said about the use, but it is treated as personal property. The decision covers the entire ground, and shows that it is property. It is held that it can be sold and purchased. If it was not property it could not be purchased. If it was not property it could not be taken possession of. They buy and pay for it, and under this decision of this Court it is personal property.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I suppose the Convention will apply the principle of the Elevator cases to this provision; and that is the common sense view to take of it. I don't like the language of this section. Suppose water is appropriated by an individual, I ask the gentleman from Santa Clara if that is not property? Suppose I go to the brook and fill a barrel with water, is it not mine as much as any other substance? That proposition is not good law. If it is used for a public purpose, then it is to be subject to public control. I strikes me that the amendment proposed by the gentleman from Placer, Judge Hale, is just the thing. When water is sold or rented, then it becomes subject to public control. I trust that amendment will be adopted by this Convention.

MR. SMITH, of San Francisco. Mr. Chairman: I offer as an amendment the minority report of the committee.

THE CHAIRMAN. Not in order at present.

REMARKS OF MR. SMITH.

MR. SMITH, of San Francisco. I wish to make a declaration in the substitute I shall offer, that the waters of the streams in this State are not the property of individuals, but belong to the State. This may be a question that will agitate the people of this State at no distant day, more than any other, railroad corporations not excepted. Water is diffused through the bowels of the earth. The principle of the report of the majority of the committee is favorable to water monopolies in all respects. The report does not remedy the evil of which the people complain, and it seems to me that this is one of the principal things that this Convention was called for. We find, all over the State, an attempt made to condemn and monopolize all the waters of the State by corporations. Especially, sir, is this the case in the City of San Francisco, where the influence of these tremendous water companies is so manifest. At the last session of the Legislature a scheme was set on foot to swindle the taxpayers out of fifteen millions of dollars for a lot of worn out waterworks in that city. At this time we find a number of these men laying claim to all the waters of the State. One of these schemes is that of Lake Tahoe, a lake twenty-two miles long and twelve miles wide; they claim the water. What works have they built? None. And they are attempting to sell this water to the citizens of San Francisco, for the enormous price of fifteen million dollars; likewise the Blue Lakes, and other lakes. It is to prevent such schemes as this that I offer this amendment. The men who are offering to sell this water to the City of San Francisco, have no right to the water which they offer. I wish to read an extract from Wicks on Mining.

At this point, time was called, and the gavel fell.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I desire to add a few words of explanation in relation to section one.

MR. HERRINGTON. I rise to a point of order. The gentleman has spoken twice already.

THE CHAIRMAN. The point of order is overruled. He has not spoken on this amendment.

MR. TINNIN. This committee has not attempted to take away any private or vested rights. It has simply provided that it shall be subject to State control when it is sold or rented. When an individual or a corporation has a water right, they have individual control of it; but when they attempt to rent it or sell it, then we declare that it is a public use, and subject to legislative control. That is the proposition in this section. An individual may own a ditch which controls an entire mining community, or an entire agricultural community. If he endeavors to demand rental, or charges for the use of the water, then the State will step in and regulate his acts, which is proper and right.

MR. HERRINGTON. Does not this report, as a matter of fact, go upon the principle that water is an absolute property the same as any other property?

MR. TINNIN. There is no absolute property when it is under control. I would cite the gentleman to the case of Atchinson vs. Peterson, decided in the Supreme Court of the United States, in support of the position taken in this report. This section simply conforms to the Act of Congress and the decisions of the highest Courts in the land.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Waters, Larue, Van Dyke, and Weller.

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

Carried—Ayes, 41; noes, 36.

THE CHAIRMAN. The first question is on the amendment of the gentleman from Santa Clara, Mr. Herrington.

Division being called, the amendment was lost, by a vote of 32 ayes to 45 noes.

THE CHAIRMAN. The next question is on the amendment offered by the gentleman from Placer.

Adopted.

THE CHAIRMAN. The Secretary will read section two.

THE SECRETARY read:

SEC. 2. The unappropriated waters of the lakes and rivers of this State are declared to be public property, and may be appropriated by

individuals, associations, or corporations, subject to such conditions and restrictions as the Legislature may impose.

MR. SMITH, of San Francisco. I offer a substitute for section two.

THE SECRETARY read:

"SEC. 2. All lakes, except artificial reservoirs, shall be declared public property. All running waters shall be declared public property, subject only to the control of the State."

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: That does not contain a legal proposition, because the running water of the State is not public property. If there is anything settled at all about water—running water—it is that when it is appropriated it becomes private property. The amendment of the gentleman from Placer, Judge Hale, covers the whole question as far as it goes, and that is, that when the water is appropriated for sale or rental, that becomes a public use, as decided in the Elevator cases. Now, all the authorities, both of England and America, recognize the fact that there is property in water, just as much as there is in land. Therefore you cannot take it from a man without making compensation therefor. What we ought to do, in addition to the section adopted, is to provide that the existing water rights, and rights of way, may be condemned by making just compensation. This is necessary in order to prevent the waste and misuse of water. In such cases the Legislature should be allowed to provide a remedy. If rights exist, why these rights may be condemned for the general public good, upon the payment to the owner of a just price for his vested rights. Without that is done, in a great many instances in this State, there can be no general system of irrigation. I hope that the amendment of the gentleman from San Francisco will not be adopted, because it is contrary to the well settled principles of law, and it can never be reduced to practice.

MR. VAN DYKE. Mr. Chairman: I move to strike out section two. There is no use of it in the Constitution, and as there is some doubt, the safest way is to leave it out.

MR. ESTEE. The unappropriated waters of the lakes and rivers of this State, includes the Sacramento River, and all other navigable streams, in which the State has no earthly interest, which the State cannot appropriate, cannot occupy. In fact the Government of the United States expressly reserved the right to control these waters when California came into the Union, and let us not do a thing which will make us so supremely ridiculous. No individual or corporation in this State can appropriate the waters of the Sacramento River. They are not subject to local laws; there is no local law that can step in and interfere with navigation.

MR. SMITH. Are they not subject still to local laws?

MR. ESTEE. No, sir. I am not speaking about taking out an amount of water that will not interfere with navigation, but I am talking about this section two as it reads. This section says they may be appropriated by associations or individuals. Now, they cannot be appropriated by anybody. Some men may have water taken out of a stream that is not navigable, but the navigable streams are under the control of the United States, and the State may not interfere with them. The State may impose certain penalties, when it does not interfere with navigation.

MR. FILCHER. Assuming that a corporation is formed to take a body of water out of the Sacramento, to take it around the foothills for the purpose of distributing it for irrigation, would they have a right to make such an appropriation?

MR. ESTEE. It depends upon where they get the water, and under what circumstances. Now, this first section stands adopted, or the amendment to it was adopted, and it seems to me that is all that the necessities of this question demand. This section declares that when these waters are appropriated for a public use, they shall be under the control of the State. The Legislature can adjust the price and govern the use of water so appropriated, and that is all that is necessary.

MR. TINNIN. As far as the committee is concerned, I think every member of this body will agree with the gentleman that the State has no control over the navigable waters of the State. This is a matter reserved to Congress when the State was admitted into the Union.

MR. SMITH. Do you hold that the State has no control over the streams of this State?

MR. TINNIN. The navigable streams, I mean. In considering the question, the committee was aware that there are certain streams in this State that might be appropriated in future for a public use, if the State should ever desire to go into a general irrigation scheme, and that the Legislature ought to have power to control these waters. That is the reason we recommended section two.

MR. HOWARD, of Los Angeles. It is a well recognized rule of law that the State may control them entirely, so long as it does not interfere with navigation.

MR. HERRINGTON. Would it be in order to move to insert the words "the right to collect rates?"

THE CHAIRMAN. Not in order.

MR. BEERSTECHER. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Water and Water Rights, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. LARKIN. I move the Convention do now adjourn.

Carried.

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

ONE HUNDRED AND TENTH DAY.

SACRAMENTO, Wednesday, January 15th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Harvey,	Reed,
Ayers,	Herrington,	Reynolds,
Barry,	Hilborn,	Rhodes,
Barton,	Hitchcock,	Ringgold,
Beerstecher,	Holmes,	Rolfe,
Bell,	Howard, of Los Angeles,	Schomp,
Biggs,	Howard, of Mariposa,	Shafter,
Blackmer,	Huestis,	Shurtleff,
Boggs,	Hughey,	Smith, of Santa Clara,
Boucher,	Hunter,	Smith, of 4th District,
Brown,	Johnson,	Smith, of San Francisco,
Burt,	Jones,	Soule,
Caples,	Joyce,	Stedman,
Casserly,	Kelley,	Steele,
Charles,	Kenny,	Stevenson,
Condon,	Keyes,	Stuart,
Crouch,	Laine,	Sweasey,
Davis,	Lampson,	Swenson,
Dowling,	Larkin,	Swing,
Doyle,	Larue,	Thompson,
Dudley, of Solano,	Lavigne,	Tinnin,
Dunlap,	Lindow,	Tully,
Edgerton,	Mansfield,	Turner,
Estee,	Martin, of Santa Cruz,	Tuttle,
Estey,	McCallum,	Vacquerel,
Evey,	McComas,	Van Dyke,
Farrell,	McConnell,	Van Voorhies,
Fawcett,	McNutt,	Walker, of Tuolumne,
Filcher,	Miller,	Waters,
Freeman,	Mills,	Weller,
Freud,	Moffat,	Wellin,
Garvey,	Moreland,	West,
Glascock,	Morse,	Wickes,
Gorman,	Nason,	White,
Grace,	Neunaber,	Winans,
Hale,	Ohleyer,	Wyatt,
Harrison,	Pulliam,	Mr. President.

ABSENT.

Barbour,	Hager,	O'Sullivan,
Barnes,	Hall,	Overton,
Belcher,	Heiskell,	Porter,
Berry,	Herold,	Prouty,
Campbell,	Inman,	Reddy,
Chapman,	Kleine,	Schell,
Cowden,	Lewis.	Shoemaker,
Cross,	Martin, of Alameda,	Terry,
Dean,	McCoy,	Townsend,
Dudley, of San Joaquin,	McFarland,	Walker, of Marin,
Eagon,	Murphy,	Webster,
Finney,	Nelson,	Wilson, of Tehama,
Graves,	Noel,	Wilson, of 1st District.
Gregg,	O'Donnell,	

LEAVE OF ABSENCE.

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

Seven days' leave of absence was granted Messrs. Barbour and Nelson.

THE JOURNAL.

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

So ordered.

PETITION.

MR. HOLMES presented the following petition, signed by a large number of citizens of Fresno County, requesting the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Borden District, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

CHANGE OF RULE.

MR. WYATT. Mr. President: I desire to call up my motion to amend Rule Two, of which I gave notice yesterday.

THE SECRETARY read:

"The Convention shall take a recess each day from half-after twelve o'clock M. to two o'clock P. M., and on Tuesdays, Wednesdays, and Fridays, from five o'clock P. M. to seven o'clock P. M."

MR. WYATT. Mr. President: Without detaining the Convention for a moment, I will state that the proposed change in the rule is simply that we may and shall hold evening sessions on Tuesday, Wednesday, and Friday evenings. By holding probably two hours and a half we would gain a day's work during the week, and would not make the labor of the Convention so onerous but what the members of the Convention could well attend to the duties. I therefore move that the proposed amendment to the rule be adopted.

MR. SHURTLEFF. Mr. President: I think it would be unwise to resort to evening sessions. We work here from six to seven hours a day, and I do not believe that the members of this Convention can do justice to the subjects that they are passing upon if we undertake to work for a longer time. I am aware that there is considerable uneasiness, that there is some considerable complaint, that this Convention is sitting too great a length of time. I think it is very important that we should go on and do our work; take sufficient time to do it well, and be careful that we do not make haste in this matter. We have not sat but one hundred and five days, not counting the four days that we adjourned. It is not an extraordinary long time if the Convention sits until the fourth of March. The Convention of New York, in eighteen hundred and forty-six, sat one hundred and thirty-one days; the Convention of Illinois, in eighteen hundred and seventy, sat one hundred and fifty-one days; the Convention of Pennsylvania, in eighteen hundred and seventy-three, sat two hundred and ten days; the Convention of Ohio sat two hundred and eighteen days; the Convention of New York, in eighteen hundred and sixty-seven, sat two hundred and twenty-three days. Now, we have certain new and important questions to pass upon. The Chinese question took considerable time, and there are other questions that will take time. There are adverse interests in this State that will necessarily take up a good deal of time. But, I say, let us do our work faithfully. I am opposed to this matter of holding evening sessions, because I fear that under the pressure which has been brought to bear to have this Convention close its labors soon; that we will do our work hastily, and to do it hastily will be very unprofitable, not only for the honor of the members of the Convention, but for the interests of the State of California.

MR. WHITE. Mr. President: I am sorry to differ totally with my friend on this question. I think it is very important, to enable us to do this work well, that we should have three evening sessions each week. We will only have sessions on Tuesday, Wednesday, and Friday evenings. We are suffering to get home, many of us. We have business at home, and are anxious to get through with the business of this Convention. I sit three or four hours in the evening without doing any work. We are obliged to remain here in Sacramento, and we might as well put in six or eight hours more a week, and that will materially assist us in getting out of the woods. I hope the amendment will be adopted.

MR. WINANS. Mr. President: I entirely agree with the view of the honorable gentleman from Napa. It seems to me that we are precipitating matters now without a due regard for the character of the work we have in hand, and without the deliberation that it demands. At the outset we squandered time with a profligacy that was remarkable, and now by way of retrenchment we propose to do everything in such a form as that nothing can possibly be well done. There is nothing gained by overtaxing the mind, nor by overtaxing the body. Mental exertion is a greater punishment to the system than is the labor of the body. If we spend seven or eight hours a day here in doing the duty that is devolved upon us, and give to it the close application of our mind and thought, we have done all that lies within our powers, and to attempt to do more is to fail to be efficient. Furthermore, this experiment has been tried. Gentlemen are not disposed to come here in the evening, except in small numbers, and you will find that if this evening session experiment is tried again a large number of the members will be absent; some because they have been overheated and worn out with the day's efforts, others because they seek for a relief and relaxation from the work of the Convention in amusements, and others again—and those the larger number—will want time to reflect upon the matters that are mooted here. Here, in the midst of the asperities of debate, there is but little time left for calm, deliberate inquiry, or reflection. You deny that entirely when you have these evening sessions. I say it is impolitic and wrong. I hope the Convention will vote it down. If we undertake, on account of personal embarrassments, and I deem them to be serious, to do our work imperfectly, will we not have cause to regret that we were members of this body at all, and will not the people look upon our actions with disfavor?

MR. REYNOLDS. Mr. President: I do not wish to add anything to the argument of the honorable gentlemen to my left, for the reason that I believe what they have said is amply sufficient against holding night sessions; but I feel unwilling to lose the opportunity of paying my friend, Mr. White, the compliment which he offered me the other day, when he thought I was becoming demoralized on the subject of salaries. Mr. President, I fear the gentleman from Santa Cruz is becoming demoralized on the subject of going home. Now, I would advise the gentleman not to try to break up this Convention, because he wants to go home so bad. If he must go home, why, we can spare him for a day or two; and I think, that after a visit of two or three days, he would be satisfied to come back and stay for awhile. And if he has not time to go all the way down to Santa Cruz, why, I think that a visit no farther than San Francisco would do him good [laughter], and that he would be willing to come back and stay with us the remainder of the session, and be willing to stay as long as necessary.

MR. BIGGS. Mr. President: I am very much in hopes that the amendment will be adopted. The gentleman from San Francisco says that we squandered time in the beginning. I am not aware of that. The committees were all at work. They all had work, and they done it faithfully, and they done it well, and they reported in due time. As to mature deliberation and reflection, it is well known that the Legislature, towards the close of the session, always have night sessions, and they do more work than they do in the day sessions.

MR. CASSERLY. It is the quality of the work, and not the quantity done by the Legislature in night sessions that should be looked at.

MR. BIGGS. We have no local laws to pass here. This is a Constitution for the whole people; and I do hope that we will have night sessions. I feel that I have not done my duty, as I was floored by a long spell of sickness, but now my head is so I am ready to work night and day. My time is worth something at home.

MR. HOLMES. I would like to ask the gentleman if he was not home, sick, for some time.

MR. BIGGS. Up to the time of my sickness I had not lost one day.

MR. WINANS. Do you want us to remain here nights to make up your lost time?

MR. BIGGS. I am willing to give you indefinite leave of absence. You can go and attend to your lawsuits and return here and help us frame our organic law.

MR. TULLY. Mr. President: When I hear such young men and boys as Major Biggs talk in the way they do, I wonder that they ever came here. Their time is so valuable, and I am sure their constituents are losing a great deal by their absence. My advice to them would be to return, to go, and not stand upon the order of their going. Now, for one, I don't want to get away. My time is not worth much here, and it is not worth much when I get home. I am not willing to work here ten or fifteen hours a day and get no money. Eight hours is my limit. We have held two or three evening sessions. The attempt to hold night sessions resulted in a farce. Nothing could be done. They are worse than Saturday afternoon sessions, and they are of no use. Now, if the gentlemen want to come here and make speeches and pay for their own gas I am willing. I do not want anything of that kind. I hope this whole matter will be voted down, and that we will come here and hold our regular sessions every day.

MR. WEST. Mr. President: I hope that the motion made by the gentleman from Monterey will prevail; not for the purpose of hurriedly passing over the work and doing it imperfectly. The principles in the different reports have been discussed pro and con in this Convention, and members are as intelligent, and can vote upon them as intelligently now, as if we talk on them for two months more. I believe that we should give a due regard and a proper consideration to the reports, but we should work industriously. Now, I do not wish to retort upon those gentlemen who talk so flippantly about wanting to go home. They have been situated so that they can go and come at their pleasure. They must realize that there are those whose interests cannot be postponed, and whose interests cannot be attended to by occasional visits home. I believe that the work that we shall do here will be better received, if we, as sensible and practical men proceed to work industriously, and then adjourn and go home; and stop this everlasting going home before the work is done; and stop this going around to balls and dances and other amusements instead of working.

MR. HOWARD. Mr. President: I wish to amend after the word "Friday," to the effect that evening sessions shall be for discussion, without taking votes. The President knows very well that in Congress they have evening sessions, but there is a conventional understanding that voting is not to be done in the evening, and there is as much profit in discussion as in voting. If we spend a few hours here in the evening discussing propositions, we save time which we would otherwise consume in the Committee of the Whole in the daytime, and I see no objection to it. As for my friend Mr. Tully, I am certain he never goes to the theater, and he never runs about town.

MR. TULLY. I will support that amendment.

MR. HOWARD. I think it would be beneficial to him, for he would spend time here instead of spending it in places less virtuous.

MR. BLACKMER. Mr. President: I oppose this resolution, and I oppose it entirely upon sanitary grounds. I believe it is bad policy to undertake to carry on sessions here in the evening. If you can find a worse place for men to breathe the free air of heaven in than this, with one hundred and fifty men in it, I do not know where it is. You light it up with those numerous gas jets, burning out all the oxygen there is in the air, and then expect men to live in it and breathe it. We shall find a worse increase in our sick list than we have ever noticed yet. It is a matter of impossibility for men to come in here and apply their minds to anything. There is nothing in the world to subsist on, and it is utter folly. It will be ruinous to every man who undertakes it. I undertake to say there is not a man who can attend these evening sessions without being in a burning fever before he gets out of here. I know it is my case, and I know it must be with others.

MR. WELLIN. Mr. President: I am in favor of the motion of Mr. Wyatt. I believe in working more hours than we are working here. I am surprised that gentlemen can go around beer saloons, that are not injurious to their health, and then not be able to get here next morning.

MR. BLACKMER. As I was the only one who spoke about health, I would like to ask the gentleman if he has ever seen me in one of those places?

MR. WELLIN. I was not speaking of you, and if you had said nothing no one would ever suspect you. One gentleman said that eight hours was enough for us to work. I think we ought to work eight hours. But when have we worked eight hours a day? Now we only work six hours a day. I think we are well enough able to work eight hours a day here, and I think if these gentlemen would come here and put in their time we would get along a great deal better. Some gentlemen say if you do not want to stay you can go away. Why, I don't want to go away for fear some of these men would do something wrong. I hope no one will go away, and I hope every member will vote for the evening sessions.

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

Seconded by Messrs. Keyes, Dunlap, Pulliam, and Lampson.

The main question was ordered.

THE PRESIDENT. The first question is on the amendment to the amendment, offered by the gentleman from Los Angeles, Mr. Howard.

The amendment to the amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from Monterey, Mr. Wyatt.

The ayes and noes were demanded by Messrs. White, Wellin, Condon, Davis, and Wyatt.

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

AYES.

Andrews,	Harrison,	Rhodes,
Ayers,	Herrington,	Ringgold,
Barton,	Howard, of Los Angeles,	Shafter,
Biggs,	Hunter,	Smith, of Santa Clara,
Boucher,	Johnson,	Smith, of San Francisco,
Brown,	Laine,	Steele,
Burt,	Larkin,	Swenson,
Caples,	Lavigne,	Swing,
Condon,	Martin, of Santa Cruz,	Thompson,
Davis,	McCallum,	Tinnin,
Doyle,	McComas,	Tuttle,
Dudley, of Solano,	McConnell,	Vacquerel,
Estee,	Miller,	Waters,
Estey,	Moffat,	Weller,
Fawcett,	Moreland,	Wellin,
Filcher,	Morse,	West,
Freud,	Nason,	White,
Gorman,	Neunaber,	Wyatt—54.

NOES.

Barry,	Hilborn,	Rolfe,
Beerstecher,	Hitchcock,	Schomp,
Bell,	Holmes,	Shurtleff,
Blackmer,	Hughey,	Smith, of 4th District,
Boggs,	Joyce,	Soule,
Casserly,	Kelley,	Stedman,
Charles,	Kenny,	Stevenson,
Crouch,	Keyes,	Stuart,
Dowling,	Lampson,	Sweasey,
Dunlap,	Larue,	Tully,
Edgerton,	Lindow,	Turner,
Evey,	McNutt,	Van Dyke,
Farrell,	Mills,	Van Voorhies,
Garvey,	Ohleyer,	Walker, of Tuolumne,
Glascock,	Pulliam,	Wickes,
Hale,	Reed,	Winans,
Harvey,	Reynolds,	Mr. President—51.

WATER AND WATER RIGHTS.

MR. SMITH, of San Francisco. Mr. President: I move that the proposition number five hundred and twenty-five be brought up in Committee of the Whole, to be taken up with the report of the Committee on Water and Water Rights.

THE PRESIDENT. That proposition has already been referred to the Committee of the Whole, on the twentieth of December, eighteen hundred and seventy-eight.

MR. TINNIN. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Water and Water Rights.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section two and amendments are before the committee.

MR. DUNLAP. Mr. Chairman: Is an amendment in order?

THE CHAIRMAN. There are two amendments pending.

MR. DUNLAP. I would ask that this amendment be read for information.

THE SECRETARY read:

"Amend section two by inserting as follows: 'The right to divert the unappropriated waters of any natural lake or stream to beneficial use shall never be denied. Priority of use shall give the better right as between those using the water for the same purposes, but when the waters of any natural lake or stream are not sufficient for the resources of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural or mining purposes shall have the preference over those using the same for manufacturing purposes.'"

THE CHAIRMAN. The question is on the motion to strike out section two.

The motion prevailed.

THE CHAIRMAN. The section is stricken out. The Secretary will read section three.

CONDEMNING PRIVATE PROPERTY.

THE SECRETARY read:

SEC. 3. The Legislature shall enact laws permitting the appropriators of water and the owners or occupants of land to construct levees, ditches, canals, flumes, and aqueducts, or run their water through natural channels, for agricultural, mining, manufacturing, milling, domestic, drainage, reclamation, or sanitary purposes, across the land of others.

MR. WINANS. Mr. Chairman: I have an amendment to offer to that section.

THE SECRETARY read:

"Amend section three by adding the words 'upon first paying a just compensation therefor, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law.'"

MR. HOWARD. Mr. Chairman: I send up a substitute for the section.

THE SECRETARY read:

"The Legislature shall provide by law for the condemnation of existing water rights for public use, and for the right of way for conducting water for such uses, first making just compensation for the same."

MR. TINNIN. Mr. Chairman: I desire to say, on behalf of the committee, that I think it was the intention that the amendment introduced by Mr. Winans should have been there, and they therefore accept the amendment introduced by Mr. Winans.

MR. VAN DYKE. Mr. Chairman: I would suggest to the committee that that amendment is unnecessary, because in the declaration of rights there is a section covering that point.

REMARKS OF MR. WINANS.

MR. WINANS. It does not cover it. Section fourteen of the declaration of rights provides that "private property shall not be taken or damaged for public use without just compensation having been first made to or paid into Court for the owner; and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law." Now, that section distinguishes between private property taken for a public use and a right of way. Neither of its provisions embrace the question here. This is taking a right of way for private use, and the section quoted only speaks of taking a right of way for public use. Besides, if there were a general declaration in the bill of rights, and that were distinctly overruled and contravened by a special provision elsewhere, there would arise a collision from that very fact, and the necessity of legal adjudication as to which should govern.

MR. VAN DYKE. I have no objection to it, but only suggested whether it was necessary.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I move to strike out section three. If this section means anything, it means too much. If it means merely to confer upon the Legislature the power described here it is wholly unnecessary. The Legislature already possesses that power, without any constitutional provision, and has been exercising, for years and years, that power. If it means more than this, it certainly means simply to dispense ——

MR. TINNIN. Has the Legislature the right to condemn private property for private uses under the present Constitution?

MR. CAPLES. This is the right of eminent domain; the right of taking private property for a public use, under the rules and regulations of law. If this proposition means anything beyond conferring upon the Legislature powers already possessed, it means to dispense with that regular process of law that is defined in the exercise of the State's right of eminent domain. Now, I do not think that the committee ever conceived the idea of dispensing with the forms of law and the condemnation of private property by a simple Act of the Legislature; but it would seem that, if this section means anything beyond an empty declaration of a right that is well known to exist without an enabling Act, it must mean that. I would ask what construction the Chairman of the committee puts upon it himself. Was it the understanding of the committee that it was competent for this Convention to confer upon the Legislature the right to condemn property otherwise than by the forms of law?

MR. TINNIN. The amendment accepted carries out the idea, and requires that it shall be done according to law.

MR. CAPLES. It reads:

"SEC. 3. The Legislature shall enact laws permitting the appropriators of water and the owners or occupants of land to construct levees, ditches, canals, flumes, and aqueducts, or run their water through natural channels, for agricultural, mining, manufacturing, milling, domestic, drainage, reclamation, or sanitary purposes, across the land of others."

Now, has not the Legislature been exercising these very powers for years and years past, under which most of the waters of the State have been appropriated? Certainly. Everybody knows that the Legislature has been doing this thing. Every gentleman knows that the State has the right, by virtue of the power of eminent domain, to condemn and take private property. Now, we cannot add anything to that power of condemnation. We can add nothing to the right of the State to appropriate in accordance with law; and I am utterly unable to see where it is proposed to do anything here that is practicable.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: The bill of rights, in the old Constitution, provided that you could take private property for public uses. Now, that is, by implication, a prohibition upon taking private property for private uses. That would prevent the Legislature passing laws permitting one man to drain his land across another, because that is a private use. The Legislature, of course, would have that power if it were not for the implied prohibition in the Constitution. In other words, the declaration that you may take private property for public uses, by implication prohibits the taking of it for private uses in any case. That is the purpose of this, as I understand it. It allows drainage for private parties over the lands of another, upon paying just compensation. I do not see why it should not be allowed.

MR. CAPLES. Then I understand that it is to take private property for private use. I deny the power. I hold that it would be in conflict with the Federal Constitution, and with the well understood and universally recognized exercise of the power of eminent domain. I am no lawyer. I am free to admit that my opinions are worth nothing upon this subject; nevertheless, I feel authorized to give an expression of my opinion. My understanding of the power of eminent domain is that

private property may be taken, not for private use, but for public use, and I think gentlemen of the legal profession will agree with me that that is the well established and well understood right of power of eminent domain, as recognized by the Federal Constitution and the decisions of the Federal Courts, and the decisions of the Courts in England for centuries past. Now, if I am right in this proposition, Mr. Chairman, and I hope to hear from legal gentlemen upon the proposition—then the committee, according to the construction of the gentleman from Alameda, Mr. Van Dyke, have attempted to do that which would be in contravention of the fundamental law of the power of eminent domain.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: Section three was placed in the report of the committee, I may say, in deference to the farming interests of the State. It was through that interest, that appeared before the committee, that section three was placed there. The object in putting it there was to overcome this difficulty which has often occurred as was represented to the committee. For instance, a party owns a piece of land between a tule swamp and the river. The tule swamp is useless, unless it can be drained. The party who owns the high lands stands there and demands an exorbitant price for the privilege of cutting a drain through his land. He really blackmails the party owning the tule lands. The committee did not think it was right that any such state of affairs should exist. Take another instance, where a party owns tule lands adjacent to a river, and those along the river find it necessary to build a levee for the protection of the lands below, to keep the water off, and the party owning the tule land refuses to allow a levee to be built upon his land. It was through these things that the section was put in the report. I think it is right and proper.

MR. CAPLES. If it was the intention of the committee to confer upon the Legislature the power to condemn property for private use, why did not the committee so state in this section?

MR. TINNIN. That belongs to another department in this Convention. We did not consider that it belonged to our part of the report. We reported on the subject before us. That would belong to the Judiciary Committee. We believe it is right and proper that this should be there for the protection of a public interest. It is true that power was originally used only for governments, but it has been perverted to corporations, and we propose here to extend it further, and to allow it to be used for private individuals.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I agree entirely with the gentleman from Sacramento, Dr. Caples, that this section three, as it stands, is a violation of the Constitution of the United States, and would be with the amendment of the gentleman from San Francisco, Mr. Winans. It was decided as long ago as eighteen hundred and eight, in the case of Fletcher vs. Peck, that a grant is a contract protected by the Constitution of the United States, and you cannot violate it; and the Constitution of the United States is as much over us as it is over the State Legislature. Now, this decision in Fletcher vs. Peck has been reaffirmed repeatedly by the Supreme Court of the United States, and you cannot take a man's land for private use at all under the right of eminent domain, and you cannot take it for public use without making just compensation.

Now, sir, water is a part of the land. It is so held by all the writers. I will read a sentence from Angell on Watercourses:

"Therefore it is that a grant of land conveys to the grantee not only the 'field' or the 'meadow,' but all the growing timber and water standing and being thereupon; and a stream of water is therefore as much the property of the owner of the soil over which it passes as the stones scattered over it."

Now, sir, it is perfectly idle to attempt to say in this Constitution that running water is public property. Running water which has been granted is not public property; and running water is not public property in any sense except so far as the use is concerned. Now, sir, an important objection to any declaration of that sort is that it is a mere idle waste of paper, and cannot be made available for anything; and my objection to the amendment of Mr. Winans is that it does not go far enough. There exists under the right of eminent domain the right to condemn property for public uses, but it cannot be made available without some declaration in the Constitution or a statute of the State. All this may be done, no doubt, in the absence of any constitutional regulation, but there must be a declaration in the statute fixing the mode and manner of condemnation. The Chairman of the committee says that the committee had the idea that, for instance, if they wanted to drain a tule swamp that they could run a ditch through your land for that purpose without paying for the right of way.

MR. TINNIN. I did not say so. That is amended. The amendment is accepted.

MR. HOWARD. That does not go far enough. Say, for instance, the people in San Francisco wish to drain Lake Bigler, to appropriate Lake Bigler for the purpose of supplying the city with water, they would have the right, under the eminent domain, because, if any individual—which I deny, for there is no appropriation of water separate from the use of it—but if any individual could set up a claim of ownership of that lake, then the State has the power and ought to provide the means of condemning that lake, so that the water could be used for the purpose of supplying the cities and towns, and supplying the country for irrigation with water. It is, therefore, necessary that we have some provision authorizing the condemnation of existing water rights. Then, again, it is well known that, under the Mexican Government, there were grants of eleven leagues of land. Suppose a grant of eleven leagues of land has a stream running by it or through it, and he appropriates the entire stream and holds it long enough to acquire it by proscription, which may be done by Spanish law in ten years; which may have been done at the common law by an adverse use and claim of right, with knowledge of his neighbors, in twenty years, and which he can do in this State, under our statutes and decisions, in five years. Then he has a title by proscription. But there is a right under the eminent domain to condemn property for public use, no matter how it is derived, or how it exists, by paying a just compensation therefor, and that ought to be engrafted in this Constitution. A party, for instance, settling upon the head of a stream, owning ten thousand or twenty thousand acres of land, or forty-four thousand acres, as he may own, may appropriate the whole water, and quiet title by an adverse use of five years under our law. Even then, there is a power by which he can be prevented from starving out his neighbors and making a monopoly of the water, and that is under the right of eminent domain, and that power ought to be attended to by this Convention, because, otherwise he may prevent the use of the water by hundreds of families, when the water, properly distributed, would be enough for all. That is a state of things which ought not to exist, and which we can reach under the right of eminent domain.

Take, for instance, the City of San Francisco. There are streams, I believe, in the neighborhood, which have been appropriated. Well, if the use of that water becomes necessary to the supply of the City of San Francisco that is a public use, and it is superior to the private use of any individual or individuals, and, therefore, the right to condemn it should exist, and should be provided for in this Constitution; and it is founded on the Latin maxim, that the safety of the people is the supreme law.

MR. MILLER. Does not that right exist now?

MR. HOWARD. Yes; the right exists now; but the right existed before we came here, before the Constitution of eighteen hundred and forty-nine, and existed by virtue of the general powers of legislation; because the general rule is that everything not expressly taken from the people by the Constitution abides and resides in the legislative authority. So that is an argument of very little force. We here wish to direct the Legislature to do certain things, and this is one of the things we ought to provide for in the fundamental law.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I was somewhat pleased and surprised to hear the argument of the Chairman of the committee when he said that this section was put in at the request of the agricultural interest. God knows the agriculturists of California don't want any of this section three; and if he is such a warm friend to the cause of agriculture he would accommodate us very much by assisting in striking out that section. I hope it will be stricken out. It is what we don't want, and we have no use for it.

MR. TINNIN. Don't you live on high land?

MR. BIGGS. I don't. The water has been around me twice. I raise good grain. It has been over me, too, and I have lost a good many things. I am not drowned. I feel grateful to the gentleman for the interest he has taken in the agriculture of the State, but I don't propose to let such a thing be engrafted in our organic law without entering my remonstrance against it.

REMARKS OF MR. HITCHCOCK.

MR. HITCHCOCK. Mr. Chairman: I am a farmer, also, and have been for some twenty-six or twenty-seven years. I am not a lawyer, and I do not understand and do not know really——

MR. BIGGS. Have you any debris from the mines coming down upon you?

MR. HITCHCOCK. I have not. Still I am interested in this subject. I realize the fact, Mr. Chairman, that there is only one outlet for all of the waters of these Sierra Nevada Mountains, and also the Coast Range. There is only one outlet, and that is through the Carquinez Straits, and we all know that we have a rainfall of from twenty to seventy-five inches. That must find an outlet, and to do so, it flows over the whole valley; and in flowing over the country it flows over my land and over all my neighbors', and we want some provision by which we can make channels through San Joaquin County, or any other county in the State, in order to carry off this water, so that we can drain our lands. It is impossible to levee it. We cannot dam it up and keep it back. It must pass on out through the Golden Gate. When you can give us some right to condemn a right of way, we can do that. The people of San Joaquin County—I speak for them particularly—would like to have some provision by which they can reclaim their lands. A bill was passed in eighteen hundred and seventy-two which covered the case entirely, but it was unconstitutional, and we cannot enforce it. The whole southern portion of this State favor it, but it is a dead-letter upon the statute books. I have drawn up an amendment here which I think covers the case. So far as mining or anything of that kind is concerned, if members think mining should not be included, why, strike it out. I will read it, and, in case this section is stricken out, I will offer it as section three:

"All persons and corporations shall have the right of way across public, private, or corporate lands, for the construction of ditches, flumes, or canals, for the purpose of conducting water for the irrigation or reclamation of lands, and for manufacturing and mining purposes, and for drainage, upon payment of just compensation."

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I hope that this section will not be stricken out. The question of its conflicting with the Federal Constitution was discussed in committee, and it was generally agreed that on the whole, or in the main, at least, the section might be made operative, and if it conferred no additional powers to act, as has been suggested by the gentleman from Los Angeles, it directly meets the wants of a large class of people in this State The committee, sir, had in view two objects. One was, as long as the waters of the State are now largely appropriated, to prevent these waters being used for the purposes of monopoly, and

beyond legislative control—the point that has been covered in the first section; and the second was in view of the natural arid condition of this country, and the fact that its prosperity must depend so much upon the proper application of the water supply, to secure the right of way to the proprietors of water to carry that water to such places that it would do the most good. Now, sir, there were numerous cases pointed out to the committee, and to my knowledge there are many cases that exist where important improvements are held back simply for the want of a right of way. Large tracts of land in California to-day are in a swampy condition, simply because a right of way for a drainage canal cannot be procured. I hold that in so far as these rights of way can be shown to be a benefit to public interest, they will not conflict with the Constitution of the United States.

We have a precedent for the principle adopted in this section, in the Constitution of Illinois. Section thirty-one, of article four, of that Constitution, aiming at the idea of drainage for agricultural lands, declares that "the general Assembly may pass laws permitting the owners or occupants of lands to construct drains and ditches, for agricultural and sanitary purposes, across the lands of others." Now, sir, many supposed their declaration in Illinois, declaring warehouses to be a public use, would conflict with the Constitution of the United States, and yet a test case proved the reverse to be true. But, sir, going further, in the case of Beekman vs. the Saratoga and Schenectady Railroad Company, in New York, in eighteen hundred and thirty-one, the Chancellor says:

"But if the public interest can be in any way promoted by the taking of private property, it must rest in the wisdom of the Legislature to determine whether the benefit to the public will be of sufficient importance to render it expedient for them to exercise the right of eminent domain, and to authorize an interference with the private rights of individuals for that purpose."

Now, sir, what are the rights conferred here?

"The Legislature shall enact laws permitting the appropriators of water and the owners or occupants of lands to construct levees, ditches, canals, flumes, and aqueducts, or run their water through natural channels, for agricultural, mining, manufacturing, milling, domestic, drainage, reclamation, or sanitary purposes, across the lands of others, upon first paying a just compensation therefor, which compensation shall be ascertained by a jury in a Court of record, and shall be prescribed by law."

Is not that a public use? Are the public not benefited by the promotion of the agricultural interest? Most certainly they must be. Is the public not benefited by the promotion of the mining interest? Manufacturing and milling, is not the public benefited by them? Certainly reclamation and drainage must stand as in the public interest. I believe in the main the section will stand good, and it should not be stricken out. If perchance, by a test case, a certain clause of it may be proven to conflict with the Constitution, and may have to fall, yet the rest will not become invalid, and it will stand for what it is worth.

I know that the interests of various sections of this State require something of this nature. There are mining interests and agricultural interests that are now retarded by the want of a right of way to secure water. We have on this water question, I think, adopted a wise provision in the first section, placing these waters, where they are used by the public, under public control, and by this means preventing a monopoly of them to an extent that may become abusive. I have no doubt the second section was wisely stricken out. I thought at the time it was adopted that there was nothing in it. But the third section I think ought to be allowed to remain.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. Chairman: The mistake seems to be general in regard to the power of the State. It has no power to take from one individual and give to another. It is no doubt feasible for the plains of San Joaquin to be irrigated; but the State has no right to order a water ditch to be cut across a man's land without rendering for it a just compensation. There will necessarily be some damage done to the land, more or less, and such compensation should rest upon a just appraisement. As to the mining districts, the ditch enterprises there and the mineral interests of those sections reciprocate each other. There are vested rights there that have been held under grant of the General Government since the early days of California mining enterprises. In the mining districts I say the mining interests and the water interests reciprocate each other. Water has been taken from the various mountain streams, and, at great expense, turned into ditches and carried all over these districts, to the enhancing of the value of mining property and to increasing the production of the mineral wealth of these districts. These ditches, constructed at great expense, have repaid to those who carried on the enterprises, at the best, but a very small interest. These mountain streams as they ran were of no use whatever, but, carried by such enterprises through the mineral districts, have been of great value in the production of gold, one of the great resources of the State. These interests should not be imperiled in any manner. Most of the enterprises of the mining districts have not repaid the owners for the investment. They may look forward, perhaps, to some future time when the water sold for irrigation, when the mines are worked out, may perhaps repay them for the investment in these enterprises. While we cannot touch these vested rights, we cannot deny the right of the State to regulate the price at which water shall be sold for the future, either for irrigating or mining purposes. These men who have been engaged in these enterprises would not object to any just regulation. But this regulation must be just. The rights of property in water must be recognized as well as rights of property in land, and we cannot evade the force of this.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. Chairman: It seems to me that a great deal less attention is paid to this public question now under consideration than its importance deserves. During the last twenty-five or twenty-eight years in this State a great deal has been effected by the use of water. Great interests have grown up in this State under that use. Great principles have been decided. The people have lived under these principles. The people have accustomed themselves to this state of affairs; and now at one fell stroke it is proposed, in this Convention, to upset the whole theory upon which the people of this State have been acting, acquiring property and improving farms. Now, from the very beginning the rights of water for purposes of irrigation and actual improvement of the land have been considered private rights. Their use has been considered private property. It has been held to be such over and over again by our own Supreme Court. Now, we propose here in one sentence to say that this private property is public. We propose to upset the whole theory, and the whole line of action of the people of this State for twenty-eight years. It has not only been recognized as private property by the people themselves, by their customs and their laws, so far as such regulation is concerned, but it has even been recognized by the General Government. The General Government, in eighteen hundred and sixty-six, granted these rights in accordance with the laws and customs of the State. Now, we propose here to say that it is all folly. Now, I do not believe this is a correct policy to pursue. I do not believe that we can expect the people to sanction anything of that sort. These farmers who have built up nice flourishing farms, with their orchards, and all the appurtenances of civilization, you might say, simply by the use of this water, and could not have done it by any other means in the world, you cannot expect them to say now, many of them in their old age, that the works of their lifetime shall pass from them by one little declaration in the Constitution, that it is all public property. I say it is too much.

Now, there is a dispute, at least among some lawyers, as to whether that provision of the United States Constitution, which says private property may only be taken for public use by giving just compensation, is a limitation only upon Congress or the Government of the United States.

MR. EDGERTON. The Supreme Court has decided that it is only upon the United States.

MR. WATERS. I understood the gentleman from Los Angeles, General Howard, to say that you cannot divert a private right for private interest.

MR. HOWARD. The Supreme Court of the United States has held that in cases where it impaired the obligations of a contract you cannot take private property for a private use.

MR. WATERS. That is amongst the limitations upon the States. No State shall pass any law impairing the obligations of a contract; but this other provision, the fifth amendment to the Constitution of the United States, has been held to apply only to the United States Congress.

MR. EDGERTON. If the gentleman will allow me, I will cite the case. In the case of Barron vs. the Mayor of the City of Baltimore, seventh Peters, it is held: "The provision in the fifth amendment to the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the Government of the United States, and is not applicable to the legislation of the States."

MR. HOWARD. That does not apply to the other proposition, that where it impairs the obligation of a contract, then it cannot be done.

MR. WATERS. Now, Mr. Chairman, I will leave the two gentlemen to decide that between them. I am inclined to believe that the gentleman from Sacramento is right. The gentleman from Los Angeles refers to that provision of the Constitution of the United States which is a limitation upon the power of the State—that they shall not pass any law impairing the obligation of contracts. Now, this right to the use of waters is not in the nature of a contract. I regard it in the nature of property. It is a property right, not founded alone upon contract, but founded upon ownership. The ownership may be the subject of a contract, or it may not. True, if you carry it back in the abstract to its original foundation, we are inclined to vest everything upon a grant from the sovereign.

MR. HOWARD. Has not the Supreme Court of the United States held repeatedly that a grant was a contract, and that the obligation can not be impaired by legislation? That is, if the State grants a man a tract of land, it is a contract, and the State cannot take the grant from him.

MR. WATERS. I think that that has been held to be a contract.

MR. HOWARD. Now, it being held by the Courts that water is a part of the land, can you take the water any more than you can take the land?

MR. WATERS. That might apply to land granted directly, or land granted by the United States.

MR. HOWARD. Does it not apply to Government grants?

MR. WATERS. I concede the gentleman's proposition so far as it goes, but it does not cover the entire ground. The proposition is as to whether it is policy for this Convention to say that this private property is public property, just in one sentence. I say it is wrong policy; it is not called for by the situation of this country at the present time. It seems to me that the water question has got to work itself out. I do not think that this Convention can settle all these water disputes in one sentence: the system has got to grow up to the times, and this thing of forcing the thing, by saying that nobody has got any right to water, is not right. If it is in order, I shall move to strike out the whole report of the committee.

THE CHAIRMAN. It is not in order.

MR. TINNIN. Mr. Chairman: I desire to amend the report of the committee.

THE CHAIRMAN. There are two amendments pending to section three.

MR. TINNIN. I ask to have it read.

THE SECRETARY read:

"Amend section three, in line three, by striking out the words 'or run their waters through natural channels.'"

MR. TINNIN. Mr. Chairman: I make this amendment for this reason: it seems to me that certain of our farmer friends are very fearful of the debris situation. They imagine that they can see the debris of the miner coming down upon them. We of the committee never saw that in the proposition. The idea was for the purpose of running the water away, and we never have once considered the debris question. For that reason I think the committee are unanimously in favor of striking out that portion of the report. Another thing. In framing this report we thought that there would be, in future days, a Legislature that would put the machinery in force to carry out this section of the Constitution. We did not think it necessary for us to say how, or in what manner, these individuals should be protected in their property when ditches or drains were run through their land. We expected that the Legislature, when they put this in force, would sufficiently protect these people in their property and their rights, and I do not think it belongs in that section at all.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am satisfied, myself, that this question is not receiving the consideration that its overshadowing importance demands at the hands of this Convention. I am thoroughly convinced that if this question had been managed and manipulated through this Convention by the Spring Valley Waterworks, it could not have been managed more to suit their taste, or better in conformity with their wishes; and if part of them who have had the management of it had been holders of the stock, it could not have been managed better to suit their convenience and interest.

MR. VAN DYKE. In what respect?

MR. HERRINGTON. Now, sir, what is sovereignty? And what is eminent domain?

MR. TINNIN. I would ask the gentleman to explain himself. Do you mean to say that the Spring Valley Water Company influenced the committee in their report? If you do, you state that which is false.

MR. ESTEE. I call the gentleman to account. I want to know what he means.

MR. VAN DYKE. So do I.

MR. ESTEE. I want to know what——

MR. HERRINGTON. Will the gentleman give me an opportunity to say what I mean? I mean that in the results of these provisions as they are now here before this house, that they could not have been framed more in the interests of the Spring Valley Waterworks. [Applause.]

MR. ESTEE. In what respect?

MR. HERRINGTON. In their working, and in the results and effects that they will have.

MR. ESTEE. Do I understand the gentleman from Santa Clara that the first section, as amended by the gentleman from Placer, Mr. Hale, is in the interest of Spring Valley?

MR. HERRINGTON. No, sir; I do not mean that. I say that so far as that part is concerned it is good; and that is the only provision that is in accordance with the requirements of the people of this State.

MR. ESTEE. Has any other section been adopted affecting that question?

MR. HERRINGTON. No, sir.

MR. ESTEE. Then I do not know what he means.

MR. TINNIN. I do not think he knows himself.

MR. HERRINGTON. I am not talking about what this Convention will do. I am talking about the provisions presented here by the committee, and no one can misunderstand what I say. I do not flinch from what I say, either. I mean precisely what I say, that the effect and the working of these sections as they are presented would have the results which I have mentioned. Now I proceed.

I say, what is sovereignty? It is simply no more nor less than that high authority which possesses the prerogative or right to form rules for the order of community and to enforce them. That is the sovereignty of this State; that is the sovereignty of every other State. Now what is the power of eminent domain? It is that power by which the State puts into exercise that sovereignty for the public weal, and nothing else. Now will you dwindle it down and drive out all the interests of one private person, and take all the interests of another private person, and put every man's hand against that of his neighbor? All will be driven asunder by the provisions you propose to insert here. It makes every man an Ishmaelite as against his neighbor; his hand is against every man's hand, and his interest against every man's interest. You set at war every private interest that is in the community with respect to water. You permit it with reference to water and permit it with reference to every other interest that there is in the commonwealth, and every man's interest will be sought to be enhanced by the use of this power of eminent domain to acquire and filch his neighbor's interest; and not upon the plea of any public benefit that will result, but solely for private use. Can you do it? Dare you do it? Have you the impudence and the boldness to assert here that all these interests may be arrayed and put at war with each other in this community? It is the destruction of empire; it is the destruction of government itself. It is the disintegration and dissolution of that great power called sovereignty. There is none of it left. Now, what is the use of coming here and talking about law if you do not mean law? What is the use of talking about order when you are creating disorder? Now, I apprehend that possibly that question may be understood, and if no one can see the force of that argument I will repeat it. I undertake to say to you now that there is no power inherent in sovereignty to destroy itself. It is not a thing that can commit that crime called *felo de se;* and there is no element in it that possesses the power to create and to organize that kind of a war, by which every element in sovereignty shall be arrayed one against the other, using the power of eminent domain to enforce its claim. Do you see the force of the argument? Do you see the idea that is embraced in the proposition that you present here? What right have I to go to my neighbor and say: Sir, I want your land, I want your water, and I have the power of eminent domain for the purpose of enforcing my private right. No, sir; I say to you now, that the power of eminent domain is based upon another proposition than that; that it is a public use to which the property you propose to take is to be appropriated and applied. Another principle, I say to you, is a war of elements and the destruction of sovereignty itself. Now, it is no use, because you limit this proposition to the mere matter of using water, or taking water, to assert that you may apply or use this power for a private individual in that regard, when you do not propose to apply it to any other proposition amongst the people. If you can apply it to water, or the right to use water, why not apply it to every other private interest in the whole State? The principle is just as unchangeable as time itself. It is just as impregnable as truth, and God upon whom it rests.

MR. PULLIAM. Don't you know that the Supreme Court has decided that the Spring Valley Waterworks has the right to the use of eminent domain?

MR. HERRINGTON. But the Spring Valley Waterworks is not like a private individual.

MR. PULLIAM. What has the Spring Valley to do with this then?

MR. HERRINGTON. I do not care when they only hold a franchise, so far as that is concerned.

MR. PULLIAM. This section don't do them any good.

MR. HERRINGTON. This section gives then an absolute right to the lakes, and that is just what they want. And they wish to defy you and the whole City of San Francisco, and bring San Francisco a beggar at its feet for that which keeps soul and body together. This is a provision that seeks to install Spring Valley as a President of that city, to whom they must pray for water to cool their parching tongues. And, you, sir, if you favor this section, are seeking to bring about precisely that result. Do you understand me now?

MR. PULLIAM. The gentleman has not shown the connection between this section and the Spring Valley. The Spring Valley Water Company has the right of eminent domain now.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I have been listening here to see if I could learn from the gentleman from Santa Clara wherein the Spring Valley has been figuring in this matter. I am very anxious to learn that fact. The only particular objection I have to the section is, that I cannot see its use, in view of the bill of rights that we have passed. The only use there can be, is for the purpose of private drainage. The Spring Valley certainly has the right of eminent domain now, so, as I understand it, this section cannot confer any further right upon them. They have a public use, and for a public use they have a right now to condemn land. Under the first section, as adopted, if the Spring Valley, or any other water company, bring water, for the purpose of sale, into a city, that is a public use. It has been so before. And although the gentleman worked himself up into a fury, I was unable to discover from his argument wherein this section confers any additional power upon the Spring Valley Water Company, or any other water company bringing water into a city for the purpose of distribution and sale. If it is so, why, I should be very happy to vote against it. I would not confer any additional power on that corporation, or any other corporation, as against the interests of the public. But I cannot see that it does.

I can see one benefit to arise from the adoption of that section, and that is the benefit that I pointed out first. It gives parties a right of drainage across the lands of others, upon compensation being paid; and there is a great question whether that can be done under the present Constitution, declaring that private property can be only taken for public uses. There may be a case where it would be difficult to establish it as a public use, and still the property of an individual could not be well used without the power of drainage. The gentleman from San Joaquin has cited instances of the kind. Now, I cannot see any objection, inasmuch as it does not come in conflict with the Constitution of the United States, to conferring, under proper legislative provisions, by general Act, the power, for the purposes of drainage and for sanitary purposes, of going across the lands of others, upon paying just compensation. Now, that is the only real benefit to be derived by the adoption of this section.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I think the gentleman from Alameda, who just took his seat, is mistaken, to this extent: as I understand the decision, one citizen cannot condemn the property of another citizen for a private purpose; for a private use that cannot be done.

MR. VAN DYKE. That cannot be done under the present Constitution. It has been done in other States.

MR. ESTEE. If the gentleman can find an instance, I do not know of it, because it is upon the theory that every citizen is equal before the law, and that anything that one man owns he owns for all the purposes of ownership, and that no private citizen can take it from him for private use; and he cannot do it at all unless he does it by the use of arms. I never heard of one instance where it could be done, and I do not think we had better try it. If the gentleman from Santa Clara meant this by what he said, he has got a good many supporters on this floor. If he meant that section one, as adopted, was in the interest of the Spring Valley Water Company, or any other water company, he is clearly in error, and I advise the gentleman not to get so much excited as to forget the very point he is making.

MR. HERRINGTON. I said, in emphatic terms, that the amendment of the gentleman from Placer was a good amendment, and ought to have been adopted; and I supported it.

MR. ESTEE. Then this Convention has not done anything in the interest of Spring Valley, or any other company, because that is just what we adopted, and I think a large majority of the Convention favored it. As to section three, I do not think we can afford to adopt that section. The Legislature would here have power to enact laws permitting A to dig a ditch right across the land of B, for A's individual benefit—not for a public use, but for his personal benefit and advantage. I do not think we had better try to do that. The Constitution of the United States, or the people of the United States, might interfere—the Constitution certainly will.

MR. VAN DYKE. That has been expressly decided in Illinois.

MR. ESTEE. If it is in order I would move to strike it out.

THE CHAIRMAN. That motion has already been made.

MR. ESTEE. I hope the motion to strike out will be adopted. The gentleman from Santa Clara has an amendment that I saw last night. If he had proposed his amendment I think it would have met the approbation of the most of the members of this Convention, especially those from San Francisco. I think Mr. Joyce also has the same amendment. Certainly I shall support it, and believe it ought to be adopted. But I hope we shall not go so far as to adopt this principle of the right to condemn private property for private use.

MR. ROLFE. Mr. Chairman——

MR. EDGERTON. I desire to vote intelligently upon this question, and I desire to know of the gentleman from San Francisco, what section of the Constitution of the United States is violated by this section three.

MR. ROLFE. I was just going to tell you that myself.

MR. ESTEE. The rights of life, liberty, and property are guaranteed by the Constitution of the United States and the Constitution of each State.

MR. ROLFE. Mr. Chairman: I will endeavor to answer that question myself, just for what it is worth. I say it is in direct conflict with the fifth amendment to the Constitution of the United States, and I have a decision here to show it; and I will guarantee that there is not a gentleman on this floor who can find a decision of any Court of respectable standing in the United States that has held that private property can be taken for private use under any circumstances whatever, unless there is a public interest to be subserved. It can be done for public use. It can be done for private use, provided there is a public interest. It can be done by a private individual, provided it is for a public use, but there is an implied contract between the State and the owner of every private property in the State, that he holds that property originally by a grant from the State. And that grant is a contract, and when the State attempts, by its Constitution or its laws, to take the property from that man and give it to another individual, for his private use, it violates that fifth amendment to the Constitution of the United States, where it says—I do not mean the fifth amendment; I mean that clause which says that no State shall pass a law impairing the obligation of contracts. I was mistaken in saying that it was the fifth amendment. I read now, from the New York Chancery Reports, eighteen hundred and thirty-one, in the case of Beekman vs. The Saratoga and Schenectady Railroad Company. It may be that what I read is only dictum, but it is good law. I read upon page seventy-three:

"The right of eminent domain does not, however, imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation, where the public interest will be in no way promoted by such transfer. And if the Legislature should attempt thus to transfer the property of one individual to another, where there could be no pretense of benefit to the public by such exchange, it would probably be a violation of the contract by which the land was granted by the Government to the individual, or to those under whom he claimed title, and repugnant to the Constitution of the United States."

Now, I say that every man that knows the law knows that private property is held under an implied contract of a grant from the State, and it cannot be taken unless a public interest is subserved, unless it is for a public purpose, anywhere. Therefore, I say, if two men hold adjoining farms, it may be a great benefit to one of these farmers to have his farm drained. He cannot drain his farm if he has got to dig up the other man's farm, unless by consent of his neighbor, and no State can pass a constitutional amendment or law giving him a right to do that. I will admit, if it is a public interest to be subserved, or for sanitary purposes, it can be done; but not for private use.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I am entitled to speak on each amendment. I ask the privilege of making a few remarks in reply to the gentleman from Santa Clara. The committee, of which I have the honor to be Chairman, presented this report to this body. They presented that report from the lights that were before them; and I assert here that the committee presented that report in what they conceived to be the general interest of the people of the State of California. And I say here, that it is unjust, unfair, and ungentlemanly, for any member of this body to get up on this floor, and, under the cloak of a coward, to make insinuations of an improper purpose in that committee. There is an old Scriptural saying, that "suspicion lurks in the guilty mind," and I think that such ideas can only emanate from a debased, a depraved, and a guilty mind.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: This, sir, is a very serious question, and one that ought to be considered, at least, before it is adopted. I suppose it is claimed that the provision which says that private property shall not be taken for public use, without just compensation be made, contains no prohibition for taking private property for private uses at all, in terms. It may be very doubtful if the grant of this power to take private property for public use, is not inferentially a prohibition for taking it for private use, but there is no direct prohibition. We have the same prohibition in our Constitution as in the Constitution of the United States. I regret, sir, that I have not taken the time to look up some authorities upon this matter; but some years ago, I had occasion to bring a suit where this precise point was involved—whether you could take private property for private uses, under any circumstances. That was a case tried in Marin County, under a statute which existed, allowing a party right of way across the lands of another, and I challenged that statute upon the ground that it was unconstitutional, and the Court below held it to be so; and I think it is a correct decision also. Where I deed a man a piece of land, surrounded by other land of mine, then he has a right of way of necessity, and it is a part of the contract of conveyance to him. If my land surrounds him, it is involved in the contract that he shall have a right to make it available, and he can have a right that is called a right of way of necessity, and it is a part of the grant. Of course, contracting or deeding it to him, he is not taking my property at all, it is merely occupying his own. I have come to the conclusion, long ago, that there is no power in the State to grant one man the property of another; it means confiscation, and nothing but confiscation; it is a dangerous right, if it exists at all. When the question was first raised, whether a railroad corporation had the right of eminent domain, the Courts of this country put the right of condemnation upon the ground that it was a public use, and the very point was urged, that there was no power, on the part of a corporation, to confiscate the private property of citizens, because a corporation was a private interest. It was represented that it would carry passengers, and do this thing and that thing, but for the purpose of private gain, and the reason urged why these ought not to be allowed to exercise the right of eminent domain was, that it was taking private property to be devoted to private uses; that was the very point made in these cases, and the Courts held that they had the right solely because it was not a private use, but devoting it to a public use. It was on that ground alone that they were allowed to condemn property, when these cases were first decided, some forty years ago, in this country. The non-user of this right on the part of the State, if it exists at all, is a strong argument against it. There has been but a single case, and that in the State of Illinois, where there has been any attempt made to take the property of one man and give it to another, for any purpose or any use whatever. Once open the door and say that the property of A can be transferred to B, simply because somebody or other thinks that B will be benefited by it, and that B will be more benefited than A will be injured, and that is the end of the rightful exercise of the power to transfer one man's property to another, and to keep up the process just as long as they please.

MR. HOWARD. I can refer you to a very early case—Calder vs. Bull—in which the Supreme Court held that it was not in the power of society to transfer private property.

MR. EDGERTON. Mere dictum.

MR. HOWARD. Very heavy dictum.

MR. SHAFTER. Mr. Chairman: Governments are instituted among men for the purpose of protecting their property and their persons, but here it is claimed that the Government has a right to dispose of the property of one man to another. Whether it is with or without compensation, makes no difference. It makes the bargain for him. I do not see any answer to the statement made by the gentleman from Los Angeles, Mr. Howard. Constitutional governments reserve the right to take private property for public use, if it is necessary to the permanence or necessities of society, but when it comes to a right to take my property and give it to another man for his use, the right of eminent domain does not apply at all. I hope this third question will be stricken out, and I do so with the most profound respect for the committee.

MR. ESTEE. Mr. Chairman: I wish to refer to the fifth amendment to the Constitution of the United States, which says that no person shall "be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation." I am aware that there has been a decision by one of the Courts explaining what due process of law is, and also the term private property for public use, but still it does not militate against the general result, nor does it affect the question at issue, that one individual's property cannot or ought not to be taken for a private use.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: Two questions are presented by this section and by the gentleman from Los Angeles. One is a question of power and the other a question of policy. A question of morality, perhaps, and a question of justice. Now, sir, if I understand the duty, the powers, and the character of this assembly, it represents the people in their primary capacity. We are here, sir, as the representatives of the people outside of their existing government. We are here to frame a Constitution; an instrument which is a new compact; an instrument which is to define the powers of a government which will come into existence under this new Constitution, if it should be adopted; and we are precisely in the attitude that the people themselves would be if they were assembled in mass Convention, creating or framing for themselves a new organic law, a new compact, and upon the great underlying principle of republican governments the majority must control. If the people agree to that compact there is an end to it, and the powers lodged in that government are supreme and are to be enforced, unless they are in conflict with some provision of the Constitution of the United States. Now, sir, the gentleman who has just taken his seat says that this section is in conflict with that provision of the Constitution of the United States which says that no person shall be deprived of life, liberty, or property, without due process of law, and that private property shall not be taken for public use without just compensation. Here is a proposition that it may be taken for private use. What is the difference so far as due process of law is concerned? The people have the power, sir. They can make such government as they please so long as it is republican in form, and if a majority of the people of this State adopt it, there is an end to the question.

Now, sir, there is a provision in the present Constitution that private property shall not be taken for public use without just compensation. Why is that there? Simply because in the absence of such a prohibition the Legislature would have power to take private property for a public use without any compensation, and therefore it is that that prohibition is placed upon the Legislature. It is a limitation upon the power of the Legislature. Suppose it was not there. Now, if the people may say, in their primary capacity, to a government that is going into existence, "you may take private property for public use after just compensation," I would like to have some gentleman point out the distinction between such a case, in point of power, and the declaration that "you may take private property for private use upon making just compensation therefor." In reply to the gentleman from San Bernardino, Judge Rolfe, I wish to say that the case cited by him has no application to this. There was a question arising under the Constitution of the State of New York, a question of legislative power under that Constitution, and it was held that the power could not be there exercised. I challenge the gentleman to show any case where any such decision has been made that private property may be taken for private use. I concede that there is any amount of dictum running through the books where they say, for instance, that the Legislature, in the absence of any prohibition, would not have the right to violate natural justice. But, after all, who is the judge of that? One tribunal might think one thing was natural justice, and another tribunal might think another thing was natural justice. I believe that the Courts hold that the Legislature can do anything that it is not prohibited from doing by the Constitution of the State and the Constitution of the United States.

MR. TULLY. Do you claim that society can have the power to do wrong?

MR. EDGERTON. No, sir; but there we come to first principles. Who is the judge? The gentleman from Santa Clara might think some proposition in the Constitution was against natural justice, and another gentleman might think it was not. I submit that if it is competent for the people in a Constitution to declare that private property may be taken for public use, the same power can say that it may be taken for private use. So far as the question of power is concerned they are upon the same plane, and no distinction can be made.

Now, come to the question of right and wrong. We may agree upon the question, but who is the judge? Why, the people, in their primary capacity, acting through constitutional forms and making a Constitution for themselves, are the judges of what is the correct principle of government. One word farther, as to the fifth amendment to the Constitution of the United States. The Supreme Court of the United States has put that at rest. In the case of Barron against the City of Baltimore, it is decided that it is not intended as a limitation upon the State, for it says "the provision in the fifth amendment to the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the Government of the United States, and is not applicable to the legislation of the States."

This is the view which I take upon this subject simply from the standpoint of the power of the Convention. As to the question of policy I am uncompromisingly opposed to this section three. I think it involves an outrageous principle. I think it would result in incalculable injury and oppression. It is without a parallel in constitution making so far as I am advised. If there is any other I do not profess to know of it, and I should like to see it. This idea of taking private property for private use. I do not see where such a principle would end. It seems to me you might as well dissolve society at once so far as property rights are concerned.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I do not propose to discuss this question of law that the legal gentlemen have been discussing for the last half hour. I desire simply to say in this connection, that there is one thing that we ought to provide for, if it is not already provided for at common law, and that is the matter of drainage. It certainly is very important. There is a vast amount of land in this State, being very nearly level, which it is very important to the owners that they should have some privilege of drainage. If that privilege may be cut off entirely by some party who owns lands across the way in the direction in which the water would naturally be run, although that party's land may need drainage also, yet from carelessness he may be disposed not to drain his own, and to stand directly in the way of anybody else draining theirs, I certainly think that if that right does not exist at common law—if it will be cut off unless this Convention provides in some way for that right—we ought to see that it is adopted in this Constitution. The form that it ought to assume I do not know, and if this article involves the principles stated by gentlemen here, certainly it ought to be changed. But I believe that the good sense of this Convention will certainly recognize that there is a necessity that some right of drainage should be given to the people.

THE CHAIRMAN. The first question is on the amendment to the amendment offered by the gentleman from Los Angeles, Mr. Howard.

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from San Francisco, Mr. Winans.

The amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from Trinity, Mr. Tinnin, to strike out in line three the words, "or run their waters through natural channels."

The amendment was rejected, on a division, by a vote of 35 ayes to 43 noes.

THE CHAIRMAN. The question recurs on the motion to strike out section three.

The motion prevailed.

MR. HITCHCOCK. Mr. Chairman: I offer a new section.

THE SECRETARY read:

"All persons and corporations shall have the right of way across public, private, or corporate lands, for the construction of ditches, flumes, or canals, for the purpose of conducting water for the irrigation or reclamation of lands, and for manufacturing and mining purposes, and for drainage, upon payment of just compensation."

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

MR. HERRINGTON. Mr. Chairman: I have a new section to offer.

THE SECRETARY read:

"The right to collect rates of compensation for the use of water supplied to any county, city and county, city, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law."

MR. HERRINGTON. Mr. Chairman: I think it is doubtful if we can be too careful with the provisions that we put into the Constitution with reference to this right to the use of water, and as that provision has been read for information once before I deem it unnecessary to more than add that it defines simply the right which may be exercised, and the manner in which that right shall be exercised with reference to the use of water.

MR. DUNLAP. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"The Legislature shall provide, by law, that the Boards of Supervisors, in their respective counties, shall have power, when application is made to them by any person or corporation interested, to establish reasonable rates to be charged for the use of water, whether furnished by individuals or corporations."

MR. HERRINGTON. Mr. Chairman: I hope that the amendment will not be adopted. The Legislature will undoubtedly have all the power necessary.

MR. ROLFE. Mr. Chairman: I call the attention of the gentleman to the supplementary section that was adopted to the article on legislative department. It gives the Legislature just that power that is included in that section: "The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph, gas, and water companies," etc.

MR. DUNLAP. I withdraw my amendment.

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

MR. HERRINGTON. Mr. Chairman: I would like to state that the amendment I have offered was drawn by John F. Swift, of San Francisco.

MR. TINNIN. Mr. Chairman: The result of that would be to compel any individual, to own any water, to resolve himself into a corporation. Now, it does not seem to me that there would be any necessity for such a proviso in our Constitution. There is no necessity of compelling every individual, who wants to do any business, to go into a corporation. If an individual had a few water pipes, and he desired to furnish water to his neighbor, he would be compelled to incorporate for the purpose of doing that.

MR. HOWARD. Mr. Chairman: If that is the opinion of Mr. Swift, I have only to say that he is sadly out on the matter of franchises. Now, if I furnish water to the gentleman from Santa Clara, it is a private matter and not a franchise, and we cannot make it a franchise by saying so here. It comes under the general principle stated by the gentleman from Marin, that you cannot take the property of A and transfer it to B, and you cannot make A sell his property to B unless he chooses. I refer to the decision of the Supreme Court of the United States, in the case of Calder vs. Bull, 3 Dallas, p. 388. Mr. Justice Chase says:

"An Act of the Legislature (for I cannot call it a law) contrary to the *great first principles* of the *social compact*, cannot be considered a *rightful exercise* of *legislative* authority."

MR. HERRINGTON. Will the gentleman allow me to suggest that this has reference to furnishing water to counties, cities, and towns, and the inhabitants thereof.

MR. HOWARD. That does not change the principle at all.

MR. HERRINGTON. That is a franchise.

MR. HOWARD. No; not necessarily. The Justice continues: "The obligation of a law in governments established on express compact, and on republican principles, must be determined by the nature of the power on which it is founded. A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act which, when done, was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; or a law that takes property from A and gives it to B. It is against all reason and justice for a people to intrust a Legislature with such powers, and, therefore, it cannot be presumed that they have done it. The genius, the nature, and the spirit of our State Governments amount to a prohibition of such acts of legislation, and the general principles of law and reason forbid them. The Legislature may enjoin, permit, forbid, and punish; they may declare new crimes, and establish rules of conduct for all its citizens in future cases; they may commend what is right, and prohibit what is wrong; but they cannot change innocence into guilt, nor punish innocence as a crime; or violate the right of an antecedent lawful private contract, or the right of private property. To maintain that our Federal or State Legislatures possess such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy altogether inadmissible in our free republican governments."

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: This is substantially a proposition to say for the third time the same thing which we have really said twice. The first section, as amended, now reads:

"The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law."

That is saying it, substantially, once. It was said before, however, in the twenty-eighth section of the legislative article, not only declaring the right, but making it mandatory upon the Legislature to exercise that right. Now, what more does the gentleman from Santa Clara propose? I respectfully submit that the Constitution we are attempting to make will be sufficiently voluminous without saying the same thing over more than twice anyhow.

MR. TINNIN. Mr. Chairman: I move that the committee rise, report back the report of the Committee on Water and Water Rights, as amended, and recommend its adoption.

MR. SMITH, of San Francisco. I object. There is a proposition to come in here.

MR. WATERS. Mr. Chairman: I move that the committee rise and report back the article, with the recommendation that it be indefinitely postponed.

THE CHAIRMAN. The motion is not in order. The question is on the motion of the gentleman from Trinity, Mr. Tinnin.

The motion was lost, on a division, by a vote of 39 ayes to 41 noes.

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

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I really do not see why this should be adopted. It need not be said that it does not enunciate any principle. But the first section, as it is amended, declares that "the use of all waters now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law." It delegates the power to the State to exercise control in a manner to be prescribed by law. I am really unable to see what more we need in the Constitution. We certainly do not desire to lay down any rule, to prescribe these regulations which we say the Legislature shall prescribe by law. We have given the Legislature full power to deal with the subject in all its length and breadth and depth. Now, unless we wish to formulate a code of laws on the subject, it seems to me that we had better leave it just where it is. It has been said that we need some better definition of a public use. I answer that it has been held for two hundred years by the common law Courts of Great Britain, and by the majority of Courts in the United States, that in determining the question of what is a public use it is mainly a question of legislative determination. I invite the attention of lawyers to this statement. The general drift of authority is that what constitutes a public use rests in legislative declaration. We have done it here, so far as the provision is concerned, in the Constitution, which is still higher authority. It seems to me with this door open there is full power for the Legislature to provide all needed legislation that the wants of this State require. I think the best thing for us to do is to stop where we are.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: Some gentlemen profess a profound ignorance of what is attempted to be done by this amendment. I will say, for their enlightenment, that the delegation from San Francisco fully understand what that means; that it is an attempt to reduce, in every possible manner, these corporations which undertake to furnish incorporated cities and towns with water, to the control of law, and to make them amenable to law, and make their operations conform to law and to established rules. This amendment interferes not at all with the supply of water to miners, or to farmers for irrigating purposes.

MR. TINNIN. Don't it compel us to incorporate? It says it is a franchise.

MR. REYNOLDS. I call for the reading of the amendment.

THE SECRETARY read:

"The right to collect rates of compensation for the use of water supplied to any county, city and county, city, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law."

MR. REYNOLDS. That has reference to the supply of inhabitants of incorporated cities and towns; that word is necessary to be put in there, "or the inhabitants thereof," and that is the purpose of it. It interferes not at all with the mining or irrigation schemes, but has reference only to the supply of water to incorporated cities and towns. I hope the amendment will be adopted. We know what it means in San Francisco.

MR. ESTEE. Mr. Chairman: I hope this amendment will be adopted, and I think it will be of great use and service to the people of this State.

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

The amendment was adopted.

MR. REYNOLDS. I move that the committee rise, report progress, and ask leave to sit again.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Water and Water Rights, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and quorum present.

REPORT.

MR. AYERS. Mr. President: I ask leave to report a section to be added to the report of the Committee on Harbors, Tide Waters, and Navigable Streams, and ask that it be referred to the Committee of the Whole.

So ordered.

WATER AND WATER RIGHTS.

MR. TINNIN. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Water and Water Rights.

So ordered.

IN COMMITTEE OF THE WHOLE.

MR. HERRINGTON. Mr. Chairman: I wish to offer the following as an additional section.

THE SECRETARY read:

"The only property that can be acquired in any of the waters of this State by appropriation or condemnation, is a use, and such use shall forever remain subject to regulation and control by the Legislature of the State for the use and benefit of all."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I will state, sir, that this proposed new section in nowise conflicts or interferes with the section presented by the committee, or that proposed by the gentleman from Placer, Judge Hale, which has been adopted by this body. This section which I offer is intended to define the extent of the rights which may be acquired by the appropriation or condemnation of the waters of this State. And I might as well repeat what has once been said here, that there are some opinions even in this Convention that lead to the conclusion that some higher right than the use can be acquired by simple appropriation, or by condemnation proceedings under the power of eminent domain, in this State. This section is designed to determine and fix, once and forever, the extent of the rights which can be acquired by these methods in the waters of this State. And it is there determined and fixed that no higher right shall be acquired than a use. The section that was adopted yesterday says that the use of all water now appropriated, or that may be hereafter appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law. That section does not prevent, as I understand it, the acquisition by condemnation of a higher right than a use. It only extends in its effects to a technical appropriation, as has been understood by the laws of Congress. All the general principles that are involved in water rights when this section is adopted will be fully engrafted upon this article, and in my opinion, as far as the general principles are concerned, it will be a complete article. Without it there will be some room for question as to the propriety of the doctrines advanced here, that higher rights may be acquired by a process of condemnation than a use. It is not good policy to engraft in an article of this kind a provision that will be open to any doubt. Now, I submit that this section ought to be adopted. It is declaratory of the common law as it exists, with reference to acquiring rights in water.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I submit that there is great danger of our introducing too much upon this subject. It is evident that the law and the decisions of the Courts have heretofore been made in accordance with the customs and demands of the country. Laws have been established upon these customs according to the necessities of the country, and the Courts have decided accordingly. I am under the impression that an amendment of this kind will be very mischievous in its tendencies. Now, for instance, where water is scarce, and where there are more ditches, as is the case in some places, than there is water to supply them, to say that that water shall be a public use and shall belong to all, is to destroy those rights in water which have been sustained by the Courts of this State. It looks very innocent in the abstract, and reads very smoothly, that everybody should have the right to the use of water; it looks very plausible and quite just to have a kind of general divide; but when certain men have undergone early hardships to acquire either land or water, it would seem to me to be absurd, upon the principles of common justice, to interfere with what they have acquired in the midst of hardships. This says that the water shall be for the common use of all. That may be a little indistinct, but we can see the tendency of the thing. It is destructive of the rights which have been acquired before. It is in violation of the well settled principles of priority of rights.

MR. HERRINGTON. It operates upon nothing except that which may be acquired hereafter.

MR. BROWN. I was not aware of that. If it operates upon nothing more than that I am deceived. I am under the impression that we have got about enough in this article. Let the people, and the Legislature which they shall choose, settle this matter according to the progress of the age. We do not want too much in it. I think we should leave something to the judgment and experience of the people. I am satisfied that it is often the case that there is too much put into Constitutions.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I hope the amendment will not be adopted. The reason I object to it is that the first section prescribes that

all the waters that are used for the supply of certain things (naming them), that the use of such water for such purposes shall be declared to be a public use. The second section prescribes that towns, counties, and cities shall regulate their use and price. The last section of the article on legislative department says the Legislature shall, by law, regulate the price of water. The whole thing seems to be harmonious as it stands. Now, the gentleman proposes another section, declaring that there is no property in water; that wherever parties have acquired a right it shall be but a use. Now, that is contrary to the very principles of the rights of property, as far as appropriation is concerned. I am not speaking of appropriations for public purposes, but for a man's own use. A man has a farm, and a stream of water runs through it. He owns that water as far as the water rises upon the land. He owns from the sun to the center of the earth, under every rule of law.

MR. HERRINGTON. Could that be acquired by appropriation?

MR. ESTEE. Certainly.

MR. HERRINGTON. No, sir; by purchase.

MR. ESTEE. The main objection to this is that the third section and this, taken together, will be meaningless, and possibly the Courts will hold that they conflict with each other. As it stands now, the article seems to be entirely harmonious. I think the gentleman from Tulare made a very good point when he said the great danger was in getting too much in the Constitution. The danger is, too, in making one section conflict with another, and in consequence the Courts may hold that they are of no effect. For one, I hope the amendment will be voted down. I move that the committee now rise, report back the article, and recommend its adoption.

MR. HERRINGTON. Would you be willing to have the word "condemnation" inserted in the section proposed by Judge Hale and adopted yesterday?

MR. ESTEE. No, sir; I do not think there is any necessity for it.

THE CHAIRMAN. The question is on the motion that the committee rise.

Carried—Ayes, 61; noes, 30.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Water and Water Rights, have amended the same, and recommend its adoption by the Convention as amended.

MR. TINNIN. I move that four hundred and eighty copies be printed.

So ordered.

MR. HOWARD, of Los Angeles. Mr. President: I wish to introduce an article on banks and banking, and ask to have it referred to the Committee on Corporations other than Municipal, without reading.

So referred.

STATE INSTITUTIONS.

MR. VAN DYKE. Mr. President: In the absence of Judge Overton, Chairman of the Committee on State Institutions and Public Buildings, which is next in order, I move that the Convention now resolve itself into Committee of the Whole, for the purpose of considering that report.

So ordered.

IN COMMITTEE OF THE WHOLE.

The article was read as follows:

ARTICLE —.

SECTION 1. There shall be a State Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy, occurring before the expiration of a term, shall hold only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the Directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

SEC. 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

SEC. 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the Prison. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty; all other officers and employés of the Prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

SEC. 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

SEC. 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

THE SECRETARY read section one as follows:

SECTION 1. There shall be a State Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy, occurring before the expiration of a term, shall hold only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the Directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard on written charges.

MR. CONDON. Mr. Chairman: I offer a substitute for section one.

THE SECRETARY read:

"SECTION 1. There shall be a State Board of Prison Directors, to consist of three persons, to be elected by the qualified voters of the State at large, at the general State election, at the times and places that State officers are elected, and the term of office shall be six years from and after the first Monday in January next succeeding their election; *provided*, that the three Directors elected at the first election shall, at their first meeting, so classify themselves by lot that one of them shall go out of office at the end of two years, one at the end of four years, and one at the end of six years. If a vacancy shall occur in the office of Director, the Governor shall appoint a person to hold the office until the election and qualification of his successor, which election shall take place at the next succeeding general election, and the person so elected shall hold the office for the remainder of the unexpired term. The first election for Directors shall be at the first general election after the adoption and ratification of this Constitution."

REMARKS OF MR. CONDON.

MR. CONDON. Mr. Chairman: As a member of the committee, I wish to say that the report of the majority contemplates the appointment of five persons, by the Governor, for a term of ten years; this, sir, is antagonistic to the very principles of the system of government under which we live. It was contended in the committee that the great object to be attained, in order to reform prison discipline, would be to have these Commissioners appointed. The argument presented there contended that by such appointment they would be free from any and all political affiliations; this I consider not a just reason, from the fact that if the people, in their sovereign power, have not the right to select their servants for the purpose of performing all official duties, it proves, sir, the fact that our system of government is a failure. I contend, sir, that the people should have that right, sir. If it is true that, in all the political positions filled in this State, and every State in the Union, we have been able to obtain honest and intelligent men for the purpose of carrying out the government, it is equally true we can select, amongst the citizens of California, men qualified to discharge the duties of Prison Commissioners. The subject of prison reform is not a new one; it is one that has taxed the mental faculties of some of the greatest minds, not alone in the State of California, but of the United States, and I might add, of the whole world. It now becomes the duty of this young State to inaugurate a system that will redound to our own good credit. I contend that by the election of these Commissioners, these great objects can be obtained, and I hope the substitute presented will meet the hearty concurrence of this Convention.

SPEECH OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I regret that the Chairman of the committee is not present, because he is much better prepared to present the claims of the report of this committee than I am. But in his absence, I suppose it devolves upon me to state the reasons for the actions of the committee in this respect. The plan here presented is substantially the one introduced here by Judge Campbell, of Alameda, which was supposed to have been formulated by the late Governor Haight, who was a member of the Prison Commission, a voluntary association which has done much good in this State, in supervising and overlooking prison discipline and management in this State. It is not new. The plan has been in vogue in other States, and the whole object is to remove the management of the State Prisons and public institutions from politics. Now, each member of the committee, and I think almost every member of this Committee of the Whole, will admit that to elect this Board of Prison Directors will be to put the State Prisons in politics. It seems to me it would necessarily follow. If these Directors are to be elected, of course they will be nominated by some party. Now, the Democratic party, or the Republican party, or the Workingmen's party, would carry the election. These Directors would be nominated by one or the other of these parties and elected. That is inevitable.

Now, in reply to the gentleman who represents the minority. He says it is right for the people to elect these officers. We concede the right of the people in the premises. But if the people adopt this Constitution with this provision in it, do not the people waive their right to elect these officers, for the purpose of removing them from the pool of politics? It is simply for the people to determine which mode they prefer. Other States have found it beneficial to have these officers appointed, because they can be chosen from among those who are eminently qualified for this particular business. Political conventions do not always select the proper men for the proper places. And it will be observed here that we have provided that these Directors shall have no salaries. It was shown to the committee, to the entire satisfaction of almost all the members, that entirely competent and worthy men can be found in this State for the purpose of reforming them and so conducting them as to redound to the advantage and benefit of the State—men of means, men who have retired from active business, and who have made this matter a study, who will be willing to give their services without compensation. I say, it was shown to the committee that any number of this class of men could be selected by the Governor, who would serve without any compensation whatever. In fact, the present Prison Commission is purely a voluntary association composed of that very class of men, and they have done a great deal of good in supervising the prison management in this State. The majority of the committee were fully satisfied that competent, honest men can be had who will perform these duties without pay, save their actual traveling expenses.

Now, sir, I wish to refer to other instances in this State where this system has worked well. Take the State Insane Asylums. The Directors are not compensated. They are not political hacks. They are not nominated by political conventions. They are selected because they are the proper men, men who will devote a little of their time to this public duty for the honor which the position confers, and for the sake of being

useful to their fellow men. Take the University of California. It is managed well by gentlemen who are appointed by the Governor, from the various political parties, without any regard to their politics whatever, and without compensation. And they serve simply for the honor which the position confers. Now, will any one pretend to say that these institutions are not managed better in this way than they would be by a Board of Directors elected by the people—nominated by political parties? Besides, sir, it must be borne in mind that if we elect these Directors from various parts of the State—from distant parts of the State—we cannot expect them to come here and serve without compensation. A reasonable compensation would be not less than two thousand or three thousand dollars per annum each. There is the matter of expense to be considered. For these and other reasons which I might adduce, the committee adopted the plan proposed by Judge Campbell, which was drawn by the late Governor Haight. We allow them to be appointed without any salary—paying their actual expenses—and they choose the Superintendent and Warden, and the Clerk. All the subordinate officers are under the immediate charge and direction of the Warden. You thus have them in check. Of course the Legislature will provide that these Directors shall keep books, and report to the Legislature, so that the whole system would have a proper course of checks. I believe the plan here adopted is the best that could be adopted for this State, as regards economy and efficiency. Certainly the other plan proposed could not be adopted without throwing the prisons at once into the whirlpool of politics, because these Directors would be politicians, necessarily, being elected by one or the other of the political parties. I hope, therefore, that the amendment will not be adopted.

MR. BIGGS. I wish to ask a question. Would not three be as good as five?

MR. VAN DYKE. There is no compensation attached, and you can have five as well as three. If they were receiving a salary I would say that three would be sufficient.

MR. CONDON. In answer to the gentleman——

THE CHAIRMAN. You have spoken once.

SPEECH OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I have been on this committee, and am one of those who signed this minority report. I must differ from my friend from Alameda, when he says the committee were of this opinion. The majority of the committee were not very positive as to their opinions. It is true, the majority signed the report to appoint five Prison Commissioners, but they were not very positive. There were several who disagreed entirely, and thus a majority and minority report was presented. I am in favor of electing these Commissioners, and also of paying them a fair and reasonable salary. I don't know how it is that gentlemen tell me to-day that we can readily get three men, or five men, to serve the State for ten years simply for the honor which the position confers, while only a day or two ago it was urged here that cheap men were very dangerous men to have in office. The gentleman himself told us that it was a very dangerous thing to have cheap men in office for Judges, and I believe he was right.

MR. VAN DYKE. I was not here at all; I was absent.

MR. WELLIN. I accept your apology. I have heard you privately say the same thing. The gentleman tells us that this University has succeeded so well in this mode of trusteeship. I remember, a few years ago, when the Commissioners didn't succeed so very well, and if the reports of the legislative committees were to be at all relied upon, they were very dear men to the State, if they did serve the State for nothing. I have the fullest confidence in the people to elect these officers. I am satisfied it will be better for the people and better for the State. I hope the proposition will be accepted, and that a reasonable compensation will be allowed. It is not that I have lost confidence in the ability of the Governor to make these appointments, but it is the common sense view that governs me. The Governor is continually besieged for every place where there is a chance to make a dollar, where there is the slightest possibility of making money. He is besieged from one end of the State to another by people wanting appointments. They make promises in conventions that if certain men are elected, the Governor will appoint certain other men to certain places. That is the fact. More places are promised than there are places, and I should like to know how you are going to take these institutions out of politics by giving the Governor the appointing power. Let the people elect them, and then, if we do not get good men the people will have no one to blame but themselves.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: As a member of the committee, and one of the signers of the minority report, I believed, sir, when I helped frame that minority report, and signed it, that it was the sense of this Convention that all persons who occupy official positions in the State should be elected by the people. If the power of appointing the members of the State Board shall remain with the Governor, then we might as well allow the Governor, by and with the advice and consent of the Senate, to appoint the members of the Board of Railroad Commissioners, and all the other officers that we have provided for. But I believe, sir, that it is one of the great principles of republican government that the people shall have the right to designate and say who is to represent them in an official capacity. If the people are competent and qualified to elect three Railroad Commissioners, who shall have absolute and unrestricted power over the railways in this State, amounting to a hundred million of dollars, certainly the people are qualified to say who shall be their State Prison Directors. It is said here that by giving the power of appointment to the Governor, you will take the matter out of politics. Now I do not believe any member of this committee who has given the matter any serious consideration will believe any such thing. If the Governor be a Republican, or a Democrat, or a Workingman, will he appoint men to the office who belong to the same political party that he belongs to, or otherwise? He can do it rightly and properly. There is nothing wrong in it. If the man be a proper man, a Republican Governor ought to appoint a Republican. It is human nature, and there is no impropriety in it. As far as politics goes, politics rule just as much in the appointment of men as in the election of men. Why should we make an exception here? Gentlemen say they are incompetent to say who the State Prison Commissioners should be. If we desire to say that the people shall have power in one case, let us give them power in all cases.

Again, the minority of the committee have seen fit to recommend but three persons. They believe that three men can act just as well as five. Whether they receive a salary, or whether they receive but their expenses, it will certainly be a saving to the State by having two men less. We therefore ask a candid and fair consideration of this report at the hands of this Convention.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. Chairman: I am opposed, sir, to this system of appointing these Commissioners. This is supposed to be a republican form of government, and I am tired of this cry about taking these matters out of politics. This, sir, is a republican form of government, and by politics we live, and by politics we expect to fall. Now it has been mentioned here that these men could serve the State as the State Board of Regents serve the State. I would not have mentioned the matter at all if it had not been brought up in that way. In eighteen hundred and seventy-three and eighteen hundred and seventy-four, during the time I was a member of the Legislature, having been appointed one of the members of the Building Committee, and it having fallen to my lot as a member of that committee to investigate the buildings of the State of California, of course it became my duty to investigate the conduct and management of such Regents. First, the College of Agriculture, and second, the College of Letters. We found ourselves for two weeks wrapt in a labyrinth—a deep, intricate mass of uncertainties. Day after day we went further into these difficulties, until we had exhausted four or five weeks in our arduous work, and at the end of that time the session of the Legislature was about to close, and we were compelled to desist from any further investigation of the matter. And let me say here, that in the short time we had to investigate the accounts of the Regents, we found thousands of dollars of the people's money that the Regents could not account for.

MR. WINANS. Mr. Chairman: I rise to a point of order.

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

MR. WINANS. The gentleman is not speaking to the question. There is no opportunity to reply to him. It is not fair to make such statements, when he knows it is not pertinent to the discussion and therefore they cannot be replied to.

MR. BARTON. I simply alluded to it to show the principle of appointing to these important positions. There is a large amount of money to be expended. I do not desire to hurt the feelings of any member of this body who may have been upon this Board of Regents.

MR. WINANS. It is not a question of hurting feelings; it is a question of assailing an institution here which has no power of reply. My feelings are not hurt.

MR. BARTON. I stand corrected. I am opposed to taking this matter out of the hands of the people. I hope this matter will be left to the people to determine.

MR. WALKER, of Tuolumne. I move an amendment.

THE SECRETARY read:

"Add, after the word 'Senate,' in line three, the following: 'More than a majority of whom shall not be of the same political persuasion.'"

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I had not intended to say anything against this matter. I am, sir, in favor of the election of these Commissioners. The argument is not good that men ought to be on that Board who have no political views. There is no man—no American citizen—who has not some political opinion. No man is fit for the position who has not some political views. I believe we can find plenty of men who have decided views, and are not afraid to express them, who will fill these positions acceptably. This question of employing men because they will serve the State without consideration, I do not believe in the policy of it. These men will seek in some way to get pay, and directly or indirectly to secure pay. The State should pay them a sufficient compensation to enable them to serve. The men should be selected by the people, and the men who are seeking these places should not be selected. They ought to be paid for their services a reasonable compensation, and men with principles, too, should be selected.

REMARKS OF MR. JOYCE.

MR. JOYCE. Mr. Chairman: I am sorry to think, sir, that the gentleman from Alameda, Mr. Van Dyke, should be so much sophisticated in the argument as to set out the Workingmen's delegation. The matter would be in their hands to elect Commissioners for ten years. It is contrary, sir, to the principles of the Workingmen's party, this appointment system, altogether. Whether it is five years or twenty years, it is wrong in practice, and I am proud to say it is not our theory. In all cases, in at least six out of ten cases, where Commissioners are appointed, we find it worked injuriously, not only in State matters, but in United States matters. Commissions are dangerous to begin with. We should look at this thing fairly in the best interests of the people of the State of California. It is but a few years ago that a Commission came out to investigate Chinamen. If the Commission had been elected by the people of California they would not be so apt to whitewash. We come to find out to-day, sir, the State of New York elected three Commissioners. According to the report we find here of Mr. Pillsbury, it shows that the

State Prison of New York is a big paying institution, under the management of three elected Commissioners. Now, sir, every gentleman on this floor knows that it takes a great deal of money to run the State Prisons, and I do not pretend that the people of this great State want men to serve them without pay. I believe the State is able to pay people when they ask them to perform any work—pay them for their time. I believe it is human nature, that if we don't pay a man he will pay himself, and they might do the same as another institution, the new City Hall. We find out that one of the Commissioners there has a partner, and gives contracts to his partner. So much for the Commissioners. Now, if the people had elected the City Hall Commissioners, I am satisfied the thing would be in a better position. In the State of New York the State Prison labor is utilized. I believe we can introduce a system of manufacturing jute bags here, and supply the farmers of this State, and make the prisons pay. Make them work for the State, so that the labor will not come in competition with outside American labor, because there is no such work done in this part of the country. The same way with carpets. I believe, to appoint these Commissioners by the Governor, would be to take the dregs, and would not be practical to the people of this State. I don't see, if the people of this State have a right to elect a man Governor, they have just as much capacity to elect these Commissioners. Another thing, I think it is a dangerous precedent to introduce into our system. I think it is bad and dangerous, and I think the long term system is bad. It is against popular government. Shorter terms are much better, and let the people say who shall represent them. I must vote against that section as offered by the majority.

SPEECH OF MR. LAINE.

MR. LAINE. Mr. Chairman: It strikes me, after an examination of the report, that it is a very good one, and it meets my hearty approval. Now, the gentlemen who have spoken against this report seem to think that it is taking some right away from the people. The proposition is simply this: we are a part of the people, and determining what is best for ourselves. Having determined that, we are determining for the people. The question arises here, as to the management of the State Prison, what is the best course to pursue in the management of these institutions? We all know that our State institutions, in order to be well managed, must have stable management. Unless they are, there can be no good realized from them. These institutions are a necessity with us. They are not institutions established for purposes of speculation, or for the benefit of parties, political or otherwise. They are evils—necessary evils—and the question arises, what is the best means of managing them so that the evil may be lessened? How shall they be managed, so that instead of being a great weight upon the incomes of the people, continually draining taxes from them, they may be rendered self-sustaining? And it strikes me that the course adopted here is a good one. I find it has been commended by very talented men—men who have devoted long years of study to these matters. This plan did not originate with this committee. They have adopted it from others. There has been placed in the hands of most of the members the report of the California Prison Commission. This Commission is composed of some of our best men, men who have the best interest of the State at heart. The human race produces such men, and we find here the names of such men as Governor Haight in our own State, who, after long study, have agreed upon this as being a wise and proper measure.

Now by this course the Governor of the State will appoint two men. Each Governor of the State will appoint two, because they are to hold for ten years. It reaches beyond his power. It reaches beyond his day. And we do know, wherever there is pay there is always a lot of men ready to rush in for the emoluments of office—not for the honor it will confer, but for the money there is in it. Men should be selected of mature years for these positions—men of observation and experience; men who have money enough, and who know there is more in the office than the mere matter of dollars and cents. Not men with whom the place is made a stepping stone to help them on towards the goal of their political ambition. Governors, in their selections, will be more apt to take men of the right kind than political conventions. They will select men who have lived beyond the mere matter of political excitement. This I believe to be the best mode of selecting the officers for these institutions. I am perfectly willing to trust the people, but do the people speak on this question? I am usually in favor of the election of all officers of the State, those which have any political bearing, but this is not one of those offices. There is no such thing as politics in the management of the State Prisons. The Governor will not be apt to stop to inquire what the man's politics are, so long as he is a suitable man for the place. If we are driven to elections, of course it will be known that the Warden will be appointed by these Commissioners, and there will be a strong political fight made for the place. That will be the object. Not whether he is the best Warden that can be selected, but whether he has political power, and whether he will add strength to the ticket. For these reasons I am in favor of this report as it comes from the committee.

SPEECH OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: I suppose, from the reading of this amendment, that the friends of the amendment contemplate making some provision for the compensation of these officers, in case these Directors are to be elected by the people.

MR. WELLIN. We propose to leave the compensation to the Convention. If they decide to elect them, then we can fix the compensation.

MR. McCALLUM. Now, sir, I am in favor of the idea presented in the report of the committee. Wherever officers are to be compensated, wherever there are large interests involved, I think it has been pretty well settled in all the States of the Union that such officers should be elected. And if they are to be compensated officers they should be elected. The committee have proceeded upon the idea that we can find five competent men to accept the office and perform these very important duties without compensation. I submit, sir, that is a very dangerous experiment to put into a Constitution. We may have many Haights in the State; we may have many philanthropists who will perform these important duties, but do we know that they can be had. We require two things. First, we will have five Directors to be appointed. Next, they shall serve without compensation. Suppose you cannot get them? Suppose practically it won't work? What are you going to do about it? That question arises, and very naturally arises here. I do not believe it is the true theory to put an iron rule in the Constitution in matters of an experimental nature. I understand that it is said there are precedents from other States. I would like to know where it is. I have looked over the American Constitutions here, and not a single one of them provides for the appointment of such Commissioners. Not one. The State of Connecticut, the Constitution says they shall be appointed or elected as prescribed by law. In the State of New York, the Constitution provides that they shall be elected at the next general election which shall be held after the adoption of the Constitution. In the State of Georgia, it provides that these officers shall be elected or appointed as the General Assembly may direct. There is no instance like that proposed by the committee. I should like to hear some good reason why the report should be adopted. It is nothing but legislation from one end to the other. We are asked here to devise a system for the complete management of the State Prison, when that whole matter is one that properly belongs to the Legislature. I am in favor of putting everything in the Constitution that ought to go there. But I am decidedly opposed to making a code of laws in the Constitution. If this is a wise provision, as I think it is, and such men can be found—and there ought to be something known about it—if these men can be found to give their time without compensation, let the Legislature make such a provision. Why should not this whole matter be left to the Legislature?

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: It appears to me that this plan is the most impracticable one that has been proposed, to leave this matter to a voluntary Commission—an executive Commission. There may be such gentlemen, but I don't believe we can get them. If we did, we would be apt to get men that are not fit for the place. The men who are fit, we might never get. It has been argued that this matter ought to be left to the Legislature. I see no reason why it should not be left to the Legislature. I see no reason why the Legislature could not manage this thing. The present system is better than that system. The Lieutenant Governor is the Warden, and the men who are associated with him are men who, like him, are chosen by the people of the State, men whom the people have confidence in. I think it is a dangerous experiment to say that we will get men to manage our State Prisons without compensation. You had better get enterprising young men, and pay them to devote their time to the work. Two thousand dollars a year would be sufficient, and then the business would be attended to. I hope if the minority report is not accepted, that the majority report will also be rejected.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I think the report of the minority fatally defective in the very first section, in not providing for any mode of removals. I look upon that as a fatal defect. Now, the report of the majority says the Governor shall have power to remove them for certain causes. Here is an office for a long term of years, and no power lodged in the Governor, or anybody else, to remove them.

MR. TINNIN. If they are State officers, what right has the Governor to remove them?

MR. HOWARD. If we give him the right he will have it, I imagine. Now, sir, the second section of this minority report contains a provision which is totally inadmissible, and that is that the State Board of Prison Commissioners shall constitute a Board of Pardons, and that the Governor of the State shall never pardon any person convicted of crime, except at the request of the State Board of Prison Commissioners. In the first place, that is inconsistent. That is totally inadmissible and impracticable.

MR. BEERSTECHER. I call your attention to the fact that if this Board is elected, they will be State officers, subject to removal by impeachment, as other State officers are.

MR. HOWARD. No matter how they are elected, they are State officers.

MR. BEERSTECHER. The committee intended that they should be removed as other State officers are, by impeachment. Again, the section referred to by the gentleman, as regards a Board of Pardons, is not under consideration now. We are considering section one.

MR. HOWARD. I am much obliged to the gentleman for the information. I will try and remember that Solomon is alive. [Laughter.] I prefer to adhere to the report of the majority.

MR. McCALLUM. I move to strike out section one.

THE CHAIRMAN. The question is on the amendment of the gentleman from Tuolumne, Mr. Walker.

Lost.

THE CHAIRMAN. The question is on the motion to strike out the section.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I hope the section will be adopted as it stands. From my knowledge of prison management, I am impressed most decidedly in favor of leaving the duties of the Governor to the Governor, and confine the Lieutenant Governor to the duties properly appertaining to that office. I believe that is the sense of this Convention. The man who is qualified to preside over the Senate may have, and more than likely will not have the faculty or the ability which fit a man to take care of prisoners. I believe the best way is to

place the management of the State Prisons in the hands of a Board of Directors. Where such officers have been appointed there has never been any distinction made on account of politics. If the State was Republican, the majority of such Boards were Republican, but the minority were always given a representation. They always had two out of five, and so it ought to be everywhere. Now, it is not so that you cannot get five men to serve for nothing on the Prison Commission. The present Commissioners visit the prisons and work for nothing, and they do as much work as it will be necessary for this Commission to do. I am afraid there is a feeling among my friends of the minority here, that these would be very pleasant salaries to take—two thousand dollars a year. I was astonished at some of them the other day, when they voted against the proposition that no member of this Convention should be eligible to office. Now, the Governor would select the best men he could find for these positions. He would look around, and if he saw a good man, take him. Then, again, if you elect these men, there is no power to remove them. The Governor cannot remove them, because it is a constitutional office. The only way they can be removed is by impeachment.

What is the ground for impeachment? It is high crime. What is a high crime—inefficiency? Not at all. Neglect of duty? No, sir. Carelessness? No, sir; and yet carelessness or neglect of duty may be the very thing that ought to authorize their expulsion. Under this other report the Governor has a right to remove them for these causes, and he will be likely to bring his power to bear upon the man who has failed to perform his duty He is there to execute the laws. He is called the Executive, for that very reason. He would compel these men to do their duty. It seems to me this function, given in this regard, is a very proper one, which could not properly apply to officers elected by the people. The Governor would retain a man in these positions as long as it was possible to retain him, because he would bring down strong criticisms upon himself if he removed him. But if he appoints a man, he himself is responsible for his conduct, and he will be obliged to exercise his power. You recollect that directors of corporations have been made responsible for those they appoint and have supervision over. Here is the Governor appointing these men, and he will be directly responsible for their conduct. And when this is the case, he will be more apt to exercise it when the occasion demands it.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I am in favor of the report of the minority. I believe in a republican form of government, and so believing, I believe the people are fully capable of selecting their own officers. If they are capable of electing a Governor, they are capable of electing the Commissioners direct. I tell you the idea that they are not as capable of electing these Commissioners as they are of electing the Governor, is all a humbug. Sir, the American people are capable of self-government. I believe they should elect these officers, as well as all officers, and I believe every man elected should have a reasonable salary, sufficient to pay him for his services, then we can have efficient officers, have the business done right, and the State will save money. The people are just as competent to select men who are qualified to fill these positions as the Governor.

REMARKS OF MR. THOMPSON.

MR. THOMPSON. Mr. Chairman: As one of the committee who signed the report—though at one time I was in favor of electing them—I concluded, after due consideration, that it was better for the Governor to appoint them. We had considerable talk in the committee concerning salaries, as to whether we should pay them or not. I am further of the opinion that we should have but three. I like the minority, in that respect, better than the majority report. I believe they ought to be paid a reasonable salary, and that they ought to be required to give their attention to it. I believe it will require a portion of their time in going from one prison to another, to see that the subordinates are attending to their duties. I was not strenuous about the Governor appointing, but it seemed to be the opinion of the majority that the Governor should appoint.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: It is very true, sir, that the system formulated here could be enacted by the Legislature without any constitutional direction. But the reason for putting it in the fundamental law is to make the system stable, so that one Legislature cannot overthrow what another Legislature has done. We have experienced the evil which has resulted from the management of these institutions by politicians. If it is placed in the Constitution there will be some stability about it. I think it ought to be done. Whether we have the Commissioners by a popular vote, or whether we have them appointed, they ought to be provided for in the Constitution. I am satisfied, too, that they ought to be appointed rather than elected. It is the only way to remove them from politics.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: Whether the system of electing or appointing be adopted, whether the committee determine upon having three or five members, I hope that the motion to strike out will not prevail. If the committee do not see fit to adopt the report of the minority, then I hope the report of the majority will be adopted, so that the present system will be changed. We took the advice of leading men, men who have studied the subject, and it was their unbiased opinion that the present system ought to be changed. I think there ought to be a Board, composed of either three or five, appointed or elected. I think it is the candid judgment of every man who has given this subject careful thought, that the present system is bad, and ought to be changed. I think it will be to the interest of the people of the State of California to adopt either the report of the minority or majority, and not to strike out the section.

MR. MCCALLUM. Mr. Chairman: I ask leave to withdraw my motion to strike out for the present.

THE CHAIRMAN. No objection; the gentleman has leave. The question is on substituting section one of the minority report for the majority report.

Division being called for, the substitute was lost, by a vote of 39 ayes to 55 noes.

MR. MCCALLUM. I now renew my motion to strike out section one.

Lost—ayes 19.

MR. SWENSON. I offer a substitute for section one.

THE SECRETARY read:

"The Legislature shall provide for the election or appointment of a State Board of Prison Directors."

Lost.

MR. WELLIN. I wish to offer a new section.

THE CHAIRMAN. It is not in order now. The Secretary will read section two.

THE SECRETARY read:

SEC. 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

THE CHAIRMAN. If there is no amendment, the Secretary will read the next section.

THE SECRETARY read:

SEC. 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty; all other officers and employés of the prison shall be appointed by the Warden thereof, and be removed at his pleasure.

THE CHAIRMAN. If there is no amendment, the Secretary will read the next section.

THE SECRETARY read:

SEC. 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

MR. WELLIN. I wish to offer a substitute for section four.

THE SECRETARY read:

"The labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall by law provide for the working of convicts for the benefit of the State."

THE CHAIRMAN. Out of order.

MR. SMITH, of Fourth District. I move to strike out section four.

Lost.

THE SECRETARY read:

SEC. 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

MR. VAN DYKE. I move that the committee rise, report back the article to the Convention, and recommend its adoption.

MR. WELLIN. If the gentleman will give way, I desire to offer an additional section.

MR. VAN DYKE. I withdraw the motion.

MR. WELLIN. Mr. Chairman: I offer an additional section, to be numbered section six.

THE SECRETARY read:

"SEC. 6. The labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State."

SPEECH OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: Perhaps there are many delegates who are not aware of the fact, that at San Quentin there are one thousand five hundred prisoners, and that out of that large number there is not one third employed directly in a form which will benefit the State. There are four hundred and seventy-five prisoners employed, let out on private contract, and the balance—over one thousand—are idle, and are being supported there at the expense of the State. The object of this section is to bring about a system by which these prisons can be made self-sustaining. We believe that one thousand five hundred able-bodied convicts can well afford to earn their own living and save the State the expense. The State has a workshop four hundred feet long by sixty feet wide, four stories high, supplied with a two-hundred horse-power engine, and that institution is kept running day after day for the benefit of the people who employ less than five hundred of these prisoners. These four hundred and seventy-five persons are employed in the manufacture of cabinetware, blinds, doors, etc. The contractors pay half a dollar a day for the prisoners. The prisoners, I have been informed, work about as well as the average white laborers. Now, the State has to feed these men, furnish the machinery, supply the building, furnish the power for driving the machinery, pay an engineer, and supply water, for the sake of hiring out four hundred and seventy-five men at fifty cents a day. The idea of this proposition which I have introduced is, that these other prisoners—one thousand of them—shall also be employed in the manufacture of something which will benefit the State. These four hundred and seventy-five are selected as the best workmen. Some of them are experienced workmen, and capable of earning the highest wages; some of them could earn four dollars a day on the outside, and here they are working for half a dollar a day, and boarded by the State. We consider that this is a wrong system entirely. We consider that these one thousand five hundred prisoners can be employed in such a manner as to make the prison self-sustaining, and you can very readily see how it can be done in a country where labor is as high as it is here. You may ask, what will we employ them at? I propose to add one thousand

men to the present working force, and put them all to work. The farmers of this State pay annually about two million dollars for grain bags. Two million dollars going out of the State every year, and we never stop to think where it is going to. Why not employ these prisoners there, and manufacture our own grain bags? Why not have them make grain bags, and save at least a portion of this money at home? You can also manufacture cordage there with the power you have. We will take these one thousand idle men and put them to work, and make them earn something. If they cannot earn half a dollar a day they can earn twenty-five cents, and it is better to have the whole number working at twenty-five cents, than to have one third only working at fifty cents. I wish to read from a paper issued by the Mechanics' State Council, advising the Legislature to put the prisoners at work on the manufacture of doors, sash, and blinds:

COST OF MANUFACTURING, ONE WEEK.

Articles.	Amounts.
1,800 doors, 54,000 feet of lumber, at 4½ cents per foot	$2,430 00
2,000 windows, 14,000 feet of lumber, at 4½ cents per foot	630 00
600 pairs outside blinds, 7,200 feet of lumber, at 3 cents per foot	216 00
100 sets of inside blinds, 2,000 feet of lumber, at 5 cents per foot	100 00
Glue, $6; nails, $20; blind wire, $20	46 00
Glass for 2,000 windows	3,000 00
Putty and setting glass	300 00
Wear of machinery	40 00
Rent of sale store	75 00
Three hands at sale store	75 00
Payroll for 100 men in the shop	1,200 00
Total cost for making	$8,112 00

SALE OF ARTICLES MADE.

Articles.	Amounts.
1,800 doors, at $2 75 each	$4,950 00
2,000 windows, at $3 each	6,000 00
600 pairs outside blinds, at $2 50 per pair	1,500 00
100 sets of inside blinds, at $4 50 per set	450 00
Total	$12,900 00
Deduct cost of making	8,112 00
Leaves profits for one week	$4,788 00

This estimate is for a private workshop with average wages paid coolies, and the necessary white men. If this work is done by the State we must add to the profits the price of labor, being one thousand two hundred dollars; then the profits would be five thousand nine hundred and eighty-eight dollars on one hundred convicts per week. Suppose five hundred of the men now under contract at the prison should be employed in making articles as above stated, the profits per week would be twenty-nine thousand nine hundred and forty dollars. From this we must deduct one fourth for the difference between free and prison labor; then the profits would be twenty-two thousand four hundred and fifty-five dollars per week, or one million one hundred and sixty-seven thousand six hundred and sixty dollars per annum. We learn from the State Prison Directors, that the entire expense of the State Prison for two years, was three hundred and fifty-five thousand seven hundred and eighty-four dollars, or one hundred and seventy-seven thousand eight hundred and ninety-two dollars per annum. When we deduct the latter sum from the profits on the labor of five hundred convicts, we have a profit of nine hundred and eighty-nine thousand seven hundred and sixty-eight dollars.

The expenses have exceeded the income from the prison the enormous sum of two hundred and twelve thousand six hundred and ten dollars, or one hundred and six thousand three hundred and five dollars per annum. Thus we see that a change of this kind would not only make the prison self-sustaining, but make enough in one year to support the prison for five years, and then leave a handsome balance of one hundred thousand three hundred and eight dollars to pay the additional expenses of shop room and machinery. This estimate is astounding to us who are mechanics, and familiar with that kind of work, yet we have gone over the figures several times, and can see no mistake. Suppose, to be sure we are right, we reduce the profits to but one fifth of the estimate, then the prison would be self-sustaining, with a margin of one hundred and ninety-seven thousand five hundred and fifty-seven dollars per annum.

You can never expect to make the whole prison self-sustaining by employing less than half the number of prisoners. I hope this proposition will receive careful consideration. I have studied this question for three or four years, and I know what I am talking about. When the Branch Prison at Folsom is once open, there will be an opening there for the prisoners to work in the stone quarry, with profit to the State. And as the number of prisoners is constantly on the increase, it behooves this State to adopt some plan by which they can be made to earn something.

Mr. BIGGS. I have an amendment I would like to offer.

The SECRETARY read:

"Strike out all down to the word 'Legislature,' reading: 'The Legislature shall by law provide for the working of convicts for the benefit of the State.'"

REMARKS OF MR. BIGGS.

Mr. BIGGS. Mr. Chairman: I believe the Legislature has full power to control that thing. I believe it is wisdom for this amendment to be adopted. I think the new section offered by the gentleman is a very dangerous doctrine to be engrafted in the organic law. No such principle as that ought to be engrafted on the law of this State, as it will be very expensive, and nobody knows whether it will ever succeed or not. I am a workingman myself, and I have just as much interest in keeping labor at a high price as any of them. No man on this floor has labored more than I have according to his age, and I want to protect and uphold labor. I offer that for the good of the laboring class. Let the Legislature control that matter, and do not go and engraft it in the Constitution. If it is to the interest of the State to let out contract labor then they should have power to do it. Do not tie the hands of the Legislature.

REMARKS OF MR. CAPLES.

Mr. CAPLES. Mr. Chairman: I am heartily in accord with the proposition of the gentleman from Butte. The gentleman from San Francisco complains that one thousand prisoners are kept in idleness, and that it is an outrage upon the taxpayers. Very good. It is sound logic; it is common sense, and I most heartily concur with him that it is an evil that ought to be corrected. But, sir, how does he propose to correct it? Why, his very first proposition contradicts the assertion that he wants the evil corrected—that is, to declare that the prison labor shall not be let out by contract. Why not, pray? They are so afraid that this prison labor may come in competition with somebody's labor that they must be kept in idleness, at the expense of the taxpayers of the State. This is not just. The question is, shall we maintain these prisoners in idleness because their labor may come in competition with somebody else's labor?

Mr. WELLIN. I don't advocate their being kept in idleness. I advocate their being put to work.

Mr. CAPLES. I concur with you there, but why do you put that contradiction in there, that they shall not be let by contract?

Mr. WELLIN. We want to change the present system, where they let out one third and allow the others to remain in idleness. We want to work them all.

Mr. CAPLES. I say the proposition to refuse to let them work on contract is an outrage upon the taxpayers. There is no justice, or wisdom, or sound public policy in such a course. Now, if the gentleman will take that dead fly out of the pottage, I will support the latter clause. The amendment covers the ground, and takes the dead fly out of the pottage. I hope the amendment will be adopted.

REMARKS OF MR. BEERSTECHER.

Mr. BEERSTECHER. Mr. Chairman: The amendment of the gentleman from Butte means simply nothing at all; it has no earthly meaning, and I think the Major knows it. If this provision is not put in the Constitution the Legislature would have power to go to work and cut off the whole contract system, or they can let out the whole number of prisoners by contract.

Mr. CAPLES. Will the gentleman allow me a question? The amendment is to strike out that prohibition declaring that prison labor shall not be let by contract; the amendment is to strike out that prohibition.

Mr. BEERSTECHER. Yes, sir; and even if you should say that the Legislature shall provide so and so, and the Legislature fails to do it, where will your remedy be? You cannot compel the Legislature to act: we cannot compel them to pass laws. Men have appealed in behalf of the suffering laboring people of San Francisco time and time again, during the last ten years, demanding that the Legislature inaugurate a system of labor, in order to abandon contract labor, and employ these prisoners directly by the State, and no result—the lobby was too strong, and the contractors prevailed.

Mr. BIGGS. Have you ever been engaged in lobbying? The charge has been made that it was in the interest of the lobby. I would like to know how the gentleman knows unless he has been engaged in it. I have been a member of the Legislature, and have never been lobbied upon this question. Unless he has been engaged in it, I don't think he knows anything about it.

Mr. BEERSTECHER. No, sir; I never have. If I ever went into it I would hire other men to do it for me. The interests of the laboring classes are directly in conflict with the interests of those who employ contract labor. I do not mean to say that the members of the Legislature, or the gentlemen who let these contracts, have been corruptly influenced in any way. I don't want to be understood as saying so; I do not say so. I do not believe there has been any corruption in that way. The result has been that the State has not directly embarked in the employment of convict labor, and there is no reason why it should not be done in this State. There are a number of things that could be manufactured at San Quentin which in nowise would compete with white labor in this State. We should keep free from competing with free white labor in this State. This is a young State. There are a great many things which we import directly from abroad, and bring across the plains and by ships from other States, which could as well be manufactured in this State. We have the shops to do it, we have the machinery to do it, and we have the men to do the work. We can build additional shops, if necessary. We can construct additional machinery, if necessary, and these men can be employed for the benefit of the State. As they are employed to-day, these hundreds of men are brought in direct competition with free white labor. They labor for fifty cents a day. The men in San Francisco who have families to support cannot compete successfully against such ruinous rates. They are manufacturing furniture there, and the consequence is that the furniture shops in San Francisco are closed, one after another. The deadly blow is being struck every day, and the day is not far distant when the furniture of this State will be made entirely by convict labor.

Mr. LARUE. How is it that the eastern manufacturers can ship furniture here and compete successfully?

MR. BEERSTECHER. How is it that hundreds of men are employed at the business to-day, while all the furniture shops in San Francisco are closing out? The sash, blind, and door factories are closing up by reason of the ruinous competition at San Quentin. There is a great departure from the original prison management of Europe. The original prison management was that prisoners were not to work at all. They remained in their cells. They were confined in solitary cells and were not allowed to work at all. Then there was a departure for the benefit of the prisoners, for their sanitary and moral condition. They were employed in some instances directly by the State for the benefit of the State, not all, but a part of them; in other instances the work was let out by contract. In some countries and States they are not let out at all. Under the old system the State was obliged to maintain and keep them. Under the system which we propose it would be but a few years before the State could employ them all for the benefit of the State. That is the way they ought to be employed, and not farmed out to contractors, thereby destroying our independent labor, and competing at ruinous rates with free white labor of the honest citizens of California.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I hope the amendment of the member from San Francisco will be adopted. I believe this system of letting out the labor of convicts by contract has been greatly abused, and is against the best interests of the State. The prisoners are let out to contractors at a mere stipend. The contractors make a large profit out of their labor, and the people who live by these trades are greatly interfered with. I believe that the State Prison can be managed by the State, and the prisoners worked by the State to advantage, without interfering with free labor in any way. This whole contract system has been wrong. The labor has been let out for a mere nothing. The Legislature could have remedied the matter, but they have never done so. It has been a question of over twenty years standing, and while the Legislature might have remedied it, they have not done it. If we correct the evil here in the Constitution that will be the end of it. Let the State work its own labor to the best advantage possible, and that will be the solution of this question.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I have to oppose the amendment of Major Biggs. He says, leave it to the Legislature. That is one of the reasons why I oppose it, because he wishes to leave it to the Legislature. We have been leaving it to the Legislature year after year, and what was done? When the lobby appeared we were left out in the cold, because we could not go there and lobby, and use money and influence with the Legislature. I know that as merely a matter of fact. Four or five years ago the Mechanics' State Council took this matter up and presented a memorial to the Legislature in regard to this matter, showing the cost of manufacturing doors, sashes, and blinds, and the enormous profits which the contractors were able to make. What was done with the memorial? It was distributed among the members, and that was the end of it. The manufacturers, who were making such large profits out of the labor of prisoners, came here and besieged the Legislature, and so they let the matter go. The State Prison was going behind then over two hundred thousand dollars. The gentleman from Sacramento seems to be very much worried at the idea of leaving these one thousand prisoners idle, as though we had advocated anything of the kind. We do not want them to be idle; we want them to work. But what we want is that all the prisoners shall work, and be earning something toward the support of the prison. We say there are over two million dollars paid out every year for grain bags by the farmers of this State, all of which could be manufactured by prison labor, without affecting free white labor in any way.

MR. BIGGS. If you establish a factory for grain bags won't you come in competition with other factories in this State?

MR. WELLIN. No, except those who employ Chinamen. There are no white men employed in the manufacture of jute bags at all. If it will come in competition with Chinamen, so much the better. You can also establish a factory for cordage and twine. We came here to the Legislature and tried to get them interested in the matter, but the lobby was more powerful, and we had to go back without having accomplished anything. We were neither able nor willing to come here and lobby the Legislature, and use money to influence them in passing laws useful to the people. We tried to get them to start a manufactory there, so as to make these prisoners earn part of their living. You can start a cordage factory there on a very small amount of money. You can arrange to work up all the coarse wools of the State.

MR. LARUE. Is the gentleman not aware that the Lieutenant Governor reported that it would cost about three hundred thousand dollars to put up machinery there to employ about thirty men?

MR. WELLIN. I don't know—there is one thing I wish to touch upon. When our committee proceeded to visit the prisons, which they did at their own expense, against the wish of some members of this Convention, who did not think the committee ought to go there. I don't know what was said down there, but it was known that an effort would be made in this Convention to abolish the system of contract labor, and when they came back their opinions seemed to have undergone a complete change. I don't know why—I have no idea. I cannot account for it. I do not propose to try. We need not name the manufactures that are to be established there. There are a number of them; I simply name one or two, in order to show what can be done. The power is there, and it can be run for the benefit of the State just as easily as it can for the benefit of private contractors.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. Chairman: It is not my intention to say more than a word or two. The argument seems to be thoroughly exhausted. I was disappointed in reading the majority report, not to find anything in regard to this matter. The present contract system is one that has some very great evils in it. In the first place, there are the evils which have already been rehearsed here. It is a very serious source of corruption, not less in the department at San Quentin, where the prisoners are kept, than in the legislative halls of this State. If it was for no other reason than this, it would be sufficient to condemn it. In the second place, it brings this prison labor in competition with free white labor, and is a degrading element, equally as degrading as the Chinese, even more so. It is criminal labor against honest labor; the slave in conflict with the free man. It is for this reason, more than any other, that this contract system ought to be abolished, and I therefore hope the section, as reported by the minority, will receive the commendation of this body.

REMARKS OF MR. CONDON.

MR. CONDON. I am, sir, opposed to the amendment offered by Mr. Biggs. It virtually means nothing, from the very fact that the proposition providing that the State could employ laborers for the benefit of the State is now in operation under the contract system in San Quentin. It will be remembered, sir, and I believe there are some members of this Convention who were members of the Legislature in eighteen hundred and seventy-three, there was a proposition introduced at that time which provided that the State should work the prisoners on its own account. The proposition was modified, and raised the price of convict labor to the sum of one dollar and ten cents a day. It was passed by both houses. Governor Booth at that time, for some unknown reason, vetoed the bill. And strange to say, sir, at the time the proposition was proposed it met the hearty concurrence of every member of the committee. But, sir, another meeting was called, to which the Governor and Lieutenant Governor were invited, and there was a division of sentiment, sir, between those two eminent gentlemen. The Lieutenant Governor reasoned that this proposition was worthy of a chance—a trial—and claimed that it could not be on any account a detriment to the interests of the State. Now, sir, after examining the question extensively, from the fact that my attention had been called to it eight or nine years ago, and at that time I acted in the capacity of a foreman in the State Prison, I believe I can demonstrate beyond a doubt that the State can successfully employ the labor of these convicts for its own benefit. The contract system is, in the first place, destructive of prison discipline. Pillsbury, De Toqueville, and other writers, well informed on the subject, say so. De Toqueville says the contract system of prison labor will lead to a total ruin of prison discipline.

Judge Powers, in his report of eighteen hundred and twenty-eight, says this mode of employing convicts is attended with considerable danger to the discipline of the prison, in bringing the convicts in contact with contractors or their agents. It is a necessary consequence that the State must be loser by this contract system. These contractors get the labor of these convicts for about the same price they could get one citizen, and yet each convict performs at least three quarters as much work as a citizen laborer. So says Mr. Pillsbury.

Mr. Chairman, putting these elements together, the case stands thus: The labor of twelve convicts will cost no more than the labor of four citizens. Yet the convicts will do nine days' work while the others do four. Thus, every dollar paid to contract labor will produce as much as two dollars and twenty-five cents expended in citizen labor. The State must be the loser by the contract system, which sells the labor of these convicts at so much less than the same labor can be obtained elsewhere. It is a burden upon free laborers for the State to contract the labor of these prisoners. In the first place, the contract system amounts to an absolute monopoly, from the very fact that the contractor owns the power, the machinery, the stock, shafting, etc. They are established in their business, and no one else can come in. They can so regulate their prices as to keep out all other parties. Second, contractors sometimes combine to keep down the rates to be paid for prison labor. In the third place, when the Folsom Branch Prison was to be built, certain contractors paid the others certain stipulated sums, on condition that they decline to put in bids, thus obtaining the convicts at much lower price than they otherwise could. The Warden of Sing Sing Prison testified that he has no doubt but the convict labor can be worked by the State to a much greater advantage. Mr. Seymour, ex-Warden, says he has no doubt that if the contract system had been abolished he could have managed the prison labor himself, and made them earn considerable revenue for the State. I could quote from a number of eminent men, who have had a great deal of experience in this matter, if I had the time—Miller, Woods, Brockway, and others. In the Clinton Prison, the contract system has been abolished. The result of this is that instead of being at a cost of thirty thousand dollars a year, the prison is a source of considerable revenue, exceeding the expenditures by about three thousand dollars. Mr. Carter, one of the Wisconsin Commissioners, says that "the average number of convicts last year was one hundred and ten, only sixty-three of whom were employed, and they earned more than twenty-five thousand dollars," which shows that these sixty-three men earned one dollar and thirty-six cents a day. If the labor of the convicts had been let out to contractors, say at sixty cents a day, they would have earned only eleven thousand three hundred and forty dollars. Supposing that they had lost no time, here would have been a loss to the State of fourteen thousand three hundred and eighty-seven dollars. Such a system would be a benefit also to the convicts themselves. There is no question in my mind as to the utility, as to the practicability of that system. Thus, even in England the contract system has been abolished. But there is a provision there that requires that every Warden, and every officer of the prison, must be a practical mechanic. This can be done in the State of California, and I hope and trust that the amendment offered by Mr. Biggs may not prevail. I will call your attention further to the fact that public opinion has been well developed on this question. There has been petition after petition sent here from the mechanics of this State,

asking that a section of this character be inserted in the Constitution. I presented one myself, and it was referred to the Committee of the Whole, but it has never been brought forward. I hope we will adopt the section as proposed by the gentleman from San Francisco.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I wish to say one word in behalf of the committee, in the absence of the Chairman. This proposition was before the committee, and I will say was favorably considered by the committee. But it was shown to our satisfaction that if this proposition was adopted it would virtually throw the prisoners out of employment there for a number of years, for the reason that the machinery necessary to carry out this project would cost a very large sum of money. I believe it is estimated at something like three hundred thousand dollars.

MR. WELLIN. Nearly all the machinery necessary can be got in one week.

MR. VAN DYKE. For one, I will say that I am decidedly averse to the contract system, and I am in favor of any project that will abolish the system.

MR. CONDON. I want to ask you a question. I want to ask you if, in the committee, did not you express yourself to the effect that you were entirely in favor of the contract system, and was not Governor Johnson in favor of this proposition?

MR. VAN DYKE. If the gentleman will keep his seat he will find out. I say, for one—and I believe I speak the sentiments of the majority of the committee—I am opposed to the contract system. I know that it has been a source of corruption in this State. But the difficulty is that you cannot abolish it in a day; you cannot abolish it in a year, unless you propose to keep your prisoners in idleness for a time, because, as it was shown to the committee, it will require the expenditure of a very large amount of money, and a great deal of time, to put the necessary machinery in position. It is true we have the power necessary to drive the machinery. That is all. No matter how much ready money we might have, it requires time. For that reason, and for that reason only, the committee deemed it unwise to put this clause into the Constitution, because the Legislature can provide for it just as well as we can. It is fairly to be supposed that the Legislature will carry out the will of the people in this respect. I am perfectly willing to give an expression in favor of abolishing the system of contract labor at an early period, as soon as it can be done. But I am opposed to any proposition that will keep the prisoners in idleness for a year or more, until the necessary preparations can be made. That is the reason I object to this section.

MR. WELLIN. As a matter of information, I will state that, having the shafting, power, and everything of that kind, the machinery could be bought in San Francisco, and set up in two or three days, enough to supply one shop.

MR. VAN DYKE. The gentleman need not address his argument to me, because I am in favor of abolishing the system as soon as possible, but I am opposed to allowing the prisoners to remain in idleness.

MR. AYERS. I wish to ask the gentleman, is there really any objection, any difficulty in keeping the prisoners at work, under the contract system, until such time as a change can be made?

MR. VAN DYKE. Certainly not. They are there under contract now. If you adopt this clause, you at once shut down the employment, at an expense of a very large sum of money. I would consent to an amendment saying, that at the end of five years from the time the Constitution takes effect, prisoners shall not be employed by contract. That will leave ample time for the State to get the necessary machinery in—or, say three years; you could not do it in one year, unless you borrowed the money. The State would require time to place all the machinery in there. In its present shape, I am opposed to it. The same object can be accomplished by the Legislature.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I beg to suggest to the Convention, under the circumstances, if it is resolved to change the contract system, we had better take until to-morrow morning to revise this proposition, and make it practicable. Now, this section is to go into effect from the time it is adopted. If a contract runs out, there is no power to make another contract. There is, consequently, no power to keep the prisoners at work, unless we authorize the Governor to borrow money; there will be no possibility of getting any between this time and the meeting of the next Legislature. Now, the State owns motive power, but not the tools and machinery. There must be some time taken to purchase this machinery and put it in position. At present there is no authority to purchase it. The Constitution cannot put the scheme into practical working effect without the aid of legislation.

MR. MORELAND. I have an amendment.

THE SECRETARY read:

"Insert 'after the first day of January, eighteen hundred and eighty-two.'"

THE CHAIRMAN. The question is on the amendment of the gentleman from Butte.

Lost.

THE CHAIRMAN. The question is on the amendment to the section, proposed by the gentleman from Sonoma, Mr. Moreland.

MR. WELLIN. I accept the amendment.

MR. BIGGS. Mr. Chairman: I desire to say that this is an experiment that this State will regret. It will cost this State millions of dollars before we get through with it. The gentleman will live to see that I am correct.

MR. HOWARD, of Los Angeles. I do not see the danger that the gentleman apprehends, because we can gradually introduce the necessary machinery for this purpose. It does seem to me that this contract system is perfectly infamous, and has been for years.

MR. REYNOLDS. It could not be any worse.

THE CHAIRMAN. The question is on the amendment.

Adopted.

MR. VAN DYKE. I move that the committee now rise, report back the article to the Convention, and recommend that it be adopted.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: I am instructed by the Committee of the Whole to report that they have had under consideration the report of the Committee on State Institutions and Public Buildings, have adopted sundry amendments thereto, and recommend its adoption as amended.

MR. VAN DYKE. I move that the article as amended be printed.

So ordered.

ADJOURNMENT.

MR. HUESTIS. I move we do now adjourn.

Carried.

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

ONE HUNDRED AND ELEVENTH DAY.

SACRAMENTO, Thursday, January 16th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Herold,	Reynolds,
Ayers,	Herrington,	Rhodes,
Barbour,	Hilborn,	Ringgold,
Barton,	Hitchcock,	Rolfe,
Beerstecher,	Holmes,	Schomp,
Belcher,	Howard, of Los Angeles,	Shafter,
Bell,	Howard, of Mariposa,	Shurtleff,
Biggs,	Huestis,	Smith, of Santa Clara,
Blackmer,	Hughey,	Smith, of 4th District,
Boggs,	Hunter,	Smith, of San Francisco,
Boucher,	Johnson,	Soule,
Brown,	Jones,	Stedman,
Burt,	Joyce,	Steele,
Caples,	Kelley,	Stevenson,
Casserly,	Kenny,	Stuart,
Charles,	Keyes,	Sweasey,
Condon,	Kleine,	Swenson,
Crouch,	Laine,	Swing,
Davis,	Lampson,	Thompson,
Dowling,	Larkin,	Tinnin,
Doyle,	Larue,	Townsend,
Dudley, of Solano,	Lavigne,	Tully,
Dunlap,	Lindow,	Turner,
Edgerton,	Mansfield,	Tuttle,
Estey,	Martin, of Santa Cruz,	Van Dyke,
Evey,	McCallum,	Van Voorhies,
Farrell,	McComas,	Walker, of Tuolumne,
Fawcett,	McConnell,	Waters,
Filcher,	McNutt,	Webster,
Freeman,	Miller,	Weller,
Freud,	Mills,	Wellin,
Garvey,	Moffat,	West,
Glascock,	Moreland,	Wickes,
Gorman,	Morse,	White,
Grace,	Nason,	Winans,
Hale,	Neunaber,	Wyatt,
Harrison,	Ohleyer,	Mr. President.
Harvey,	Reed,	

ABSENT.

Barnes,	Gregg,	O'Sullivan,
Barry,	Hager,	Overton,
Berry,	Hall,	Porter,
Campbell,	Heiskell,	Prouty,
Chapman,	Inman,	Pulliam,
Cowden,	Lewis,	Reddy,
Cross,	Martin, of Alameda,	Schell,
Dean,	McCoy,	Shoemaker,
Dudley, of San Joaquin,	McFarland,	Terry,
Eagon,	Murphy,	Vacquerel,
Estee,	Nelson,	Walker, of Marin.
Finney,	Noel,	Wilson, of Tehama,
Graves,	O'Donnell,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence for two days was granted Mr. Prouty.

THE JOURNAL.

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

Carried.

PETITION.

The President presented the following petition, signed by a large number of citizens of Colusa County, asking the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to the members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Colusa County, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

HARBORS, TIDE WATERS, AND NAVIGABLE STREAMS.

MR. AYERS. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Harbors, Tide Waters, and Navigable Streams.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section one.

EMINENT DOMAIN.

THE SECRETARY read:

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

THE CHAIRMAN. If there be no amendment to section one, the Secretary will read section two.

RIGHT OF WAY.

THE SECRETARY read:

SEC. 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable, and that the people shall not be shut out from the same.

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

THE SECRETARY read:

"Insert after the word 'purpose,' in the fourth line, as follows: 'nor to destroy or obstruct the free navigation of such waters.'"

MR. ROLFE. Mr. Chairman: If I understand that amendment right there is nothing wrong about it, but it is unnecessary. I believe it gives no guarantee except what is contained in the Act of Congress, admitting this State into the Union. I just merely called the attention of the committee to this fact. I do not see any objection to the report, and I do not see any use for it.

MR. AYERS. Mr. Chairman: The committee were well aware of that fact, but in order to make it doubly sure we inserted it there. The amendment will do no harm, and as a positive declaration may do a great deal of good in preventing unnecessary litigation.

The amendment was adopted.

MR. HERRINGTON. Mr. Chairman: As a matter of fact, this report has never been printed. I have never heard of it till this morning. I submit that there are some things in this report that require further examination.

MR. LAINE. Mr. Chairman: I have not had an opportunity to examine this report. The very first section of this report I do not believe there is a member of this Convention understands. It strikes me we had better postpone the consideration of this until members have had an opportunity to examine it. Now, this first section says "the right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State." Now, if any gentleman on this floor comprehends what that means, he has more comprehension than I have, that is all.

MR. CASSERLY. Mr. Chairman: I think the article conflicts somewhat with the article under which California was admitted into the Union.

MR. AYERS. Mr. Chairman: I will state that the reason why the committee inserted the section was that the right of eminent domain had been exercised by quasi-public corporations, by virtue of the authority of the State, in a great many cases, and the State might hereafter want access to the navigable waters through the lands that had been so granted.

THE CHAIRMAN. If there be no further amendments to section two, the Secretary will read section three.

THE SECRETARY read:

SEC. 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations; but sites for wharves, warehouses, or other necessary incidents to commerce, may, upon application to the Board of Supervisors of the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of years, to such persons, partnerships, or corporations; *provided*, that nothing in this section shall apply to the tide lands of the Bay of San Francisco.

MR. LAINE. Mr. Chairman: I move to strike that section out. I am satisfied that it is dangerous, because there may be millions of acres of land that may be reserved. I move to strike it out.

REMARKS OF MR. AYERS.

MR. AYERS. I hope the motion will not prevail. The provision in the commencement of this section is one which now exists in the Code. It withdraws the marsh and tide lands from sale within two miles of any incorporated city or town in the State. The object of this section is to prevent parties from coming up to Sacramento and obtaining title to tide lands which are necessary for the purpose of ingress and egress to the people from various parts of the State—I was going to say surreptitiously getting control over them in fee from the State—and the people who are interested in having ingress and egress over these lands, or through these lands, know nothing about it. Now, sir, we propose to place the authority of obtaining title to such lands, as are within two miles of any incorporated town, in the Board of Supervisors, who shall be authorized to lease these lands for such purposes as are designated in this section, namely: for purposes incident to commerce. Gentlemen will concede that the local Boards of Supervisors will understand exactly the requirements of the public in regard to these tide lands; and they will not be apt to lease or to give a franchise to these lands unless the public interests require it. I hope that the motion will not prevail.

MR. LAINE. Mr. Chairman: Tide lands belong to the State on the condition of reclamation. Now, the State has perfect power to open highways where she pleases, and has always exercised it. What more or better right does it require on a public stream than anywhere else? The State can make a road over my lands whenever it chooses to reach either tide water or a town. This section would tie up this property, prevent its reclamation, and do nobody any good, that I can see.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am just as much in favor of preserving the rights of the people to frontages as anybody in the world: but it does strike me if this constitutional provision is adopted there will be no such thing as the reclamation of these tide lands for the purpose of constructing towns. Now, we do not desire to tie ourselves up in such a way as to prevent the increase of population on the borders of our bay or ocean. The idea that the land shall be held in that way, so that it can be granted out to private parties under such circumstances, seems to me to be impolitic, to say the least of it; that land shall be reserved two miles back from the bay, simply because it is tide land. I am perfectly willing to place restrictions in every way to protect these frontages, but to say that all tide lands within two miles of any incorporated city or town in this State shall be withheld from grant or sale, it seems to me is not proper in a constitutional provision.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope the section will not be stricken out. If there is any one abuse greater than another that I think the people of the State of California has suffered at the hands of their lawmaking power, it is the abuse that they have received in the granting out and disposition of the lands belonging to the State, and I hope the Convention will make such restrictions upon that subject as it can; at least to remedy the abuse in so far as it can be remedied with reference to the little land yet left to the jurisdiction of the State. But this section ought to be amended so that the lease should not run longer than twenty years, and the power to reach tide water and navigable streams should be left so in the hands of the State that it would not take a five or ten years' lawsuit in order to reach the navigable water of the State. The grants have been made now to the swamp lands, and the tide lands, and the marsh and overflowed lands, and they have been allowed to be taken in such vast quantities by these corporations that now the people are hedged off entirely from reaching tide water, navigable water, or salt water. I do not want it so that they can be placed in the hands of corporations in such a way that they cannot be recovered unless at the expense of a vast lawsuit and years of time consumed in it. I hope that the declaration contained in section three will stand, and that it will be amended so that the lease shall not be for more than twenty years.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I utterly dissent from the language of the two first sections, and do not see how they can be adopted at all; but as to the third section, I hope that the Convention will retain it, with such modification as the Convention may think right. I should be glad if the gentlemen would get out of the habit of talking about corporations in connection with everything. The trouble is, that these tide lands are being taken up now simply for the purpose of speculation, and of imposing upon the people who own the land back of them. I have just had a little experience in it. A short time ago a man took up two hundred and twenty acres of this land that is not worth a copper, in front of my land in Marin County, and then wrote me a letter, that for so much money I can buy him out. What does he do it for? He has done it on purpose to compel me to pay him six or seven hundred dollars for a day's journey to Sacramento. His little project, however, will fall through, for he will never get a cent for it. The purpose is, if I want to go off shore, he is going to compel me to buy a mud flat in order to get out to sea. It is merely to extort money, and to impose upon people who happen to own a little land. If a man wants to ship wood off his lands, he finds some fellow has taken up a strip of this tide land in front of him, if it is not more than twenty feet, and can extort any amount of money for the privilege of getting a scow up to take off his wood. It becomes a source of evil, without doing any good. It strikes me that the principle of the third section ought to be adopted. If twenty years is a judicious time, why, then, limit the lease to that time.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I hope that the section will not be stricken out. The remarks of the gentleman from Marin very ably set forth why it should not be stricken out; and I beg leave to disagree with the gentlemen from Santa Clara with regard to the section. It may not be, in your neighborhood, necessary, but in many parts of the State it is necessary. Now, whether these rights exist for individuals or corporations, makes no difference. These frontages are held in this State to the exclusion of the lawful traffic across these tide lands to the salt water. In the County of Los Angeles a large frontage has been surveyed around so as to exclude the commerce of the county from building piers, wharves, or warehouses. It is necessary that these things should be boldly and positively met, so that there may be no doubt; that the people may not be led into traps. I hope the motion to strike out will not prevail.

REMARKS OF MR. CASSERLY.

MR. CASSERLY. Mr. Chairman: This matter has come up somewhat unexpectedly to me, but as a contribution to the better understanding of the whole subject, I call the attention of members of the Convention to the provision of the Act of Congress admitting California into the Union. The provision is this:

"And that all the navigable waters within the State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor."

I take it for granted that it is familiar law to most of us that the lands between low and high-water mark became vested in the State of California, subject to that provision. As I said, I merely rose to suggest that contribution to a better understanding of a subject which has come up somewhat unexpectedly to me, and, I believe, to most of the Convention.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: In common with most of the Convention this article has come up very unexpectedly to me. As to this section three, I am very much impressed with the idea that if we adopt it that it will have the appearance of constitutional legislation in favor of private interest. Now, sir, I have no doubt that there has been great abuses in the disposition of tide lands as well as swamp lands and other State lands; but because there have been abuses in the southern portion of the State that is no reason why there should not be any distribution of State lands within two miles of the navigable waters of the State.

MR. AYERS. I beg to correct the gentleman. The section says within two miles of any incorporated city or town.

MR. MCCALLUM. The section reads:

"All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations; but sites for wharves, warehouses, or other necessary incidents to commerce may, upon application to the Board of Supervisors of the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of years to such persons, partnerships, or corporations; *provided*, that nothing in this section shall apply to the tide lands of the Bay of San Francisco."

Yes; within two miles of any incorporated city and town within this State. In a very populous county—if not now there likely will be some that I could name—there might be towns all along where these tide waters are, and it would certainly exclude the disposition of these lands along the whole line of tide water. The Legislature of course ought not to dispose of these lands without proper guards and conditions to prevent frauds, but to say that they shall not be disposed of at all is virtually to give them away; virtually to say that the State shall have no benefit, except with reference to these leases. I am not familiar with these tide lands, but I understand that some of these tide lands may be very valuable for certain agricultural purposes. I presume that the time may come when they may be disposed of at a considerable price per acre. If this were a Legislature I would coöperate with the gentleman from Los Angeles as far as I could in order to throw any proper guards around the disposition of these lands; but this proposition may be regarded in this light: persons having tracts of land lying back of these tide lands, it is certainly a matter of considerable private accommodation to them that they should be kept public forever, and I apprehend that that view possibly might be taken by some of our constituents, and be regarded as private interests. I think it ought not to be put into the Constitution of the State.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I consider that the provisions of section three are perfectly in harmony with what I believe to be the sentiment of this Convention. This section, if the gentleman will pay attention to it, only withdraws such lands as are within two miles of any incorporated town. These tide lands generally are necessary for the commerce of the State—invariably, I may say. Now, sir, it seems to me that has been the policy of the State heretofore, for that very law now exists in the Code. It has been found beneficial, and we wish to make it permanent by placing it in the Constitution. In my opinion, the whole State would be benefited by the Supervisors of each county having control over these water frontages; it is necessary that they should. The people know their wants. The commerce of each locality will be adapted to that locality, and the Board of Supervisors will know when to grant a lease, and when not to. These lands are already reserved in the State——

MR. MCCALLUM. Is it your proposition that these lands should never be disposed of under any circumstances?

MR. AYERS. Yes; that is my proposition, that they be withheld from sale. The gentleman will recollect that tide lands are not marsh lands; tide lands are lands six feet under water—that is the average, high and low tides.

MR. MCCALLUM. Where do you get that definition?

MR. AYERS. I find that in the decision of the Supreme Court, by Judge Shafter.

MR. VAN DYKE. Mr. Chairman: I hope the motion to strike out will prevail. I think it is a dangerous section.

THE CHAIRMAN. The question is on the motion to strike out the section.

The motion was lost, on a division, by a vote of 34 ayes to 54 noes.

MR. WYATT. Mr. Chairman: I now send up my amendment.

THE SECRETARY read:

"Amend by inserting in line six, between the words 'of' and 'years,' the words 'not exceeding twenty.'"

MR. WYATT. Mr. Chairman: It will then read: "But sites for wharves, warehouses, or other necessary incidents to commerce, may, upon application to the Boards of Supervisors of the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of not exceeding twenty years, to such persons, partnerships, or corporations," etc. I desire to say nothing more than that I think twenty years is long enough for a lease to run in cases of this kind.

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

The amendment was adopted.

MR. AYERS. Mr. Chairman: I move that the committee rise, report this article back to the Convention, and recommend its adoption.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the article on harbors, tide waters, and navigable streams, have amended the same, and report it back with the recommendation that it be adopted.

MR. AYERS. Mr. President: I move that the usual number of copies of this article be printed.

The motion prevailed.

THE PRESIDENT. The next in order on the General File is the report of the Committee on City, County, and Township Organizations.

The following is the draft submitted by the committee:

ARTICLE —.

CITIES, COUNTIES, AND TOWNS.

SECTION 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

SEC. 2. County seats shall not be removed by special law, but such removals shall be provided for by general law. No county seat shall be removed unless two thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

SEC. 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided; nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of the county or counties affected, voting at a general election, shall vote therefor. New counties, when created, or portions of a county, when added to another county, shall be liable for their just proportion of all debts and liabilities, then existing, of the county or counties out of which they are respectively formed or taken.

SEC. 4. The Legislature shall establish a system of county governments which shall be uniform throughout the State; and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and, whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county, and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general laws.

SEC. 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their compensation. It shall regulate the salaries and fees of all county officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them or officially come into their possession.

SEC. 6. Corporations, for municipal purposes, shall not be created by special laws, but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns; and cities and towns heretofore organized or incorporated may become organized under and subject to such general laws. Cities and towns may become incorporated under general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith.

SEC. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or houses of legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for two years. Any casual vacancy in the office of Supervisor in either Board shall be filled by the Mayor.

SEC. 8. No person shall be eligible to a county or city office unless he has been a citizen and resident within such county or city for two years next preceding his election or appointment to an office therein.

SEC. 9. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of largest general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall, at the end of sixty days thereafter, become the charter of such city, or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate, and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of Deeds of the county, among the archives of the city, and thereafter all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

SEC. 10. The compensation or fees of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

SEC. 11. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

SEC. 12. Any county, city, town, or township, may make and enforce within their respective limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SEC. 13. Taxes for county, city, town, school, and other local purposes must be levied on all subjects and objects of taxation. In addition to that which may be levied for the payment of the principal and interest of existing indebtedness, the annual rate on property shall not exceed the following: For county purposes, in counties having two million dollars or less, shall not exceed —— cents on the one hundred dollars' valuation; in counties having six million dollars, and under ten million dollars, such rate shall not exceed —— cents on the one hundred dollars' valuation; and in counties having ten million dollars or more such rate shall not exceed —— cents on the one hundred dollars' valuation. For city and town purposes such annual rate on property in incorporated cities and towns shall not exceed —— cents on the one hundred dollars' valuation; and in any city and county with consolidated government, such rate shall not exceed —— cents on the one hundred dollars valuation.

SEC. 14: The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 15. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with, any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

SEC. 16. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, and the public interest demands it, appoint such officers.

SEC. 17. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SEC. 18. All moneys, assessments, and taxes, belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall, immediately on receipt thereof, be deposited with the Treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

SEC. 19. The making of profit out of county, city, town, or public school money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SEC. 20. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the assent of two thirds of the voters thereof, voting at an election to be held for that purpose; and in cases requiring such assent, no indebtedness shall be incurred (except by a county, to erect a Court House or Jail) to an amount, excluding existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring such indebtedness; and unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within forty years from the time of contracting the same.

SEC. 21. No county, city, town, or other public or municipal corporation, by a vote of its citizens or otherwise, shall become a subscriber to the capital stock, or a stockholder in any corporation, association, or company, or make any appropriation, or donation, or loan its credit to, or in aid of any person, corporation, association, company, or institution.

SEC. 22. No law shall be passed by the City Legislature granting the right to construct and operate a railroad within any city, town, village, or on any public street or highway thereof, without the consent of the municipal or other proper or local authorities having the control of such street or highway proposed to be occupied by such railroad.

SEC. 23. In any city where there are no public works owned and controlled by the municipality for supplying the same with artificial light and water, any company duly incorporated by the laws of this State shall, under the direction of the Superintendent of Streets of said city, have the privilege of disturbing and using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and of making connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, for which the same or either may be used, upon the conditions following: Such company shall make good all damages to such streets and thoroughfares, except necessarily occasioned by the reasonable use thereof, and be liable to such city and its inhabitants therefor. Such company introducing and supplying gaslight, or other light, and fresh water, or either, shall furnish the same, so far as necessary and required, free and without charge, to all public buildings, institutions, and school houses belonging to such city, and used for municipal purposes; and such company introducing and supplying water shall also furnish the same free, and without charge, to the Fire Department, and for the extinguishment of fires. Each company, its property and franchise, shall be liable to such city and its inhabitants for the performance of these conditions.

SEC. 24 In counties or cities having more than one hundred thousand inhabitants, no person shall, at the same time, be a State officer and a city or county officer, nor hold two city or county offices.

SEC. 25. No public work or improvement of any description whatsoever shall be made or done, in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment in proportion to benefits, on the property to be affected or benefited, and shall be collected and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed.

SEC. 26. The Legislature shall not pass any local or special law in the cases following:

Regulating the affairs of counties, cities, towns, townships, wards, city or county Boards of Education, school districts, or other political or municipal corporation or subdivision of the State;

Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, or parks;

Relating to cemeteries, graveyards, or public grounds not of the State;

Locating or changing county seats;

Incorporating cities, towns, or villages, or changing their charters;

Creating offices, or prescribing the powers and duties of officers in counties, cities, towns, townships, or school districts;

Regulating the fees or extending the powers and duties of county or municipal officers;

Regulating the management and maintenance of public schools, the building or repairing of school or Court Houses, and raising of money for such purposes;

Extending the time for the assessment or collection of county, city, or other municipal taxes, or otherwise relieving any Assessor or Collector of county or city taxes from the due performance of the official duties, or their securities from liability;

Legalizing the unauthorized or invalid acts of any officer or agent of any county or municipality thereof;

Directing the payment of money out of the treasury, or by any officer, of any county, city, or town, without the consent of such county, city, and town;

Directing the payment of money from out of the treasury, or by any officer of, or creating any liability against, a county, city, town, or any public or municipal corporation, without its consent.

MR. WYATT. Mr. President: I move that the Convention resolve itself into Committee of the Whole, to take into consideration the report of the Committee on City, County, and Township Organization.

MR. BIGGS. Mr. President: The Chairman of that committee is absent. It is a very important report, and I would be very glad to have the Chairman of that committee, Judge Hager, present, when it is considered. He is now absent, owing to sickness in his family.

MR. CASSERLY. Mr. President: I saw Judge Hager very recently in San Francisco, and spoke to him upon the subject of this report. He informed me that he had sickness in two families, one in one house and one in another. Under these circumstances I am unable to say when he will be here. I shall telegraph him to-day on the subject.

MR. GRACE. May I ask if the gentleman is a Mormon—having two families?

MR. CASSERLY. I hope that my friend will give the time of grace to Judge Hager.

MR. WYATT. Mr. President: I made the motion for the purpose of bringing the subject before the Convention, to ascertain what the state or condition of that report was in with reference to anybody acting as Chairman, or Chairman pro tem., in the consideration of the matter; but if it is the desire of the Convention to pass it over I have no objection.

MR. TINNIN. Mr. President: I move to amend by taking up the report of the Committee of the Whole on preamble and bill of rights.

THE PRESIDENT. The motion is not amendable in that way.

MR. LARKIN. Mr. President: It seems to me that if Judge Hager's family is sick there are other members on that committee who can explain their report. Besides Judge Hager, there are on that committee Messrs. Fawcett, McFarland, Barbour, Hale, Hall, Schell, Tinnin, Reddy, Rolfe, Barnes, Holmes, Mills, McCallum, and Freeman. I think it is as well to proceed with the report of that committee now as any other time. That and the report of the Committee on Education I consider to be the only other reports of importance.

MR. TINNIN. Mr. President: I hope the Convention will not force that report upon the Committee of the Whole at the present time. The Chairman is absent, and more than half of the committee are absent. I see that the Chairman of the Committee on Education is here; why not take up his report?

MR. LAMPSON. Mr. President: I hope that the committee will not take this up in Judge Hager's absence. I think that, in justice to him, it should not be taken up at this time.

MR. FAWCETT. Mr. President: I also hope that if there is anything else that the Convention can take up, it will postpone the consideration of the report of this committee, on account of the absence of Judge Hager. I am unalterably opposed to a large portion of the provisions of this report. I am opposed to at least three quarters of the provisions contained in this report, and, in justice to Judge Hager, who is an ardent supporter of it, I think it ought to be postponed.

MR. BLACKMER. Mr. President: There is another report on the file which has been reported back by this same Committee on City, County, and Township Organization, number five hundred and twenty-two upon this file, relative to local option. Five hundred and twenty-one is the report relative to city, county, and township organization; five hundred and twenty-two is relative to local option. It is reported back to this Convention without recommendation, and, as a matter of course, the committee say by that that they have no special fight to make on it. If it is not proper for us to take up the other report, it is perfectly proper that we take up that subject at this time.

MR. WEST. Mr. President: I am of the opinion, sir, that the question of local option would properly be considered in connection with that of city, county, and township organization. It would properly belong to section twelve of that report, and should be considered with the report of the Committee on City, County, and Township Organization.

MR. BEERSTECHER. Mr. President: I hope that the matter of local option will not be taken up at this time. I understand that the committee are about equally divided on the subject of local option, and a contest is anticipated upon that subject, and it would be no more than fair if they desire to take anything up, that they should take up the report of the committee and let local option follow the report, because I think that the consideration of local option would certainly be largely affected by the adoption or the rejection of the report of the committee. In fact, the adoption of certain sections of the report virtually dispose of the question of local option without any further consideration.

MR. HOWARD. Mr. President: It is very evident that if we do not go on with these reports in their order we will never get through. If we wait for absent members of committees, who go home, or get sick, or go home and stay and not return, we will never get through with this business. We must take things in their order if we propose to finish our work.

MR. VAN DYKE. Mr. President: Part of the members of the next committee are absent, and if it is desirable to get through with these articles in Committee of the Whole I do not see what other course we can take than to follow the order of the file. If we deviate, it requires more than a majority vote. If any other committee was ready to go on it might be well enough, but the other committee is in just as bad a condition as this. This is a long article, and will require a great deal of consideration. We certainly can commence it, and there are other members of the committee who have considered the matter, and can defend the report. I hope we will take it up in its order.

MR. GRACE. As it seems that there is nothing before this Convention, I now move that the Convention resolve itself into Committee of the Whole for the purpose of further considering the right of female suffrage. It will have to come up at some future time.

MR. AYERS. Mr. President: I hope that we shall proceed in order in this Convention. If gentlemen who are Chairmen of committees are absent, the best way to bring them here is to start in on their report, and they will come up here on double quick time.

MR. BROWN. Mr. President: I am in favor of going on. I like to see politeness and formality, but business must be attended to. I am under the impression it is so regarded by the members here who have been attending to business strictly. Now, this matter may be delayed indefinitely, for we hear that the gentleman has two sick families to attend to. We do not know when he will be here at all. We have paid the gentleman sufficient respect in discussing this matter so long, to the delay of the important business of this Convention. I am anxious that we should go on with the regular order.

MR. STEDMAN. Mr. President: Is an amendment in order?

THE PRESIDENT. No, sir.

MR. STEDMAN. Then, sir, I move that we take up the report of the Committee on Education. It cannot be urged that the Chairman is not present. Now, sir, Judge Hager has a peculiar interest in this report of the Committee on City, County, and Township Organization. He is Chairman of the committee, and I know that he is anxious that it should not be taken up in his absence. I understand that he will return to this Convention in a day or two.

MR. WINANS. I object to the amendment.

THE PRESIDENT. The amendment is not in order, and therefore not before the Convention. The question is on the motion that the Convention resolve itself into Committee of the Whole for the purpose of considering the report of the Committee on City, County, and Township Organization.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section one.

ORGANIZED COUNTIES.

THE SECRETARY read:

SECTION 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

THE CHAIRMAN. If there be no amendment to section one, the Secretary will read section two.

REMOVAL OF COUNTY SEATS.

THE SECRETARY read:

SEC. 2. County seats shall not be removed by special law, but such removals shall be provided for by general law. No county seat shall be removed unless two thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

MR. HERRINGTON. I send up an amendment.

THE SECRETARY read:

"Amend section two by striking out all of line one, and down to and including the word 'law,' in line two."

MR. HERRINGTON. Mr. Chairman: The object of omitting that clause is that it is found in the report of the Committee on Legislative Department as amended. This same provision is there made. I believe it is subdivision twenty-one of section twenty-five of the article on legislative department.

MR. MCCALLUM. There is no question but what it is covered by the article on legislative department. Section twenty-five of that article provides that the Legislature shall not pass special laws in certain cases, and among them is changing county seats.

MR. WYATT. Mr. Chairman: I move to strike out section two, and I do it for the reason that I think the subject is amply provided for in the twenty-fifth section of the article on legislative department, and that this is only duplicating it. I object to it on the further ground that it is harsh in saying that it would require a two-third vote. That is equivalent to saying that a county seat should not be removed at all.

MR. BIGGS. Mr. Chairman: I am in hopes that that section will not be stricken out. The amendment offered by the gentleman from Santa Clara I think is just and right. I hope this section will not be stricken out unless gentlemen want to make county seats migratory, moving them about on wheels every two years.

MR. BLACKMER. Mr. Chairman: I hope the section will not be stricken out. It is evident to all that the first part of the section is not necessary, but I think the Constitution should say that the county seat should not be removed without a two-third vote, and that we should prohibit the Legislature from passing a general law whereby the question should be submitted oftener than once in four years.

MR. MOFFAT. Mr. Chairman: I hope the section will not be stricken out. We have been put to the expense and trouble of two especial elections, just to gratify a few men in the southern part of our county. If they are defeated they will try the thing over again whenever they have a chance. We are against moving our county seat. They beat us on one election, and we got a rehearing and set the thing back again. Now, then, the people of our county are opposed to moving the county seat, but there are a certain set of people in the southern part of the county who are in favor of its removal, and they colonize into our county from fifty to two or three hundred, in order to defeat the wishes of the people of our county. This section prohibits that change without a two-third vote. I am satisfied that it is right, and I hope that the section will stand as it is.

MR. SMITH, of Fourth District. Is an amendment in order to add to the section?

THE CHAIRMAN. The question is on the motion of the gentleman from Monterey to strike out section two.

MR. BROWN. Mr. Chairman: I am in hopes that section will not be stricken out. We know that there are a kind of emotional sensations gotten up frequently that prevail over the people to a considerable extent, and consequently that county seats have been almost on wheels. This would protect the people to a great extent against such excitements. I think that such excitements should be guarded against by law, and this constitutional provision being established, would do that thing.

MR. CASSERLY. Mr. Chairman: I hope that this section will be adopted just as it stands. It seems to me, sir, that it will protect the State, and the people of the State, from these frequent demands for change of county seats. I suppose, sir, there is hardly a member of this Convention ignorant of the calamities that have fallen upon the people in connection with these elections. Great wrongs have been perpetrated. It has seemed to me, and to everybody else who has paid attention to it, as though the whole desire was to see who could get the most illegal

votes, and in counties, too, where the vote polled was three or four times the vote cast in any election before or since. I think if it accomplishes no other purpose than to take the county seat question out of politics, it will be a valuable provision.

MR. SMITH, of Fourth District. Mr. Chairman: I hope the section will not be stricken out. The Legislature has passed a law something to the same effect as this provision in this section two. There are counties that have built expensive buildings—our county is one of them—and has put itself heavily in debt—forty or fifty thousand dollars—to build expensive Court Houses in the section of the county that is undoubtedly the place for the county seat; yet other portions of the county are still struggling for the county seat. Our county is one of a great many in the same situation. Now it seems to me that while it is well to have this law, it is well to have it fixed substantially in the Constitution; and while it is being fixed in the Constitution, let it be such as it is now upon the statute books. For that reason I offered to put in an amendment there to make it the same as it is in the Code—substantially the same—that there shall be no vote for a change of county seat within two years after a vote had been taken. This section would allow a vote to be taken immediately after the adoption of the Constitution. The Act puts it off two years longer.

MR. MCCALLUM. The law will remain after the Constitution is adopted, unless it conflicts with the Constitution.

MR. SMITH, of Fourth District. I do not see why we should not fix it in the Constitution as it is in the Code.

MR. MCCALLUM. Mr. Chairman: I suppose it is hardly necessary to add anything, as there seems to be a general expression against striking out this section. I believe that this proposition was one of the few propositions on which the committee were unanimous, in favor of the section as it stands. The first part—the action on the legislative article—has affected that. As to the balance of the section, we were unanimous.

THE CHAIRMAN. The question is on the motion to strike out the section.

The motion was lost.

THE CHAIRMAN. The question recurs on the motion of the gentleman from Santa Clara, Mr. Herrington, to strike out the first line, and part of the second line, down to the word "law."

The motion prevailed.

MR. SMITH, of Fourth District. I now move to amend by adding to section two, "nor in any county within two years after the adoption of this Constitution."

The amendment was rejected.

MR. VAN DYKE. Mr. Chairman: I hope that the committee will allow us to return to section one. I wish to move to strike it out. As it stands now, it will prevent the Legislature from consolidating counties, or from abolishing small counties. It is a dangerous section. I hope the committee will allow us to return to it.

THE CHAIRMAN. That section has been already passed by the unanimous consent of——

MR. HOWARD, of Los Angeles. I object.

THE CHAIRMAN. The Secretary will read section three.

NEW COUNTIES.

THE SECRETARY read:

SEC. 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided; nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of the county or counties affected, voting at a general election, shall vote therefor. New counties, when created, or portions of a county, when added to another county, shall be liable for their just proportion of all debts and liabilities, then existing, of the county or counties out of which they are respectively formed or taken.

MR. CAPLES. Mr. Chairman: I send up an amendment to that section.

THE SECRETARY read:

"Amend as follows: 'First, strike out, in the second line, the word 'eight' and insert 'ten;' second, strike out, in line three, the word 'five' and insert 'seven;' third, strike out, in line four, the word 'five' and insert 'ten;' fourth, strike out, in line six, the words 'a majority' and insert 'three fifths.'"

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I presume that the committee aimed to correct a great evil; they aimed to put the brakes on the very bad practice of dividing up counties for the purpose of making some gentleman's farm valuable, or affording places and positions for hungry politicians. But, I must say, Mr. Chairman, that they put the brakes on very light indeed; too light to do any good. Now, it may be very desirable in our new counties here, with a large area and small population, and small wealth; it may be very desirable for some gentleman to convert his farm into a county seat, and enhance its value from five thousand dollars to one hundred thousand dollars, in town lots; it may be a very good thing for that gentleman, and it may be a very good thing for other gentlemen to be afforded the position of Sheriff, Clerk, Supervisors, and the various county officers; but, Mr. Chairman, it is not a very good thing for the poor taxpayers, when counties are made up out of a sparse population, and with but little wealth. It is no joke for them, but it is not always the case that their rights are taken into consideration; they are at home, at work upon their farms, not troubling themselves about politics, but these ringsters, gentlemen of leisure who are looking after office, are always on the lookout, and they always exercise an influence wholly disproportionate to their numbers, and it is no unusual thing for them to succeed. Perhaps there is scarcely a gentleman on this floor but who has seen or known something of this practice, if not in California, at least in some other States, because it is a practice not peculiar to California by any means. I have known it, perhaps other gentlemen here have known it in other cases, and I must say that the committee have touched it altogether too lightly. Now, I maintain, to separate and divide a county, and leave it with but eight thousand population, and permit a county to be organized out of another county with but five thousand population, is altogether too liberal to that class of gentlemen of whom I have been speaking. I think, to say that the county from which the territory is taken should not be reduced below ten thousand, is liberal enough to that class of gentlemen. I think, to say that a new county ought not to be organized unless it has at least the population of seven thousand, is sufficiently liberal to those gentlemen. I think, in cutting up an old county to make a new one, that when they say the line shall not pass nearer than five miles, I think they are a little too liberal there, and I think I am abundantly liberal when I say ten miles. In regard to the last count of my amendment, providing that counties shall not be divided without a three-fifths vote, I think that, too, is an improvement on the report of the committee. The committee provides that it may be done by a majority. My amendment proposes three fifths, and I think, and I submit to gentlemen, that that is a wise provision. Why, if but a bare majority can cut up a county, various influences might be brought to bear. Men exercise an influence that is hurtful and dangerous to the public interests, for the very reason that certain gentlemen and certain things always do exercise an influence when they bring it to bear, that is disproportionate to their numbers. Others who are not active politicians are at home at work upon their farms, and scarcely know what is going on. They are likely to be imposed upon by designing men. Therefore, I maintain that counties should not be divided or cut up unless three fifths of the voters of the county concur in demanding it.

MR. WYATT. Mr. Chairman: If I wanted doubly to prevent a new county from being organized, I would support the amendment; but as the original is entirely sufficient to prevent a new county ever being organized, I deem it unnecessary to put a double-header on that subject, and I shall, therefore, vote against the amendment.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I think the report of the committee is sufficient to prevent any evils that might arise. The provision requiring a majority of the votes of the county affected will certainly preclude the formation of counties where it is not desirable. That there should be a sufficient population to entitle them to a representative in one branch of the Legislature I believe essential, and that the formation of counties simply on account of some mining excitement, or for this or for that temporary cause, I believe has been a great detriment to the State. I believe the guards provided for in this section three will protect the formation of new counties. I think under the circumstances that there is no danger but what the Legislature will fully protect the interests of the people, and that the section as reported should be adopted by this Convention in preference to the amendment offered by the gentleman from Sacramento. In three fifths of the counties affected, that vote would be almost to cut off the formation of any new county. It might be but one quarter of the county affected. That quarter of the county would, perhaps, vote in favor of the formation of a new county, while three fourths would vote to keep that portion of the territory. I refer the gentleman to the case of Nevada County. Residents of Truckee for a number of years have desired to form a new county, including a portion of Nevada, El Dorado, and Sierra. They claim that they have to pass around Placer to get to their county seat. If there was an exception in the State to the general rule, perhaps it would apply there better than in any part of the State; but the principle that we should prohibit small counties being organized, such as Alpine and Modoc, I believe to be correct. But with that restriction none of these counties could have been formed. I am opposed to the practice of forming these new counties where it is not necessary.

MR. CAPLES. I ask that the question be divided and each count be voted upon separately.

THE CHAIRMAN. The question will be on the first branch to strike out "eight" and insert "ten."

The amendment was rejected.

THE CHAIRMAN. The question is on the second to strike out "five" and insert "seven."

The amendment was rejected.

THE CHAIRMAN. The question is on the third proposition to strike out in line four "five" and insert "ten."

The amendment was rejected.

THE CHAIRMAN. The question is on the fourth proposition to strike out in the sixth line the words "a majority" and insert "three fifths."

The amendment was rejected.

MR. WELLER. I send up an amendment.

THE SECRETARY read:

"Strike out, in section three, commencing at the word 'nor,' in the fifth line, ending at the word 'therefor,' in the seventh line."

MR. DAVIS. I second the motion.

REMARKS OF MR. WELLER.

MR. WELLER. Mr. Chairman: The portion stricken out by that amendment reads: "Nor shall a county be divided, nor have any portion taken therefrom, unless a majority of all the qualified electors of the county or counties affected, voting at a general election, shall vote therefor." I offer that amendment for this reason: where a portion of the county is unfortunately situated, and wish to be joined to another county, they would be obliged to get a majority of all the votes of the whole county. I think the statute has been heretofore that where the parties that wish to be set off should all sign a petition, that they could be set

off into another county by an enactment of the Legislature; but according to that clause it would be impossible for one portion of the county to be set off from another. I move to strike out that whole clause.

MR. FREEMAN. Mr. Chairman: It seems to me that the part moved to be stricken out is the best part of the section. I think that no portion of a county ought to be taken from a county without its consent, nor added to another county without the consent of the people of that county. That is all that portion of the section provides for. Certainly that ought to be done.

REMARKS OF MR. EVEY.

MR. EVEY. Mr. Chairman: I am in favor of the amendment offered by the gentleman from Santa Clara, Mr. Weller. Under the report of the committee, as it is reported, I think that we should never have another new county in this State. I am no advocate of new counties, unless the population is sufficient and the taxable property is sufficient to support the new county. But it seems to me under this report of the committee that it would make no difference how much population or taxable property was contained within the new boundary proposed to be erected into a new county, the old county could forever prevent the organization of a new county, provided they had a majority of the voters. I think it would be very unjust and very unfair to put into the Constitution a provision of that kind, and I hope that the amendment offered by the gentleman from Santa Clara will prevail.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I hope, too, that the amendment will prevail, and that that clause will be stricken out, for I know myself of instances where it would work very badly. If the people of a certain section were unanimous in favor of joining another county, they could not do it under this amendment, because, of course, the people of the county would, for the sake of having their property on the tax roll, hold them anyway. There are certain little adjustments all over the State that require to be made, because these counties are new counties, and are sometimes very unjustly divided. I hope that the amendment will prevail, and that that part of the section will go out.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I agree with the gentleman from Sacramento, Mr. Freeman, when he says that this is the very best part of the section. If we had had this in the Constitution before we would have had no Alpine County struggling for an existence. It is a fact, known to every one, that it is not a case of public necessity. It has been a great advantage to certain men, for the purpose of getting county offices.

MR. WHITE. This has nothing to do with new counties. If you look at that you will see that it does not refer to new counties.

MR. TINNIN. It seems to me that unless this clause is kept in this section that it would be impossible to set off a new county. I hope that the report of the committee will be sustained. I believe in a strong restriction upon the power to organize new counties, or set off a portion of one county to another.

REMARKS OF MR. DAVIS.

MR. DAVIS. Mr. Chairman: I believe, with the section as it now stands, it would be almost impossible ever to get a new county. If the eastern end of Nevada County desire a new county to be made out of Placer and Nevada, they never could have a new county under this section; and, although we do not desire a new county at the present time, there may be some time in the future when we would desire it. We have to travel nearly one hundred miles on two railroads to reach our county seat, and should we obtain a population of five thousand and desire a new county, I do not see, under the present section, how we could ever obtain it. We have a county capable of sustaining a large population, and in case we should, in the future, desire a new county, I should like to have it so that we can obtain it.

REMARKS OF MR. MILLS.

MR. MILLS. Mr. Chairman: I think this portion of the section ought not to be stricken out, for the reason that I am not aware of any way that a county could be divided, or a portion taken off, unless it was by the consent of both. Suppose, for instance, that the people of San Joaquin should vote to take a portion of Sacramento County, and Sacramento County should not consent to it. How would you get it? Upon what principle can they ask this unless both parties consent to it? It is like trading horses. I say to a man I wish to trade horses with you, and I take his horse. Could I enforce it without his consent? I think the clause ought to remain in the section.

REMARKS OF MR. WYATT.

MR. WYATT. I am at a loss to know what a proper construction of the matter proposed to be stricken out here is. It reads, "nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of the county or counties affected, voting at a general election, shall vote therefor." Now the question is where there is two or three counties to be effected by the proposed change, does it take a majority of each county to make this effective, or does it require that the votes of the three counties shall be aggregated? For instance, a very large county in population, like Sacramento, proposes to take off a slip of Yolo County, then if it requires a vote of each county, Yolo can stand Sacramento County off if she is opposed to the uniting of the territory, but if it is aggregation of the votes, Sacramento County can walk over and take as much of Yolo County as she desires. I hope that the clause will be stricken out.

REMARKS OF MR. CAPLES.

MR. CAPLES. I had thought, Mr. Chairman, that the report of this committee was extremely liberal—too liberal; entirely too much so—but it seems as though I was laboring under a most profound error, for it would appear that gentlemen desire to break down all restrictions—absolutely all restrictions. Now, Mr. Chairman, let us see what would be the effect of striking out this portion of the section. I read the portion proposed to be stricken out: "Nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of the county or counties affected, voting at a general election, shall vote therefor." Now I would like to know how this is to be done unless it is by a vote of the county. But it is proposed to strike that out. Well, what then? This Committee of the Whole have already provided in the action had upon the report of the Committee on Legislative Department, that the Legislature shall have no power to change county seats by special enactment. It must be done by general laws. Now will these gentlemen who favor striking out this vital portion of this section be in favor of a general law that would provide that any section of a county might, of its own motion or volition, strike itself out from the parent county and attach itself on to another county? Is this the idea? Is this the desire of these gentlemen? Because if it is not to be done by vote of the county or counties interested, why I take it that the people themselves desiring to detach themselves should be permitted to do so under a general law, because we have inhibited special laws for that purpose.

For instance, here is Yolo County lying next to Sacramento. The people of that portion lying between the Tule House and the river are very much nearer to Sacramento, and their business is in Sacramento as much, if not more, than at their own county seat. Would these gentlemen, by general law, provide that that strip of territory, say two miles in width, might, by the act of the citizens occupying that strip of territory, be detached from Yolo County and attached to Sacramento County? It seems to me that this is the most preposterous proposition that I have heard. What would be the general result of opening up this question of the disintegration of counties? I will venture to say that it would be a pandora box of confusion worse confounded from one end of the State to the other, because you will scarcely find anywhere an exception to the rule that in every county of the State there would be some corner or slice on one side or one end that would prefer to attach itself to some other county. It may be nearer to that county seat. Various things may be brought to bear, and the result would be disintegration and confusion. Certainly no gentleman on this floor desires to inaugurate such a lawless, revolutionary proposition as this. Now, if gentlemen had proposed to insert, where they propose to strike out, some provision that would be specific, would offer some guards against confusion, why it would be more reasonable; but they propose nothing to say what the Legislature may provide, but they are aware that the Legislature must provide by general law. It cannot provide by special law, for I take it for granted that this Convention is against special legislation, and has put the seal of condemnation upon it. Therefore, they must provide, by general law, and every section, corner, or slice of a county may, of its own volition, take itself out of a county and put itself into another county. They have not said so in terms, but it follows as a natural sequence. If I may be excused from saying so, I consider this a foolish proposition, a proposition in the interest of cliques and private interests, and one that would result in confusion worse confounded.

MR. STEDMAN. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Strike out the word 'the' in the sixth line, before the word 'county,' and insert the word 'each,' so that it shall read 'a majority of all the qualified electors of each county or counties affected.'"

REMARKS OF MR. STEDMAN.

MR. STEDMAN. Mr. Chairman: As I understand the clause, as it reads now in the report of the committee, the objection of the gentleman from Monterey is well put. As I understand it, sir, it requires; in settling this matter, the combined votes of the counties, and, as the gentleman says, if there was a majority in the County of Yolo against adding any portion of that county to the County of Sacramento, and if a majority of Sacramento County voted to take it, although the people of Yolo objected to losing a portion of their county, it would be taken from them, from the fact that the voters of the counties voted therefor.

MR. TINNIN. Will the gentleman allow me to suggest that he strike out also the words "or counties?"

MR. STEDMAN. I accept that amendment. If my amendment is adopted, if the County of Yolo should object to having this portion taken from them, and the County of Sacramento should vote therefor, that portion would not be taken. It would require a majority in each county. I believe that this would be right, to settle the dispute.

MR. WELLIN. Mr. Chairman: I hope that the amendment offered by Mr. Stedman will be adopted. Under the report of the committee Sacramento could go over and steal a large slice of Yolo County. Down there in Alameda, the people of San Francisco could step over and steal the Town of Oakland. I think we ought to fix it so that the people who are losing their territory should have a voice in it, and not be overruled by the larger vote in the other county.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: I hope, sir, that the amendment offered will not be adopted, and that this section may be amended by striking out all of it down to the words "new counties," in the seventh line. In addition to that, I think, also, that the words, "or portions of a county when added to another county," in the eighth line, should be stricken out, for the reason that they have no meaning that I can perceive which could be brought into any practical effect. So far as these words are concerned in the eighth line, "or portions of a county when added to another county," the effect would be this: that if a new county was formed, and in running its lines, or in the description, you should have three fourths of one township and half of another township from an

adjacent county, that in every sort of way these fractional portions of townships are to contribute their just proportion of the county debt, it would be found impracticable to arrive at any just proportion. At any rate, the words, "new counties, when created, shall be liable for their just proportion of all debts and liabilities, then existing, of the county or counties out of which they are respectively formed or taken," will cover all that is necessary. The reason why I hope that the amendment will be voted down, and I may have an opportunity to offer an amendment to strike out all after the words "section three" down to the word "new," in the seventh line, is, that the various amendments proposed and the original section as offered by the committee are going to prevent the formation of any more counties. It may be that no more are needed at present, but I do not think that this Convention can discount all future time with safety and with intelligence. That more counties can be formed is very manifest. The amendment of the gentleman from San Francisco, Mr. Stedman, that whenever a county is formed, that each county that is to be subdivided in the formation of the new county have got to approve of it by a majority vote, renders it absolutely certain that you will never have another county in the State, whatever changes the circumstances of the State may require, or whatever the population may be. Again, here it is proposed that there must be at least five thousand inhabitants. Now, sir, we have counties in this State where a man has to travel from sixty to one hundred miles to reach the county seat. Now, in a vicinity of that kind, if there is a population of three or four thousand, or four thousand nine hundred, and they are willing to pay the expenses of a county government, why in the name of conscience should they not have one? The State is made up now of counties, a large number of which do not contain five thousand inhabitants, and they contribute their full share to the strength, the prosperity, and the wealth of the State. Gentlemen say we must consider the poor taxpayer. I will call the attention of gentlemen on this floor to the fact that it costs many citizens of this State more money now to travel to the county seat than it costs to pay the taxes on their property annually. Again, we are assuming, if we adopt a section like that, that this State is now crystallized.

MR. FILCHER. If the travel was only half the distance, would not the expense be about the same?

MR. JONES. Not at all. Thirty additional miles make it necessary to stay another day. When men are within twenty or thirty miles of their county seat, which ought to be nearly central, they can go and return the same day; but when you come to go farther than that, then it is two or three days trip. It is a grievous burden upon every Grand Juror, every trial juror, every witness, and every man who has any business of any sort whatever to transact at the county Court, that he should be obliged to travel fifty, sixty, seventy, or one hundred miles for that purpose. It ought to be within the power of the Legislature to so modify the general law as to meet the wants of such citizens. We are assuming, if we adopt this section, that this State has crystallized, and has taken upon itself a permanent form; that the counties are now all that they ought to be for all time to come. We have no right to make such an assumption. The centers of population are continually changing, and are subject to great and rapid changes. Besides, there is not a State in the Union, and there never will be, where the crystallized and permanent form of government embraces counties of such enormous magnitude as California. Look at the great counties of San Bernardino, Stanislaus, and Merced, reaching from the mountains on the east to the crest of the coast range on the west. If this State is going to be what we expect, a great and thriving population will exist on the two sides of the San Joaquin River. At the present time there is no population to justify two counties, but every consideration of expediency, every consideration of right, will dictate that there should be the power to pass a general law which will permit them to form two counties. For one half of the year it is almost impossible to reach the seat of justice in order to transact any business, judicial or otherwise, that a man may have to transact at the county seat. The country is flooded. A great river moves down and perhaps overlaps its banks for three or four miles. In the future we ought to have some means of adapting the condition of the counties to the interests of the people. The Legislature is not abusing any right—is not abusing its authority in the way of making new counties. Why not let the Legislature have the power to pass a general law, and to modify that general law from time to time, so as to permit of the organization of new counties when the interests of the people demand it?

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

On a division, the vote stood 42 ayes to 4 noes.

THE CHAIRMAN. We will take another vote. There is no quorum voting.

The question was again put, and, on a division, the vote stood 61 ayes to 7 noes.

THE CHAIRMAN. No quorum voting. There is manifestly a quorum in the committee. Gentlemen are requested to vote one way or the other.

The amendment was adopted, on a division, by a vote of 74 ayes to 15 noes.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Weller.

The amendment was rejected.

MR. JONES. Mr. Chairman: I send up an amendment to section three.

THE SECRETARY read:

"Strike out after the words 'section three,' down to the word 'new,' in the seventh line; also, strike out from line eight, the words 'or portions of a county when added to another county.'"

MR. HERRINGTON. I rise to a point of order. That strikes out a portion of the last amendment that has been inserted.

THE CHAIRMAN. It is perfectly in order to do so, provided you strike out other language in connection with it.

MR. JONES. Mr. Chairman: I have stated my reasons for offering this amendment, and I do not propose to detain the committee at all now. As to the words in line eight, "or portions of a county when added to another county," I do not deem it a matter of moment, but I do not understand any useful effect of it. I do not deem it a matter of great moment whether they are stricken out or not, but it seems to me that it will be embarrassing if they are left in.

MR. TINNIN. Mr. Chairman: This amendment would virtually destroy section three, and I think we should retain some vitality in that section. The Convention has decided that there is virtue in that section, and I hope that the Convention will adhere to its decision, and vote down the amendment.

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

MR. HERRINGTON. Mr. Chairman: I desire to amend the section in lines seven and eight, by transposing the terms, striking out the words "new counties, when created or," and transposing them to after the word "counties," so as to make it read: "portions of a county when added to another county, or new counties, when created, shall be liable," etc. That will express what was undoubtedly intended by the committee. but as it now stands it makes it read awkwardly, as though new counties would be added to other counties. I will reduce it to writing.

THE SECRETARY read:

"Strike out, in lines seven and eight, the words 'new counties, when created, or,' and insert the words 'or new counties, when created,' after the second 'county,' in line eight."

MR. SMITH, of Fourth District. I would like to ask the gentleman a question. How can a portion of a county pay? Why should not the new county pay that portion? How can a portion of a county pay separately?

MR. VAN DYKE. I would like to inquire, how can a portion of a county pay any portion?

MR. HERRINGTON. The sentence will commence and read as follows: "Portions of the county, when added to another county, or new counties, when created, shall be liable for their just proportion of all debts and liabilities then existing of the county or counties out of which they are respectively formed or taken."

MR. VAN DYKE. My question is, how a portion of a county can pay?

MR. HERRINGTON. I suppose that the assessment roll will show it. The like has been done by the Legislature in this State.

MR. SHAFTER. Mr. Chairman: It has been done, as the gentleman from Santa Clara says, over and over again, not only in this State, but in other States. There is no trouble about it. The assessment roll at the time will show how much belongs to that portion, and the Legislature can direct the assessment and collection of taxes in proportion to the amount of property in that portion of the county to be applied to the debt of the county.

MR. JONES. Suppose the county line runs through a man's property?

MR. SHAFTER. It is done every day now, in formation of road districts and school districts. Lines run through my lands in three or four different places.

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

The amendment was adopted.

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

THE SECRETARY read:

"Strike out the words between the words 'thousand' and the word 'nor,' in line five."

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: The words proposed to be stricken out are these: "nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided." It is with reference to the single point provided for in this section, that there shall be no county seats within five miles of the lines of a new county. Now, that would work very inconveniently in some cases. We do not know what might occur pending the existence of this Constitution, if it should be adopted. It might be, as in the County of Alameda, it would be impossible to have a county seat five miles from the line of a new county. On this question the committee were divided. I believe the majority were in favor of the language as there used, but it may, in some cases, work great inconvenience; and I entertain the conviction that it is a provision that ought not to be placed in the Constitution. Perhaps, as a general rule, it might be a good one, but every good idea ought not to be put into the Constitution. The question is not whether the idea is good, but whether it is good to place in the Constitution of the State. I hope that these words will be stricken out. It might work great inconvenience in some cases.

REMARKS OF MR. HALE.

MR. HALE. It is true, as stated by the gentleman from Alameda, that this proposition did not receive the unanimous support of the committee. but it did receive the sanction of quite a large majority. I wish to state on behalf of the majority of the committee——

MR. MCCALLUM. My recollection of the thing is that it was struck out in committee. Afterwards it was claimed that it had not been stricken out. I, in common with some others, was of the opinion that it had been stricken out. I know I made the motion to strike it out, and I understood the motion prevailed.

MR. HALE. In response to the suggestion of the gentleman, I will say that probably it is a misapprehension. I believe that the truth of the matter was that a motion was made to strike it out, and I do not remember what action was taken on it by the committee. At a subsequent meeting, when I think a larger number were present, the matter was considered, and it was then retained. However, it makes no difference. The question is whether it ought to be retained or not. Now, in

behalf of the report of the committee upon that point, Mr. Chairman, I wish to say that this clause is derived from the Constitutions of several of the Western States, where, as in this State in some instances, there seems to be a constant furore to change county seats, and to divide counties. The judgment of the committee was, like that founded upon the Constitutional Conventions of those Western States, that this policy had been an excellent policy; that these movements for divisions of counties and change of county seats were largely founded upon private interests, and frequently without much regard to public weal; that it was wise, therefore, to place suitable restraints upon the exercise of this power of the Government. The provisions are inserted from the Constitutions of other States and also the laws of other States, placing a restriction upon the power to so divide a county that the new county line should be within less than five miles of the old county seat.

Now, it is the presumption that if it were, that it would necessitate the change of the old county seat, as well as the making of a new county seat. I think it is a wise and just restraint. I hope the amendment will not prevail. It has been suggested that there would be difficulty in such a county as Alameda. Now, there should not be any difficulty about that. That would involve probably the case of a city. If the gentlemen wish to provide for that it can be done in an independent section, or the introduction of new matter providing a different rule applicable to the formation of new cities and counties, or a restraint upon a division of a county where they have a city and county. I can imagine cases where that might be a useful thing; but this rule, as for its application to the State at large, I apprehend will be found to be wise. If it is necessary to have a provision to meet cases like Alameda County, I shall not object to it, provided that it does not disturb the harmony of this report.

MR. MCCALLUM. I would like to ask the gentleman if he does not think there are already enough counties?

MR. HALE. I think there are altogether too many.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: As a general proposition, I concede what has been said in opposition to the formation of new counties on every occasion, to make places for some aspirants for office; but there are cases when it is proper to have new counties formed, and to have counties divided, so that a city and county may be formed, so as to save expense to the population. Now, sir, it strikes me if we are going much farther we had better prohibit entirely the formation of any new counties. As remarked by the gentleman by my side, Mr. Wyatt, we have already partly done that. That is what I object to; that we are making this too unyielding by putting it into this Constitution. Take, for instance, up the San Joaquin Valley—there may be county seats within five miles of the San Joaquin River. Now, if it is desirable, hereafter, to form new counties, you could not divide it by the river, and you would have to divide it a little ways off the river in order to get five miles from an existing county seat. It is utter folly to put such a clause as this in the Constitution, in my opinion. If there are exceptions to a rule it ought not to go into the Constitution. Leave it to the Legislature—not form an iron rule that we cannot get over at all. That is the reason I am opposed to the section. I hope the amendment will prevail.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I move to strike out the section. It has been amended so that I cannot support it. Here is San Joaquin, Marin, Santa Clara, Sacramento—I do not know but Placer, and perhaps Butte and Yuba Counties—that have got railroad bonds out, and county bonds out. This Convention has adopted a provision that if a county is divided up it shall not be liable for any part of these bonds. That would be a very nice operation, to shift the responsibility by transferring the debts to a county that did not have any debt upon it.

MR. LARKIN. What amendment authorizes that?

MR. SHAFTER. The section, as it has been amended. It will let the balance of the county that is left shift its debt over on to the county that takes this part in. What right is there on the part of this Convention to shift the responsibility of a bond which the county has executed over on to somebody else that may not be able to pay it? It cannot be done, and it ought not to be done if it could be done.

MR. TINNIN. Mr. Chairman: I hope that the motion of the gentleman from Marin will not prevail. I am sorry to admit that, by one of the amendments, the section has been partly emasculated and destroyed, but there is a little virtue in it yet, and we hope that by retaining it we may perfect it in Convention. I hope the motion will not prevail.

MR. ROLFE. Mr. Chairman: If I understand this section right, I hope it will be stricken out, or else materially changed. There is a provision here, that new counties, when organized, shall be liable for their just proportion—will the Secretary please read Mr. Herrington's amendment?

THE SECRETARY read:

"Strike out, in lines seven and eight, the words 'new counties when created, or,' and insert the words 'or new counties, when created,' after the second 'county' in line eight, so it shall read: 'portions of a county, when added to another county, or new counties, when created, shall be liable for their just proportion of all debts and liabilities then existing, of the county or counties out of which they are respectively formed or taken.'"

MR. HERRINGTON. The gentleman from Marin has lost his reckoning.

MR. ROLFE. There is a liability for a proportion of the indebtedness of the old counties. Now, the old counties, from which a portion of a county has been taken to form a new county, as is the case with San Francisco at present, and other counties, may have an indebtedness, and at the same time, may have a large amount of property on hand, more than the indebtedness. So, although they may be in debt, they are not insolvent; they retain the public buildings, and still the portion of the county that has been taken from it must be liable for the indebtedness of that county, but, of course, cannot have a part of the public buildings.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: The gentleman will find that he is in error. They would only be liable for their just proportion. It was supposed by the committee that the language would cover the very point which he makes. Of course that portion of the county taken from the county is entitled to its credit for the property of the county as well as being liable for its just proportion of its liabilities. That is the view taken by the committee, and it was discussed at length. If the gentleman can find any better words, let him suggest. I wish to say to the gentleman from Marin that the very proposition which he advocated was adopted in the amendment of the gentleman from Santa Clara, Mr. Herrington. It does provide that the portions of the county shall be liable as well as the new county. The objection was made that it might be difficult to ascertain how much they were to pay, and the gentleman answered that proposition himself. I hope that this motion will not prevail. This evil that is mentioned here of the formation of new counties without any conditions whatever is a great evil which this committee proposed to remedy. They have attempted to remedy it in the manner provided in the first clause. I confess that unless this amendment which I have offered should prevail I should not be disposed to support the section. I cannot see what answer there is to the amendment which I have offered. I hope it will prevail, and that the section may then be adopted. It is conceded here that as it reads it would work a hardship in the cases mentioned. There are other cases where that will not occur. There might be cases where the county seat of a new county would not be on the banks of a river, although there might be a large city there.

MR. WINANS. Mr. Chairman: I think that the honorable gentleman from Marin misunderstands the effect of the Herrington amendment. Certainly if he does not, I do. As I read and interpret the amendment offered by Mr. Herrington——

MR. SHAFTER. I understood the Clerk to read that the portions of the county were stricken out. That I am in error in.

MR. WINANS. Consequently the virtue of the motion of the gentleman fails.

MR. MCCALLUM. Is the motion of the gentleman from Marin withdrawn?

MR. SHAFTER. No.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: As for the amendment of the gentleman from Alameda, I think the section as it stands is a good one. The Constitution of Missouri and the Constitution of Illinois have established the limit at ten miles, and they have done so with a view to adding stability to their county seats. A similar provision will have the same effect here in California. The idea is, as I understand it, that in the event of the organization of a new county, they should not affect the location of the present county governments by such a change. For instance, if it should hereafter be deemed advantageous to divide Placer County, which is now nearly one hundred miles in length, it would work a great hardship to change the county seat from its present locality, and entail upon us the expense of another set of new buildings, besides the removal of such county property as is movable. This would limit it to at least five miles, and I think the limit is small enough. For my part, I would prefer even a greater distance. I would prefer ten miles, and if it were offered here, I would vote to make the limit ten miles instead of five.

MR. LARKIN. Would not this limit prevent a new county in Alameda? It might not affect us, but it might come near some gentleman.

MR. FILCHER. The county seat of Alameda County is established. It is more than likely that the present county seat would be the county seat of one or the other, and I say that the new county should not come within ten miles of the present county seat; because in the establishment of a new county seat it should be that distance in justice to the most of the people in the new county formed. Placing county seats on one side of a county is unjust to the other side; it is like sticking a school house in the corner of a school district, which is sometimes done, and always to the great dissatisfaction of those in the other end of the district.

MR. MCCALLUM. Suppose, during the existence of this Constitution, there should be two cities of ten thousand inhabitants within that distance, would you not say——

MR. FILCHER. I should say that in forming a county they should run out at least five miles outside of that big city, if they desired to have that the location of government.

MR. LARKIN. Mr. Chairman: This restriction was simply a restriction to prohibit the hasty formation of counties. There are sufficient guards in this section, in relation to the formation of counties, without this provision, and I think it should be stricken out. There may be exceptions, but there are hardships under it.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope that the motion of the gentleman from Marin will prevail, and that the section will be stricken out, because I do not want to say to the living now, nor to the living who shall come hereafter, that the State of California in the year eighteen hundred and seventy-nine attained its growth, and there was no possibility of any future growth. I want this motion to prevail, for it is said the dead should not govern the living, and we will be dead to those whom this law is intended to operate upon. This is but saying that there shall be no more counties made in the State of California. It is saying that where there is a county seat located now they shall retain it

for all future time. It is to say that the growth of this State, no matter what it may be in the future, must conform to our notions of the proper boundaries of these counties, regardless of what they desire, or what may be just to them. It is no use to misconstrue this section. If you refer to the section you will find that it fixes forever the county lines of this State while this Constitution governs. I hope it will be stricken out.

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

The amendment was rejected.

THE CHAIRMAN. The question is the motion of the gentleman from Marin to strike out section three.

The amendment was lost.

THE CHAIRMAN. If there be no further amendment to section three, the Secretary will read section four.

COUNTY GOVERNMENTS.

THE SECRETARY read:

SEC. 4. The Legislature shall establish a system of county governments which shall be uniform throughout the State; and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and, whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county, and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general laws.

MR. HALE. Mr. Chairman: I offer a substitute for section four.

THE SECRETARY read.

"SEC. 4. The Legislature shall establish a system of county governments, which shall be uniform throughout the State; shall provide for the election or appointment in the several counties of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require; and shall prescribe their duties and fix their compensation; and by general laws shall provide for township organization or subdivision of the county, under which any county may organize whenever a majority of the qualified electors of such county or subdivision of a county, voting at a general election, shall so determine; and whenever a county or subdivision of a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county, and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general laws. It shall regulate the salaries and fees of all county officers in proportion to duties, and for this purpose may classify the counties by population."

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: The purpose of this substitute is to embody the substance of sections four and five in one section, upon the ground that the matters are germane, and that they may be consolidated in one section. It also omits some portions of section five. There is also one additional feature contained in the substitute, not contained in the report of the committee, and I will call attention to that particularly. We here provide for the organization of townships or counties with township governments. The report of the committee provides that it may be done by a full county, and comprising all portions of the county, or, in fact, "and by general laws, shall provide for township organization, under which any county may organize, whenever a majority of the qualified electors of such county, voting at a general election, shall so determine." The substitute contains the words "and by general laws, shall provide for township organization, or subdivision of the county, under which any county may organize whenever a majority of the qualified electors of such county, or subdivision of a county, voting at a general election, shall so determine; and whenever a county or subdivision of a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general laws."

The idea of this amendment is this. There are quite a large number of counties in this State which contain two distinct characters of population. The county that I have the honor in part to represent is one of them. I allude to the County of Placer. The upper portion will be found to be mineral, and the people there are engaged in mining pursuits. The lower part will be found to be agricultural, and the people farmers and fruit growers. Now it has been found, in the efforts heretofore made in this behalf, and also in the experience of other States bearing some analogy to this, that in the agricultural portions of counties they will find it to their advantage, and it will be found generally, that the people will favor township organization and the maintenance of township government. I have no doubt that in every community of the State where the population is sufficient, where the industries are sufficiently well organized, where property interests are established and the communities organized upon a proper basis, that this township organization will be found a good policy, and result in public advantage. Now take the County of Placer as an example. The lower half of the county is almost wholly occupied by people engaged in agricultural pursuits. Farming, on a large scale, is there conducted. Fruit raising is a large industry. Mining is but a small employment to the people, and comprises but a small portion of the property interests there. In that portion of the county—and I speak of this merely as an example—the people will find it to their advantage, and I believe will be very willing, to adopt a system of township governments. In the upper portion of the county the people are engaged in mining, and there is a large floating population and other elements which would make it practically out of the question to adopt, advantageously, township organization or government, and probably their vote would defeat its adoption in the lower part. This amendment is to enable these subdivisions of counties to act upon this proposition for themselves. It is to allow the benefit of township organization and government in those cases where the interests or conditions of the people would justify their adoption, and enable the other portions to maintain their present status. The committee found some difficulty in the adoption of that language, disagreeing with the idea, and thought it impracticable. However, the primary object of the substitute is to embody the substance of sections four and five in one, upon the ground that they are germane and may be properly combined.

MR. LAINE. Mr. Chairman: I hope that both these sections will be stricken out, as useless, and traveling over ground covered by the Committee on Legislative Department. The committee has come to a conclusion at variance with this report. I hope the substitute will be voted down, and that the sections will both be stricken out.

MR. HERRINGTON. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Amend the amendment to read as follows: 'The Legislature shall establish a system of county governments which shall be uniform throughout the State, and by general laws shall provide for township organizations and government therein, giving to the county and township officers charged with governmental functions such powers, executive, legislative, and judicial, as may be deemed necessary for the orderly conduct of the affairs thereof, and for the safety and happiness of their inhabitants.'"

MR. HERRINGTON. Mr. Chairman: It is half-past twelve, and I suppose that the committee will now rise. I make that motion.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on City, County, and Township Organization, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and a quorum present.

VACATING THE OFFICE OF SECRETARY.

MR. SWING. Mr. President: I desire to introduce a resolution in relation to the Secretaryship of this Convention:

THE SECRETARY read:

WHEREAS, The Secretary of this Convention, J. A. Johnson, has declared to members of this Convention his intention of absenting himself for the purpose of visiting the National Capital on business entirely unconnected with his duties as Secretary, and has already been absent from his duties for a period of more than three days without leave, and without furnishing a substitute;

Resolved, That the office of Secretary of this Convention be and the same is hereby declared vacant, and that George A. Thornton be and he is hereby declared Secretary of the Convention for the remainder of the session.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: Mr. Johnson, before leaving here—I had a conversation with him before he went away from here to Oakland. In that conversation he said he was going to Oakland, and that he had some days' work to perform there, when he intended to come back here and go from here to Washington, with the expectation of remaining some time. However, he said before he proceeded to Washington he would come here and make some arrangement in regard to the position he is occupying. Now, it does seem to me, sir, that we are acting too hastily. The declarations of the gentleman, as regards his intentions, are not evidence, and should not be taken as evidence against him. Of course, if we had proof that Mr. Johnson was proceeding to Washington without notifying this Convention, or had actually vacated his position, why of course I would have no objection to his place being filled by some other person. But I do not understand that this action is based upon anything else save the last declarations of the gentleman. And, as the statement was made to me that he expected to come back here and stay for a day or two before going to Washington, I believe it would be no more than justice, no more than fair dealing, if Mr. Johnson be in Oakland, he should be notified that this Convention is about to take this step. I am not making this speech on behalf of Mr. Johnson. I have nothing to say for him, but I believe in fair dealing, and justice requires that a man should be notified, and should not be so summarily dealt with as this resolution extends. I hope it will be deferred until we ascertain exactly what he intends to do. It may be the intention of the gentleman to resign his position, and unless the mover of the resolution sees fit to postpone it for a short time, I shall feel called upon to make a motion to lay it upon the table. If the mover desires to postpone it for a few days I think it will be satisfactory to all the members of the Convention.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I am one of those who supported Mr. Johnson, and I am a friend of his. I spoke to him concerning this matter, and he told me that he accepted the position for one hundred days, and had no intention of remaining longer, as he had his arrangements made to go on to Washington, and that he could not remain longer. He had conversations with other gentlemen, I find, to the same effect. I have no disrespect for him, but to those gentlemen who are at the desk I think it is no more than right.

REMARKS OF MR. SWING.

MR. SWING. Mr. Chairman: I did not offer this resolution because I have any ill feeling toward the Secretary; on the contrary, I have the kindest feelings for him. But I know it has been customary with Secretaries and Clerks, when they have to absent themselves, to furnish some person to do their duty for them while absent. As regards the statement of the gentleman from San Francisco, that these statements are made without any foundation, that I am willing to take upon myself; but I am willing to refer to the record to show that he has absented himself, without leave, for more than three days, and referring to Rule Ten, in regard to the duties of Secretary, we will see whether or not he is not liable to this measure: "The Secretary must attend each day, and call the roll, read the Journal, and all propositions and resolutions." I refer to that rule, against which he is acting in direct opposition. It is a very easy matter for him to get leave of absence, and furnish a proper substitute to perform the duties. When he sees proper not to give any courtesy, I do not believe this Convention is bound to show him any courtesy; therefore, I insist upon the resolution, unless I am shown some good reason why the matter should be postponed.

MR. STEDMAN. Mr. Chairman: I hope the resolution will be adopted. The Secretary of this Convention has left us for a number of days, and he had not even the courtesy to ask this Convention for leave of absence. He has gone to Oakland, and I presume through his means scurrilous articles have been written in the Times, holding us up before the people of this State to ridicule; and I say, sir, that the position should be declared vacant, because he has treated us with discourtesy. I do not think we will treat him any more discourteously by declaring the place vacant than he has us.

MR. BARTON. Mr. Chairman: I heartily second the remarks of Mr. Stedman. Not because I have any ill feeling towards Mr. Johnson. I leave the Convention to determine for themselves about the allusions and declarations made by my friend, Mr. Beerstecher. As far as I am concerned, Mr. Johnson stated to me that he would be obliged to go. I asked him if he intended to resign. He said: "I suppose, inasmuch as I am obliged to go, the Convention will have to use its own pleasure."

MR. WELLIN. Mr. Chairman: I rise to oppose the passage of this resolution. He has absented himself some days; but, sir, it will not do for us to declare the place vacant. That is simply to expel him without giving him any opportunity to be heard. It will not change the condition of things for us to call upon him to say whether he is about to leave the State or not. Give him due notice, and if he does not reply, all right. I do not like to hurry a matter through like this. I think it is undignified and unbecoming a deliberative body. We have run the Convention without Mr. Johnson, and we can do it a little longer. He can then come in and ask for leave of absence, or tender his resignation.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I think the gentleman referred to some rule about three days.

MR. SWING. No, sir; I read a part of Rule Ten bearing on this matter.

MR. MCCALLUM. This is the first intimation I have had of such a resolution as that; and more than that, it is the first I have heard about any intended absence of the Secretary. It appears to me that it cannot be assumed by any gentleman here, and will not be, that Mr. Johnson knows of any resolution of this sort. I suppose that will not be claimed.

MR. STEDMAN. I wish to ask the gentleman a question: If you have noticed in the Record Union and Bee an article stating that Mr. Johnson was about leaving for the East—for Washington—and would probably resign his position? Such an article was published in those papers.

MR. SWING. I understand the gentleman to say that there has been no such statement made by the Secretary.

MR. MCCALLUM. What I say is this: I suppose that no gentleman here will say that he consented to this resolution. We have heard it assumed here that he did not expect to serve over one hundred days, and it seemed to imply that he consented, and was used as an argument. No gentleman will say that he consented. I am entirely unfamiliar with his business as to his intended absence. I know this: that after the election of Mr. Johnson, partly because he was not an expert reader, though of average capacity in that line, a number of gentlemen who voted for him have been dissatisfied with him from the beginning. But I hope no injustice will be done, and certainly it would be extremely unjust and unprecedented to expel an officer without notice. Mr. Johnson is the second officer in this Convention, and as I understand from gentlemen here, he is in Oakland. Mr. Johnson, then, can be notified. I think myself, sir, that if Mr. Johnson does not intend to remain and perform the duties of Secretary, that we should have another Secretary in his place, and a very efficient gentleman has been named in his place. But the other ought to have an opportunity to be here. Of course, if he is going away to remain, he would undoubtedly resign. As far as any information we have here to the contrary, he may be absent on account of sickness. I cannot say otherwise. Now, sir, I don't suppose there can be any two views as to the propriety and right of giving the gentleman a chance to be here. If he is here, I have no doubt he will resign before he goes to Washington, if he does not intend to return immediately. As I stated, I have certainly no desire to continue the gentleman as Secretary unless he performs his duties. But we might as well, because the President of this Convention has been absent a week, declare the office of President vacant. I move to make that resolution the special order for next Monday, at two o'clock, and that the acting Secretary notify Mr. Johnson.

MR. JONES. I ask if the gentleman would not consent to add to his motion, a reference to the Committee on Privileges and Elections, with instructions to report the facts.

MR. MCCALLUM. That is unnecessary.

MR. JONES. We shall have no official knowledge coming to us in any way.

MR. SWING. I don't desire to do the gentleman any injustice. I will consent that it be done, or to refer it to that committee.

MR. TINNIN. I move to amend, until to-morrow morning at half-past nine o'clock.

MR. MCCALLUM. I think the best motion to make is that it be made the special order for next Monday, at two o'clock. I don't see what any committee has to do with it.

MR. BIGGS. I ask the gentleman how many days he has been here in the last two weeks.

MR. MCCALLUM. I confess he has been absent most of the time. I don't know why he has been away. But if he had not been here for a month he is entitled to notice before we adopt a resolution of this kind.

MR. BEERSTECHER. He went away last Saturday.

MR. DUDLEY. I think it is no more than right that he should have notice. There are two gentleman who have gone on his bonds, and if we expel him some blame might attach to them.

REMARKS OF MR. CASSERLY.

MR. CASSERLY. Mr. President: I agree with the remarks of the gentleman from Alameda. It is the essence of all justice that you should not decide or punish until after you have heard. If the Secretary was the greatest criminal in the land he would be entitled to due notice and a hearing, and I am for giving him that notice, and an opportunity to be heard. When we found that he was not attending to his duties, from day to day, we should have stopped him at the threshold. We allowed the Assistant Secretary to go on and discharge the duties, and by such sufferance he has been absent when he should have been here. Now, I respectfully submit that he is entitled to notice before we proceed to condemn him.

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. President: I think it is proper that the motion of the gentleman from Alameda should carry. This very hasty action was something of a surprise to many of us. It is understood that Mr. Johnson intends going East very soon. He expects to come back here. It may have been that he has been detained in Oakland longer than he anticipated when he went away Saturday. I believe it is a very common thing for members to go down and be detained longer than they anticipated, consequently he didn't ask for proper leave of absence, to stay the proper length of time. He stated when he left that he designed to come back. He designed resigning his position before he went. I think it is proper that he should have a hearing. It is a matter of courtesy to him, and certainly justice. He ought to be notified of the action of the Convention.

MR. RINGGOLD. Mr. President: I desire to take this opportunity to say that the gentleman has used the paper which he controls to assault a body of men who helped him to the position he now holds. In return for that magnanimous act, I will consent for him to have a chance to be heard.

THE PRESIDENT. The question is on the motion to make the matter the special order for Monday, at two o'clock.

Carried.

COUNTY GOVERNMENT.

MR. HERRINGTON. I move the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on City, County, and Township Organization.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section four, and amendments, are before the committee.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: The amendment which I propose as a substitute, or amendment offered by Judge Hale, epitomizes the substance of the provisions contained in section four, and is a clean cut provision. That portion of the amendment to which I object is that in reference to a vote of the county. My opinion is, sir, that the effect is not fully appreciated by gentlemen in considering this section—the effect which this provision will have upon organizing a system of government for counties and townships. It permits portions of a county to accept the provisions provided for in section four, as proposed by Judge Hale, and it requires that the counties shall first take a vote. What system of county government will you have when the county adopts this system? Will the old system continue as it is now? Will you keep up the present system that is provided by the Legislature under the various Acts passed with reference to county governments? How will you adopt one uniform system to which you will compel counties to conform? That is the proposition which is presented to you, and to which you must come, whether you sleep over it, or whether you wake to its full importance. Under the system proposed in the amendment of the gentleman from Placer, a single township will have power to adopt this system by a vote of the township, while the remaining portion of the county will stay under the old system, or have no government at all. I say this situation of things is possible under this amendment, as proposed by Judge Hale. Now, it is true that this amendment proposed by Judge Hale dispenses with section five; but it will alter the symphony of the system proposed by the committee. Section five can be amended in a much shorter way than by adopting that amendment.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: It seems to me the amendment is objectionable upon two grounds. One is that it does not permit the people of the several counties to determine for themselves by a vote whether they will or will not adopt a system of township organization. That

I apprehend would be more than unwise. In the Western States, where a system of township government has been, of later years, adopted, they inaugurated in all those States, or in most of them, by submitting the question to a vote of the county or subdivision of the county. They were adopted in portions of these States and in others they were rejected, and the experience of those portions adopting them has been such as to lead the remaining portions to adopt them also. I have for these reasons given portions of a county the right to adopt the system, independent of the other portion. I think in any event the question ought to be submitted to the people. Therefore, I am opposed to the substitute.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: It seems to me that the section proposed by the committee is preferable to either of the amendments. The amendment of the gentleman from Placer was considered by the committee. It seemed to embody a consolidation of sections four and five, with the exception that it authorized portions of a county to adopt township organization. The section as it stands simply provides for the organization of county governments by the Legislature, thus permitting counties to establish township organizations. But the amendment of the gentleman from Placer allows portions of counties to establish township organizations. The committee considered that that could not be practically operated; that there must necessarily be great confusion where one part of the county is having its affairs conducted under one system, and another part of the county is having its affairs conducted under another and different system. The amendment of the gentleman from Santa Clara is still more objectionable, if I understand it, because it seems to compel the Legislature, as far as we can do so, to provide for township organizations in the various counties. Now, there was a section in the old Constitution like this as it stands. The Constitution declared that the Legislature shall provide for township government, but the people of the State either never desired these organizations, or else the representatives have for a long time neglected to accede to their desires. But the amendment of the gentleman seems to make the same mistake that was made in the old Constitution, and that is that it makes it mandatory upon the Legislature.

MR. HERRINGTON. If the gentleman will excuse me, the gentleman from Santa Clara made that mistake on purpose. He did not design to leave it to the Legislature to do as they see fit.

MR. FREEMAN. In that it is objectionable. There is no reason why we should force a system upon the people of the counties.

REMARKS OF MR. MILLS.

MR. MILLS. Mr. Chairman: I hope the amendment of the gentleman from Santa Clara will not prevail. The provision of the present Constitution provides that the Legislature shall establish a system of township organizations. But they never have done so. The matter was referred to the Legislature and they refused to do it. The report of the committee is that the Boards of Supervisors may establish such township governments. It is true it would be under a provision passed by the Legislature, but if the Boards of the several counties undertook to establish such township organizations, they are permitted to do it under section four. The difficulty was that, until you had taken a vote in the counties, you could not know what the people desired. The Boards of Supervisors are able to know what is best for the several counties. At the present time the system of township governments amounts to nothing. It is true that the revenue Act provides that Assessors shall provide for assessing property by townships, but in two thirds of the cases he cannot tell where the township lines are. It is a great difficulty for him to undertake to do it. When assessments are made for road purposes, a township sometimes gets more than its share, because he does not know where the lines are. But when this system is put into force, we shall hear of no more of such cases as the case of the people against Moore. Why not put it in the power of the people? It may be said that the people have never asked for it. Do you not know that petitions have been sent to the Legislature from the different counties repeatedly, endeavoring to obtain this thing? I say, to my certain knowledge, such petitions have been sent from the county where I reside. The Boards of Supervisors know the feeling in the county, and can act intelligently. I think it is best that local matters should be determined by local officers.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: The proposition embodied in sections four and five was really contemplated by the Committee on Legislative Department. The adoption of the report of that committee, as it was adopted by this Convention, makes a necessity for this and similar provisions in this Constitution. There we provided that the Legislature shall pass none but general laws, and that matters of local legislation should be left to the people of the several counties and townships. Now, in carrying that out it was contemplated that a provision of this kind would have to be inserted in the Constitution. That the Boards of Supervisors, or Trustees, or whatever their names, should legislate upon matters affecting their own counties. The county has, through its Board of Supervisors, to regulate all matters affecting the county; not only to grant franchises for bridges, provide for the salaries of officers, but all other matters which ought to be done by the Board of Supervisors. I believe, when considering the expense, that it will limit the expense of the government. I believe it will limit the expense of city governments, and township governments, and compel them to live within their income. The amendment of Judge Hale, that the Legislature shall fix the salaries in the different counties, is in conflict with the main idea embodied in the legislative provision, that none but general laws should be passed. In each county of the State to-day they have different salaries for their officers. The member elected is often under stronger obligations to the county officers than to the people themselves, and hence the misfortune of some of the counties who have a special system of salaries. This very provision provided for in the legislative report, doing away with special legislation, leaving the Supervisors of the county and citizens to determine for themselves this question, is the theory that is determined upon in this Convention, and you must go back on it if you adopt this amendment. I hold that this is one of the first pieces of reform, doing away with special legislation; that special bills were passed often, under a suspension of the rules, without any member of the Legislature knowing anything about them except the member who introduced them. I believe this idea ought to be carried out. I believe it will simplify government, and reduce the expense one half in many counties. I believe it is what the people demand, and that they can elect Supervisors with reference to that question who will be better able to determine what salaries officers should have than the man who is elected to the Legislature with reference to how he shall vote on United States Senator. This is the true principle of government—to bring it home to the people. You cannot bring government any too near to the people. You cannot make your officers any too much responsible directly to the people.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: Whatever objections may be raised to other parts of this report, I think this section four is wholly unobjectionable. It is part of the system that is made necessary and indispensable by the action of this committee in adopting the report of the Committee on Legislative Department; inasmuch as the Legislature is to be cut off from all special legislation, it becomes indispensable to make provision for local governments by general laws. This section four follows that general principle; it is clear and distinct, and susceptible of but one interpretation, and covers the ground as far as it goes. I confess I am utterly unable to see any objections to one single line or sentence in section four. The amendment offered by the gentleman from Placer is a departure, and would be utterly ruinous, to say that a part of a county should adopt township organizations, and another part remain as it is; that would inevitably create confusion, and the system would certainly break down of its own weight. I take it, that every man on the committee will refuse to adopt that principle. As to the mode prescribed in this section four, it is pliant and elastic, and the people may adopt it by a vote of the people of the county, or they may decide to remain as they are; that is as it should be; there will be no confusion; the people have it in their own hands to adopt it, or let it alone. As to the amendment of the gentleman from Santa Clara, it seems to me it is an attempt to make a distinction where there is no difference. True, he would hand it over to the Legislature, but there he will be precluded by the action of this committee, because we have already decided that there shall be no special legislation. It must be done by general Act. Why not do it right here, and now, by the adoption of this report and this section? There is no trouble about it, and the people of a county may, at any time, adopt it for themselves. You cannot pass special Acts, and if you do it by general Act, the effect will be exactly the same as it would be by the adoption of this section, so where is the necessity for leaving it open to the Legislature in future? I am not able to see where there would be anything gained by it; it would simply be calling upon the Legislature to do what might be done here.

THE PREVIOUS QUESTION.

MR. WATERS. I move the previous question.

Seconded by Messrs. West, Evey, Larkin, and White.

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

Carried.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

Lost.

THE CHAIRMAN. The question is now on the amendment offered by the gentleman from Placer, Judge Hale.

Lost.

MR. ROLFE. Mr. Chairman: I offer a substitute for section four.

THE SECRETARY read:

"SEC. 4. The Legislature shall establish a system of county governments, which shall be uniform throughout the State; shall provide for the election or appointment in the several counties of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their compensations, and by general laws shall provide for township organization under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws. It shall regulate the salaries and fees of all county officers, and for this purpose may classify the county by population."

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: That is just word for word the same as the amendment offered by the gentleman from Placer, except that it leaves out these words, "subdivisions of counties," where they occur in the second and third places. It leaves that part out which some gentlemen object to here. Now, my object in offering this is to consolidate sections four and five. If gentlemen will look at this report they will find there are twenty sections—quite a long document. It is objectionable in that respect. This substitute embodies everything that is contained in sections four and five—puts it in one section, and saves several repetitions. As the section will then stand, it will only be about as long as section five now is.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I move to strike out the words: "under which any county may organize," and insert in lieu thereof the words, "which organization any county may adopt." As the language now reads it seems to make perfect nonsense. The phraseology is this: "and by general laws shall provide for township organization, under which any county may organize." Now, a township is a subdivision of a county. How, then, a county can organize under a township organization I fail to understand. The meaning is what I want embodied in the amendment. Put such language in the Constitution, and the part is made greater than the whole. "May provide by general laws for township organization, under which any county may organize." I say no county can organize under a township organization, because a township is part of a county. The amendment I suggest is simply to correct the phraseology, and make that verbal accuracy that should exist in a Constitution.

MR. AYERS. I suggest that it might be cured by a simple transposition, thus: "shall provide for township organizations by general laws, under which any county may organize."

MR. MCCALLUM. It seems to me that the section is good as it is, and I don't see the necessity of this strained construction. "By general laws shall provide for township organization, under which any county may organize." It is a general law. There is no question about it. It appears to me there is no amendment necessary. I suppose it would be still more complete to say, "by general laws shall provide, etc., under which laws any county may organize."

MR. CROUCH. There is one serious objection to the amendment proposed by Judge Rolfe. He says the Legislature shall, by general and uniform laws, provide for the election or appointment of officers. I certainly should object to the appointment of these officers in any county. I understand that is included in the substitute proposed by Judge Rolfe, and I shall oppose it.

MR. JOHNSON. I think the language proposed by the gentleman from San Francisco is a little better than the way the committee have it, but it is suggested that he repeat the word "organization."

MR. WINANS. I have no objection to that.

THE CHAIRMAN. The question is on the amendment proposed by Mr. Winans.

MR. HALE. I would suggest to the gentleman from San Francisco to strike out the words "under which," where they occur in the second line, and substitute the word "in." Also, strike out the words "may organize," where they occur in the third line.

MR. WINANS. I don't see the relevancy of the amendment.

MR. HALE. I offer that as an amendment to the amendment.

MR. WINANS. I don't think my amendment is understood. In order to make the language plain and clear, I propose to make it read: "may provide for township organization, which any county may adopt." That language will convey, without any doubt, the idea intended to be conveyed by the section.

MR. HALE. The amendment I propose will make it read this way: "The Legislature shall establish a system of county government which shall be uniform throughout the State, and by general laws shall provide for township organization in any county, whenever a majority of the qualified electors of such county shall so determine."

MR. AYERS. I submit that the manner in which the gentleman is attempting to amend the section will alter the meaning which the committee intended to convey. He strikes out the word "county," and puts in township organization, and as I understand it, it is the intention of the committee to have it so that each county may, as a county, organize under it.

MR. LARKIN. If, after the word "organization," in line three, we add "township government," that would make it perfectly clear.

MR. JOHNSON. Mr. Chairman: It seems to me that this ought to be clear. What is the purport of the Winans amendment? It is to make section four read: "and by general laws shall provide for township organization, which any county may adopt." Now, suppose it was as the gentleman from Los Angeles proposes, it would read: "and shall provide for township organization by general laws, under which any county may organize." There is no difference. The meaning is the same, only the language of the Winans amendment is shorter and more apt, because every township organization must be under general laws. Where the organization is adopted it is under general laws.

MR. FREEMAN. The original section is substantially clear, and the amendments proposed have the same ambiguities as the original section. The amendment proposed by the gentleman from San Francisco reads that the Legislature shall provide for township organization, which any county may adopt.

MR. JOHNSON. What is the antecedent of "which?"

MR. FREEMAN. "Township organization."

MR. JOHNSON. Then I will read it and see if it is not good language.

MR. FREEMAN. That is not the question. Under these general laws the county is to organize. It is all right the way it is.

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

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from Placer, Judge Hale.

Lost.

MR. AYERS. I offer an amendment.

THE SECRETARY read:

"Strike out 'by general laws' in line two, and insert the same after the word 'organization' in the third line, so as to read: 'and shall provide for township organization by general laws, under which any county may organize.'"

THE CHAIRMAN. The question is on that amendment.

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Bernardino, Judge Rolfe.

MR. EVEY. I move that the words "or appointment" be stricken out of that amendment.

MR. ROLFE. What will be done in case of the death of the County Clerk?

MR. EVEY. This makes the appointment by the Legislature. They might appoint all these officers.

MR. ROLFE. It says they may provide for them, not appoint them.

MR. VAN DYKE. I suggest that we strike out "County Clerks, District Attorneys," etc., because we have already provided for them.

No second.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Bernardino, Judge Rolfe.

Lost.

THE CHAIRMAN. The Secretary will read section five.

THE SECRETARY read:

SEC. 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their compensation. It shall regulate the salaries and fees of all county officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them or officially come into their possession.

MR. HERRINGTON. I offer an amendment.

THE SECRETARY read:

"Add after the word 'duties,' in line five, the words 'and responsibilities;' and also, strike out all after the word 'population.'"

MR. HERRINGTON. Mr. Chairman: By adding the words "and responsibilities" after the word "duties" it will cover the whole ground embraced in those four lines.

MR. WEBSTER. I wish to offer an amendment as a substitute.

THE CHAIRMAN. Not in order at present. The question is on the amendment of the gentleman from Santa Clara.

Lost.

MR. WEBSTER. I offer my substitute.

THE SECRETARY read:

"The Legislature, by general and uniform laws, shall provide for the election, by the several counties, of Boards of Supervisors, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties. It shall fix the compensation of the members of the Boards of Supervisors of the several counties, and shall provide for a strict accountability of county and township officers for all fees which may be collected by them, and for all public or municipal moneys which may be paid to them or finally come into their possession."

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: It occurs to me that the construction of this word "appointment," in the second line, is altogether too broad. I think, sir, it would be subject to such construction as alluded to; that is, the power of the Legislature to appoint county officers, including County Boards of Supervisors; so I have left that word out. In this proposition I have made, I have also left out the words "Sheriffs, County Clerks, District Attorneys," etc., because in section fourteen, as amended, of the report of the Judiciary, these are all provided for. It is simply a repetition of the words. I have also left out the proviso that provides for the salaries of county officers. I claim that it is for the best interest of all concerned, that county officers—the salaries and fees—should be provided for by the Boards of Supervisors of the several counties. We know very well that most of the evils which have sprung up here on account of the misdirection of the Legislature have worked great injury. I have known instances where an officer, after his election, would come before the Legislature, unknown to the people before his term of office began, and has been, through special legislation, enabled to increase his fees and salary. I think this had better be provided for by the local authorities. I believe it to be the desire of this body, and of the people, to bring our local affairs as near home to the people as possible. If the salaries of these minor county officers are provided for and fixed by the local authorities, it will be much better than if done by a general bill. You can take as an illustration the report of the Judiciary which we have just adopted. Now, there are not half the members of this Convention that know as to the equity of salaries provided for in many of the counties. It is claimed now that some of them are not high enough, and that others are too high. It shows the impossibility of the Legislature fixing salaries for minor officers.

THE CHAIRMAN. The question is on the substitute.

Division was called, and the vote stood: Ayes, 39; noes, 32.

No quorum voting.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: The gentleman has explained that the object of his amendment is to give the Boards of Supervisors the right to fix the compensation of county officers. I desire to call his attention to the fact that his amendment will not realize any such object. The Legislature, by virtue of its general power, will have full control over this matter, unless something in his amendment says that this power shall be vested solely in Boards of Supervisors. Now, the evil which the counties sought to avoid in this report was this: the evil of special pleading; the evil of men going from the county to the Legisla-

ture, and having special laws passed which affected their county only. To cure that evil, the committee have provided for a classification of counties, and provided that the salaries of the various county officers should be fixed upon some scale. Now, the amendment does not provide for that, nor for anything else. The simple result will be, that the Legislature will, as heretofore, have control over the question. They will in the future, as in the past, have a right to make a local fee bill, because it must be made in some way. The amendment does not provide, as he wishes, that these matters should be under the control of the Supervisors. If the committee desire that the Supervisors should have control, I don't know that I have any objection; but I don't want them to vote under a delusion.

MR. VAN DYKE. I call the gentleman's attention to the legislative article already adopted, which provides that the Legislature shall not pass special laws in regard to fees.

MR. FREEMAN. Yes; the Legislature will have to pass general laws.

MR. VAN DYKE. I think this is the proper place to put it. Under the scheme we have been formulating here, the Legislature cannot pass special laws, and the necessary consequence will be to throw a great deal of the local business upon the Boards of Supervisors of their respective counties. It will have the effect of raising the standard of that body. The people will elect a Board that they have confidence in, and I say it is proper that they should be given power to fix the fees of county officers.

MR. BIGGS. An amendment to the amendment.

THE SECRETARY read:

"The Supervisors shall fix the salaries of all other county officers."

MR. WEBSTER. I accept the amendment.

MR. VAN DYKE. I suggest that you make it read "other county officers not otherwise provided for."

MR. WEBSTER. I accept the suggestion.

MR. WINANS. I submit that Sheriffs, County Clerks, and District Attorneys ought to be constitutional officers. They always have been such, and ought always to be.

MR. VAN DYKE. They are provided for in the article on judiciary.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. Chairman: I think there is one objection to this amendment which gives power to fix the salaries of the several county officers to the counties. It is this: some of these county officers have duties to perform in which the State has an interest, and the Legislature has something to say as to the duties to be performed by these officers, and the pay they shall receive. Now, for instance, the State has an interest in the duties to be performed by County Assessors, and has something to do in saying what they shall receive. The Tax Collector, the Sheriff, and the District Attorney are in the same category. It ought not to be left to the local Boards to so reduce the pay that these officers cannot afford to hold the office. Now, there has been an instance of one county in this State where the county was so situated that if they could have done it, they would not have had a single officer in the county. The County of El Dorado was in such a situation, that they could not even afford to have a Board of Supervisors, for fear that summons would be served on them. Now, might not this act in such a way that you would have no assessment roll. I think it is unreasonable. I think that power should not be given to the local Board.

REMARKS OF MR HALE.

MR. HALE. Mr. Chairman: I hope the amendment will not pass. I am unable to see wherein it is any improvement upon this section reported by the committee. I am aware of the fact that the gentleman who makes this motion says he proposes to substitute the Boards of Supervisors for the Legislature, in fixing the fees and salaries of all county officers, except their own fees; and I suppose, from the discussion here, that there is some color of sanction for the idea in our article on legislative department, wherein we have inserted four distinct cases, and denied the Legislature the right to pass such local or special laws. If the legislative article intends anything of this kind, however, it is news to me. The evil they sought to remedy was to avoid this legislation for special localities. What was proposed was, that instead of having local legislation by the Legislature, we were to have local Legislatures, or Boards of Supervisors. But no such idea was understood as this in the Committee of the Whole when that article was adopted. The scheme of the committee was this: in place of special local legislation by the Legislature, there should be general laws provided. For instance, in place of having a bill passed, regulating the fees of the Sheriff in Placer County, there should be a law providing for the fees and compensation of the Sheriffs and other officers of the counties of the State, and they can classify the counties by population so as to do it, and to give to each set of officers, according to the classification of the counties, a just compensation. It was never contemplated taking that power out of the hands of the Legislature and placing it in the local Boards of Supervisors. That would be a most dangerous experiment, and those who try it will very soon have occasion to recede from their experiment. That is not the evil sought to be remedied. It was to require these laws to be made general. If you undertake to leave it to the Boards of Supervisors to fix the compensation of county officers, you will soon have Pandemonium in these counties. You cannot point me to a county where you would not have it. The committee have formulated this section upon the same principle on which the Committee on Legislative Department acted, and I hope the amendment will not prevail.

MR. WYATT. I am a good deal like the fellow who was too lazy to say his prayers. He hung the Lord's Prayer on the foot of his bed, and, pointing to the paper, said: "Lord, them's my sentiments," and jumped into bed. Judge Hale has stolen a march on me and uttered my sentiments exactly.

MR. TINNIN. I desire to call attention to section fourteen of the report of the Judiciary Committee: "The Legislature shall provide for the election of Clerks, Sheriffs, and other necessary officers, and shall fix, by law, their duties and compensation, which compensation shall not be increased or diminished," etc. Now, the committee has passed this. If you wish to undo it, vote for the Webster amendment.

MR. WINANS. I submit that it would not undo it, for the two would be in direct conflict with each other.

THE CHAIRMAN. The question is on the amendment.

Lost.

THE CHAIRMAN. The Secretary will read section six.

THE SECRETARY read:

SEC. 6. Corporations, for municipal purposes, shall not be created by special laws, but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, and cities and towns heretofore organized or incorporated may become organized under and subject to such general laws. Cities and towns may become incorporated under general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith.

MR. HERRINGTON. I offer an amendment.

THE SECRETARY read:

"Strike out all down to and including the word 'but,' in line two."

MR. SMITH, of Santa Clara. Mr. Chairman: I offer an amendment.

THE CHAIRMAN. Out of order at present.

MR. HERRINGTON. This clause is entirely unnecessary. The Legislature is bound to provide by general laws—they cannot do it by special laws. This is to strike out the negative proposition.

THE CHAIRMAN. The question is on the amendment.

Division was called for, and the amendment was adopted by a vote of 52 ayes to 26 noes.

MR. SMITH, of Santa Clara: I offer an amendment to section six.

THE SECRETARY read:

"No city or town shall include within its limits any adjacent farming land without the consent of the owners thereof."

MR. DUDLEY, of Solano. I hope that amendment will be adopted. Cities often take in adjacent lands for the purpose of making taxes.

MR. VAN DYKE. Mr. Chairman: I hope the amendment will not be adopted. I know of some gentlemen who own rich land adjacent to town, who pay no taxes, and I am in favor of compelling them to help bear the burden.

MR. McCALLUM. Mr. Chairman: This amendment was before the committee, and the committee were unanimous against the proposition. It seems to me there is a very serious objection to such a proposition. It would work most disastrously in many cases. There might be some cases where it might work well, but the Constitution must apply to all.

MR. WHITE. I hope the amendment will be adopted, because I have known very serious inconveniences to farming land which were tried to be incorporated into the town. There is a constant fight between towns and the local farms around.

The amendment was rejected.

THE CHAIRMAN. The Secretary will read section seven.

THE SECRETARY read:

SEC. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or houses of legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that, after the first election, only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for two years. Any casual vacancy in the office of Supervisor in either Board shall be filled by the Mayor.

MR. VAN DYKE. Mr. Chairman: This section emanated from Judge Hager, and he desired an opportunity to discuss it. I ask, as a favor, that it be passed for the present. He will be here to-night.

MR. CASSERLY. Mr. Chairman: I telegraphed to Judge Hager, and received a reply from him, in which he says he will be up to-night. I have no doubt he would greatly prefer to have the section passed over for the present.

THE CHAIRMAN. The question is on the motion to postpone until to-morrow.

Carried.

THE SECRETARY read section eight.

SEC. 8. No person shall be eligible to a county or city office unless he has been a citizen and resident within such county or city for two years next preceding his election or appointment to an office therein.

MR. FREEMAN. Mr. Chairman: I move to strike out section eight.

THE CHAIRMAN. The question is on the motion to strike out section eight.

MR. FREEMAN. Mr. Chairman: I will say, in the first place, I think it is entirely competent for the Legislature to provide for a qualification which a man shall have to be elected to office; in the next place, in my judgment, the best qualification he can have is the fact that, having been voted for, he has received a sufficient number of votes to elect him. This section is directed to persons coming into a neighborhood and running for office. The fact that a man is a new-comer is a fact which the voters themselves must take into consideration, and if, notwithstanding that fact, they prefer him to some older citizen, I think that preference should be respected.

MR. TINNIN. Mr. Chairman: I hope the motion made will not pre-

vail. I think it is a very necessary section. It is necessary, for the reason that committees should be governed by those who fully comprehend the necessities of the people. Now, this idea of men stepping immediately into a community, and comprehending the wants of the community, is an impossibility. In moments of great excitement it often happens that men are placed in office not competent to perform the duties.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I hope the motion to strike out will carry, and that this Convention will not stultify itself by declaring that the people are not capable of self-government. No such provision as this exists anywhere. If you can make a limit of this kind, for the reasons just asserted, you might go on and prescribe other qualifications, limiting and restricting the power of the people in the selection of their officers. If we are to have a free government by the people, it seems to me it is safe to trust the people to select their own officers. Such a provision has no business in the Constitution.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: To use a stale argument, I hope the motion will be adopted, and the section stricken out. All these limitations are simply limitations upon the liberty of the people, and where not necessary, they should not be inserted in the Constitution.

MR. HOWARD, of Los Angeles. I would like to ask the gentleman a question.

MR. McCALLUM. Certainly.

MR. HOWARD. Why, then, not allow all aliens to vote? Why require a man to be naturalized in order to vote or be admitted to office?

MR. McCALLUM. My proposition is that these are limitations upon the people. I do not see that the questions affect my proposition. I concede that in such cases, and in all cases where there is a necessity for a limitation upon the people—upon the liberties of the people—that limit ought to be inserted in the Constitution. But in this matter I think the people are fully competent to determine among themselves who is qualified and who is not, and determine who they will elect and who not.

MR. TINNIN. Will the gentleman allow me a question?

MR. McCALLUM. Yes, sir.

MR. TINNIN. Didn't you vote upon the clause of the Judiciary Committee requiring judicial offices to be of a certain class, and was not that a limit?

MR. McCALLUM. I am not denying that the Constitution has to make limitations in a certain sense. They have to commend what is right in one case, and prohibit what is wrong in another. But what I object to is going into unnecessary details in this thing. Now, sir, in the more populous counties, where population and wealth have doubled in the last five or six years, those of us who have resided there twenty-five or thirty years, do not propose to place any limit upon the liberties of the people—they may select whom they please. I understand that some members of this Convention might possibly be interested in this question, but I would remind them that they have just as good a chance as anybody else. I hope the motion will prevail.

REMARKS OF MR. DUDLEY.

MR. DUDLEY. Mr. Chairman: I submit to this committee that a proposition which prevents persons from aspiring to office until they shall have got their house warm, is not an unnecessary detail. It has occurred in this State in the past, and may occur again, that gentlemen, owing to the shifting of the party in power, have gone from one locality to another for the sole purpose of having a voice in the management of public affairs. Now, no one knows better than the gentleman from Alameda, the methods and means by which men are nominated for office. They know that when the nomination is once made the line is drawn between parties in a political contest, and the question of the length of residence of the candidate is no longer in view. It is taken for granted that the nominating convention has passed upon the matter, and that the candidate is acceptable. Now, it is not asking too much of a man, before he becomes an applicant for office, that he should have become a resident long enough to enable him to comprehend the wants, wishes, and necessities of the community in which he lives. I hope, therefore, that the section will be adopted. I should prefer to require a residence of five years. There are plenty of prominent residents in this State to hold all the offices.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I submit to the committee such as that savors a little of spite. Now, it has been thought when once one becomes a citizen of the United States, or has grown up here for a period of twenty-one years, or has been here five years and naturalized, that he understands the theory of this government. I submit that it is not necessary that a man should reside three or four years in a county. If it is necessary for him to be there two years in order to hold any of these local offices, we may just as well consider it ten years. It is not a question of the number of years, but it is a question of honesty, capability, and capacity to discharge the duties of the office. And I submit that the people ought to be their own judges in regard to that matter.

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

Carried.

THE SECRETARY read section nine:

SEC. 9. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of largest general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall, at the end of sixty days thereafter, become the charter of such city, or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate, and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city, and thereafter all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to the others.

MR. McCALLUM. Mr. Chairman: I make the same motion in regard to section nine, that it be passed temporarily. That is the principal section of the report.

THE CHAIRMAN. There being no objection, it is so ordered. The Secretary will read section ten.

THE SECRETARY read:

SEC. 10. The compensation or fees of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

MR. SWENSON. I offer an amendment.

THE SECRETARY read:

"Add to the section: 'But the Board of Supervisors may require all such officers under bond to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant.'"

MR. DUDLEY, of Solano. I move to strike out the section, because section fourteen of the article on judiciary, already adopted, renders this section unnecessary.

MR. FREEMAN. I think the gentleman from Solano is mistaken about section fourteen being sufficiently broad to cover the ground covered by section ten. Section fourteen provides for the election of Clerks, Supreme Court and County Clerks, District Attorneys, Sheriffs, and other officers. It seems to me that section would be construed as having reference to State and county officers, and not to city and township officers. Section ten also provides that their terms shall not be extended, and section fourteen of the other article makes no provision upon that subject. Therefore, it seems to me best to retain this section. Both provisions are good.

MR. HALE. Mr. Chairman: I hope the amendment will not prevail. Now, it is said that section fourteen of the judicial article covers the ground; an inspection shows that it does not; that only partially covers it. This section ten is just where it belongs in this Constitution; it belongs in the article concerning cities, counties, and townships—it is right in itself. The rule applies to cities, counties, and towns, and is right and just, and that is the place for it.

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

Lost.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from San Francisco, Mr. Swenson.

Lost.

THE CHAIRMAN. The Secretary will read section eleven.

THE SECRETARY read:

SEC. 11. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatever.

No amendment.

THE SECRETARY read:

SEC. 12. Any county, city, town, or township, may make and enforce within their respective limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

MR. STUART. Mr. Chairman: I offer an amendment to be added to the section.

THE SECRETARY read:

"The Legislature shall provide by law for the inspection of all distilled liquors, wines, and beer, in order to prevent their adulteration."

REMARKS OF MR. STUART.

MR. STUART. Mr. Chairman: I desire to have the legislative power pass laws that will stand. It is a well known fact that adulterations have become the order of the day in these as well as other things, and I want to see laws passed to prevent it, if it is possible to do so. I would like to have the Secretary read an article which expresses my views on this subject.

THE SECRETARY read the following, from the Dixon Tribune:

"A WINE BUBBLE PRICKED.—Charles A. Wetmore, the Alta's correspondent at the Paris Exposition, has been making a tour through the

wine-making regions of France, and studying up the whole subject of the manufacture and sale of wine with a thoroughness never excelled. His investigations throw a flood of light on the subject, and dispel a few illusions. They are a terrible eye-opener for affected connoisseurs of French wines. We might almost say they ought to make a temperance man of the most confirmed old bibber. To read these articles is to lose faith in the famous wines that have made the names of vineyards and provinces, by which they are called, known throughout the civilized and semi-civilized world. The authorities quoted by Mr. Wetmore entitle his statements to the most respectful consideration; and if the account given by the Bordeaux merchants themselves can be trusted, their vintages are more a triumph of chemistry than of nature. The most celebrated wines are turned out, in quantities to suit, in the cellars of Bordeaux, Cette, and Marseilles. No order for a particular wine ever embarrasses a French merchant. If the brand is not in market, or if the vineyard has not produced anything recently, an imitation is easily produced by mixing strong and light wines, adding alcohol manufactured in Germany, from potatoes, and then dosing the compound with chemicals, to give the required color and bouquet. Labels are no protection, for those of the famous vineyards are printed for the trade and sold in quantities to suit. Furthermore, these doctored wines can be made as cheap as desired, so that the American importer can buy Chateau Lafitte or Sauterne at a few cents a bottle, and sell it for as many dollars to boobies who pride themselves on knowing every vineyard in France. A certain degree of mixing and alcoholization are considered legitimate, and authorized by the Government, though the wines for home consumption must not be alcoholized so highly as those for export—the Government thinking that what is good enough for foreigners must not be allowed to twist the brains and burn the stomachs of its own citizens. But the illegal manufacture, with the most deleterious chemicals, is, according to Mr. Wetmore, boldly practiced under the eyes of the authorities. The French themselves do not aspire to drink the grand wines, but content themselves with a good ordinary wine of no particular brand. Our author advises the American consumer to do the same, since the cheapest wine is generally the best—at least the purest. The yield of the few famous vineyards is very small, and of very unequal degrees of merit in different years; but the regular demand from all the four quarters of the world is met every year, and enough manufactured to supply all deficiencies."

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: We have upon the books a severe statute against the adulteration of spirituous liquors, but it has never been enforced, and it has come to be a notorious fact that these adulterations are universally practiced, to the great injury of the health of our people. Now, Congress some time ago investigated this subject. A gentleman who has lately retired from the business assures me that not one tenth of the liquors drank in this State are pure liquors. That nine tenths are manufactured, doctored, and poisoned by the wholesale liquor dealers. These foreign manufacturers buy our California wines, make them up into champagne, adulterate them, and ship them back to us; and the same way with brandy. They mix it up and doctor it up with all sorts of impure chemicals, and send it back here as pure brandy. There is another evil. It interferes with the manufacture of pure brandy and pure wines. It interferes with the pure wine industry, which is just now attracting so much attention in this country, and for which there is springing up a healthy demand in London and other large centers. But so long as this manufactured stuff takes the place of it, so long the business cannot be carried on profitably here, because, with a very little pure California wine and brandy they can make enough poison by adroit mixing to supply the whole market, and destroy the health of the people also. In order to protect our own health, and the industries of the State, we must make and enforce stringent laws against the adulteration of wines and liquors. It seems to me that the only way to reach it is to do the way they do in some portions of Europe—by inspection. If the brandy don't come out colorless, let them knock the head out of the barrel and let it run. My own opinion is that the provision just introduced is one of the most necessary provisions we have.

MR. MILLS. If you apply it to one, why not to all?

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I could not hear the remark made by the gentleman who spoke last. One thing is evident, that everything that points in the direction of having fine liquors should be appreciated by this committee. [Laughter.] It is a fact that numbers of our citizens will drink, and the fact that the liquors are poisonous appears not to prevent them at all. In the midst of all this it is necessary that we should guard our citizens, if we can do it, by a constitutional provision, or in any way whatever that is reasonable. We know that poisonous liquors have injured many, and killed many, and the welfare of our citizens must be guarded. I am in favor of the amendment.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: Now, take that in connection with section twelve, that "any county, city, town, or township may make and enforce, within its respective limits, all such local, police, sanitary, and other regulations as are not in conflict with general laws." This is the article on cities and counties. This section twelve refers exclusively to them. If the amendment were proper in any place in the Constitution, it would be in the legislative article, and, if a proper amendment, when we come to consider that article in Convention, the gentleman can offer it. But, sir, I wish to say, that I indorse all the gentleman has said on the great evil of adulteration of liquors. But the gentleman, in his argument, has stated that we already have a statute upon the subject which has never been enforced. Then if it cannot be enforced, what will this amendment amount to? It is proposed to say that the Legislature shall amend that Act or pass some other Act. I had supposed for the last three or four months that this was a Constitutional Convention. But as we are getting so much into details, there seems to be some question about it. There is no precedent for this kind of detail in the Constitution. Why, the gentleman from Los Angeles, in two hours, can specify one hundred clauses of legislation that ought to be enacted, yet which are unnecessary in the Constitution. Nobody denies that the Legislature has this right now. To make it consistent we had better say that the Legislature shall amend the present law, and to make it thoroughly consistent, say how and in what manner they shall amend it. I confess that I am becoming imbued with some respect for the oft-repeated complaint that we are getting too much legislation in the Constitution.

MR. REDDY. Mr. Chairman: I hope, before gentlemen vote upon this amendment, they will reflect and consider the method that will be necessary to carry this provision into effect. It will require a Board of officers from Siskiyou to San Diego.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Sonoma.

Lost.

MR. SCHOMP. I offer an amendment.

THE SECRETARY read:

"Insert after the word 'township,' in the first line, the words 'school or road district.'"

REMARKS OF MR. SCHOMP.

MR. SCHOMP. Mr. Chairman: I offer that in the interests of public highways. We have labored under great difficulties in the improvement of these highways, by reason of the system of levying taxes. They have to be general throughout the county, and they were generally levied to meet the general wants. Now, we desire in this case to meet special wants, by authorizing the Board of Supervisors to levy a tax for roads in these local districts. We have in the county in which I live great diversity of soil. In some places the natural roadbeds are about all we need in the way of roads, and in other places it requires a large amount of money to make good roads. Some of us are willing to have our roads made permanent, and to pay for it, if the Board of Supervisors can have the power to levy the tax necessary.

MR. FREEMAN. The amendment seems to go far beyond what the gentleman professes to want. It makes a road district a legislative body, because they have power to pass laws, and make police and other local regulations.

THE CHAIRMAN. The question is on the adoption of the amendment.

Lost.

MR. HALE. Mr. Chairman: I offer an amendment to the section.

THE SECRETARY read:

"Amend the section by striking out the words 'as are not in conflict with,' where they occur in the third line, and substitute therefor the following: 'as shall be authorized and prescribed by.'"

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: This amendment I hope may be adopted, for the purpose of carrying out the intention of the committee. You will observe that the words here are "all such local, police, sanitary, and other regulations as are not in conflict with general laws." In these townships, as suggested by Mr. Freeman, there are no Boards to make these regulations. The amendment contemplates that general laws shall be passed by the Legislature, prescribing the means under which cities, counties, towns, and townships may make and enforce these regulations for sanitary and other purposes. Upon the breaking out of contagious or infectious diseases, there must be power to protect the community. In cities they can do it, because they have Boards to regulate such matters. But in townships they have no such organizations, and the methods and means by which they are to accomplish these things, ought to be prescribed and regulated by general laws.

MR. BLACKMER. Mr. Chairman: I prefer the section reported by the committee, and it seems to me it is desirable upon this ground: I believe these local authorities ought to be left to do all those things that, in their judgment are necessary to be done, and that are not in conflict with the general laws of the State. But to say they shall do nothing except that which is prescribed by law, is to put an iron-bound rule in the Constitution. Leave it to them to do such things as in their judgment are best, so long as they do not conflict with the general law.

MR. HERRINGTON. This is an ungrammatical sentence. I offer the following amendment:

THE SECRETARY read:

"Strike out the words 'their respective,' in line two, and insert the word 'it's' in lieu thereof."

MR. MCCALLUM. Mr. Chairman: As to the last amendment, there is no question but that it is necessary to make sense, and make it grammatical. As to the amendment offered by the gentleman from Placer, I have this to say: these little two lines and a half here, I think were formulated, and written over and over again, more than any section in this report, and I had supposed the committee had reached a happy agreement upon that little section twelve. The gentleman from Placer had his full share in the construction of that section.

MR. TINNIN. Mr. Chairman: I am sorry to see that the gentleman from Placer, and the gentleman from Alameda, cannot rest satisfied with their own work. They had a great deal to do in formulating that in the committee. Now, I think both of these amendments are improper. I think the section is all right as it is.

THE CHAIRMAN. The first question is on the amendment of the gentleman from Placer, Judge Hale.

Lost.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

Adopted.

THE CHAIRMAN. The Secretary will read section thirteen:

THE SECRETARY read:

SEC. 13. Taxes for county, city, town, school, and other local purposes must be levied on all subjects and objects of taxation. In addition to that which may be levied for the payment of the principal and interest of existing indebtedness, the annual rate on property shall not exceed the following: For county purposes, in counties having two million dollars or less, shall not exceed —— cents on the one hundred dollars' valuation; in counties having six million dollars, and under ten million dollars, such rate shall not exceed —— cents on the one hundred dollars' valuation; and in counties having ten million dollars or more, such rate shall not exceed —— cents on the one hundred dollars' valuation. For city and town purposes such annual rate on property in incorporated cities and towns shall not exceed —— cents on the one hundred dollars' valuation; and in any city and county with consolidated government, such rate shall not exceed —— cents on the one hundred dollars' valuation.

MR. WHITE. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on City, County, and Township Organization, that they have made progress, and ask leave to sit again.

ADJOURNMENT.

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

Carried.

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

ONE HUNDRED AND TWELFTH DAY.

SACRAMENTO, Friday, January 17th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Herold,	Rhodes,
Ayers,	Herrington,	Ringgold,
Barbour,	Hitchcock,	Rolfe,
Barry,	Holmes,	Schomp,
Barton,	Howard, of Los Angeles,	Shoemaker,
Belcher,	Howard, of Mariposa,	Shurtleff,
Bell,	Huestis,	Smith, of Santa Clara,
Biggs,	Hughey,	Smith, of 4th District,
Blackmer,	Hunter,	Smith, of San Francisco,
Boggs,	Johnson,	Soule,
Boucher,	Jones,	Stedman,
Brown,	Joyce,	Steele,
Burt,	Kelley,	Stevenson,
Campbell,	Kenny,	Stuart,
Caples,	Keyes,	Sweasey,
Casserly,	Kleine,	Swenson,
Chapman,	Laine,	Swing,
Charles,	Lampson,	Thompson,
Condon,	Larkin,	Tinnin,
Crouch,	Larue,	Townsend,
Davis,	Lindow,	Tully,
Dowling,	Mansfield,	Turner,
Doyle,	Martin, of Alameda,	Tuttle,
Dudley, of Solano,	Martin, of Santa Cruz,	Vacquerel,
Dunlap,	McCallum,	Van Dyke,
Edgerton,	McComas,	Van Voorhies,
Estey,	McFarland,	Walker, of Tuolumne,
Evey,	McNutt,	Waters,
Farrell,	Mills,	Webster,
Fawcett,	Moffat,	Weller,
Freeman,	Moreland,	Wellin,
Freud,	Murphy,	West,
Glascock,	Nason,	White,
Gorman,	Neunaber,	Wickes,
Grace,	Ohleyer,	Wilson, of Tehama,
Hager,	Prouty,	Winans,
Hale,	Reed,	Wyatt,
Harrison,	Reynolds,	Mr. President.
Harvey,		

ABSENT.

Barnes,	Gregg,	Noel,
Beerstecher,	Hall,	O'Donnell,
Berry,	Heiskell,	O'Sullivan,
Cowden,	Hilborn,	Overton,
Cross,	Inman,	Porter,
Dean,	Lavigne,	Pulliam,
Dudley, of San Joaquin,	Lewis,	Reddy,
Eagon,	McConnell,	Schell,
Estee,	McCoy,	Shafter,
Filcher,	Miller,	Terry,
Finney,	Morse,	Walker, of Marin,
Garvey,	Nelson,	Wilson, of 1st District.
Graves,		

LEAVE OF ABSENCE.

For one day was granted to Mr. Garvey.

Two days leave of absence was granted to Messrs. McConnell and Lampson.

Three days leave of absence was granted Mr. Morse.

Leave of absence for one week was granted to Mr. Hilborn.

THE JOURNAL.

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

So ordered.

PETITIONS.

MR. HERRINGTON presented a petition and protest from one hundred and twelve business houses of San José, against special license on business.

Referred, without reading, to the Convention, to be considered with the article on revenue and taxation.

MR. VAN VOORHIES offered the following petition, signed by a large number of citizens of Alameda County, requesting the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Alameda County, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

MR. FREUD. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on City, County, and Township Organization.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section seven, which was temporarily passed over yesterday.

CITY AND COUNTY GOVERNMENTS.

THE SECRETARY read:

SEC. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated governments. In consolidated city and county governments of more than one hundred thousand population, there shall be two Boards of Supervisors, or houses of legislation; one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for two years. Any causal vacancy in the office of Supervisor in either Board shall be filled by the Mayor.

MR. MORELAND. Mr. Chairman: I send up a motion to strike out part of the section.

THE SECRETARY read:

"Strike out all after the word 'government,' in the seventh line."

MR. VAN DYKE. I second the motion.

MR. HERRINGTON. I send up an amendment.

THE SECRETARY read:

"Amend section seven as follows: Strike out the words, 'for the incorporation and organization of corporations for municipal purposes,' and insert in lieu thereof the word 'therefor;' also, in line five, strike out 'so far as.'"

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I am not very well posted upon what has been done with this report. I have not had time to examine the amendments that have been adopted, and I do not exactly know the condition in which it is now. I regret very much that I could not have been here during the consideration of the report, merely from the fact that I was familiar with it; but I have not been able to get here in consequence of sickness in my family. The object of section seven is to allow these incorporations to take place as provided for in section six, which I understand has been amended. Section six reads:

"Corporations, for municipal purposes, shall not be created by special laws, but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns; and cities and towns heretofore organized or incorporated, may become organized under and subject to such general laws. Cities and towns may become incorporated under general laws, whenever a majority of the electors, voting at a general election, shall so determine, and shall organize in conformity therewith."

That is section six. Now, section seven says that, "city and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes." That is referring to the preceding section. The general laws that may be passed in accordance with the preceding section shall be applicable to cities and counties, incorporated under section seven. The amendment would destroy the very object that the section has in view. I think the amendment ought not to be adopted.

I understand there is another amendment to strike out "so far as.' That language, according to my notion, is strictly correct. Just so far and no farther. The limitation is so far as they are not inconsistent they shall be applicable. I see no reason for striking the words out.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: In reference to the first amendment, I do not see why it should not be adopted. That strikes out the balance of the section from the word "government." Now, that part that he moves to strike out is a good deal legislation; it provides that in cities of over one hundred thousand inhabitants there shall be two Boards of Supervisors or houses of legislation. I do not like that word to begin with, and to end with you might find that a city of one hundred thousand inhabitants would get along better with one Board than the expense of two. I think it would be better to leave that to legislation, because then it could be modified as experience should show to be desirable. I think it would be better to strike out that part. I suppose that was the object of the motion to strike out. We may find it harmful, and then we could not amend it. In cases like that I think it is better to leave it to the Legislature.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I presume it is pretty well understood that in all municipal governments there are two Boards of legislation. In the City of San Francisco the reason they have had one is that the Constitution would not admit of two. It provides that there shall be one Board of Supervisors in each county. It is intended to have two houses of legislation, or Boards of Aldermen. One is intended to be a check upon the other. When a measure passes one body it has to go to the other, and the people have time to see what it is. Public opinion is brought to bear upon it, and the result is better legislation. So in the Legislature; a bill passes one house and is generally discussed, and the other house can act more intelligently upon it. This provision is intended to make it compulsory upon cities having a consolidated government that they should have two Boards of legislation. That is the intent of it, that it should be a constitutional provision. Is it right, or is it wrong? In regard to the argument that it is legislation, you might make that objection to every provision that is offered in this Constitution, because the Legislature is all powerful, unless it is limited by the Constitution itself. I know that when I was in the Legislature, and since I have been out, I have been called upon to know if I could not control some bill by which we could get around that provision in the Constitution, in order that we might have two Boards in that great city. We find the necessity of it. I have been spoken to again, and again, and again, about having two Boards in that great City of San Francisco, and in any city that has fifty thousand, or one hundred thousand, or two hundred thousand inhabitants. I hope that the provision will remain in the section.

REMARKS OF MR. MORELAND.

MR. MORELAND. Mr. Chairman: I hope that the motion to strike out all after the word "government" will prevail. We ought not to lay down any iron bound rule for the government of cities and counties, especially such a rule as is laid down in this section. It seems to me that this is a matter of legislation entirely; that under this Constitution, if adopted, the Legislature, if it sees fit to, can provide for the plan that is laid down in this section. We ought not to adopt it in this Constitution so that it could not be done away with if the people did not like it, or if it did not work well. I hope the motion will prevail.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I hope the amendment to strike out will not prevail. It is not a question whether this is legislation or not; it is not a question whether the Legislature can make this provision or not at some future session; but it is a question whether it is right or not. It is a question whether cities of large population, where there are interests involved as momentous, perhaps, as ever came before the Legislature, should have a Board of Supervisors divided into two bodies, like a legislative body. The reasons are strong. If there be any reason why there should be two houses in a legislative body, the reasons are as strong in favor of having two branches of the city Legislature as there can be of the State. We all understand in San Francisco how easy it is to get a resolution passed by the Board of Supervisors. We all understand how easy it is for an ordinance to pass through one body that may be inimical to the interests of the people. It may be passed by lobbying. It may be in the interests of some contractor, or some ring, or some political party. If there are two houses it needs no argument to show that there must be some delay and some discussion. The case is very different with a city of one hundred thousand inhabitants and that of a few hundred. In a village of a few hundred everybody knows everybody's business; every citizen knows all that is going on, in the Board of Supervisors and out of it. But in a large city it is vastly different. There is the hurrying to and fro, the attention to one's own concerns, the never ending conflict of life, the conflict of a mercantile community, of a trading community, that absorbs men's attention, and absorbs their time, and they have little opportunity to look after their Boards of Supervisors, and look after the schemes of politicians and the schemes of contractors of all sorts. Every imaginable interest centers in the Board of Supervisors, and, with a single Board, there is abundant opportunity to slide things through, and often the feeble barrier of five days' publication of an ordinance before the ayes and noes are called on its final passage is violated or dispensed with, and the ordinance goes into effect and is enforced for years and years, until it occurs to somebody interested to ascertain whether that order was lawfully passed; and then they turn back and find that the ordinance was not legally passed, and then down it goes. A case of this kind occurred in the case of these famous riot trials. There had been an ordinance on the books for years, and I suppose had been enforced for many years, or many parts of it had been enforced. Finally the so-called riot trials came up. The question was raised and an investigation entered into to see whether the ordinance was properly passed or not. It was discovered that it had been rushed through, the point was made in Court, and down it went. Now, these two Boards of Supervisors, as provided in this section, will, to a great degree, obviate these difficulties. I do not see why we should not put this into the Constitution, that, "in consolidated city and county governments of more than one hundred thousand population there shall be two Boards of Supervisors." The expense is trifling compared to the interests involved, and I can think of no possible objection that could be urged against it, except that it costs a little more to support than one Board; but the check which it will be upon reckless legislation it seems to me is beyond all question. I hope that section seven will stand as reported by the committee, and in saying so I think I give voice to the unanimous opinion of the San Francisco delegation.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I understand that this section is intended to give to cities of one hundred thousand inhabitants the privilege of having two Boards of legislation. I am satisfied that they should have, if they desire, but the trouble is, they have specified in the section just how these two Boards shall be constituted, what shall be their term of office, etc. I would leave it to read: "in consolidated city and county governments of more than one hundred thousand population, there shall be two Boards of Supervisors or houses of legislation;" and then leave the balance to the Legislature to say how long the terms of these officers shall be, what number shall constitute each Board, etc. I do not think there ought to be one Board of legislation for cities of such vast commercial importance as San Francisco. I am in favor of the adoption of that portion of the section which authorizes two houses of legislation, but I am in favor of striking out all that which enters into details.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: As some of the gentlemen appear to think that this is a new thing, I desire to announce the fact that it is not a new thing. I find this provision in other Constitutions where it has been adopted, and where it has been acted upon. I will refer to the Constitution of Missouri, which says it shall be a feature of all such charters; that it shall provide, among other things, for two houses of legislation, one of which, at least, shall be elected by general ticket. That is a provision that is already adopted, and has been acted under for some years past in St. Louis. The objection that it is legislation has no application at all. The question is simply, is there any virtue in it: is there any benefit to be derived from it? Now, we all know that San Francisco is very heavily taxed. The taxation of that city is nearly six millions of dollars. Every little homestead is taxed nearly out of existence. Taxes have been imposed in every shape and form under the Consolidation Act. I think this provision a judicious one, and I hope it will be retained in the Constitution.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I am in favor of the proposition to have two Boards of Supervisors, or houses of legislation for the control of large cities where the government is consolidated, but I would like to ascertain from the Chairman of the committee in what manner the second Board is to be constituted? It says, "one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for two years." It does not specify whether they are to be from the city and county at large or not. I do not understand why it is specified in one instance and not in the other.

MR. HAGER. The intention was to leave the manner of the election of the other Board with the Legislature. The provision is, that at least one Board shall be elected from the city and county at large. The other will be elected under the general law, which as is provided may be enacted in the preceding section six. If we leave it to be arranged by the Legislature under section six, we will make no mistake.

MR. WINANS. Mr. Chairman: I think it is very desirable that there should be two branches of government in a city so large as San Francisco, or as Oakland, if that should be consolidated in any way, but certainly in San Francisco. One Board operates as a check upon the other. Where legislation is carried on for such a large mass of interests it is necessary that there should be some sanction and safeguards. In the City of New York the plan has been to have a Board of Aldermen and a Board of Assistant Aldermen, through both of which all matters must pass in order to reach a final issue or adoption. At present they have but one Board in San Francisco, and the consequence is that we very frequently have bad measures engineered through by designing persons through corrupt means, and the community is therefore injured, and our rights violated by means which could not be adopted with like facility if there were two Boards, or two governing powers. I think there is great merit in this proposition, and shall therefore object to striking it out.

MR. McCALLUM. Does not the affirmation that a city with a population of one hundred thousand shall have two houses, negative the idea that a city of less than one hundred thousand could have these two houses of legislation if they wanted it?

MR. WINANS. Undoubtedly.

MR. McCALLUM. Then I object to it. We might want it before we have one hundred thousand.

MR. WINANS. You have got then to wait until you have one hundred thousand; but that could be reached by another amendment.

MR. McCALLUM. Mr. Chairman: I wish merely to say then that I

rather favor the idea suggested by the gentleman from Monterey, Mr. Wyatt, that there is no necessity of striking out any portion except that after the words "houses of legislation," leaving the balance out; and then I propose to offer an amendment that this section shall not be construed as prohibiting cities of one hundred thousand population from having two houses of legislation. I shall therefore vote against the amendment.

REMARKS OF MR. JOYCE.

MR. JOYCE. Mr. Chairman: I am opposed to striking out section seven. I think there are very good grounds for having it adopted. I do not know why it should cost five million five hundred thousand dollars annually to pay the expenses of that city and county, when it does not cost four million dollars to run the State. Now, if the Board of Supervisors have a right to levy a tax at option on about three hundred million dollars of property without any check upon them, I think it is a very strange thing. I think, to say the least, a check upon that Board is a very safe thing to establish. As my colleague, Judge Hager, has said, most every other State in the Union has got a double form of legislation. And now that San Francisco is growing more rapidly than any other city in the Union, I do not see why we should not establish the precedent there while we have got the opportunity to do so. I am in favor of the double form of government. I am satisfied that the people are robbed as much in paying the expenses of running one Board as would pay the expenses of the extra Board. Jobs are run through there with such speed that the public press even cannot get an idea of what is going on. I believe that it will be a great saving to the people of San Francisco to have a double Board instead of having but one as it is now. I shall favor the bill as it is now.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I cannot see any necessity for the words embraced in the first sentence of this section—"for the organization of corporations for municipal purposes." The part of it referring to general laws, and that city and county governments may be established under general laws, does not mean the constitutional provisions under which these corporations are formed, but refers to statutes to be enacted by the Legislature under this Constitution. Now, if that be so, why it should confine the Legislature to enacting the provisions for the incorporation of city and county governments under general laws for the incorporation of cities, is more than I can comprehend. I think the Legislature ought to be left free to pass these general laws just as they see fit. If they see fit to put them in two enactments they should be allowed to do so. In fact, I am of the opinion that in conformity with the spirit of the Constitution, that every law shall have but one object, that it will be necessary to segregate these provisions in some way in general laws. It is true that some one general title-head might embrace these two provisions, but I think the Legislature ought to be left free to act upon their own judgment. As to the words "so far as," I propose to read the section, and see whether there is any difference in the signification of the section without them: "The provisions of this Constitution, applicable to cities, and also those applicable to counties, so far as not inconsistent, or not prohibited to cities, shall be applicable to such consolidated government." Now, let us read it without them: "The provisions of this Constitution, applicable to cities, and also those applicable to counties, not inconsistent, or not prohibited to cities, shall be applicable to such consolidated government." Now, if they are applicable so far as not inconsistent, they are applicable when not inconsistent. That is all there is to it. If anybody can show me the difference I will give it up. If there is any difference I am unable to perceive it. The words ought to be stricken out. There is no necessity for using superfluous language. Let us go directly to the point, and hit it squarely on the head.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: It would be necessary for the Legislature to pass general laws for the consolidation of city and county governments separate from the general laws providing for the incorporation and organization of corporations for municipal purposes, which is not necessary. A consolidated city and county government is nothing more than a municipal government. The terms employed are proper for the purpose of creating one corporation, which is a municipal corporation for the government of a city. Now, section six provides for general laws to be enacted by the Legislature for the incorporation of cities, and this provision is intended to bring consolidated cities and counties under the provisions of section six for their incorporation. Why should it not be so? Why should we have one set of laws for consolidated governments, and another set for the incorporation of cities? I do not see. The section reads: "City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws, providing for the incorporation and organization of corporations for municipal purposes." Now, there it is complete. How do you get them? Go back to section six, and the Legislature passes under section six a code of laws for the incorporation of cities, and city and county governments may be merged and consolidated under those laws. If this portion of the section is stricken out you would have to have another set of laws.

MR. HERRINGTON. Does the Chairman hold that it would be wise to provide that city and county governments may be consolidated under laws providing for city governments? Would you say it was necessary to use any more than this term "therefor?"

MR. HAGER. I do not understand what the gentleman means. I do know something about city and county governments consolidated. We have got one in San Francisco, and I think I know as much about it as the gentleman from Santa Clara; perhaps a little more, in consequence of greater experience. That is now a consolidated government by special legislation. It is intended to have no special legislation. The whole principle of this report is to have no special legislation in regard to the incorporation of cities, or in regard to the incorporation of consolidated cities and counties. The object is to have them incorporated under general laws, and instead of having legislation specially in regard to San Francisco or any other county, this is nothing more than to allow city and county governments consolidated to be incorporated under the general law that provides for the incorporation of cities. It is strange to me that the gentleman, with his great intelligence, cannot see it.

MR. HERRINGTON. I will ask another question, if you will allow me. Do you think that by striking out these terms, that city and county governments can be incorporated by anything else than a general law?

MR. HAGER. The merging and consolidating into one government is one thing; the incorporation of that consolidated government is another thing, and both are to take place under general laws.

MR. HERRINGTON. It does not take two Acts? Can you embrace it in one Act?

MR. HAGER. That is the intent of the section as it stands, that they may be incorporated under the general law for the incorporation of cities and towns; and there should not be any general law for the incorporation of cities and counties consolidated. It seems to me so perfectly plain, that I am surprised that the gentleman does not understand it.

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

The amendment was rejected.

MR. SWENSON. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Amend section seven as follows: Strike out all between the words 'governments,' in line seven, and the word 'there,' in line eight; also, strike out the word 'shall,' in line eight, and insert the word 'may,' in place thereof."

MR. HAGER. Mr. Chairman: If I understand the amendment, it is to strike out the words "of more than one hundred thousand population." That matter was discussed in committee, and the committee concluded to leave it at one hundred thousand.

MR. VAN DYKE. I hope the gentleman will accept the amendment.

MR. HAGER. But let me state: a city and county consolidated government is a very peculiar institution. Your city limits and your county limits must coterminate, otherwise you cannot have a consolidated government. Gentlemen must think of this. How are you going to consolidate Oakland and Alameda County? You must make a new county, and make the city limits and the county limits exactly the same thing.

MR. VAN DYKE. There is no difficulty about that at all.

MR. HAGER. I have no objections to striking out the clause, if any members wish to have it for their counties. I think, perhaps, that the measure would be unpopular if it applies to all the cities of the State, because a city may not wish it, and it would lose votes instead of gaining votes; but if it is desired in any other part of the State than San Francisco, I have no objections.

MR. MCCALLUM. Why not say "may," instead of making it mandatory?

MR. HAGER. We want it mandatory in our city. We all want it mandatory in our city.

MR. BIGGS. Stick to that; you want it mandatory there.

MR. HAGER. I have no objection to the other. Now, let me say a word to the gentleman from Alameda. I want to call the attention of the members from Alameda to this section. Perhaps it may not be entirely understood. If you look at it critically, you will find that the first paragraph from the beginning of the section down to the word government, in the seventh line, applies to cities and counties generally, not to cities and counties having one hundred thousand inhabitants. It applies to them all. It is in a subsequent paragraph that the provision is made for two Boards of Supervisors. As it stands it could not have any application to any city in the State except San Francisco. But Oakland can have a consolidated city and county government under section seven, down as far as line seven, without having a double Board.

MR. VAN DYKE. But suppose the people of Oakland should see proper to have consolidated city and county government, unless it had one hundred thousand people it would be prohibited here by implication from having two Boards. That we do not want.

MR. HAGER. But the general law may provide for two Boards. The general law authorizing the incorporation of cities may provide for two Boards. There is no limitation against that in the section.

MR. VAN DYKE. I understand that it would be prohibited by implication——

MR. HAGER. There is no prohibition against having two Boards in any city that is incorporated.

MR. VAN DYKE. Suppose it is incorporated as a city and county, then it would be prohibited by implication from having two Boards.

MR. HAGER. If it has over one hundred thousand inhabitants it *must* have two Boards. If it has not one hundred thousand inhabitants it *may* have two Boards. There can be no question about it at all if the general law authorizes it. In section five—I do not know what they did with it—but I drew it in such a way as to admit of two Boards in each county:

"SEC. 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their compensation.

It shall regulate the salaries and fees of all county officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession."

MR. VAN DYKE. I hope the gentleman will——

MR. HAGER. I am not quite through. You can have two Boards in any city or consolidated government if you want them. In every consolidated city and county government having over one hundred thousand inhabitants you must have them.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I move to amend by inserting after the word "years," in line fourteen: "Two houses of legislation may be provided by general laws for cities of less than one hundred thousand inhabitants." I think, Mr. Chairman, that that will cover the ground of objection of the gentleman from Alameda, and also enable other cities in this State to have two houses of legislation. I know that in the city in which I reside, a few months ago we revised our charter, and there was a strong sentiment in favor of a double house—of a Board of Aldermen and a Board of Assistant Aldermen—and the reasons advanced were exactly the reasons which the Chairman of this committee advances in favor of such houses of legislation in San Francisco. With that amendment, all other cities of less than one hundred thousand inhabitants would, at their option, be enabled to establish such houses of legislation.

MR. HAGER. If the gentleman from Los Angeles would put his amendment in section six it would be in its proper place. It could come in after the word "towns," in line four, at the top of the page.

MR. AYERS. I think it would be in its proper place here.

MR. HAGER. Section six relates to cities. This section relates to consolidated cities and counties.

MR. AYERS. Section six has been passed upon, and under our rules we cannot go back to it. I presume by unanimous consent we could get at it, but I think it would be in its proper place in this section. It it is germane to the whole subject of the section.

MR. REYNOLDS. I call the attention of the gentleman from Los Angeles to the fact that the amendment offered by Mr. Swenson strikes out the words, "of more than one hundred thousand population."

MR. AYERS. As I understand it, that would vitiate the intention of the committee to have it mandatory in regard to cities of more than one hundred thousand population. I wish to leave the same rule open to cities having a less number of inhabitants.

MR. SWENSON. Would not that create special legislation? Would it not require a special Act in favor of San Francisco? We have said that the Legislature shall pass no special Act, and this would necessarily require a special Act so far as San Francisco is concerned. It may be done under a general Act, and that is the reason why I offer this amendment.

MR. HAGER. As there seems to be a desire to have a clause in that will preclude any construction that would prevent a city from having two Boards of legislation, I would ask unanimous consent to put that in section six.

MR. LAINE. I certainly object to that. We have got Boards enough in our part of the country.

MR. AYERS. It is not for the counties, it is for the cities.

MR. LAINE. We have got cities in our county too.

MR. HAGER. I would ask the gentleman if he would object to taking up section six.

MR. LAINE. We can attend to it in the Convention.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: If the amendment should be voted down I would offer the following amendment:

"Strike out the words 'one hundred thousand' and insert 'fifty thousand;' and strike out in line eight the word 'shall' and insert the word 'may.'"

In that way it would not be mandatory upon any city. We are satisfied here that a double house is better for the interests of the people, although it may cost more money to support two houses. If this system is a good one, other towns and cities of less than one hundred thousand inhabitants can have two houses without it being forced upon them. This section as it is forces it upon cities of over one hundred thousand inhabitants, whereas, if it is a good system they must reach one hundred thousand before they can avail themselves of it. I believe this will certainly be a good system. One house will act as a sort of check upon the other, and it will produce better government. By doing this we will reduce the taxes on the people, and give more satisfaction. But I also think that if it is a good rule it should be fifty thousand instead of one hundred thousand, and then leave it in their power to adopt the plan or reject it, just as they please. Therefore, if some of the amendments are voted down, I shall offer this.

MR. LARKIN. Why not adopt the amendment offered by Mr. Swenson?

MR. WELLIN. Because it would leave it to twenty thousand. A small community can govern itself with one Board. I do not believe a double system of government should be forced upon a community of ten or fifteen thousand people.

MR. AYERS. Why should not this safeguard be extended to small cities as well as large ones?

MR. WELLIN. The article, as it stands here, makes it compulsory upon cities——

MR. SWENSON. Does not my amendment provide for that very thing you are trying to get at?

MR. WELLIN. No, sir, it does not. It leaves it for twenty thousand.

MR. SWENSON. Does the gentleman know of any city of less than ten thousand?

MR. WELLIN. I propose to reduce it from one hundred thousand down to fifty thousand, and I think that ought to give satisfaction to everybody. If the City of San Francisco has got along with a single house and built up to three hundred thousand population, I think other cities can stand it until they reach fifty thousand.

MR. VAN DYKE. Either of those amendments will suit us.

MR. STEDMAN. I move the previous question.

Seconded by Messrs. Larkin, Ayers, Hitchcock, and Biggs.

The main question was ordered.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Los Angeles, Mr. Ayers.

The amendment was rejected.

MR. WELLIN. I now offer my amendment.

THE SECRETARY read:

"Amend section seven by striking out the words 'one hundred thousand,' in lines seven and eight, and inserting the words 'fifty thousand;' and by striking out in line eight the word 'shall,' and inserting the word 'may.'"

MR. WYATT. I ask for a division of the question.

MR. VAN DYKE. I hope that amendment will be adopted.

THE CHAIRMAN. It is the same as the other amendment.

MR. EDGERTON. I desire to remind the gentlemen who favor empowering the Legislature to do so and so that this committee has, by an almost unanimous vote, adopted the provision already, that every clause in the Constitution shall be mandatory.

MR. VAN DYKE. Except as otherwise provided; and where you say "may," that otherwise provides.

MR. JOYCE. Mr. Chairman: I hope that the word "shall" will not be stricken out of that section. I think it is just what the people want. I have no objection to have it brought down to fifty thousand, but I want the word "shall" to remain there.

MR. STEDMAN. I have an amendment to offer to the amendment.

THE SECRETARY read:

"Strike out 'fifty' and insert 'seventy-five.'"

MR. STEDMAN. Now, Mr. Chairman, I am decidedly in favor of the report of the committee; still, at the same time, I am willing to compromise and put in the words "seventy-five," in place of the words "one hundred;" and though I have offered an amendment, I hope that both the amendments will be voted down. I offer my amendment to defeat his amendment. I think one hundred thousand is low enough. I hope both amendments will be voted down. I think it is wrong to place in this Constitution a clause compelling a city with only fifty thousand inhabitants to entail a double expense upon its citizens.

MR. MCCALLUM. I hope the question will not be divided. I believe that the house has to vote upon the whole question.

THE CHAIRMAN. Except as we have a rule which allows any member to ask for a division.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I am in favor of the whole amendment, but I want the first one at any rate. I hope that we will not take any chances, not knowing what will become of the ballots. The effect of this would be, that if we adopt the first proposition, it would say to a city of fifty thousand inhabitants—"you shall have two Boards of Supervisors, or two houses of legislation, whether you want them or not." Afterwards, if we refuse to strike out the word "shall," and insert the word "may," we would compel the people of Oakland, or any people who might be similarly situated, to have what they do not want, or have it before they want it, supposing they want it at some future time. I had proposed to offer this amendment: "This section shall not be construed as prohibiting any city, or any consolidated city and county government, of less than one hundred thousand population, from having two houses of legislation." That will leave others free in this matter. If this question has to be divided, I hope gentlemen will not take the chances of voting for the one without knowing what will become of the other. I would ask what rule it is that gives a single member a right to call a division? I claim if there is an objection to a division that then the question shall be taken: shall the question be divided?

MR. WELLIN. We have divided other questions and can readily divide this without taking a vote upon it.

MR. MCCALLUM. We can divide it, but I don't want it divided.

THE CHAIRMAN. The question is on the first branch—on the motion strike out "fifty" and insert "seventy-five."

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I have tried to explain heretofore that any city and county may be consolidated, whether they have one hundred thousand inhabitants or not, but that the last portion of this section only applies to cities having one hundred thousand inhabitants. Now suppose all of section seven after the word "government," in the seventh line, was stricken out; every city and county in the State might be consolidated notwithstanding, and incorporated under section six. This provision after the word "government," in the seventh line, is applicable only to cities having one hundred thousand inhabitants. It does not prevent a city having fifty thousand inhabitants becoming consolidated, but it says, where they have one hundred thousand population they must have two Boards. It would not prevent their having two Boards if it was a city and county government consolidated, but the

provision only applies to cities having one hundred thousand inhabitants, and, notwithstanding that provision, any city and county can be incorporated under the sixth section; but if they contained one hundred thousand inhabitants they must have two Boards. That is the argument, and that is all there is of it.

MR. VAN DYKE. My point is that the expression of one thing excludes the other, and by saying that in any city having one hundred thousand population there shall be two Boards, necessarily, by every rule of construction, excludes every city of less than one hundred thousand inhabitants.

MR. REYNOLDS. If the gentleman will refer to the first part of the section, and then to line eight, he will see that if these consolidated governments contain a population of one hundred thousand, they must have two Boards of Supervisors.

MR. VAN DYKE. Suppose they do not have one hundred thousand; then they shall not have two Boards.

MR. SWENSON. For this government has only one set of officers.

MR. REYNOLDS. It does not follow from any construction of this section that city and county governments may not be consolidated, whatever their population; and it does not follow, from any construction, that they are obliged to have two houses of legislation unless they have one hundred thousand inhabitants.

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

Seconded by Messrs. Hitchcock, Stuart, Stedman, and Huestis.

The main question was ordered.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from San Francisco, Mr. Stedman, to strike out "fifty" and insert "seventy-five."

The amendment was rejected.

THE CHAIRMAN. The next question is on the motion of the gentleman from San Francisco, Mr. Wellin, to strike out "one hundred" and insert "fifty."

The amendment was rejected.

THE CHAIRMAN. The next question is on the motion of the gentleman from San Francisco, Mr. Wellin, to strike out the word "shall" and insert the word "may."

The amendment was rejected.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I move to amend section seven by striking out the words "or houses of legislation," where they occur in the ninth line. In support of this amendment, I wish to call attention to the fact that in the fifth section we have provided that "the Legislature, by general and uniform laws, shall provide for the election, or appointment, in the several counties, of Boards of Supervisors." And now, in this section there is the same thing, except providing specially for double Boards of Supervisors in certain cases, to wit: cities and counties containing a population of more than one hundred thousand. Now, our Constitution, in the legislative department, provides that the Legislature shall be the law-making power of the State Boards of Supervisors, have an office within the Constitution, but not the office of law-making. They are not the law-making power. I apprehend that it is not the intention of this committee that they should be, and yet these words sought to be stricken out by this amendment accomplish that result, at least so far as it can be accomplished by these terms. If the amendment was adopted the clause would read "in consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors." It is not necessary to repeat, by saying "or houses of legislation." They are called Boards of Supervisors. Why call them houses of legislation? The Constitution of the State provides for one legislative department of the government. Let us not depart from it. Let us preserve the harmony of the system.

MR. BARBOUR. I send up an amendment.

THE SECRETARY read:

"Amend section seven by striking out all after the word 'government,' in line seven."

THE CHAIRMAN. The amendment is not in order. It has already been voted down.

MR. HAGER. Mr. Chairman: The reason that that was put in that shape was simply to admit of other houses of legislation by name than Supervisors. They never would be called First and Second Board of Supervisors; they would probably call them First or Second Board of Aldermen, or Aldermen and Assistant Aldermen. Counties must have Supervisors. We have a Board of Supervisors there because we could not have anything else; but if we have a Board of Aldermen, or a Board of Councilmen, then the words "houses of legislation," would apply. I would not select the name of Board of Supervisors for a city; "Supervisors" is better for a county government; but, if it so happened, as we now have a Board of Supervisors, that that government should be perpetuated under a consolidation, the name would be Supervisors; but if we incorporated under some other form, they would probably adopt the name of Aldermen, or Councilmen; that is the reason it is put in here to reach these cases. I do not see what harm it could do. The Constitution would apply now to the name of Supervisors; but if we should incorporate, and have a new charter, they would probably be called First and Second Board of Aldermen.

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

The amendment was rejected.

MR. MCCALLUM. Mr. Chairman: I now send up my amendment.

THE SECRETARY read:

"In line fourteen, after the word 'years,' insert 'This section shall not be construed as prohibiting any city or consolidated city and county government, of less than one hundred thousand population, from having two houses of legislation."

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: That is the sole point which we from Alameda have sought to make in this controversy. The gentleman from San Francisco seemed to be very averse to having the first proposition which we asked for, but we did not wish to be placed in the position that other cities should not have the same advantage. It is perfectly safe to leave the people to deal with the matter. The sole object is to obviate the legal question. The chairman of the committee, Mr. Hager, seems to think that the affirmation in the one case does not negative the other. His colleague, Mr. Winans, thinks as I do, that the assertion of the one is to negative the other.

MR. BIGGS. Mr. Chairman: The amendment offered by Mr. Ayers, and which was voted down, was substantially the same as this.

MR. MCCALLUM. I would like to have it read.

THE SECRETARY read the amendment offered by Mr. Ayers, as follows:

"Insert after the word 'years,' in line fourteen, 'two houses of legislation may be provided by general law, for cities of less than one hundred thousand inhabitants.'"

MR. MCCALLUM. I submit that that is not the same thing. Let the Secretary read mine.

THE SECRETARY read:

"In line fourteen, after the word 'years,' insert: 'This section shall not be construed as prohibiting any city or consolidated city and county government, of less than one hundred thousand population, from having two houses of legislation.'"

MR. MCCALLUM. That is nothing on the subject of what the Legislature shall provide. The other says that two houses of legislation may be provided under general law. I simply propose that the section shall not be construed as prohibiting cities of less population than one hundred thousand having two houses of legislation.

MR. EDGERTON. What is the difference?

MR. MCCALLUM. The one says the Legislature may provide, by general law, for two houses, and the other says that the section shall not be construed as——

THE CHAIRMAN. The Chair is of the opinion that they are equivalent propositions, and, therefore, rules it out of order as having been already voted down.

MR. MCCALLUM. I desire to appeal from that decision.

THE CHAIRMAN. The Chair hears no second.

MR. STEDMAN. I offer an amendment.

THE SECRETARY read:

"Insert in the thirteenth line, between the word 'years' and the word 'and,' the words, 'by supervisorial districts.'"

MR. STEDMAN. Mr. Chairman: I offer this in the interest of good government. We have provided in this section seven that two Boards of Supervisors shall be elected for the city and county, each of them to consist of twelve, I suppose. I desire in offering this amendment to have it stated in this section that one of these Boards shall be elected by districts. Now, if we provide that the twenty-four shall be elected by a general ticket, one political party will probably carry the county. To elect twenty-four Supervisors from one political party, I do not care what party it is, I do not think would be in the interest of good government. I desire to give the minority a chance, and in order that we may have all political parties represented in our Boards of Supervisors, I hope the amendment will be adopted.

MR. RINGGOLD. I move the previous question.

Seconded by Messrs. Larkin, Moreland, Davis, and Hunter.

The main question was ordered.

MR. HAGER. I would like to inquire if there is any such thing as a Supervisorial District?

THE CHAIRMAN. The main question has been ordered. The question is on the adoption of the amendment offered by the gentleman from San Francisco, Mr. Stedman.

The amendment was rejected.

MR. THOMPSON. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend section seven by striking out, in the ninth line, the word 'twelve,' and inserting 'eight.'"

MR. THOMPSON. Mr. Chairman: I think if we have two Boards of Supervisors for San Francisco, that it would be well to have one of them of a different number. I am in favor of this, from the fact that it will make less expense. I have heard it talked of several years, having two Boards, but I have never heard any one suggest equal numbers for the Boards. Generally I have heard five named, or seven, for that Board. All legislative bodies, from the United States Congress down, are composed of different numbers, one branch having a higher number than the other. For that reason I offer this, to save expense to the City of San Francisco; for, as I understand it, there is no other city in the State that will come under this section. I think, therefore, it will be a good amendment.

MR. CROUCH. Mr. Chairman: I move to amend by inserting, after the word "be," in the eighth line, the words "and in those of more than fifty thousand inhabitants there may be."

THE CHAIRMAN. It is not in order at present. The question is on the amendment offered by the gentleman from San Francisco, Mr. Thompson.

The amendment was rejected.

MR. CROUCH. I now offer my amendment.

THE SECRETARY read:

"Insert after the word 'be,' in line eighth, the words 'and in those of more than fifty thousand inhabitants there may be.'"

MR. REYNOLDS. I call the attention of the gentleman to the fact that the amendment is inconsistent with the section itself. I will read: "In consolidated city and county governments, of more than one hundred thousand population there shall be, and in those of more than

fifty thousand inhabitants there may be, two Boards of Supervisors," etc. That would make the section inconsistent with itself. But if he will insert his amendment after the word "governments," in the seventh line, then his amendment will be consistent. Then it would read: "In consolidated city and county governments, of more than fifty thousand inhabitants there may be, and in those of more than one hundred thousand population shall be," etc.

MR. VAN DYKE. What is the difference?

Mr. REYNOLDS. I only desired to call attention to the fact that if we adopt the amendment in that shape it will make the section wholly inconsistent with itself. If the committee desire to adopt the amendment it should be put in the seventh line after the word "governments."

MR. HAGER. I move to amend the amendment so that the clause will read: "In consolidated city andc ounty governments of more than one hundred thousand population, and in those of less than one hundred thousand there may be two Boards of Supervisors," etc. If the gentleman will accept that amendment——

MR. CROUCH. I accept the amendment.

MR. McCALLUM. Then, Mr. Chairman, the details of this section follow that condition. I had thought at first it would accomplish the desired result, but I think now it would be no improvement, or very little. One difficulty, in the first place was, that it was going too much into detail, but if San Francisco wants it we do not care to raise the question; but I submit that these details ought not to follow this optional provision, as to the other cities. I propose, in order to avoid that parliamentary difficulty, to offer this amendment which accomplishes the same end that we are all trying to arrive at. After the word "years," in line fourteen, insert, "This section shall not be construed as prohibiting a city, or consolidated city and county government having a greater population than forty thousand from having two houses of legislation." That will make a limit. But I see a difficulty with the amendment of the gentleman, over the way. I think it is a serious one, and I cannot vote for it. It compels all these conditions to be accepted.

MR. VAN DYKE. I do not see why it does not improve the section. If we cannot get all we want let us get what we can. We need not incorporate under that if we do not please.

MR. McCALLUM. I would like to ask the gentleman if he desires to have it so that we must have not less than twelve?

MR. VAN DYKE. The City of Oakland might prefer that to one house. If they do not prefer it to one house they need not adopt it. It is not mandatory.

MR. McCALLUM. Why compel them to accept these details? Why may we not have the principle without the conditions?

MR. VAN DYKE. Because the committee have refused to strike that out. We cannot have what we would have, but let us get what we can.

MR. LAINE. I hope the country members will think something of this. It would be an invitation to the Legislature to impose upon the various counties of the State a cumbersome government, and I do believe that if the City of San Francisco desires to submit herself to so cumbrous a form of government as this the rest of the State ought not to be placed in the same position. We will have to be continually watching the Legislature, to prevent these cumbersome governments being imposed upon us. I believe that the experience of the American people is such that we do not need so many Legislatures. We are now going into a scheme by which we are to have a Legislature in every township, a Legislature in the county, a Legislature in the city and county, and a multiplication of laws in this State. There are more laws now in this State than any lawyer will live long enough to read and digest. I hope these amendments will be voted down. If the City and County of San Francisco desires it let her have it. I hope the country members will vote these amendments down.

MR. VAN DYKE. It does not apply to counties.

THE CHAIRMAN. The question is on the adoption of the amendment offered by Mr. Crouch as modified.

The amendment was rejected.

MR. McCALLUM. I now offer my amendment.

THE SECRETARY read:

"Insert in line fourteen, after the word 'years,' the following: 'This section shall not be construed as prohibiting a city or consolidated city and county government, having a greater population than twenty thousand, from having two houses of legislation."

MR. GRACE. I do not know whether there is any city outside of San Francisco having forty thousand.

MR. McCALLUM. Oakland has.

MR. GRACE. I would make it small enough to take in other cities that are smaller.

MR. McCALLUM. I wish to have it so that other city and county governments may have two branches of the Board of Supervisors if they desire to have them. That is all there is in it.

MR. AYERS. If the gentleman will insert "twenty thousand," instead of "forty thousand," I will favor it.

MR. McCALLUM. I have no objection to that. I will insert there the words "twenty thousand," instead of "forty thousand." If they do consolidate that way, then all the details belong to themselves. If we had adopted the amendment we have just voted down, it would have required twenty-four Supervisors. I hope this amendment will be acceptable to the committee, and I will contribute, for my part, nothing further to this avalanche of amendments.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: As long as this system was confined to the City of San Francisco, I felt like permitting the delegates from that place to decide whether it was acceptable to them or not. The proposition now under consideration involves the extension of the system over the whole State; for be it remembered that it is a spirit of this article, and of every part of the Constitution that we are adopting, that there shall not be special legislation; that systems of government shall be uniform; and therefore it will follow, if this provision is adopted, and if any general law shall be enacted under and in pursuance of it, that it must extend the system to all consolidated cities and counties of twenty thousand inhabitants. I do not know what virtue there is in a double Board. I have heard no virtue ascribed to it, and I see no object in it other than the multiplication of offices and the establishment in each county of something that shall be an imitation of a city organization or a city government.

There are four or five counties in this State which might be consolidated under this section: There is the City and County of San Francisco, I suppose you might say the City and County of San Jose, and perhaps three or four others—the City and County of Stockton, the City and County of Los Angeles, the City and County of Oakland, and so on. For one, as a representative of a county that might be affected by this, I say that I do not wish the Legislature to have the power to impose any such system upon us. I see no necessity for two Boards of Supervisors, or two Boards of Trustees; it is a mere additional expense, and one of those things that is likely to be lobbied through the Legislature by some person who is desiring a position, or by some one of that numerous class who have nothing for the present, and would be glad of any change for the future.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: The amendment of the gentleman from Alameda illustrates the difficulty which always attends an attempt to fix up a clause like this, which is aimed only at one city, one political subdivision, without making use of the words expressive of it. Now, if the committee or Convention wish to make a system applicable only to San Francisco, we ought to have used the word San Francisco. There is a peculiarity surrounding the situation of that city in its consolidated character which impelled the committee to adopt this section, and also section nine; that that city was capable of supporting a sort of government within a government; and that the multifarious interests there could not be reached by general incorporation acts. But instead of making use of the word San Francisco, the committee used the phrase "city of more than one hundred thousand population," because it is not likely that as long as this Constitution stands there will be in the State of California another city of one hundred thousand population. It is not likely there will be another consolidation of city and county government in the State of California while this Constitution stands, if it should not be ratified. And even if they run up to a population of one hundred thousand or more, it is not likely that there will be a consolidation unless there is also a change of geographical lines. Now, according to the amendment of the gentleman, as I read it, it would provide that a city of forty thousand inhabitants, which was not consolidated with the county government, might have a double-headed house of legislation, while a city of one hundred thousand inhabitants that was not consolidated with the county government, need not have it. The phraseology of it is peculiar. If it is a city not consolidated, and has two hundred thousand inhabitants, by a fair construction it need not have this double-headed government. Now, sir, this whole attempt to regulate this matter ought to have been kept out of this section. I think the gentleman from Alameda, who was a member of the Committee on City, County, and Township Organization, as well as myself, is like the boy who, when he sees another boy have a thing, immediately wants it. Whenever San Francisco gets anything, no matter whether it is appropriate to some other place or not, no matter whether it fits them or not, they have an idea that they are a great rival to San Francisco, and they immediately want the same thing. If San Francisco chooses to launch into a system of government containing all the grand machinery of a whole government within itself, Oakland shows its bad temper, and wants the same thing, because it is going to grow up and be a great city, and and thereby tangle up and spoil everything we are attempting to do. Everybody knows that the attempt in this section was to have it apply alone to San Francisco. That is all there is about it; and this amendment ought not to be incorporated in it. And when section nine is adopted, and the people are thereby authorized to go ahead and make their charter for their own government, they ought not to be hampered by this provision, but should be left free to create their own internal government, as they propose, consistent with the Constitution of the State and the laws of California. I shall support section nine, and I believe this portion of section seven will be inconsistent with it, and unnecessary, because they are competent to frame a charter providing for twelve Supervisors, or ten, or fifteen, electing them from the city at large, or electing them from districts, as they see fit. Therefore these amendments that the gentleman proposes are unnecessary, and I hope will be voted down.

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

THE CHAIRMAN. It is not in order at present.

MR. HUESTIS. I move the previous question.

Seconded by Messrs. Biggs, Howard, Evey, and Stuart.

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. McCallum, as modified.

The amendment was rejected.

MR. HAGER. Mr. Chairman: I had no idea that this section was going to create so much difficulty in the Convention, or receive so much apparent opposition. The section as drawn was intended to be for the City of San Francisco.

MR. MORELAND. Mr. CHAIRMAN: I rise to a point of order. There is no motion before the House.

THE CHAIRMAN. The point of order is well taken.

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

The motion was lost.

THE CHAIRMAN. If there be no further amendment to section seven, the Secretary will read section nine.

CITY GOVERNMENT.

THE SECRETARY read:

SEC. 9. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with, and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of largest circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall, at the end of sixty days thereafter, become the charter of such city, or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city, and thereafter all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

MR. MORELAND. I move to strike out section nine.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: The members of the Convention will observe that this is proposed for the formation of a charter, by the people, subordinate to the Constitution and laws of the State. We have already adopted a provision that the Legislature may, by general law, provide for the incorporation of cities. Now, then, any charter that may be formed will be subordinate to these general laws, but it will be shaped by the people, and submitted to the people, and ratified and adopted by them. That has been the custom all over the world. In San Francisco we used to adopt our charter, submit it to the people, the Legislature would ratify it, and it became the charter. Now, it is proposed that in a city parties may be elected for the purpose of framing a charter, just what we have done heretofore in San Francisco, and when it is framed it has to be submitted to the people, and has to be ratified by them; but it must be subordinate to the Constitution, and subordinate to a general law. Now, then, if the City of San Francisco should undertake to frame a charter, it should not be submitted to the Legislature, because we have taken that power away from the Legislature, and instead of that we substitute a general law; therefore, it must be in subordination to the general law as the only authority that controls the matter. In former years, when San Francisco was not a consolidated government, we had some four or five charters. There was a convention to frame a charter; my friend in front of me, Mr. Casserly, was a member of it, and when the charter was ratified by the people and sanctioned by the Legislature, it became the charter of the people. Now, the Legislature, under a general law, may authorize any city to frame a charter. Under section six that we have passed, the Legislature, by a general law, may authorize any city in the State to frame a charter, if it is in subordination to the Constitution and general law.

MR. MORELAND. What is the use of this section in here then?

MR. HAGER. Simply to provide another way, that the people may elect delegates to meet in convention and deliberately frame a charter. It is an important matter in a great city like San Francisco, while a little town, perhaps, would not require all that machinery. It is a provision, I may say to my friend, that I have copied from the Constitution of Missouri. [Laughter.] The Constitutions of Missouri and Pennsylvania I happen to have in convenient shape to handle, as you may see, in pamphlet form, and the Constitution of Missouri being the latest, is one of the best, because they have selected and retained from other Constitutions pretty much everything that is worth being retained in a Constitution. I do not forget the Constitutions of my friend from Santa Clara, or my friend from Santa Cruz. I have used part of the Constitution of my friend from Santa Clara. If we should strike the section out then there would be no machinery for arranging a charter for the City of San Francisco. A general law might provide for this same thing. A general law might provide that a city may elect delegates, but inasmuch as we are on the subject, and a large city might be willing to elect members to a convention, whereas others might wish to resort to a cheaper machinery, and adapt it to the general law, we considered it best to provide for it here. This applies strictly and only to the City and County of San Francisco. It is the same machinery that was made use of in the City of St. Louis, where they adopted a charter which has been the cause of great reforms in the administration of the Government of that State. I cannot see that any evil will come from it. We have this peculiar government there, a consolidated city and county government. I do not agree with my friend from Sacramento, that the tendency is to multiply offices. The tendency is to reduce the number of offices. Instead of having a set of city officers, and a set of county officers, they are consolidated. We have a Sheriff, who is the Sheriff of the county and of the city. We do not have a Coroner any more. We have a Tax Collector, and we have an Auditor that acts for both; formerly we had one for each. The tendency of a consolidated government is to reduce the offices from two to one in every case, and reduce the expense in every particular, and not, as the gentleman said, for the purpose of multiplying offices. He says that they want none of this government in the City of Sacramento. Suppose they don't; but suppose the people should wish to adopt it at some future time, for the purpose of economy. It must be done by the sanction of the people or it cannot be done at all. If we cannot trust the people in this matter, who can we trust? If they make a mistake it is in their power to correct it. It is expected that this Constitution will bring healing to the wounds of our oppressed people, and so far as is in my power, it is my intention to reduce the expenses of government, and not multiply them; and this report, from the beginning to the end of it, has been with the intention of reducing county and city expenditures, and not for the purpose of increasing them. I hope that this section will be retained.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I assented to the proposition, as a member of the committee, and I believe that it is demanded by the interests of the people of the City of San Francisco. I do not understand that San Francisco can proceed under a general incorporation law that may be framed by the Legislature, because that general incorporation law is not broad enough to cover the interests of the people of San Francisco. It is true, we should not use the term "city having a population of more than one hundred thousand inhabitants." Of course, as I said before, in reference to the other section, the intention is to authorize the people of San Francisco to frame a charter in an exceptional case; instead of proceeding under a general law, to frame a charter of their own. Now, it is undoubtedly true that a necessity exists for an entire and total change in the organic law of San Francisco. No man from that city, who has ever sought or attempted to find out what the fundamental law of that city is, upon which its legislation must be based, can tell what it is. And it is because of the wide field which is required to be covered by the legislation of San Francisco that a fundamental law ought to be provided by a charter, by which to measure and test the validity of the ordinances of that city. San Francisco has many institutions, maintains many Boards, which do not exist in any other city of the State, and which will not exist. They are special to the city. They are *sui generis*. They are governed by a law unto themselves, in respect to these various institutions and public works and public Boards, which do not apply to any other city in the State. Now, it has a consolidated charter, but the Act of Consolidation, as it is called, which is the present fundamental law of that city, is in an extremely confused state. It is a piece of patchwork, made up like Joseph's coat. Many of the laws are doubtful, and they would all be wiped out by a charter framed by a Board selected by the people of the city, who would present to them a complete system of local government, for it has to be submitted for their ratification.

Now, I see no objection to this being engrafted in the Constitution. I see no objection, of course, within the scope of the Constitution, and subject to the laws of the State, and providing a basis for their local legislation. Questions will always rise, and questions must rise in any act, in any attempt on the part of the Legislature to delegate to the people of San Francisco the power to go ahead and make a local law. Questions of the power of the Legislature to delegate its authority in this, that, and the other instance, will constantly arise, all of which will affect the validity of the legislation and create litigation. The intention is to avoid all these vexed questions. The intention is to avoid all these questions that are continually arising and vexing the Courts with regard to contracts, etc. Some scheme of fundamental law ought to be provided as a basis of legislation which the people stand ready to enact. By the complaints which I have heard with regard to the Consolidation Act, I am certain that it should be sought by the people, and demanded by the people, that a charter, complete and independent, should be provided for that city and the Consolidation Act superseded and wiped out.

SPEECH OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: This was one of the sections of the report upon which the committee was about equally divided, and according to my recollection it was struck out once or twice, and at the instance of the Chairman, I think, finally a bare majority assented to it.

MR. HALE. There was never over one quarter of the Committee sanctioned this section.

MR. McCALLUM. Not over one quarter of the committee ever gave its sanction to the section. I think that is correct, likely. The most of the committee were not very generally divided, and I think it may be safely said that not one third of it ever sanctioned this section nine. The first main provision, or inconsistency of this section, is this: that in the legislative article, and in this article on city and county governments, in which it is proposed to remedy the great existing evil of special legislation, in the principal section, or in one of the sections, this section nine appears in this new Constitution special legislation. Now the gentleman from San Francisco, the Chairman of the committee, says that it provides that this charter may be framed under general laws. The phraseology is subject to different construction, and I ask the attention of the committee to its peculiar phraseology:

"Any city having a population of more than one hundred thousand inhabitants may frame a charter of its own government, consistent with, and subject to the Constitution and laws of this State."

What shall it be consistent with? Why a fair construction of that language is that the city may frame a charter, not that it says that the charter shall be consistent with, but that they shall frame a charter, and of course it is consistent with the general laws, because, although it is of a special nature, anything in the Constitution must be regarded as general law; and the Constitution saying that they shall frame a charter, then it must follow that it is a constitutional charter, though not consistent with the general laws under which other municipal corporations are organized. This article, of course, is in itself law. The gentleman says: "Oh, it provides that it must be consistent with law!" Certainly, but this is law. Section nine is law if it becomes a part of the Constitution. It is somewhat in the nature of making a city in our State different from all other cities. Why should this difference be made? "Oh," gentlemen say, "there is a necessity for it," but do not point it out. Why may not the city of San Francisco organize under general laws like all other cities? Why say that they shall frame a special charter for San Francisco?

MR. JOYCE. Why have you tried to get the same provisions applied to Oakland, awhile ago, that would not apply to all others?

MR. MCCALLUM. We never attempted to apply anything to Oakland. It is the principle I oppose. There is no necessity for this special legislation. Here follows this general proposition, and then a page and a half of dreary details as to the manner in which this thing shall be done, but not the Constitution of the State. If, as the gentleman says, it is intended to conform to general laws, then where is the necessity for this general provision. It must be consistent with general laws anyhow. This is general, all sufficient. I do not say there is any design in the Chairman of the committee wording it in the way it is.

MR. BARBOUR. In my opinion general laws do not apply at all, and it is very doubtful whether they can authorize the application of a charter made up under general laws. This must be submitted for ratification. In small towns, or cities, I submit that it is very doubtful whether this course may be pursued with reference to submission.

MR. MCCALLUM. Why may not a general law provide for submission in all cases?

MR. BARBOUR. There may be a very serious question with regard to the power of the Legislature to delegate its authority.

MR. MCCALLUM. You can put that into the Constitution if it does not already exist. I hope the motion of the gentleman from Sonoma will prevail.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I will say a very few words in favor of this section, and in opposition to the motion to strike out. There is something more provided, something more comprehended in this section than the mere submission of a charter. Now, in ordinary cases, in small cities and towns that are incorporated, where the population is not large a few of the most influential citizens get together and frame a charter, and send it to their member of the Legislature, and have it adopted. Now, in a city of immense population, such a thing is wholly impossible; and hence the provision here providing for a convention of citizens elected for that purpose, who shall be sworn to perform an official duty, to set about it and within ninety days frame a charter for the city precisely as we are framing a charter for the State of California, now; then for submission to the people, etc. This section goes to the incubation of this charter, and not leave it to citizens in a private capacity, and we all know how such things are done when anything is done that is every body's business and nobody's business.

Now, to illustrate the difficulties under which the city labors to-day. I wish to call attention to the volume I hold in my hand. Here is a volume of fine print, three hundred and nineteen pages, that comprises the charter of the City of San Francisco, to-day. Originally it was thirty-one pages, but there have been one hundred supplemental Acts passed, and that comprises the charter to-day. No man on earth knows what is in it, and they do not pay any attention to it, either. They ride rough-shod over it. Dozens of these Acts have been passed in the interest of a single individual. Some contractor, or some officer would want to get a supplemental Act passed, and he would slide up to the Legislature and get it through. Under this section, a body of citizens selected for that purpose, will go to work decently, frame a charter, and submit it to the people. If they fail, try it again, and the amendments be made in the same and no other way. The argument seems to be overwhelming in favor of adopting a regular systematic course, the same as in forming a Constitution for the State. The argument that it is creating an *imperium in imperio*, that it is creating a free city, that it is running away from the State, has no force whatever. Of course this charter must be subservient to the Constitution and laws of the State; hence there can be no objection whatever to giving the City of San Francisco the authority to frame a charter for her own government.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I merely want to say a few words in regard to the report of the committee. I do not know whether it was intended to adopt the report or not. I do not know whether one quarter, less or more, voted in favor of this section. I know that at all times it was we had barely a quorum, and there could not much more than a quarter vote for anything. I believe once we acted without a quorum. It was very difficult to get the committee together. The committee consisted of fifteen, and we tried to have eight there. One quarter would be four of the eight. Five would be a majority of the eight. But this was understood. I stated to the committee that this was a matter relating exclusively to San Francisco, and I did not consider that any member of the committee was so well able to judge of it as the members from San Francisco; and that I would not stand by it myself unless the delegation from San Francisco here favored it. I stated that it was a matter relating to San Francisco, and that I would not undertake to get up here and advocate it if I did not think I was sustained by the majority of the delegates from San Francisco on this floor. And I would not now. If the delegates from San Francisco do not favor it, I will not favor it. I am not factious about this thing at all. It is copied almost exactly from the Missouri Constitution, and then they have there a special provision in regard to the City of St. Louis. We will call it the Missouri compromise. [Laughter.] Now, in the Missouri Constitution, I will say to the gentleman from Alameda, they have a provision that any city having more than one hundred thousand inhabitants may frame a charter. That is applicable to the whole State. Then they have a special provision in regard to the City of St. Louis, about twice as long as the other. Here is the provision: "The City of St. Louis may extend its limits," etc., and then provides for the government of the City of St. Louis, and a special charter in that particular case.

I merely refer to it as a precedent to show that something of a similar character has been done elsewhere. Then they have a general provision in regard to other cities. Now, to go back to this matter. Section six, as has been heretofore stated, provides for the incorporation of cities, and then it contains this clause:

"Cities and towns may become incorporated under general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith."

There it is submitted to the people. I think every city should adopt its own charter. I think that should be the rule; that when they adopt a charter and organize under the general law, that they should become an incorporated city. But the committee struck out a clause that was in there: "When they shall adopt a charter." Now, the Legislature may authorize them to adopt a charter; but when it comes to a city of over one hundred thousand inhabitants, why, it is reasonable enough that they should have a mode of a different kind, by electing a Board of gentlemen to frame a charter, as we do here, because it is an immense job. And it must be a charter engrafted upon the existing institutions. That Consolidation Act has got to be the foundation of a future charter, because all our laws are arranged with reference to that; and in this particular case it would require, in my opinion, a convention to adjust that mass of matter and put it into paragraphs that would form a charter. But no general law could be broad enough to frame a charter under that Consolidation Act. That is the reason why I recommended this provision specially for that city. It must be with reference to that Act. All the officers are arranged under it. It cannot be done by general law: and it is for the safety and for the interest of the people that this provision has been proposed to be engrafted in the Constitution.

Now, what is the argument against it? What does the gentleman from Alameda say? "Why should they have a different rule?" Because we have a different rule now. It is the only city and county government that is consolidated. It differs in that respect from every other city in the State of California. I might say, what objection is there if the people there want it? We cannot do anything here but what must be ratified. If they vote for a Convention and the Convention frames a charter, and the people adopt that charter, by a majority vote or otherwise, who should get up here and say that they shall not have it? Is that democratic or republican government? Is that in accordance with the spirit of the age? The argument is because it is San Francisco. But I say if the delegates from San Francisco are opposed to it I am opposed to it too. I would not undertake to urge it upon this body unless a majority from that city sustained me; and the committee made the report with that understanding.

MR. HITCHCOCK. I move that the committee rise.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I wish to call the attention of gentlemen to the fact that the people of San Francisco have been complaining year after year about our present system of government. We are governed by twelve men—a Board of Supervisors and a Mayor. Seven Supervisors can vote any measure through. If the Mayor vetoes that measure it then goes back, and eight men—only one more—can pass it and force us to bear the burden of taxation. We desire a change. A change has been called for from time to time by the people. Under our street system alone, why people have been assessed entirely out of their property, from the very fact that a few men can manage the whole affair. They have actually put street work through there and assessed more costs than the property sold for in the market, and have taken the people's property clear away from them. What reason have these gentlemen to give why we should not manage our own affairs, so long as we do so consistently with the Constitution? We pay, out of a total of five hundred and eighty-three thousand dollars in round numbers, we pay two hundred and fifty-four thousand dollars. We comprise one third of the population of the State of California. What reason can be given why we should not arrange our matters to suit ourselves? Do you suppose that we are not intelligent enough—that we do not know our own wants? Do you suppose we cannot send a delegation here to Sacramento that know their business? I hope that not a single delegate will be against this proposition.

MR. HUESTIS. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on City, County, and Township Organization, have made progress, and ask leave to sit again.

The Convention then took a recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

RESIGNATION OF THE SECRETARY.

THE PRESIDENT pro tem. Gentlemen: I have here the resignation of Secretary Johnson, which the Secretary (Smith) will read:

THE SECRETARY read:

SACRAMENTO, CALIFORNIA, January 17, 1879.

COLONEL J. P. HOGE, President Constitutional Convention:

SIR: It becomes my duty, in obedience to obligations and duties taken upon myself prior to the meeting of this Convention, and which I cannot now shirk any longer, herewith most respectfully to tender my resignation as Secretary of this Constitutional Convention. I regret exceedingly the necessity which compels me to take this step, and have remained at my post a week after the close of the one hundred days, during which we all anticipated that the work of the Convention would be completed. In this connection it may not be out of place for me to express my surprise at the movement made yesterday in my absence to forestall my resignation, and place a stigma upon me at the same time. I had arranged with my assistants to attend to the duties of my desk until my return, when I proposed to take proper and dignified leave of the Convention to whom I am indebted for honor conferred upon me. Thanking the Convention with a full heart for all that I am indebted to them, both in the honorable position conferred upon me, and the warm courtesy at all times extended to me, I am very truly yours,

J. A. JOHNSON.

MR. HUESTIS. Mr. President: I move that the order in connection with this matter, by which it was set as the special order, be now rescinded.

Carried.

MR. HUESTIS. Mr. President: I move that the resignation of Mr. Johnson, as Secretary of this Convention be accepted, and that the Convention now proceed to fill the vacancy.

MR. SWING. Mr. President: By leave of the Convention I will withdraw the resolution I presented yesterday.

THE PRESIDENT pro tem. If there is no objection the gentleman will have leave.

THE PRESIDENT pro tem. The question is on the motion to accept the resignation and proceed to fill the vacancy.

Carried.

NOMINATIONS FOR SECRETARY.

MR. EDGERTON. Mr. President: There was a resolution offered yesterday and withdrawn to-day. I now take very great pleasure in submitting to the Convention the name of Ed. F. Smith, of Sacramento, a gentleman in every way qualified to fill the position of Secretary of this Convention, as gentlemen know by experience. Mr. Smith was elected Assistant Secretary at the commencement of the session, and has served faithfully ever since. He has made a faithful officer, has always been prompt in the performance of his duty, and his election will gratify a very large circle of friends. I hope the young man's claims will meet with a favorable consideration.

MR. BIGGS. Mr. President: I take great pleasure in placing in nomination a gentleman whose qualifications we all know—George A. Thornton. He has occupied the Clerk's desk as Assistant Clerk, and I know he is faithful and well qualified. I take great pleasure in asking the delegates to make George A. Thornton the permanent Secretary of this Convention.

THE PRESIDENT pro tem. The Secretary will call the roll.

The roll was called, and resulted as follows:

FOR E. F. SMITH.

Barbour,	Harrison,	Shurtleff,
Barry,	Harvey,	Smith, of Santa Clara,
Belcher,	Herold,	Smith, of 4th District,
Bell,	Howard, of Los Angeles,	Smith, of San Francisco,
Blackmer,	Joyce,	Soule,
Brown,	Kenny,	Stedman,
Campbell,	Keyes,	Stevenson,
Caples,	Kleine,	Sweasey,
Condon,	Larue,	Swenson,
Crouch,	Lindow,	Thompson,
Davis,	Mansfield,	Tuttle,
Dowling,	Martin, of Santa Cruz,	Van Dyke,
Doyle,	McCallum,	Webster,
Dudley, of Solano,	Mills,	Wellin,
Dunlap,	Moffat,	West,
Edgerton,	Nason,	Wickes,
Farrell,	Reed,	Wilson, of Tehama,
Glascock,	Reynolds,	Winans,
Gorman,	Rhodes,	Wyatt—58.
Hale,		

FOR G. A. THORNTON.

Andrews,	Huestis,	Prouty,
Barton,	Hunter,	Ringgold,
Biggs,	Johnson,	Shoemaker,
Boggs,	Jones,	Stuart,
Boucher,	Kelley,	Swing,
Burt,	Laine,	Tinnin,
Charles,	Larkin,	Tully,
Evey,	Martin, of Alameda,	Turner,
Fawcett,	McComas,	Van Voorhies,
Hager,	McNutt,	Walker, of Tuolumne,
Herrington,	Moreland,	Waters,
Hitchcock,	Murphy,	Weller,
Howard, of Mariposa,	Ohleyer,	Mr. President—39.

Whole number of votes	99
Necessary to a choice	50
E. F. Smith received	58
G. A. Thornton received	39

THE PRESIDENT pro tem. Mr. Smith is declared to be the Secretary of this Convention.

LOCAL SELF-GOVERNMENT.

MR. HALE. I move that the Convention now resolve itself into Committee of the Whole, the President pro tem. in the chair, to further consider the report of the Committee on City, County, and Township Organization.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the motion to strike out section nine.

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman: I apprehend, sir, that we shall not be called upon to argue a more important matter than that which we now are about to act upon. I am earnestly in hopes that this motion to strike out will prevail. I confess I was a little sorry—I might say, a good deal sorry—when the committee refused to strike out of the second section that expression, "houses of legislation." I had just been reading section nine, and I thought I could see the reasons—the motive—for retaining that expression. This ninth section is very strong, and makes it easy for the City of San Francisco to set up an independent government, entirely independent of the authority of this State. I am aware, sir—my attention has just been called to the fact by the Chairman of the committee—that the section contained these words: "Any city having a population of over one hundred thousand inhabitants may frame a charter for its own government, consistent with, and subject to, the Constitution and laws of this State." I suppose the idea is that this accomplishes the negative of all that I assert. If there be anything else in the section that is in the nature of a check, I would like to hear what it is. But notwithstanding these words—notwithstanding it says they shall be subject to the Constitution and laws of this State, there are no means provided, no agency established, by which it can be done. What is it we authorize? Why, that the City of San Francisco may hold a Constitutional Convention—call it in her own way, hold it when she pleases, enact such a Constitution as she pleases. How is it to become the organic law? Why, sir, by submitting it to the electors of the City of San Francisco. Is there any power in the State Government, supposing that they should set up a government thus inconsistent with the State Government, and which contravenes the policy of our laws, by which the State could prevent it? No, sir, there is no authority provided. It is to be submitted to the electors alone, and if by them ratified, it becomes the organic law of the city of San Francisco. There is no power in the Legislature; there is no power in the judiciary, nor in any of the departments of the State to interfere if we establish that system; and if they themselves become dissatisfied and wish to amend it, they have only to repeat the process, and call, independently of the authority of the State, another Convention, and adopt these amendments and put them in force. They are required to keep one of these new Constitutions on file in the office of the Secretary of State, and then all the Courts, and all the departments of Government are required to take notice and govern themselves accordingly.

This is the boldest kind of an attempt at secession. If this had been attempted down at the lower end of the State it would not have looked so bad. But here in San Francisco, where commerce and population congregate, where we cannot get out and in except through the Golden Gate, seems to me to savor so strongly of imperialism that I cannot see how any gentleman on this floor can reconcile himself to advocate it. Why, how, for what reason, can it be argued that the City of San Francisco shall not submit themselves to the laws of the State of which they are a part, and whose government and duties they should share? Why not provide a law by which the other cities and counties of the State could make their own laws, have their own Legislatures, adopt their own system of government, and dispute the will and authority of the rest of the State? Why not? What reason can be given? Gentlemen tell us that the conditions of San Francisco are peculiar. They are no more peculiar than those of any other large city; and, sir, allow me to say that these gentlemen have read history different from what I have. It will be found—it has been found—that these cities will have to invoke the conservative influences, the conservative wisdom of the country of which they are a part. Why, sir, what need is there of this system? The City of San Francisco will have one third of all the members of the Legislature. She has always had, and always will have, a large share in the control of the State government. Why should she not submit herself to the laws of the State? I do trust that this motion to strike out will prevail.

MR. VAN DYKE. Mr. Chairman: I propose an amendment to the section.

THE SECRETARY read:

"Amend by striking out all after the words 'section nine' and inserting the following: 'The Legislature may, by general law, provide that any city having a population of more than one hundred thousand inhabitants may frame and adopt a charter for its own government, subject to and not inconsistent with the Constitution and laws of the State.'"

MR. HOWARD, of Los Angeles. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Insert, after the word 'inhabitants' in the second line, 'and all other towns organized under a charter.'"

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: As the section now stands, I agree entirely with the gentleman from Placer that it is dangerous, and I don't think we should put in this Constitution a provision which will

allow any part of the State Government to run away or get outside of, or beyond the control and authority of the State Government. I am not in favor of allowing any part of this State to set up an independent empire; and though I agree that every locality should have the right to govern its own local affairs, still I think this power should be subordinate to and subject to the supreme power of the State. Now, sir, I do not object at all to allowing citizens of San Francisco, or Oakland, or Sacramento, to frame a charter for their own cities, provided their action is in pursuance of law, and subject to the control of the legislative power of this State; but I do object most strenuously to putting any thing into this Constitution that will allow any part of this State to frame a charter that shall not be submitted to the Legislature, that the Legislature cannot have power over; in other words, independent entirely of the State Government.

MR. JOYCE. Does he want to have the charter of San Francisco adopted that way, so the railroad company can rob us as they have for years past, taking away Mission Basin and water front?

MR. VAN DYKE. I don't understand what that has to do with this question. I do not object to the City of San Francisco framing its own charter, so long as it is subject to the supreme power of the State, and not superior to it. Now, sir, if that section nine is adopted, there is no power in this State to remedy any evil that may be enacted there in the charter by the city. I say that is dangerous; I am opposed to it; but the same object can be acquired under this amendment. This provides that a city of that size may frame and adopt its charter in pursuance of law, and still the whole thing emanates from the supreme power of the State, and is subject to that power, as it always ought to be. Why, sir, pass that section, and the City of San Francisco, or any other city of one hundred thousand inhabitants, will occupy the same position towards the State Government that the State does towards the Federal Government. It will be supreme in everything except the general matters laid down in the Constitution. But here is an attempt to set up an independent government, and, sir, I hope this amendment may be adopted, or the section stricken out.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I trust, sir, that the section will be retained. And it is a remarkable fact that all the opposition comes from the advocates of centralism, the whole of it. They are opposed to local government, that is the whole thing. If gentlemen will read Bancroft's History of the United States they will find their history sadly out of joint in these matters. What is the fact? It is notorious that every job is gotten up by a clique who have an axe to grind at home, and they send it to the Legislature and get it adopted, and the Legislature saddles it upon the people in the cities and towns. That is the history in this State. Now, sir, I speak advisedly in this matter. In the City of Los Angeles about half a dozen fellows, with an axe to grind, got up a charter and sent it up here for ratification, unbeknown to the people of the city, and they got it adopted too. It proceeded to organize a city government under the pretense of organizing a Board of Public Works. And the business interests of the city would have been destroyed but for the fact that the District Court and the Supreme Court pronounced the Act unconstitutional. The City of Los Angeles took this matter into her own hands. They called a public meeting, they framed a charter, they discussed it, it was published, and adopted, and the Legislature was asked to ratify it, which they did. And so long as this thing is managed by the Legislature, so long will these jobs and frauds prevail. Now, sir, this system of town government in the thirty States, and particularly in New England, has met the commendation of many eminent men, and particularly of De Tocqueville. I know it is a good system of government. I know it secures local rights, local economy, local good government. I have heard, at town meetings in New England, discussions on public affairs relating to township government, that would have done honor either to the Legislature or the Congress of the United States. And it is the proper place for this power to rest, with those who know the local interests, and who are thus able to provide for their own control. This system will prevent corruption. I favor it for that reason, and because it suppresses jobs, and because it secures honest, fair, intelligent, and efficient local government.

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I really do not see what objection there can be to retaining this section. Nor do I see any occasion for saying that this report smacks of secession. This section is uniform in its application, and under a certain status it is applicable to any city that has, or shall have, one hundred thousand inhabitants. Therefore, it is not objectionable on the ground of want of uniformity. Now, sir, if there was any antagonism between the delegates from San Francisco, it might be entitled to respectful consideration. But as I understand it, they are a unit upon this question, and I see no reason why the section should not be adopted. Why, this very first provision here says that the charter shall be subject to the Constitution and laws of the State; not only subject to the Constitution, but subject to the laws which may be passed hereafter. What more can we require? Is it not in entire harmony with a section which we have adopted in the legislative department. There is no secession about it. In Missouri it has worked well. I am not a Missourian myself, but I must say that when the City of San Francisco joins hands with the Constitution of Missouri, and finds a champion in the able and distinguished Chairman of this committee, it is irresistible.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: I think this is a somewhat dangerous provision. I do not believe any gentleman could define the City of San Francisco. You have a City and County, but no City, of San Francisco, and there is no provision made by which this can be adjusted; so it does seem to me that the citizens of San Francisco had better examine this matter. Suppose now an election were to be called to-morrow, how would you vote? What will become of the County of San Francisco? What will become of the other territory? It seems to me it would result in serious confusion, and I think you had better examine the matter.

SPEECH OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: The Chairman of the committee, in his opening remarks, frankly conceded that this section was unnecessary; that without this section it would be within the power of the Legislature, by general laws, to authorize every city to frame charters in such manner as the Legislature should deem best. I say, therefore, it is entirely unnecessary in the Constitution. It is entirely unnecessary here that we should part with our entire control and power over the city. Nor does it follow, because such charter is to be submitted to the people of that city and county, that the Constitution which is adopted will be free from objection. It is provided that the charter may be amended not oftener than once in two years, by submitting it to the legislative power of the city. It is practically beyond amendment, because amendments must be submitted by and through the legislative authority, which means nothing more nor less than the Boards of Supervisors. And I will say, that when gentlemen here profess the faith which they do profess in local administration of government, they must have had a different experience from what I have read of. I have not heard of a Board of Supervisors, or Council, or local government of any large city in this country that has not been constantly accused of abuses of the most flagrant character. Why, every gentleman who advocates this measure, rises to do so by telling us of the abuses practiced by their Boards of Supervisors; and yet they now seek local government which shall cast them off from the State, and place them entirely within the control of the very class of which they now complain. Why, in the twenty-third section there is a long amendment in regard to allowing water pipes to be laid down in the city of San Francisco, because they say the local authorities cannot be trusted with the matter, because they are under the control of Spring Valley. This amendment is wrong in principle. It makes a discrimination upon the wrong side. If there be any discrimination, it should be found upon the side of the smaller, and not the larger, cities. It may be that the local township governments of New England have operated as well as the gentleman says, but it is not true that in the great cities of the Union the system has operated well. If you are going to make a discrimination, make it against the great cities, and in favor of the smaller communities.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: I am surprised at this opposition, the more so because it is based on an entire misapprehension of the purport of the section. We are told the design of the section is to provide a government, independent and entirely beyond legislative control, for the City of San Francisco, and for reporting and advocating it I have been charged with being a secessionist. I am not, and never have been a secessionist. Idle words, and absurd declaration, based upon an assumed hypothesis, entirely unsupported by facts, cannot be answered by argument, but may be denied. This section does not, and is not intended to establish an independent government beyond legislative control. It is intended to and does give the people the privilege of framing and adopting a charter for themselves, subject to general laws, and to the approval of the Legislature. This is no new thing; the same power has often been conceded, in this State and elsewhere, by legislation. Years ago, by law, the same privilege was granted to the City of San Francisco. The section provides that cities containing more than one hundred thousand inhabitants may frame a charter for their own government consistent with and subject to the laws of this State, which must be ratified by popular vote, and then submitted to the Legislature for its approval or rejection. In other words, it provides for the election of fifteen freeholders, who may frame a charter; this, if ratified by the popular vote, must be submitted to the Legislature for approval. If approved, it becomes the organic law of such city, and supersedes all special laws inconsistent with such charter; but it must be consistent with and subject to all general laws. A previous section (section six) directs that the Legislature, by general law, shall provide for the incorporation, organization, and classification of cities, and then declares that all cities heretofore or hereafter organized, and all charters thereof, framed or adopted by authority of this Constitution, shall be subject to and controlled by general laws. San Francisco, with its one hundred thousand inhabitants, and any charter framed for that city by a Board of Freeholders, as provided in this proposed section now under consideration, must be subject to and controlled by these general laws. Now, sir, if to provide for local self-government, subject and subordinate to general laws, subject also to the approval of the popular vote and the Legislature, be secession, my friends, so reckless in their assertions in opposing the provision, can make the most of it.

These charters so framed, like all others, must be and are declared to be, subject to and subordinate to the general law. The Legislature, by general laws, may limit, alter, change, annul, or extend any or all the provisions of such charters framed by the people of a city, as fully as may be done in cities incorporated under general laws. The provisions of section six apply to all charters and to all cities generally, and to none specially; there are no exceptions in favor of cities of over one hundred thousand inhabitants, none in favor of San Francisco. All general laws will be as operative, controlling, and imperious in the City of San Francisco, with a charter framed by the people, as in the smaller cities organized under general laws. Now my friend from Sacramento, Mr. Freeman, says, why limit this provision to cities of over one hundred thousand inhabitants? Why not make it applicable to all? I might ask, why did not he in the Committee on Cities and Counties, of which he was a member, move to make it applicable to all cities? If it be the wish of the convention to extend the provision to all cities, I will sup-

port an amendment to effect this purpose. If my friend from Placer, Mr. Hale, wishes his Auburn, loveliest city of the foothills, to be included, let him propose to amend rather than oppose because it is not included; and if my friend from the groves of Alameda, Mr. McCallum, wishes his rural City of the Oaks included, I will aid him in that. There is no desire to be exclusive; on the contrary, if there should be any good in it, I am willing it should be extended to cities of ten or twenty thousand inhabitants. As originally drawn and presented to the convention by myself, the proposition was general, and made applicable to all cities; but the Committee on City and County Government, to which it was referred, struck out the general provisions, and limited it to cities of over one hundred thousand inhabitants. If I am not mistaken, some of the members of the committee now objecting to the section because it does not extend to all cities, in the committee favored the special limitation. I am ready to support and vote for an amendment to extend to all cities this right of local self government, either subject to or not subject to legislative control. If we cannot trust the people themselves, how can we trust a Legislature elected by the people? Legislatures have disappointed the people, will the people prove unfaithful to themselves?

MR. HERRINGTON. Why not put in the first part of section six, authorizing the Legislature to make this provision: "The Legislature shall, by general law, provide for the incorporation of cities and towns," etc. Will you put that in section nine?

MR. HAGER. And then what?

MR. HERRINGTON. Leave it there.

MR. HAGER. Why, sir, this section we are now considering is subordinate to section six. The City of San Francisco, if it be hereafter incorporated, must be incorporated by authority of general laws under section six. This provision does not of itself frame a charter or create a municipal corporation. It is not intended to do so, it merely provides a mode in which certain cities may, consistent with and subject to the general law, frame a charter for their government. The general law may limit their powers and restrain their action in any respect as fully as in the case of other cities, because it is declared the charters so framed by the fifteen freeholders must be subject to the general law. By the section, as reported by the committee, it was intended to make this provision applicable only to San Francisco, and why members from other cities or counties should object to the people of San Francisco framing a charter for themselves, subject to general law and legislative approval, and thereafter subordinate to general law, I am at a loss to understand. Logic, argument, reason, which may address themselves to our judgment, I might attempt to answer; but idle talk about the desire of San Francisco to secede and set up for itself an independent government beyond legislative control, and all such rhetorical nonsense, is unanswerable.

The theory of these provisions in regard to counties, cities, and towns, is to deprive the Legislature of the power to legislate by special laws. This was the principal purpose in view: that the Legislature shall not in the future, as in the past, legislate by special laws. Our volumes of statutes are mostly filled with enactments specially applicable to the various counties and cities of the State, so that each city and county has its special and different code of laws. These provisions do not take from the Legislature the power to legislate by general law. Its powers in this respect are ample, and apply to San Francisco equally with all the other cities of the State. There is no discrimination or special privileges. The power to legislate by special law is taken away, as it ought to be. I hope we have seen the end of it. Every one knows the pressure upon Legislatures for special laws and special privileges. It is the policy of modern Constitutions to deprive the Legislature of these mischievous powers, and I hope California will follow in this line of constitutional reform——

MR. HALE. Mr. Chairman——

MR. BROWN. I rise to a point of order.

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

MR. BROWN. The gentleman from Placer has spoken once.

MR. HOWARD, of Los Angeles. Mr. Chairman: In looking over section nine I see one provision there that could not be made applicable to other cities, and therefore I withdraw the amendment.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I desire to say a word in reply to the gentleman from Los Angeles——

MR. WHITE. I rise to a point of order—the gentleman from Placer has spoken once.

THE CHAIRMAN. The gentleman has spoken upon the motion to strike out. He has not spoken upon the amendment pending. The gentleman from Placer will proceed.

MR. HALE. Mr. Chairman: One word in reply to the gentleman from Los Angeles. He commenced by calling attention to the fact that this opposition comes from the advocates of centralism. I do not know exactly what he meant, but if he means that the opponents of this measure are the friends of centralization in any offensive sense, then I hurl it back in his teeth.

MR. HOWARD. The gentleman might as well keep his shirt on.

MR. HALE. I read from Bancroft's History also, to show that in Massachusetts they did not set up town meetings as against the State government at all. Now, sir, I say that this is an attempt to set up a government independent of the State of California. The gentleman from Sonoma tells us it is right because it is uniform. He says the committee sanctioned it. I say that hardly one quarter of that committee assented to it. When I spoke of secession I was not unaware of the fact that the section says that the charter so framed shall be consistent with and subject to the Constitution and laws of this State. But if we adopt this provision it is a part of the Constitution, and is absolute. By reading this section it will be seen that after this charter is ratified the Courts are bound to recognize it, because the Constitution so provides. It is subject to no law, subject to no department of the State, subject to no authority. Therefore it becomes the supreme law. I trust the committee will not indulge in any such dangerous experiments as this.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: It seems to me, sir, that the opponents of this section are fighting the air. They have been denouncing it as productive of a variety of mischiefs, without showing what they are. As a practical illustration, the City of St. Louis has a provision exactly like this, and identical with this, and yet we have never heard anything about St. Louis being above the control of the State, but on the contrary, there is perfect harmony between the city and the State. There is a practical illustration right before your eyes, and before the eyes of the nation, of the fallacy of the idea that we are militating against the interests of the State, in the adoption of a system for the government of one of our chief cities. And, sir, the plan proposed by this section seems entirely consistent with the theory upon which the Convention has been acting—that local legislation ought to be left to the localities which it is intended to affect. That is the very spirit that has been underlying the action of this body heretofore, and from the beginning; and we have provided that the Legislature shall sit but for sixty days, and that they shall pass no special laws. What does that mean, but that the localities are to legislate for themselves in local matters. The idea is also that it will prevent corruption in the Legislature. This system, I believe, meets the unanimous approval of the delegation from San Francisco, for under such a system of government we can hope to escape from the evils which are now and have been in the past inflicted upon us. I think the rest of the State ought to be willing to concede this to us, so long as there is nothing that can conflict with the rights and interests of the State, or any part of the State.

SPEKCH OF MR. BROWN.

MR. BROWN. Mr. Chairman: I had not intended, sir, to say anything upon this subject whatever, but I will improve the opportunity to express my views briefly upon the matter. It appears to me that the object of the people in having the Convention called—or one of the leading objects—was to have as much of the local legislation taken away from the Legislature as possible, and given to the different counties and cities. The intention was to give the management of local affairs more to the people of the different localities, who are fully conversant with their own wants and wishes. The matter resolves itself down to this: that the people in particular portions of this State, and in particular cities, understand their own affairs, and their own business, with which they are intimately connected, better than any one else can understand them. It is this great principle upon which this measure and this class of measures are framed. Now, sir, it appears to me this is a correct principle. It has been urged that it is something new, and that it would be almost an impossibility to carry out the grand principles that are intended, because there is a county and a city consolidated. The modes are all set apart in this section, so that there can be no trouble. It is urged, also, that it is setting up an independent government in opposition to the government of the State—a separate affair—and consequently borders unto secession. The attempt to set up this kind of argument is simply ridiculous. They claim that this borders unto secession, when the very first part of it reads clearly that all this is subject to and in accordance with the Constitution and laws. We are simply imitating the organic law of Missouri, where their great city is organized under just such a constitutional provision as this. It is evident that these attacks are mere flourishes of words, which amount to nothing at all. There is no principle in it. Now, sir, I am in favor of this section, and it is not necessary to waste time trying to answer these silly objections. That city can govern itself better than anybody else can govern it, as regards purely local affairs.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: There seems to be some strange misapprehension here. The gentlemen argue this question as though the people of the towns are no part of the people of the State. Now, sir, if this fact has not attracted the attention of the sycophants of centralism, it has at least attracted the attention of M. de Tocqueville, when he says that in the township, as well as every where else, the people are the only source of power, and in no part of the Government does a body of citizens exercise a more mighty influence. And the American people demand obedience to the utmost limits possible. That is the language of an intelligent foreigner. If this idea has not occurred to those who bow in obedience to centralism, it has occurred to every philosophical writer upon the government of this country. It is a principle which lies at the very foundation of American government. I know there are persons here, even on this floor, who can see no merit in local government. They are the ones who deny upon this floor the decisions of the Supreme Court, that the State is the sovereign power. Sir, local government is no new idea. It existed way back in the middle ages, as it now exists in modern Europe; and the principle is recognized by every writer of any fame, that local government is a beneficent institution, and one that should be cherished and maintained.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: Section twenty-five of the Missouri Constitution has been referred to here. Now, section sixteen of that Constitution is a general section like unto this section now under consideration. In fact, it is a copy of it. After enacting these sections, for fear that they had placed St. Louis without the jurisdiction and control of the Legislature, of the General Assembly, it became necessary, and they did reorganize the section. Now, sir, there is no need to argue this question. The charter proposed will be under the control of the Legislature, and there is no possible foundation for the wild fears that have been expressed here.

THE PREVIOUS QUESTION.

MR. HUESTIS. Mr. Chairman: I call for the previous question. That is the reply I make.

Seconded by Messrs. West, Evey, Wyatt, and Shoemaker.

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

Carried.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Alameda, Mr. Van Dyke.

Lost—ayes 22.

THE CHAIRMAN. The question is upon the motion to strike out section nine.

Lost.

MR. JONES. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"And whenever such city shall have adopted such organization, superseding all laws inconsistent therewith, such city shall thereafter be entitled to receive from this State all the privileges and consideration accorded to the most favored nations, and the Legislature of this State shall provide a duly accredited minister, as a representative of the State in said city."

[Laughter.]

MR. WHITE. I object.

THE CHAIRMAN. The amendment is out of order.

MR. HALE. Mr. Chairman: I wish to offer an amendment.

THE SECRETARY read:

"Amend section nine by inserting between the words 'same' and 'it,' in line fifteen, the following: 'And if the Legislature of this State, at its next session thereafter to be holden, by a concurrent majority of both houses thereof, shall also pass and ratify such charter, and the same shall be either approved by the Governor, or, if vetoed by him, shall be passed over such veto in the manner provided in this Constitution for the enactment of bills not approved by the Governor into laws, notwithstanding the objection of the Governor thereto.'"

MR. WHITE. I rise to a point of order. It is not possible to understand that amendment.

MR. HALE. Mr. Chairman: I offer this amendment in good faith, and I hope this committee will adopt it. The provisions of this amendment are: that if the Legislature shall ratify the charter which the city may adopt (which is the only point of difference), it shall then become the law of that city. I trust that we shall not so far depart from the general plan of this Constitution as to enable a municipality, or any department of this State, to establish a system of laws without the consent of the law-making power of this State. This amendment is offered for the purpose of subjecting these charters to the discretion and approval of the Legislature, like all other bills; and if the people of San Francisco shall have devised a system of municipal government that shall meet the approval of the law-making power of this State there is no reason why it should not be enacted into law.

MR. WHITE. I call for the previous question.

THE CHAIRMAN. The question is on the adoption of the amendment.

Lost.

MR. McCALLUM. I move an amendment.

THE SECRETARY read:

"In lines one and two strike out 'one hundred thousand' and insert 'forty thousand.'"

MR. McCALLUM. Mr. Chairman: This amendment was agreed to in the committee. As I have said, I am opposed to this idea, but if we are to have a provision of that kind, I don't know of any reason why it should not apply to cities of forty thousand if they want it. They may want such a provision as that.

MR. HAGER. We discussed that matter in the committee. I was favorable then to putting it in. But there is but one city and county in the State, and it occurs to me that it would be difficult to do it.

MR. McCALLUM. I call your attention to the language of section nine, which says, any city, or consolidated city and county. I don't know whether there can be such consolidation or not.

MR. HAGER. I have no objections. We want no exclusiveness here. I am willing to give it to every city in the State. I am willing to strike out the words "having a population of more than one hundred thousand."

MR. McCALLUM. That is my preference. I will modify my amendment so as to strike out from the word "city," to the word "may," in lines one and two. Then it will read: "any city may frame a charter," etc.

THE CHAIRMAN. The question is on the amendment.

The vote was taken, but no quorum voting. The question was put a second time, and still no quorum voted.

MR. HAGER. Allow me to say that this is not compulsory. It leaves it open to the city to accept it or not. I can see no objection to the amendment.

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

Carried—ayes, 48; noes, 34.

THE CHAIRMAN. The Secretary will read section thirteen:

THE SECRETARY read:

SEC. 13. Taxes for county, city, town, school, and other local purposes, must be levied on all subjects and objects of taxation. In addition to that which may be levied for the payment of the principal and interest of existing indebtedness, the annual rate on property shall not exceed the following: For county purposes, in counties having two million dollars or less, shall not exceed —— cents on the one hundred dollars' valuation; in counties having six million dollars, and under ten million dollars, such rate shall not exceed —— cents on the one hundred dollars' valuation; and in counties having ten million dollars or more, such rate shall not exceed —— cents on the one hundred dollars' valuation. For city and town purposes, such annual rate on property in incorporated cities and towns shall not exceed —— cents on the one hundred dollars' valuation; and in any city and county with consolidated government, such rate shall not exceed —— cents on the one hundred dollars' valuation.

MR. FREEMAN. Mr. Chairman: I move to amend by striking out all after the word "taxation," in line two.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I propose this amendment with same degree of trepidation, because I find this section is copied from the Missouri Constitution. But notwithstanding that august instrument, it seems to me that it is not practicable for us here to impose a limit upon local taxation. I doubt whether any gentleman will undertake the task of laying down a rule by which he could agree that his own expenses, or the expenses of his family, should never exceed a certain sum. And yet, we gravely propose here to limit the expenditures for the city, and for the county, and the State. If a provision of this kind is adopted it will be found that occasionally circumstances will arise, extraordinary emergencies, in which additional expenses must be made and provided for. We have a provision somewhat similar to that in our city charter—a provision under which the city is forbidden to contract any liabilities unless there is money in the treasury to pay the same. But it was abandoned about a year ago, when the levees were broken below the city; when the homes of twenty thousand people were in danger; and when it was believed that an expenditure of one thousand dollars would avert the calamity, it was thought to be no crime to violate the charter, and incur this liability. It so happened at that moment that the Legislature was here in session, and our representatives immediately came here and procured the necessary legislation. But it cannot be expected that a Constitutional Convention can be always in session. It certainly cannot be expected that we will bind ourselves up with an iron-clad rule, so that when the emergency arises we cannot appeal to any authority to be released. And as there was a large majority of this committee a few moments ago sustained the section under consideration, because they believed in local self-government, I say upon the same theory they must sustain my motion to strike out this matter, leaving these questions to the local authorities.

MR. BIGGS. I move to strike out all after the word "taxation," in line two, and insert the following:

"Provided, that no city, city and county, town, or county, shall ever incur a debt which, together with existing indebtedness, shall exceed two per cent. of the assessed value of the property therein. Such value shall be ascertained from the assessment roll for State and county purposes made immediately previous to incurring such indebtedness; *provided, however*, that a city, city and county, town or county, may borrow money under and in accordance with the following conditions and limitations, in addition to any other conditions and limitations contained in the Constitution, namely: the debt must be for some single work or object only, and must be authorized by a resolution passed by a vote of three fourths of all the members elected to the Board of Supervisors, Common Council, or local Legislature. Such resolution shall also distinctly specify the single work or object for which the debt is to be created, and the amount of the debt authorized, and shall contain provisions for a sinking fund to meet the same at maturity, and requiring at least ten per cent. of the principal to be annually raised by taxation and paid into the sinking fund. Such resolution shall not take effect until it shall be ratified at an election held in said city, city and county, county, or town, at which no other matter is voted upon, and which shall be held within thirty days after the passage of said order or resolution. The Legislature shall make such laws as may be necessary to provide for holding such election, and ascertaining the result thereof."

That is section thirty-four, that was drafted by the legislative committee.

MR. McCALLUM. Mr. Chairman: I wish to call the attention of the gentleman to section twenty, on that very subject.

MR. BIGGS. I compared it with that. If the gentleman thinks I had better withdraw it, I will withdraw it. I will withdraw it, by permission, until we consult together. [Consults.] After consultation with Judge Terry, I am willing to withdraw it in order to save discussion.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: By this section thirteen, as reported, it was the intention of the committee to place a maximum limit on the taxing power of cities and counties. As my friend from Sacramento, Mr. Freeman, late of Illinois, with much emphasis, has told you it is substantially taken from the new Constitution of Missouri, his intended sarcasm is misapplied. I am not of Missouri; have never lived there, nor in any contiguous State or Territory; not even in the State of Illinois, whence my friend is said to come. Being Chairman of the Committee on City and County Government, I consulted the different Constitutions, especially the new Constitutions of Pennsylvania and Missouri, which I have in convenient pamphlet form, and, like other members have done in like cases, when I found any provisions which I deemed worthy of consideration, I presented them to the Convention. As I have stated, this provision is intended to fix a maximum limitation upon the taxing power; and if the Convention will give me its attention for a short time, I will explain its purpose. Municipal indebtedness, city and county indebtedness, has become a subject for serious consideration in all the States. Thoughtful men, political economists, and Legislatures are giving the matter prominent attention. Let me briefly refer to some statistics: In the American Almanac of eighteen hundred and seventy-eight, I find it recorded that the municipal indebtedness in the United States, in the year eighteen hundred and sixty-six, amounted to two hundred and twenty-one million three hundred thousand dollars. That is, in the year eighteen hundred and sixty-six, it

was over two hundred and twenty-one million dollars. In the year eighteen hundred and seventy-six this indebtedness amounted to over six hundred and forty-four million dollars—more than doubling itself in ten years. This average increase in indebtedness during this time, has been about two hundred per cent.; the increase in taxation was about eighty-three per cent.; the increase in valuation about seventy-five per cent., and the increase in population about thirty-three per cent. Population and value of property have by no means kept pace with municipal indebtedness. When our municipal indebtedness is doubling in less than ten years, we might well ask, where are we drifting. It may be a foolish thing, in the estimation of some on this floor, to attempt to limit this power of taxation; it may be a foolish thing to undertake to compel our cities and counties, or the State, to live within their respective revenues, but I do not think it will be so regarded by those who pay the taxes. Our people, who are taxpayers, and not office-holders, will not feel aggrieved if the revenues are limited to the necessities of an economical administration of government, and if State, city, or county officers are allowed to expend no more money than the revenue will yield.

When we examine into the percentage of taxation throughout the United States, in the year eighteen hundred and seventy-eight (American Almanac), we find it ranged from ten cents up to one dollar. Among the highest taxed States California stands third in the list, Alabama and South Carolina being above; but as those States have an enormous interest-drawing debt, they are not a fair criterion, and we may say California, all other things being equal, stands first on the list as being the highest taxed State in the Union. Now, these are facts that I suppose my friend Mr. Freeman, who, it appears, is not well pleased with the Constitution of Missouri, will listen to as matters worthy of his consideration on economic grounds. I should be pleased to have him turn his attention to these facts and speak to them, rather than to hear him indulging in the declamation that he is opposed to the thing because he wants the people to have unlimited power. It is not proposed to limit the power of the people, but to give the people the opportunity to limit the legislative power of taxation. Is it unreasonable to place a limit on the power of taxation? Would the taxpaying portion of the community so regard it? Why should California, in her rate of taxation, stand among the highest taxed States of the Union, while New York, Pennsylvania, Ohio, and other States stand far below her in the list?

Taxes should be equal to the necessary expenditures of Government, but beyond that there should be no taxing power. Why are taxes comparatively higher in our State than in our sister States? Is it not because we are more extravagant in the expenditure of the public money? Over four millions of dollars are required to run our State Government, and about half as much more to run the Government of the City of San Francisco, while our sister State and neighbor, Oregon, only requires three hundred and fifteen thousand dollars for the support of her entire State Government. It may be all right. Perhaps we can afford to pay more for a government than other States do. Perhaps we can afford to pay higher salaries. The salaries of State officers here average higher than in other States. Our Legislatures are better paid. Does this bring us better laws, or is our State better governed? In the flush times salaries were keyed up too high, and it is difficult to get them down. It can only be done by limiting the taxing power. Governments are organized for the protection of society, and taxes are imposed for the support of Government. Each member of the community contributes his proportion toward sustaining Government that he may have protection of person and property. Offices are public trusts, not created for the benefit of those who enjoy them, but established for the administration of Government. California stands next to Pennsylvania, New York, and Ohio in the amount of revenue raised by taxation for the support of State Government; and next to Alabama and South Carolina in imposing the highest percentage of taxation. I call the attention of the Convention to these facts, and submit the question whether or not a constitutional limitation on the taxing power is worthy of our consideration.

In the percentage of taxation for county purposes, I find in Calaveras it is 2.36, in Alpine 2.14½, and in other counties the rate varies in sums between one and two dollars on the hundred. In some of the counties this tax is imposed for revenue, not only to pay the ordinary expenses of local government, but also the interest on funded and unfunded indebtedness. We could not well adopt a uniform rule of taxation to meet county indebtedness, but we might to meet ordinary county and city expenditures. How much more or less should this be than one dollar on the hundred? The provision which it is proposed to strike out reads: "In addition to that which may be levied for the payment of interest on existing indebtedness," the rate of taxation shall not exceed a certain specified amount in the several counties as proposed to be classified. The blanks may be filled up by the representatives of the different counties according to their wish. Taxation for ordinary purposes could not go beyond, but might go below, the limits fixed by the Constitution. Whether the section is adopted, or stricken out, is of no more personal interest to me than any other member of the Convention. I have given my reasons for its retention, and I have referred to statistics and facts in support of my position. If no better argument can be made against it than the one that has been urged, that it comes from the Constitution of Missouri, its opponents must be exceedingly limited in their resources, or else they are advocating the wrong side. In this section, by misprint, a line has been omitted, and if it should be necessary, I will send up the proper amendment.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: The gentleman might have added the States' indebtedness which would have swelled the amount up to the billions. I will agree with him as to the evils of running in debt, but it cannot be avoided by any such provision as this; it can only be done by a return to first principles. When an individual, who has run in debt because he had credit, finds his credit is exhausted, he has to come back to first principles, and pay as he goes. That is the only proper principle for cities and counties. Now, there is a proposition here, section twenty, which meets the question, and prevents cities and counties from running in debt, and compelling them to pay as they go. Pay as you go, and shake off the leeches who fasten themselves upon the body politic, and you are all right. I maintain that you cannot, by a provision in the Constitution, determine the amount of revenue which a city or county may raise for legitimate purposes of government; that is a thing that ought always to be flexible, and the Legislature is the proper authority to determine the rate of limitation upon the power of taxation, if it ought to be determined at all. The main thing is to prohibit them from running in debt, and then, when the people have to put their hands into their pockets every year they will look closer into public affairs, and pay more attention to where the money goes to. It is safe to say, when you adopt that principle, that debts cannot be imposed beyond certain limits, that you have destroyed the main means by which these mountains of municipal debts have been piled up. I have no objections to giving the Legislature power to place a limit upon the rate of taxation, in fact, I think it ought to be done. Now, the same subject came up before the committee upon the proposition to limit the rate of State taxation—forty cents on the one hundred dollars, I believe was the limit specified. It must have been apparent to the committee that such a provision was not proper in the Constitution, for they voted it down. The Legislature can do so when it becomes necessary, and then there will be some power to change the rate; but if you put it in the Constitution, it cannot be changed. There is nothing flexible. Cities which have exactly the same amount of assessable property may require a different rate of taxation. Emergencies may arise that will require the expenditure of a much larger amount in the one than in the other.

THE CHAIRMAN. The question is on the motion of the gentleman from Sacramento, Mr. Freeman, to strike out a portion of the section.

Division being called for, the motion was carried, by a vote of 49 ayes, to 30 noes.

MR. JONES. Mr. Chairman: I move now that the balance of section thirteen be stricken out, for the reason that the subject-matter is provided for already; it is all provided for by the Committee of the Whole, for we have said that everything capable of being transferred shall be taxed. What is the use of repeating it in every article in the Constitution?

THE CHAIRMAN. The question is on the motion to strike out section thirteen.

Carried.

THE CHAIRMAN. The Secretary will read section fourteen.

THE SECRETARY read:

SEC. 14. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I move to strike out the section, because the section in the article on revenue and taxation covers the ground; when it says that growing crops and such property as may be used for public schools, and property which belongs to this State, etc., shall not be taxed. Now, under that system of exempting, there is no occasion for saying that the Legislature shall have no power to impose taxation upon counties, cities, and towns, or other public or municipal corporations.

MR. HAGER. It don't say that the Legislature shall have no power to impose taxes. It says they shall not have power to impose taxes upon counties, cities, or towns, for municipal purposes, but may, by general laws, vest in the authorities thereof the power to assess and collect taxes for such purposes. They can impose all the taxes they see fit, but not for county or municipal purposes.

MR. JOHNSON. It would be very unusual for the Legislature to do anything of that kind, and it seems to me that this is entirely superfluous. There is not a particle of need of it. "The Legislature may, by general laws, vest in the corporate authorities the power to assess and collect taxes." Now, there is no occasion for that in there. The Legislature has that power already. There is no occasion for putting permissive clauses in the Constitution. The Legislature is the sovereign power, except as its power is limited by the Constitution of this State and the Constitution of the United States, and so there is no occasion for permissive clauses that the Legislature may do this thing or that thing. If I thought there was any occasion for such a provision I would support it, but there certainly is not.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: There is another reason why this section should be stricken out. We have gone so far as to give to these municipalities almost absolute power in relation to their own domestic affairs, and I think we ought to preserve some power of supervision in the Legislature. Now, if this provision should be adopted, it is pretty certain that the Legislature would have no power to compel cities, or towns, or counties, to pay their debts. Now, if they choose to avoid the payment of their debts, there certainly ought to be power in the Legislature to compel them to do so. The section ought to be stricken out.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: This provision comes from the Illinois Constitution, word for word. It has also been adopted in several other Constitutions. There is nothing new in it, but I believe we first find it

in Illinois, and I presume, therefore, it will be acceptable to my friend from Sacramento. The Legislature shall not, for county purposes or city purposes, impose taxes upon counties or cities. They may impose it for State purposes, but not for county purposes. That is to be done by the counties themselves. Now, why should the Legislature say to a county, you are to raise so much and pay it over to a railroad company or anybody else, in order to build a depot, or to subsidize them in any other way? Why not leave it to the counties themselves, as it is at this time? That provision is in a dozen Constitutions. It is perfectly clear and just, and for the protection of every community in the State.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: There is probably not half a dozen counties in this State that will average the same amount of taxes for county purposes. Still this Convention has provided that the Legislature shall pass none but general laws. Now, you propose to strike out the provision, leaving the Supervisors the power to levy taxes. You have provided for local government, and still you have now taken away the method of local government. These are acts that ought to be left to the local authorities. As far as that is concerned it will not affect the indebtedness of this State. It leaves this matter to the local authorities and allows the Legislature to enact general laws.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: I think there is some misapprehension in regard to this section. The property referred to here is not the property of the county which is provided for in the revenue Act In the next place, I think my colleague, Judge Campbell, is under a misapprehension as to the mode of compelling the performance of contracts by counties. I think if there is any remedy in such a case it is only through the Courts. That has been the practice in California, as far as I know. I think under these circumstances section fourteen ought not to be stricken out.

MR. CAMPBELL. My colleague is entirely mistaken if he supposes that the Courts could compel them to levy any tax. They could not do it unless it is specially provided for by law. There are to-day delinquent counties, and the Courts have no power, and the Legislature certainly ought to have supervision over them. If any county refuses to pay its debts the Legislature ought to have power to make them do it.

MR. McCALLUM. I will ask you if you have not known a case where there has been an attempt made by the Legislature to compel the county to pay a debt—the case of El Dorado County? And was not the case in the Courts? I repeat, sir, that it is through the Courts that this question can be reached, and not through the Legislature.

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

Lost.

THE SECRETARY read section fifteen:

SEC. 15. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

MR. FREEMAN. Mr. Chairman: I move to strike out section fifteen.

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

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I don't know that I ever heard of a municipality that did not have commissions for various purposes. For instance, in the municipality here we have a Board of Fire Commissioners; we have a Board of Commissioners for funding our debt; we have a Board of Police Commissioners; a Board of Levee Commissioners; and I suppose there is no city anywhere that does not have commissions for some purpose or other. It does seem to me that it would not be right to prohibit it. It is true the section also goes on to say that the Legislature shall not delegate its power to any commission or association of individuals; but I think no Legislature needs such a provision.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: This is taken from the Constitution of Pennsylvania, therefore I suppose it will meet with the same criticisms as the section taken from other Constitutions. I do not dare to take any more honors upon myself. To show that there is no difference, I will refer you to the Constitution of Pennsylvania, which you can compare for yourselves. This does not say that the county shall not have any Commissions. It says the Legislature shall not delegate to any special Commissions its power. It don't say that the city or the county shall not do it, but it provides that they shall appoint their own Commissioners. Why not? Why not the city appoint its own Commissioners? If they want a Funding Commission, why not appoint them? Why should the Legislature force upon you men from distant portions of the State to control your funds and pay off your debts? Why should not the local authorities do it? Why should the Legislature appoint the Commissioners? Why should the Legislature appoint a Commission to go into any city or county in this State to do any act which the corporation can better do themselves, and better supervise themselves? I cannot see any objection to the section. There seems to be a feeling here that the people are not to be trusted in any manner whatever. We have had Commissions put upon us by the Legislature, down in San Francisco, to open streets at an enormous expense, amounting often almost to a confiscation of property—some even had to give up their property. I hope it will be stopped. Let the corporations take charge of it themselves. Why should they not be better informed as to the business to be done than any foreign Board of Commissioners who go down there to eat out our substance?

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

Lost.

MR. FREEMAN. I move to amend.

THE SECRETARY read:

"Amend by striking out the words, in lines five and six, 'or perform any municipal functions whatever.'"

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I cannot see what objection there is for appointing the ordinary commissions which exist in every town in the State, as I mentioned before—Fire Commissioners, Commissioners for funding the debt, Police Commissioners, and Levee Commissioners. It may be true that this provision is found in the Constitution of Pennsylvania. In fact, the Chairman of the committee seemed to go through all the Constitutions in the United States, get them all in one mess together, and pour them into this committee, where it is impossible for this Convention to do anything with them.

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

Lost.

THE CHAIRMAN. The Secretary will read section sixteen.

THE SECRETARY read:

SEC. 16. No State office shall be continued or created in any county, city, town, or municipality for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law and the public interest demands it, appoint such officers.

MR. HERRINGTON. Mr. Chairman: I offer the following substitute:

THE SECRETARY read:

"Any county, city and county, city or town, may, when authorized by general law, provide inspection officers therein for the inspection, measurement, and graduation of merchandise, manufactures, and commodities."

MR. HERRINGTON. Mr. Chairman: This substitute provides for the protection of people outside of your cities as well as those who live there. The section says, when they see fit to appoint these officers, they may do it. I think that is not right. It leaves us in the country without any protection whatever in our trade with your cities.

MR. DUDLEY, of Solano. This section also inhibits the State from maintaining revenue officers in the cities. I hope the section will be stricken out. I move that the section be stricken out.

MR. HAGER. Mr. Chairman: The object is not to prevent the appointment of inspection officers, but to prevent the State from appointing inspection officers in the counties or cities; it leaves them power to appoint inspection officers by general law. It has no relation to revenue whatever; my friend from Solano is entirely mistaken; the localities are just as competent to appoint these officers, if they are necessary, and more so than the State; it leaves the matter with the people of the several localities, rather than in the hands of the State. Now, when I was in the Legislature, a proposition was made to appoint a gauger of firewood, another for liquor, and they were always trying to log-roll something of that kind through the Legislature, in order to create a place for some hungry politician. Several of those bills were log-rolled through.

THE CHAIRMAN. The question is upon the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

Division was called for, and the vote stood: Ayes, 25; noes, 43.

No quorum voting.

The question was put again, and the amendment lost, by a vote of 34 ayes to 58 noes.

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

Division being called for, the committee divided, and the motion was lost, by a vote of 31 ayes to 55 noes.

THE SECRETARY read section seventeen:

SEC. 17. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

MR. TULLY. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on City, County, and Township Organization, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. WALKER, of Tuolumne. I move we do now adjourn.

Carried.

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

ONE HUNDRED AND THIRTEENTH DAY.

SACRAMENTO, Saturday, January 18th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

Andrews,	Boggs,	Crouch,
Barbour,	Boucher,	Davis,
Barton,	Brown,	Dowling,
Belcher,	Burt,	Doyle,
Bell,	Campbell,	Dudley, of Solano,
Biggs,	Caples,	Dunlap,
Blackmer,	Charles,	Edgerton,

Estey,	Lewis,	Smith, of San Francisco,
Estee,	Lindow,	Soule,
Evey,	Mansfield,	Stedman,
Farrell,	Martin, of Alameda,	Steele,
Fawcett,	Martin, of Santa Cruz,	Stevenson,
Freud,	McCallum,	Stuart,
Gorman,	McComas,	Sweasey,
Grace,	McFarland,	Swenson,
Hager,	McNutt,	Swing,
Heiskell,	Mills,	Thompson,
Herold,	Moffat,	Tinnin.
Herrington,	Moreland,	Townsend,
Hitchcock,	Murphy,	Tully,
Howard, of Los Angeles,	Nason,	Turner,
Howard, of Mariposa,	Neunaber,	Tuttle,
Huestis,	Ohleyer,	Vacquerel,
Hughey,	Overton,	Van Voorhies,
Hunter,	Prouty,	Walker, of Tuolumne,
Johnson,	Reynolds,	Waters,
Jones,	Rhodes,	Webster,
Joyce,	Ringgold,	West,
Kelley,	Rolfe,	Wickes,
Kenny,	Schell,	White,
Kleine,	Shoemaker,	Wilson, of Tehama,
Laine,	Shurtleff,	Winans,
Larkin,	Smith, of Santa Clara,	Wyatt,
Larue,	Smith, of 4th District,	Mr. President.

ABSENT.

Ayers,	Glascock,	Nelson,
Barnes,	Graves,	Noel,
Barry,	Gregg,	O'Donnell,
Beerstecher,	Hale,	O'Sullivan,
Berry,	Hall,	Porter,
Casserly,	Harrison,	Pulliam,
Chapman,	Harvey,	Reddy,
Condon,	Hilborn,	Reed,
Cowden,	Holmes,	Schomp,
Cross,	Inman,	Shafter,
Dean,	Keyes,	Terry,
Dudley, of San Joaquin,	Lampson,	Van Dyke,
Eagon,	Lavigne,	Walker, of Marin,
Filcher,	McConnell,	Weller,
Finney,	McCoy,	Wellin,
Freeman,	Miller,	Wilson, of 1st District.
Garvey,	Morse,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Keyes, Garvey, and Harvey.

THE JOURNAL.

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

So ordered.

PETITIONS.

MR. BLACKMER presented the following petition, signed by a large number of citizens of San Diego County, requesting the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of San Diego, San Diego County, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on table, to be considered with article on revenue and taxation.

MR. TULLY presented a similar petition, signed by a large number of citizens of Santa Clara County.

Laid on table, to be considered with article on revenue and taxation.

REPORT.

MR. MORELAND. Mr. President: I send up the report of the Committee on Schedule. I ask that the usual number be printed, and that it be referred to the Committee of the Whole.

THE SECRETARY read:

CONSTITUTIONAL CONVENTION, SACRAMENTO, January 18th, 1879.

MR. PRESIDENT: Your Committee on Schedule beg leave to report as follows:

Your committee have duly considered Amendment No. 228, submitted by Mr. Tully for Mr. Laine, and Amendment No. 283, submitted by Mr. Shoemaker, and recommend that they be not adopted.

Your committee submit the following report, and recommend its adoption:

Messrs. Boggs, McComas, and Moreland dissent from section ten of said schedule, and recommend the following in lieu thereof:

SECTION 10. In order that future elections in this State shall conform to the requirements of this Constitution, the terms of all officers elected under the same shall be, respectively, one year shorter than the terms provided for in this Constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution, shall be elected at the time and in the manner now provided by law.

All of which is respectfully submitted.

W. W. MORELAND, Chairman,
RUSH McCOMAS,
H. C. BOGGS,
WM. PROCTOR HUGHEY,
CHAS. SWENSON,
HENRY NEUNABER,
PETER J. JOYCE,
CHARLES R. KLEINE,
THOS. HARRISON,
H. V. SMITH,
ALPHONSE VACQUEREL.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

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

SEC. 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any such subdivision or municipality, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

SEC. 3. The Legislature, at its first session after the adoption of this Constitution, shall provide for the transfer of all records, books, papers, and proceedings from such Courts as are abolished by this Constitution, to the Courts provided herein; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in first instance commenced, filed, or lodged therein. No officer elected at the first election after the adoption of this Constitution shall be entitled to draw any salary until he shall have been duly installed as such either by provisions herein or by Act of the Legislature.

SEC. 4. The Secretary of State shall cause this Constitution to be published once a week for at least four consecutive weeks next before the first Wednesday in May, eighteen hundred and seventy-nine, in not more than six newspapers published in this State, one of which newspapers shall be published in the City and County of San Francisco, one in the County of Sacramento, one in the County of Los Angeles, one in the County of Nevada, one in the County of Santa Clara, and one in the County of Sonoma. The Governor shall issue his proclamation giving notice of the election for the adoption or rejection of this Constitution at least one month before the said first Wednesday in May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

SEC. 5. The Superintendent of Printing of the State of California shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "For the new Constitution." He shall likewise cause to be so printed and delivered to said Clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "Against the new Constitution."

SEC. 6. The Clerks of the several counties in the State shall, at least five days before said election, caused to be delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section.

SEC. 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

SEC. 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as the City and County of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns are received, or until six postponements have been had, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

SEC. 9. The Governor of the State of California, shall as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation,

declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the day hereinafter specified.

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

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

MR. MORELAND. I move that the usual number of copies be ordered printed, and that it be referred to the Committee of the Whole.

The motion prevailed.

MR. VACQUEREL. Mr. President: I have an additional section to offer to the article on city, county, and township organization, which I would like to have referred to that committee.

The proposition was referred to the Committee on City, County, and Township Organization without reading.

THE ASSISTANT SECRETARYSHIP.

MR. WILSON, of Tehama. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That the President of this Convention be and he is hereby authorized to fill the vacancy in the office of Assistant Secretary, occasioned by the election of Edward F. Smith as Secretary of said Convention, by appointment, whenever, in his judgment, the business of the Convention requires it.

MR. TINNIN. Mr. President: I think there will be no necessity for an Assistant Secretary. I move to lay the resolution on the table.

The motion prevailed.

CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

MR. TINNIN. Mr. President: I move that the Convention resolve itself into a Committee of the Whole, for the purpose of further considering the report of the Committee on City, County, and Township Organization.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section eighteen.

PUBLIC MONEY.

THE SECRETARY read:

SEC. 18. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall, immediately on the receipt thereof, be deposited with the Treasurer, or other legal depository, to the credit of such city, town, or other corporation, respectively, for the benefit of the funds to which they respectively belong.

THE CHAIRMAN. If there be no amendment to section eighteen, the Secretary will read section nineteen.

PROFIT ON PUBLIC MONEY.

THE SECRETARY read:

SEC. 19. The making of profit out of county, city, town, or public school money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

MR. CAPLES. Mr. Chairman: I move to strike out the word "school," in line two. It would seem to be as bad to steal any other money as school money. I do not know why the committee put that word in. It would seem to be inadvertence or carelessness.

MR. HAGER. I would like to explain that that makes it applicable to State moneys, and is intended to make it applicable to municipal governments. This relates to, city, county, and township organizations.

MR. CAPLES. I would ask the Chairman if school money is not public money?

MR. HAGER. So it is to a certain extent.

MR. CAPLES. If it is public money, I would inquire what difference there is between making money out of money belonging to the school fund and any other fund.

MR. HAGER. I merely wish to state that it would make it applicable to State moneys.

MR. McCALLUM. I would suggest to insert the word "other" before the word "public." That will include all public money.

MR. LARKIN. I second that motion.

THE CHAIRMAN. The question is on the motion of the gentleman from Sacramento, Mr. Caples.

The motion prevailed.

MR. McCALLUM. I now move to insert the word "other" before the word "public."

The motion prevailed.

THE CHAIRMAN. The Secretary will read section twenty.

INDEBTEDNESS.

THE SECRETARY read:

SEC. 20. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the assent of two thirds of the voters thereof voting at an election to be held for that purpose; and in cases requiring such assent no indebtedness shall be incurred (except by a county to erect a Court House or jail), to an amount, excluding existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring such indebtedness, and unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within forty years from the time of contracting the same.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I move to strike out the word "five," in the eighth line, and insert "two," in lieu thereof. I hear it proposed to insert "three" instead of "two," but I do not feel disposed to place it at so high a figure. The practice prevalent both in California and in the eastern States, a practice that has been growing rapidly, of late years, of extravagance and expenditure in engaging in improvements of various kinds, has resulted in an enormous increase of municipal indebtedness. It is an evil great enough in California—an evil that most gentlemen upon this floor have realized, and have some knowledge of—but it is yet in its infancy in California, compared with the eastern States. The aggregate has amounted to over two hundred millions of dollars in the last decade. It is a practice that inevitably tends to a loose and extravagant mode of expenditure, and entails upon the taxpayers burdens that are onerous and insupportable, and I think that now and here is the time to put the brakes on and check this vicious practice. Now, if we estimate the liberty of expenditure that would be left by fixing the limit at two per cent, we find that it would enable counties like Sacramento, for instance, to contract debts over and above existing indebtedness to the extent of four hundred thousand dollars. Now, it does seem to me, Mr. Chairman, that that is margin enough, and I am free to say, in my judgment, too much. Gentlemen may argue that in exceptional cases, like cases of floods, fires, or other calamities, that it might become necessary to expend a great amount. Admit that in exceptional cases that may occur once in a lifetime, this may be the case; and admit all that such gentlemen claim, that there would be some inconvenience resulting from this restraint or restriction in cases of that kind, and I hold that the evil is incomparably less than that resulting from that extravagant system of expenditure that has prevailed in the past, and will prevail in the future, unless we put a substantial check upon it. I propose to do it now and here, and feel sure that the good sense of gentlemen on this floor will sustain me in the proposition that it is necessary, that it is desirable, and that it is the duty of this body to put, now and forever, at least so far as we can here, a stop to this system that has prevailed in the past, and is likely to prevail in the future, unless we stop it.

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

THE SECRETARY read:

"Amend section twenty as follows: Strike out the word 'five' in line eight and insert the word 'three.'"

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I hope that "two" will be allowed to stand. I am certain that two per cent. on the principal is all that ought to be permitted in these cases. This is not limiting the expenditure. We are first allowed to spend as much as we like, and now it is asked to allow us to contract a debt upon the county of five per cent. upon its property. I really think that one per cent. is enough, but at all events it should not go above two. I am certain that it would be enough for our own county, and I am sure that we would want as much as any county. We can tax ourselves as high as we please and spend all that, and then we can go in debt to the extent of five per cent. The people never know what they are doing when they go in debt. If we were down to a cash basis, it would be better than to give them any lee-way. Two per cent. is rather too much to allow under the circumstances, excepting in case of some calamity, and that is provided for.

MR. WEST. Mr. Chairman: I hope that the amendment offered by the gentleman from Sacramento, Mr. Caples, will prevail. I believe that two per cent. is enough in any county of the State. In our county it would create an indebtedness, over and above existing indebtedness of four hundred thousand dollars, which would be amply sufficient for any purpose which the county would require to create an indebtedness under any emergency. I hope the amendment will be inserted. It is a crying evil that exists throughout the country. I suppose as a country the world has not a parallel to the municipal indebtedness of this country. I hope that this amendment will prevail, and that two per cent. will be the limit fixed to which counties can run in debt.

MR. LARUE. Mr. Chairman: I am aware that in most of the counties of this State the taxes are heavy, but there are cases which will arise where it may be necessary to raise more than two per cent. I cannot see any injustice in leaving the trustees of a city a little lee-way: that is, only in the city. Our city tax amounts to two per cent. now.

MR. BIGGS. Mr. Chairman: I believe, if I understand the amendment offered by the gentleman from Sacramento, Mr. Larue, that it is to strike out "five" and insert "three." I am in hopes that amendment will be adopted. It is a question that would occasion a great deal of thought. Two per cent. is not enough. You may examine every Constitution in the United States, and you will not find one of them as low as two per cent. A majority stand from three to five.

MR. WHITE. I would ask the gentlemon whether you cannot first assess as high as you like, and have this extra after that assessment?

MR. BIGGS. This includes the indebtedness of cities, towns, and counties.

MR. WHITE. No, that is not the case.

MR. BIGGS. Under the amendment which I offered yesterday, it includes the indebtedness. The amendment I was addressing myself to was the amendment I offered yesterday at the request of Judge Terry. That says two per cent. altogether, with existing indebtedness. I see the report of Judge Hager is exclusive of such indebtedness. That makes quite a difference. If that includes indebtedness, every gentleman will know that two per cent. is not enough.

MR. McFARLAND. Mr. Chairman: I think the committee does not understand this provision. I do not understand that it has anything to do with taxation at all, or the right of taxation. It simply says that the indebtedness shall not be increased over a certain amount, even if two thirds of the people vote for it.

MR. BIGGS. Don't it say you have to refer to the assessed value of the property?

MR. McFARLAND. The only provision is that the indebtedness of a county or city shall not exceed so much per cent., excluding past indebtedness, even though two thirds of the people vote for it. Now, recollect, there is no increase of indebtedness to five per cent., except it has been voted for by two thirds of the voters. Now, it seems to me that when the matter has to be submitted to the people and receive a two-thirds vote, it had much better be left at five per cent., because you cannot increase the indebtedness unless two thirds vote for it.

MR. LARUE. I withdraw my amendment.

MR. McFARLAND. It seems to me that it should stand as it is. It is enough to require a two-third vote.

MR. ESTEE. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend section twenty by inserting, in line seven, after the word 'jail,' the words 'or for a city, or city and county, for the acquisition or construction of waterworks.'"

THE CHAIRMAN. That is not an amendment to the amendment.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I do not know that the Convention entirely understands this section as it is intended. In the first place, as the Constitution now stands, there is no limitation upon the taxing power in any county. You may make an assessment for taxes as much as you please. There is no limitation upon that. Therefore that matter should be taken into consideration when you go beyond the ordinary purposes of revenue. The section is intended to be a limitation to this extent: that the outlay shall not exceed the income and revenue provided for them respectively for such year. Now, you can make that revenue just what you please. You may levy two, five, six, or ten per cent. if you choose, because you have already stricken out the limitation we had in the previous section, so that you may tax ad libitum. You may go to the extent of ten per cent. if you choose. That matter ought to be taken into consideration here, because you have the power at all times to levy any tax, for the ordinary expenses of the government, that you see fit, and now if you want to go beyond the purposes of ordinary revenue for any special purpose, then the question arises, to what extent shall you go? The limit here is not to exceed five per cent., and then it requires the consent of two thirds. I think it is safe to leave it at that. There is an abundance of safety for any county in the State. I think the limitation to two per cent. would be useless, because you can levy that much without for ordinary purposes; but if you want to go beyond the ordinary purposes, I think the limitation to five per cent. is enough. I think if gentlemen will reflect upon it in all its bearings, with the power that they have for all the purposes of revenue, that five per cent. is as low as it should be.

MR. WYATT. Mr. Chairman: I hope the amendment of the gentleman from Sacramento will be adopted. I think that the ad libitum power we give of taxing, and then with the privilege of increasing the indebtedness to the amount of two per cent. upon the assessed value of the property, is giving privilege enough for the purpose of taxing the people. Upon an assessment roll of ten million dollars you can then put an extra tax upon the people of two hundred thousand dollars. That ought to be sufficient. Sacramento can go in debt, under that rule, two million dollars. I think, if we attempt to put any limitation whatever upon it, that two per cent. is sufficient. I therefore hope that the amendment, reducing it from five per cent. to two per cent., will be adopted.

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

The amendment was adopted.

MR. ESTEE. Mr. Chairman: I now send up my amendment.

THE SECRETARY read:

"Amend section twenty by inserting in line seven after the word 'jail,' the words 'or for a city, or city and county, for the acquisition or construction of waterworks.'"

MR. ESTEE. Mr. Chairman: I hope that we will be permitted, if we want to acquire waterworks to do so, and I hope that gentlemen will not oppose it.

MR. McFARLAND. Mr. Chairman: I would like to know why we are going to make this exception to the rule. If this proposition is good for one part of the State, it is good for the whole. It seems to me that is folly to make a rule, and then make exceptions for some particular case that happens to strike gentlemen. There may be a thousand other cases where they might want to have this privilege for other purposes than waterworks. Now, does not the fact that right now there is a case pointed out where this law will not work well, prove that the whole thing is wrong. Why should you provide an exception to this rule in the case of San Francisco?

MR. HAGER. I move to strike out of the amendment the words "acquisition or."

MR. ESTEE. Mr. Chairman: I hope the words will not be stricken out, and for the very obvious reason that under the law we can condemn any waterworks that belong to private parties. If it is condemned by a judicial proceeding, then we have to provide for paying for it. Take San Francisco for instance. So far as I am concerned we do not want to buy any waterworks, but if we wish to acquire private property, we must go into the Courts and condemn it; and after we shall have condemned it, then we must provide for paying for it. Striking this out would prevent San Francisco from ever owning these waterworks. So far as I am concerned, I would rather that the amendment would be voted down than voted for as proposed to be amended by Mr. Hager. I am not in favor of buying anybody's waterworks and paying fifteen million dollars, or any other sum; but I wish to place it so that if our city, or any other city, wishes to acquire waterworks by the exercise of the right of eminent domain, and then paying the amount that the Courts may claim should be paid, it may do so.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: As I understand the amendment it covers the two means by which the people could be supplied, by the acquisition of existing works or by the introduction from abroad, of water. I think it proper and appropriate to make an exception in favor of this great necessary of life; in favor of allowing the people to issue their bonds, or make laws for acquiring that great necessary. Now, the people of the City of San Francisco, for the acquisition or ownership of pure fresh water, it may be necessary for them to incur an indebtedness of twenty million dollars; and, with the growing population, it may be that before many years it will be necessary to incur that amount of expense. Now, to acquire water, would impose upon the city the necessity of raising something in the neighborhood of one million and a half per annum, and it would be necessary to determine, of course, the number of years these bonds would have to run, etc. That would necessarily be raised by a tax upon the community. I am in favor of leaving the people of San Francisco free to acquire waterworks and incur the indebtedness necessary, because of the great necessity that exists for something of this kind in the presence of the monopoly existing there, which may take advantage of a cast iron prohibition in the Constitution prohibiting the people from going abroad and obtaining water, and which would be disastrous to the people.

MR. WINANS. Mr. Chairman: This amendment, while it injures no other county, materially benefits the City and County of San Francisco. We think it is quite as important to have a fund for the obtainment of water supplies throughout the city as it is to have either a Court House or a Jail. I cannot conceive why this proposition should be opposed. I presume it will not be. It seems to me, sir, that the amendment proposed by Judge Hager would entirely emasculate that of Mr. Estee. We want the entire right, in its full form, or we do not desire it at all, according to my view of the sentiment of the people there. The city authorities should have entire jurisdiction of this subject, if it is conferred upon them in any way at all, and any partial privilege would be worse than nothing. I hope, therefore, that the amendment of Mr. Estee will be adopted. It is what we want and need, and injures no other county and no other interest throughout the State, while it will be largely conducive to the prosperity of our city.

MR. CAMPBELL. Mr. Chairman: We, in Oakland, are somewhat similarly situated in that respect. We may require to condemn waterworks for that large and growing city, and I hope the amendment of Mr. Estee will be adopted.

MR. McCALLUM. Mr. Chairman: I am in favor of the amendment proposed by the chairman of the committee. What possible necessity, if the Government shall control these waterworks, as has been provided in other sections, what possible necessity can there be for the acquisition of private waterworks which furnish abundant water? The argument that would be used at other times, and under other circumstances, the reduction of rates, cannot be used if this Constitution is adopted, because the people themselves, through their authority, regulate those rates. Those rates, it is supposed, will be regulated upon principles of justice to the water companies, and of justice to the people. Then, what possible point can be accomplished by the acquisition of works already constructed?

MR. ESTEE. Will the gentleman allow me to ask him a question? Under the law now, and the decisions of the Courts, could they not regulate the rates?

MR. McCALLUM. Under the law now, two of the Commissioners are named by the company.

MR. ESTEE. It may be so always. I will leave it to the gentleman if it does not cost as much for water as for bread in San Francisco?

MR. McCALLUM. It may be so always, which is the very point I am seeking to make. We have adopted, in section twenty-eight of the legislative article, a provision that the rates of water companies, and gas companies, and all other corporations, shall be regulated and fixed by law; if fixed by Commissioners, or fixed by Board of Supervisors, and that in cases where Commissioners are appointed, that the corporation shall not name one of them; and it cannot be so always, if this Constitution is adopted.

MR. ESTEE. Does the gentleman assume the proposition that, because we have the right to regulate the price of water, no city should ever own its waterworks?

MR. McCALLUM. No. And if the gentleman would do me the honor to listen to what I have to say he would not have asked the question. I am in favor of that provision giving the right to a city to construct its waterworks, and in that case, I suppose the city would never do it except in these cases, either where the private waterworks did not furnish water in quantities sufficient, or did not furnish water of a proper quality.

MR. ESTEE. What will you do in a case where private companies own all the sources of water?

MR. MCCALLUM. I do not know that that case exists.

MR. CAMPBELL. It exists in our own county to-day.

MR. MCCALLUM. On the contrary, I know that another company has been willing to furnish bonds to the proper amount to bring water in from other sources, and I have understood that that was the case in San Francisco, but I suppose in the case of San Francisco, without pretending to know as much about their affairs as their own local delegation, that the water is sufficient in quantity and quality. If so, the idea of purchasing when you have got the right to control the rates appears to me to involve the idea of speculation, and speculation on the side of the corporation in all such cases. I am in favor of the amendment offered by the Chairman of the committee and leave the exception as to this limitation of indebtedness to the construction of works.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I would prefer that this amendment should not be made at all. As I said before, the cities have the right to levy any tax they see fit. When we increase the taxation by the taxation of securities, the taxable property in the City of San Francisco will probably come up to between three and four millions of dollars, that will make at two per cent. an abundance of money to supply the city with waterworks. We do not want to purchase Spring Valley Waterworks, and do not want to be compelled to purchase them.

MR. MCCALLUM. Is it true that Spring Valley has all the sources of supply?

MR. HAGER. I believe they profess to own all the supplies in the State. I do not suppose there will be any works constructed in the City of San Francisco unless the Spring Valley Water Company disposes of theirs. Every effort that has been hitherto made has failed, because the Spring Valley Water Company was there to interpose. You must purchase their works, at twice what they are worth, or else you will have no water at all. There is another clause reported here by this committee, that any person shall have the privilege of supplying water to cities. As it is now, no one can get the privilege in San Francisco, because the power of Spring Valley is so great. Laws have been passed by the Legislature providing for Commissioners, but were insufficient, because they were controlled by the Spring Valley. While the Spring Valley Water Company has got a good many sources of supply, I suppose the City of San Francisco could find others if they did not have to pay such a high rate of compensation to parties who claim to have taken up other sources of supply. They claim that Lake Tahoe is taken up by certain parties. That which should be open and free to the world has been reduced to private ownership, a thing never heard of in any country in the world except in California, where water, the essential of life, is made the subject of private ownership by individuals and held by them. Who ever heard of such a thing? I say it is a shame. I do not suppose San Francisco can establish waterworks. If they wish to do so they have abundance of opportunity under this section as it stands. They can tax ad libitum every year. Six million dollars ought to be sufficient and more than sufficient to supply the City of San Francisco. But if they are compelled to buy Spring Valley at fifteen million dollars, because they cannot do any better, they will have an insufficient supply, because Spring Valley is not a sufficient supply at present, and will not be in the future. They have purchased, as they say, and claim other sources of supply down the coast and over in Calaveras County. I hope the amendment will not prevail at all, and that the section will stand just as it is. I have no objection to putting in any amendment for county buildings, school houses, or anything of that kind. But there is two per cent. I think it will be better to leave it as it was.

MR. ESTEE. I am perfectly willing to insert after the word "acquisition" the words "by condemnation." I still maintain that San Francisco never can own its waterworks if that section is adopted.

MR. HAGER. I do not suppose that San Francisco ever can own its waterworks, unless it pays fifteen millions of dollars to the Spring Valley Water Company. Every effort that has hitherto been made has failed. I do not suppose we can get our waterworks very well. I am willing to leave it to private enterprise. If they can get rid of private ownership in public property, I think the people could get an abundant supply with six millions, or five.

MR. ESTEE. Mr. Chairman: I would ask leave to amend my amendment, by inserting "by means of condemnation."

THE CHAIRMAN. If there be no objection, the gentleman will have leave to modify his own amendment. The Secretary will read it as modified.

THE SECRETARY read:

"Amend section twenty by inserting in line seven, after the word 'jail,' the words, 'or for a city, or city and county, for the construction of waterworks, or for their acquisition by means of condemnation.'"

MR. REYNOLDS. Mr. Chairman: It needs but little reflection to show that two per cent. indebtedness is wholly inadequate for the purpose of enabling the City of San Francisco ever to acquire its waterworks in any manner whatever—by condemnation, purchase, or otherwise. During the last two years many estimates have been made, and much money expended in obtaining them, and they all show that it would cost many times five millions of dollars to procure water in the cheapest manner that it can be procured. So that to restrict the city to two per cent. is to cut it off from the possibility of owning its own water supply. How absurd is the reasoning that would permit a county, or a city and county, to erect a Court House, or a jail, or a school house, and tie its hands so that it cannot provide itself with water to drink. It does not seem to me to be any argument. The city ought to be free to purchase its waterworks, to condemn, or build, without any restriction. If there is any exception to be made, certainly the supply of water ought to come first.

MR. GRACE. Mr. Chairman: I am not certain that I clearly understand what is before the House: but I am certain that I do know that the people of San Francisco whom I represent do not want to purchase the Spring Valley Water Works. They do not want anything in this Constitution that will aid and abet in any way that company. There have been several schemes to buy the old rotten works of that company that has robbed the city for the last twenty years, and the old flumes and ditches that are pretty near ready to tumble in; and there are several schemes on foot for the purpose of fleecing the city of San Francisco, and I want to oppose everything that gravitates in that direction.

MR. HAGER. Mr. Chairman: As the gentleman has amended his amendment it is now necessary for me to amend mine, so as to strike out the words, "or for their acquisition by means of condemnation."

REMARKS OF MR BARBOUR.

MR. BARBOUR. Mr. Chairman: I have this to say in regard to the supply of water for the city of San Francisco. If I was a large stockholder in the Spring Valley Water Company I would not ask a better thing than his proposition, as it is reported by the committee. Now, I do not suppose that my friend has allowed his interest in the Spring Valley Water Company to control his action here: but, sir——

MR. HAGER. I have no interest in the Spring Valley Water Company, and have not had for years.

MR. BARBOUR. I thought you was a stockholder.

MR. HAGER. No; and have not been for years. In the gas company I am, and I have reported a provision against my own interest.

MR. BARBOUR. I admit it.

MR. HAGER. If there is anything in this report that favors me, I ask any gentleman to point it out.

MR. BARBOUR. I wish to call attention to the peculiar position in which these people would be placed. If I was a large stockholder in the Spring Valley Water Company, I would not ask a better provision than this section twenty, to be able to say to the people of San Francisco: "Now we have got you where we want you; you cannot threaten us with going outside to bring in water; it is Spring Valley or nothing."

MR. ESTEE. That is it.

MR. BARBOUR. That would be exactly the position in which you are placed. You propose to limit the amount of debt to two per cent. and then require the assent of two thirds of the voters to even that. Could the company ask a better hold upon the people than that? If they can defeat propositions, now is there a better position to be placed in than that identical one? It is not a proposition to compel the city to buy the old works of the Spring Valley Water Company. The people there are certainly intelligent. No proposition can go through without it is first submitted to the voters of the city and passed upon by them. Do you propose to prevent them from exercising some little judgment in reference to the subject of procuring this great necessary of life, because there is some company there that has some water rights? The city can go into the market and purchase elsewhere just as well as there, and yet you say they shall not do it. I am willing to leave the Spring Valley Water Company open to come in with their bid, and if it will sell at a reasonable price, I want the City of San Francisco to be able to purchase it. I have no such bullheaded hostility to the Spring Valley Water Company as to say that if they will sell for what it is worth, I would not consent to buy it. I do not believe that the people can be led to buy it at three or four times what it is worth. It has been tried, and it will be a failure in the future as it always has been in the past.

REMARKS OF MR. MILLS.

MR. MILLS. Mr. Chairman: I am decidedly opposed to the section, because it provides that no county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability, in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the consent of two thirds of the voters; and even then cannot create an indebtedness exceeding two per cent. Now, I will venture to say that there is not in the country a school district that may desire to build a school house that can do so under this provision in this section as it now stands. In the town in which I live we desired to build a school house valued at eight thousand dollars. The only means by which we could do so under the existing law was for individuals to give their own notes to secure the assessment. They did so and built a school house at the county seat. It would be impossible to secure the necessary building in a county under this section. They cannot build their bridges even under the provisions of this section. In the county in which I reside, sometimes when the Winters are very severe, our bridges are swept away almost entirely. Roads are injured and destroyed, and it is necessary that there should be a means of raising money sufficient to repair them.

Now, in respect to bringing water into any town, if it is limited to the amount that is stated here, it would be utterly impossible for any town to undertake to provide water, leaving out of the question the City of San Francisco. With regard to that, the general argument here has been in respect to the provisions as applied to the City of San Francisco. Take it, sir, as applied to a county. A county may desire to build a Hall of Records, or provide a hospital; how can it do so? The county in which I reside has built a Hall of Records, at an expense of from eight to nine thousand dollars; they run in debt for a greater portion of it, although the county is perhaps able to pay, and will pay it within a year or two; but, under this provision, we could not have got a Hall of Records. This limits it to such an extent that it operates against the interests of the counties, townships, and school districts; therefore, I am opposed to this section entirely, as it now stands.

REMARKS OF MR. GORMAN.

MR. GORMAN. Mr. Chairman: I hope the amendment offered by the gentleman from San Francisco, Mr. Estee, will prevail. I believe that the city of San Francisco is the most peculiar city in the world in regard to water, the sands from the ocean blow through the streets, and

almost cover the houses in places. We need more water in that city for domestic uses, and for street purposes, than in any city in the world. We want it for our public parks, and if we were to limit the supply, to what cities generally need, it would not be a quarter of what the city should have. In the summer time when there is long periods without rain, the sewers get so foul that, if it was in a warm climate, the mortality would be terrible, and even as it is, the sewers have to be flushed very often. If we have to pay for the water we can scarcely sprinkle the streets of the city in sufficient quantities. If the city owned its own water works it could be used for many purposes; we could have plenty of water for the parks, for the streets, for the sewers, and for manufacturing and domestic purposes. They say you can regulate the price of water. But either the city would have to pay an immense amount for the water, or you would have to reduce the price so low as to break the company—one thing or the other. We have seen in San Francisco where there was large fires that the mains conducting the water were altogether insufficient in size. The city should own its own water works. They should put in pipes sufficiently large that in cases of fire the people could have all the water necessary. The water in the past years has been so bad from this Spring Valley Water Company that it could scarcely be used. It was filled full of living matter, to be seen by the eye coming out of the pipes. The Spring Valley Water Company have control of all heads of streams and lakes within thirty or forty miles of San Francisco, of all the water capable of being brought into the city: and certainly we need the power to construct or acquire water works more than any city in the world. I hope the amendment will prevail.

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

Seconded by Messrs. Campbell, Evey, Hager, and Hunter.

The main question was ordered.

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

The amendment to the amendment was rejected.

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

The amendment was adopted.

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

THE SECRETARY read:

"Amend section twenty as follows: add at the end of the section the following: 'Any indebtedness or liability incurred contrary to this provision shall be void.' Also, in line four, insert the word 'qualified' before the word 'voter.'"

MR. HAGER. Mr. Chairman: The word "qualified" ought to be there. The other amendment was in the report of the Committee on Legislative Department, and their section was stricken out because it properly belonged here, and I move it as an amendment to this section.

The amendment was adopted.

MR. WYATT. I move to amend in line fourteen, by striking out the word "forty" and inserting the word "twenty."

MR. HAGER. I will state to the Convention that, as originally drawn, it was twenty years. The committee, after deliberation, seemed to think that forty years was better. I would prefer twenty myself. It is a question for the interior counties to decide for themselves. The committee, after deliberation, thought it had better be forty.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was adopted.

MR. MANSFIELD. I send up an amendment.

THE SECRETARY read:

"Amend section twenty by adding, after the word 'jail,' the words 'public school building in any city, town, or school district.'"

THE CHAIRMAN. There is already an amendment put in there after the word "jail."

MR. MANSFIELD. The object is to allow the people of any district to build a school house if they so desire. In the original they could not build except a Court House or jail.

MR. HAGER. Mr. Chairman: I do not see any objection to making that amendment.

MR. LARKIN. Mr. Chairman: I will offer an amendment to the amendment that I think will cover that question. This applies simply to counties—"except by a county to erect a Court House or jail"—and that provision is simply to extend it to school houses. I believe it should extend to any public building to be erected by a city, county, or township. I move to amend section twenty, line six, by striking out "except by a county to erect a Court House or jail," and insert "except for the acquisition or construction of water works or public buildings."

THE CHAIRMAN. That is not an amendment to the amendment. It is an independent amendment.

MR. CAPLES. I am surprised at this amendment. Its practical result would be to nullify the restrictions that we have proposed to place upon the incurring of indebtedness. Now, that exception was made by the committee of Court House or jail for the simple reason——

THE CHAIRMAN. That amendment is not before the committee at present.

REMARKS OF MR. CAPLES.

MR. CAPLES. I merely referred to the exception made by this amendment. The exception made by the committee was because of the prime necessity. These buildings must be had. They are indispensable to the carrying on of government, and hence the committee made a special exception for them, and that was right. Everybody recognizes that the amendment proposed by the gentleman from El Dorado would open the doors to the building of anything and everything, and any kind of extravagance and unnecessary improvements. For instance, if it is to be extended indefinitely to any kind of improvements, or any kind of building, why it practically nullifies the restriction that we aimed to place upon public expenditure. I am utterly opposed to throwing the door wide open to the building of palatial school houses, or palaces for our paupers, or any other system of extravagance that would be invited by this universal exception of anything and everything that might be hatched up for the purpose of robbing the taxpayers.

MR. WYATT. Mr. Chairman: I take the same view as the gentleman from Sacramento, Mr. Caples. So many exceptions destroy the whole section. I hope, for my part, there will be no more exceptions, and if they go on we might as well strike the whole section out.

MR. GRACE. Mr. Chairman: I now move to strike the whole section out. I think it is a disgrace to the Convention.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Los Angeles, Mr. Mansfield.

The amendment was rejected.

MR. GRACE. I move to strike out section twenty.

MR. LARKIN. Mr. Chairman: I consider that section one of the most important sections in this whole report, a section that is eminently essential for the protection of our counties, cities, and towns. This committee has amended it, and there is no necessity for striking it out.

The motion was lost.

MR. MCCALLUM. I move to add, after the last word of Mr. Estee's amendment, the words "at a price not exceeding the actual cost of such water works."

THE CHAIRMAN. It is out of order. You cannot amend that amendment. The Secretary will read section twenty-one.

THE SECRETARY read:

SEC. 21. No county, city, town, or other public or municipal corporation, by a vote of its citizens or otherwise, shall become a subscriber to the capital stock, or a stockholder in any corporation, association, or company, or make any appropriation, or donation, or loan its credit to, or in aid of, any person, corporation, association, company, or institution.

MR. HAGER. Mr. Chairman: That section has already been substantially adopted in the article on legislative department, and I would like to offer a substitute for it.

THE SECRETARY read:

"Substitute for section twenty-one: 'SEC. 21. The Board of Supervisors, or other legislative authority, in their respective counties or cities, shall have power, by two thirds of all the members concurring in the vote therefor, to remove from office any officer of said county or city for negligence, incompetency, or corruption.'"

MR. HAGER. Mr. Chairman: We have a provision of that kind in regard to a summary way of getting rid of incompetent State officers, and I think we ought to have the same remedy in the counties. If an officer is corrupt or incompetent, there should be some authority to deal with him promptly. If an officer refuses to pay over the moneys that he collects, there should be a summary way of turning him out of office at once." A provision in the article on judicial department gives the Legislature the right to remove Judges by resolution. This is a provision that I think would be well enough in regard to removing incompetent county officers by the Boards of Supervisors.

MR. MCFARLAND. Mr. Chairman: We have been proceeding here for some time upon the theory that the worst men in the world were Supervisors. Now, you are going to give this unworthy Board of Supervisors power to turn out any officer in the county. Who is going to turn out the Supervisors? It seems to me a strange proceeding to put this power into the hands of three, or four, or half a dozen men, who, according to the gentlemen, are generally rascals, and cannot be trusted. I hope the substitute will not be adopted.

MR. ESTEE. Mr. Chairman: My objection to the substitute is this: that under the present statute you can turn out any corrupt officer in a very short period of time, and the idea of allowing two thirds of a Board of Supervisors to turn out an elective officer is a strange one. Suppose the Board of Supervisors were of one political faith, and the county officers were of another, they might be removed simply upon that ground. I think it would be an extraordinary proposition.

MR. HAGER. Would it be any more extraordinary than for the Legislature to remove Judges elected by the people?

MR. ESTEE. I am not passing upon that. Leave it to the Courts. Who is going to watch the Supervisors? My chief objection is that it may be done for political reasons, and I think we ought to guard against placing any power in the hands of any local officer whereby they can remove an elective officer without any due process of law. In other words, the Board of Supervisors may remove a county officer—Sheriff or Clerk—without any showing on the part of that officer. That officer may be disgraced and ruined for life, and he never have an opportunity to defend himself.

MR. BARBOUR. Did you not propose, in the article on corporations, to authorize the Legislature to remove an elective officer?

MR. ESTEE. No, sir; I did not. That was an amendment adopted in this body. It is adopted, it is true, but I do not wish to be responsible for all that has been adopted, and I am not; but that does not make the slightest difference. This would be very dangerous. The Board of Supervisors might be of a different political party from the Sheriff, and they might pass a resolution that the Sheriff is not a responsible party, and declare his office vacant.

MR. LARKIN. Mr. Chairman: I move to strike out section twenty-one, as this is already provided for in the article on legislative department.

The motion prevailed.

THE CHAIRMAN. The section is stricken out. The Secretary will read section twenty-two.

THE SECRETARY read:

SEC. 22. No law shall be passed by the Legislature granting the right to construct and operate a railroad within any city, town, village, or on any public street or highway thereof, without the consent of the muni-

cipal or other proper local authorities having the control of such street or highway proposed to be occupied by such railroad.

MR. CAPLES. I move to strike out section twenty-two. The provisions of section twenty-two are all right enough, but we have already adopted provisions that cover the whole ground making section twenty-two unnecessary.

The motion prevailed.

THE CHAIRMAN. The section is stricken out. The Secretary will read section twenty-three.

THE SECRETARY read:

SEC. 23. In any city where there are no public works owned and controlled by the municipality for supplying the same with artificial light and water, any company duly incorporated by the laws of this State shall, under the direction of the Superintendent of Streets of said city, have the privilege of disturbing and using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and of making connection therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gas light or other illuminating light, or with fresh water, for domestic and all other purposes, for which the same or either may be used, upon the conditions following: Such company shall make good all damages to such streets and thoroughfares, except necessarily occasioned by the reasonable use thereof, and be liable to such city and its inhabitants therefor. Such company introducing and supplying gas light, or other light, and fresh water, or either, shall furnish the same, so far as necessary and required, free and without charge, to all public buildings, institutions, and school houses belonging to such city, and used for muncipal purposes; and such company introducing and supplying water, shall also furnish the same free and without charge, to the fire department, and for the extinguishment of fires. Each company, its property and franchise, shall be liable to such city and its inhabitants for the performance of these conditions.

MR. CAMPBELL. Mr. Chairman: I send up an amendment to that section.

THE SECRETARY read:

"Amend section twenty-three by inserting after the word 'used,' in line ten, the following: 'Subject to such general ordinances as the municipal legislative authority may make as to the mode of exercising such privilege, and.'"

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: As the section now stands it authorizes any of these companies to tear up the streets of any city according to their discretion, upon certain conditions, and these conditions are, that they shall make good damages to such streets and thoroughfares, except necessarily occasioned by a reasonable use thereof, and be liable to such city and its inhabitants therefor. You simply create a liability. You allow them to tear up the streets without any regulation as to the extent of such tearing up, and simply make them liable where they may be insolvent and unable to respond in damages, and where they may occasion great inconvenience. If this privilege is to be given, it ought to be under such regulations as may be established by the municipal authorities in regard to the mode of exercising it; such, for instance, as that they shall be prohibited from keeping any block in an unsafe or improper condition; the extent of street they may tear up at one time, and all these things. I propose simply to change it in that way.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I move that the section be stricken out. On yesterday there was a strong sentiment expressed here in opposition to giving San Francisco her charter in the form in which she desires it, because it was said that we would be adopting an act of secession. If the Convention does not want San Francisco to secede from the State, it ought not to want gas companies to secede from the different subdivisions of the State. This section contains a grant of power entirely overruling and controlling the local governments in which these companies exist. It takes away from the local governments the right to control and regulate these institutions, and makes them independent of municipal authority. It is, therefore, entirely objectionable, and I presume, since it is not desired by San Francisco, or any of the large cities where gas questions arise and agitate the people, I am quite certain it cannot interest any other portion of the State.

MR. GRACE. I second that motion.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I hope the section will not be stricken out. The reason why that section is inserted here may need a word of explanation. It seems to me it ought not to need a word of explanation to any resident of the City of San Francisco. There have been frequent attempts to introduce water, even artesian well water, in San Francisco, and persons who have sunk artesian wells in different parts of the city and finding that they had an abundant supply, have asked the privilege of supplying their neighbors in the same block, or perhaps adjoining blocks, and have sought the privilege of merely laying down supply pipes, to supply their neighbors with water that they have brought out of the depths of the earth, could not get the privilege from a Board of Supervisors to do that. They have stood ready all the time to give any amount of bonds required or named. They could not get the privilege. We understand the reason very well—the power of Spring Valley.

Again, there has been, during the session of this Convention, parties who have sought the privilege of erecting gasworks and laying down gas pipes, and supplying that city with gas at a reasonable figure, offering to comply with any bond that might be named, offering to give any necessary bond—not only that, but any bond that the Supervisors dare name. Could they get the privilege? No, sir! The San Francisco Gaslight Company stood in the way. Now, this section seeks to obviate that and give all parties the bare right to lay down water pipes or gas pipes—the bare, naked right to do so. But they are subject to all the necessary conditions. First, they shall do so under the direction of the Superintendent of the streets of the city; that is to say, they must not take up more than a certain distance in a street at once without repairing it again; in certain crowded thoroughfares they must do their work in the night time; they must work in these crowded streets between six o'clock in the evening and seven o'clock the next morning, and keep it all repaired during that time, and other conditions that may be deemed necessary by the Superintendent of Streets, so that they may not obstruct the traffic and business of the public. Such company would be subject to all these conditions. Then, again, it is recited: "Such company shall make good all damages to such streets and thoroughfares, except necessarily occasioned by the reasonable use thereof, and be liable to such city and its inhabitants therefor. Such company, introducing and supplying gas light, or other light, and fresh water, or either, shall furnish the same, so far as necessary and required, free and without charge, to all public buildings, institutions, and school houses belonging to such city and used for municipal purposes; and such company, introducing and supplying water, shall also furnish the same, free and without charge, to the Fire Department, and for the extinguishment of fires. Each company, its property and franchise, shall be liable to such city and its inhabitants for the performance of these conditions." I do not see why such a section as that should not be adopted. It is simply to break the power of overshadowing monopolists.

Mr. Chairman: I dislike to disclaim here against water monopolies and gas monopolies. It is a hackneyed phrase, I know, and I dislike to use it; but, sir, these institutions are all-powerful, and it is necessary to use it. Practical experience proves it to be necessary. It is, beyond dispute, that we need some such declaration in the law we pass to give these parties the right to use the streets to supply the people with these necessaries of life. All we wish to do here in this section is to declare the right to use our streets for the purpose of laying down water pipes and gas pipes, as well as of travel, subject to the proper conditions. That seems to be all that is necessary to say on this subject. Where a water company and a gas company—and they work together wherever it is necessary—have enjoyed a right to furnish all the water and all the gas to a city of three hundred thousand inhabitants for many years, they have acquired wealth and have acquired influence in so many ways, that it is almost impossible for a private citizen, or for a new company to come in there with any sort of opposition, without incurring difficulties that are absolutely insurmountable. That has been found to be the case. Within the past two or three months parties have been endeavoring to get this privilege, but they could not do it upon any conditions. They could not do it when they offered the city the privilege of naming its terms.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: What my friend from San Francisco says in reference to the gas and water companies is undoubtedly true, but I find that section nine prescribes a plan for a city government with full power. I will read part of the section:

"Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been, for at least five years, qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of largest general circulation in such city, for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election; and if a majority of such qualified electors voting thereat shall ratify the same, it shall, at the end of sixty days thereafter, become the charter of such city, or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof, and supersede any existing charter, and all amendments thereof, and all special laws inconsistent with such charter."

Now, let us look at this section twenty-three, the one under consideration:

SEC. 23. In any city where there are no public works owned and controlled by the municipality for supplying the same with artificial light and water, any company duly incorporated by the laws of this State shall, under the direction of the Superintendent of Streets of said city, have the privilege of disturbing and using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and of making connections therewith, so far as may be necessary for introducing and supplying such city and its inhabitants either with gas-light or other illuminating light, or with fresh water for domestic and all other purposes for which the same or either may be used, upon the conditions following: Such company shall make good all damages to such streets and thoroughfares, except necessarily occasioned by the reasonable use thereof, and be liable to such city and its inhabitants therefor. Such company introducing and supplying gas light or other light, and fresh water, or either, shall furnish the same, so far as necessary and required, free and without charge, to all public buildings, institutions, and school houses belonging to such city, and used for municipal purposes; and such company introducing and supplying water shall also furnish the same, free and without charge, to the Fire Department, and for the extinguishment of fires. Each company, its property and

franchise, shall be liable to such city and its inhabitants for the performance of these conditions.

They may take up the streets if they will furnish the city with gas and water. Now, what is the result? The result will be this—and here my friend mistakes his own case—that there never can be such a thing as competition under this section. I want to know how you can get a gas company in San Francisco, now that there is one already established, to come there and lay down pipes, for whenever they do it they have got to furnish San Francisco with gas free, that is the section. In other words, it pays a premium to the old company. It allows them to occupy their present position, and the new company has got to furnish the whole city with gas. Now, my friends do not mean that, but it reads that way. It is so in the section. Again we have a got a water company. Now, my friend proposes to meet the question of these artesian wells in certain localities. What is the result? Here is one sunk at a corner, we will suppose, and it raises five hundred thousand gallons of water a day. Now, the moment they commence to lay down water pipes in San Francisco, to supply the people of San Francisco, or any considerable number of them with water, they have got to supply the whole city with water. I think the city will have most ample authority to regulate this matter, and I realize the justice of the remarks made by the gentleman, last on the floor, in regard to the failure of parties to obtain the privilege of laying down pipes in San Francisco. Yet, I think from the provision that has already been adopted the most ample security will be given for any such thing in the future.

Mr. BARBOUR. Suppose the people do not make a charter?

Mr. ESTEE. If they do not have any city government they will not. If they do not have any charter they will not have any laws. They will have power to grant these privileges. These are extraordinary penalties that you propose to impose, because anybody can see that there is not a gas company in the world that ever will attempt to lay down pipes in San Francisco, and furnish the people with gas unless they sell the gas to the people at an enormous price, for they have got to give the gas to the city for the purpose of lighting the streets. Therefore, I think we had better, unless it can be amended, strike that section out.

Mr. McFARLAND. I have an amendment to offer.

The SECRETARY read:

"Amend section twenty three, by striking out lines 'one and two,' and the word 'water,' in line three, and insert in lieu thereof 'in the city of San Francisco.'"

REMARKS OF MR. ROLFE.

Mr. ROLFE. Mr. Chairman: I have three or four objections to this section. I do not know as I shall mention them all. In the first place, it was argued here very strongly yesterday that cities were able to govern themselves, and should be allowed to govern themselves. Well, I do not object to that. But, if cities are able to govern themselves and do govern themselves, then I say let them do it; and if they are not able to protect themselves from the Spring Valley Water Company, or anything else, let them suffer. It is said here that private citizens have dug artesian wells, and have asked the privilege to supply their neighbors with water, and the municipal authorities would not give them the right to lay down the pipes. I do not know anything about that. I do not care. If there is anything wrong about it, then let the people of that city elect other citizens who will act in the matter. But if the city authorities refuse that right, my opinion is that there is some good grounds for refusing it. That is only my opinion, not knowing anything about it. But this section will not remedy the evil. This section only gives this right to incorporated companies. If the gentleman will read the section he will find it so. It does not grant the right to the citizen who digs an artesian well and wants to supply his neighbor with water. It does not give them the right unless they go to work and incorporate. This thing of incorporating has been stigmatized by this Convention, and this Convention has said substantially that these incorporated companies must be discouraged.

I have an artesian well on my place at home. There are three of my neighbors that take it partly through the streets. There has been no objection to it. Under this section we would have to go to work and incorporate, if the question was raised. This is the objection I made before the committee. The answer was, that nobody but a corporation would want that privilege. I do not think so. Why, in the town that I live in there is a surplus of water. It is watered too much now. But a corporation could avail itself of the privilege of this section, and with a capital of not more than two thousand dollars, could flood that city with water and destroy it. They could say, unless you come to our terms we will flood your town and drown you out, and then you may whistle for damages, because we are not worth anything to pay you. It says that the company shall be liable for damages, but who is to guarantee that the company would have enough to pay the damages? Now, sir, let these cities stand upon their legal rights to refuse any company or any person the right to tear up their streets and lay down water pipes, or gas pipes, or anything of the kind, if, in the judgment of the municipal authorities of the city, they deem it advisable to refuse it; and if there is further need of legislation in this behalf, then leave it to the Legislature to correct the evil.

Mr. HERRINGTON. Mr. Chairman: I would like to offer an amendment.

The CHAIRMAN. There are two amendments pending.

REMARKS OF MR. HERRINGTON.

Mr. HERRINGTON. Mr. Chairman: I will address myself to the proposition as it stands. Now, I am disposed to the opinion that there is some other spot on this globe besides San Francisco. I do not believe that that is the hub of the universe; and I believe that this question should be considered with reference to some other locality besides San Francisco merely. The way the section stands it is a fact that it absolutely cuts off all competition with persons who have established works furnishing water or gas to cities and towns in this State. It is a complete bar, practically, because it is an enormous expense to furnish a city such as San Francisco with gas or water free. Oakland is a large city, too, and San José has some pretentions, and there is gas furnished to that city; and there is a little town called Santa Clara, where I reside, and there is gas furnished to that town; and there is a considerable amount of gas in this assembly. [Laughter.] I say that the section as it now stands absolutely cuts off all competition, in all cities and towns, at all events as far as this section goes. It is true it reads "city," but I think it would be construed to mean "the City and County of San Francisco." And at all events, suppose that it be rigidly adhered to, as to the terms of this section, and that it means "city," and that it did not include San Francisco, then I am still more interested. I do not think San Francisco has any business to fasten it upon us. I think we ought to have the right of competition. I think that those who may dare to set up a competition ought to have the same rights as those now furnishing. They ought to have the same right to compete for the compensation that is paid by citizens. The same argument will apply to the furnishing of water. Any one who will compete with the water works of San Francisco, Oakland, or San José ought to be allowed to compete on the same terms as those enjoyed by the parties now furnishing those cities. I had proposed in my own mind, and have drawn an amendment that would place them all on the same basis. Those who are now furnishing gas to cities would furnish it free of cost, and that would get some benefit out of these institutions that have these works now erected. Now, I submit that if this section has to stand and not be stricken out, this provision which I have prepared ought to be inserted, and we ought to have some benefit from these organizations that are now established.

REMARKS OF MR. GRACE.

Mr. GRACE. Mr. Chairman: It does seem to me that this section and its amendments is a section of words without understanding. I do not see how a company is going to compete with an established company, and furnish water for city purposes. Now, these small companies, or corporations, that have their artesian wells, that you were speaking of, how many of these public institutions could they furnish? How would they divide it up? One institution may take all the water they have. How could they make their profit? The whole thing is ridiculous.

Mr. ESTEE. How could they furnish the fire department?

Mr. GRACE. I do not see how they could furnish anything. It means that the Spring Valley Water Company is the only company that can do it; and it bars every road to competition; everything is closed out, and that is the final upshot of it. I tell you, the whole thing is a dazzling fraud, and I am in favor of striking out the whole section and going on to something that is more reasonable and substantial, and more to the interest of the constituents I represent.

REMARKS OF MR. MCCALLUM.

Mr. McCALLUM. Mr. Chairman: This proposition was introduced at an early day in the Convention by the gentleman from San Francisco, Mr. Reynolds. It came before the Committee on City, County, and Township Organization, and I admit that I made no objection. It received no little amount of discussion. But the proposition, as it here stands, ought not to be adopted, and I am in favor of the motion to strike it out. I do not find that my constituents, or any portion of them, either those averse to corporations or those on the other side, are in favor of this proposition. Besides, since this matter was presented to the Committee on Cities and Counties, we have taken very important action in the Committee of the Whole. We have since then adopted the proposition of local self-government; and if section nine, as suggested by Mr. Estee, should not cover it, then section twelve will cover it. It is very brief, and I will read it:

"Sec. 12. Any county, city, town, or township may make and enforce, within their respective limits, all such local, police, sanitary, and other regulations as are not in conflict with general laws."

Therefore, under that section, and in fact under the law as it is now, the local government has authority over this case. I have heard of some complaints as to the action of city authorities besides those which are made in the city of San Francisco. My judgment is, and perhaps if the proposition had been so framed I would have been disposed to support it, as to give the right to competing companies on the same conditions as those which were prescribed in the case of the original companies. But this section twenty-three provides no conditions of that kind, as has been already presented, and I will not repeat the arguments. In the first place it requires that it shall be a corporation, whereas individuals or partnerships ought to have the same rights in such cases. It provides that "such company shall make good all damages to such streets and thoroughfares, except necessarily occasioned by the reasonable use thereof, and be liable to such city and its inhabitants therefor." Now, as to what will be necessarily occasioned these words are rather ambiguous. And then as to liability. The gentleman who is the author of the proposition says that there is a lien upon their property. There is no provision in this article of that kind. There is no lien. But, as has been suggested by another gentleman, there is no requirement that the corporation shall have any property at all. And suppose the corporation is insolvent—in fact I believe a majority of the corporations in this State are insolvent.

Mr. REYNOLDS. I would like to know how a corporation—a gas company or a water company—is to lay down pipes, is to have water, in the first place, to bring there; and in the second place, to have flumes, pipes, reservoirs, conduits of every description, and lay down pipes, and yet have no property? How is it to do these things?

Mr. McCALLUM. There are two or three questions involved in

these remarks. I will try to segregate them, if I can. My point is that there is no provision that the company should have any property. There is no provision in this section that the company shall have any water, or shall have any reservoirs, or shall have any property at all.

MR. REYNOLDS. Then who is damaged?

MR. McCALLUM. They might dig up the streets to lay down pipes. It gives them the right, in the language of the section, of "disturbing and using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein." Of course, it would be a fair presumption that they would not dig up the streets unless they had water and pipes; but, so far as this section goes, they might commence digging up the streets before they had a single pipe. There is nothing in the Constitution to prevent them from beginning at either end. And, then, suppose they have no property, what are you going to do about it? I believe the practice is to require bonds to pay damages.

THE CHAIRMAN. The gentleman's ten minutes have expired.

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

MR. TOWNSEND. Second the motion.

MR. HAGER. I have not had a chance to say a word on this proposition. I would like to have the gentleman withdraw the motion a minute.

MR. WATERS. I am willing to withdraw the motion.

MR. TOWNSEND. If it is only a minute—I am willing to give him a minute.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I have been trying to get the floor for some time, to say a few words upon this section. A great deal of criticism has been indulged in with regard to it and I will explain it so far as I understand it, it being reported by the committee of which I am the chairman. Now, there has been something said about the stockholders of companies, and I wish to say that I have no interest in the Spring Valley Water Company. I have an interest in a gas company, and this report is against my interest, and therefore it cannot be said that I was influenced by my personal feelings. This is against my interest. I favor the proposition because I think there is a necessity for it. I know there is a necessity for it in the City of San Francisco. The streets of the city are occupied by the Spring Valley Water Company, and no other party can begin because of it. So it is with regard to gas, to a certain extent. I look upon water as an essential of life. Now, I know that people have dug artesian wells, and have petitioned the Board of Supervisors to lay down pipes in order to supply their neighbors, and it has been refused. Why should not the privilege be open and free, even by a Constitutional provision? Now, objection has been made that this gives it to a company. Companies are liable to the restraints of the law, individuals are not. When a general law is passed you may put as many guards in as you please, and a company must comply with those conditions; therefore, I think it ought to be limited to companies. Two or three individuals may incorporate under the general law, and lay down pipes and supply their neighbors with water, if they see fit to do it. Ordinarily I would not favor a provision of this kind, unless there was some necessity, some overwhelming necessity, you may say, and I think that necessity exists in San Francisco, because I know that the people have not had the opportunity of supplying water, and yet it has been circulated around here that the Board of Supervisors had made a concession. In regard to gas, it may be said that gas is not a necessary of life, and the same reason does not exist, but I could not afford merely to report in favor of one proposition, and not in favor of the other; therefore, I reported in favor of both. I am in favor of it, and I hope it will not be stricken out. It does not apply to San Francisco alone, it applies to the whole State.

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

Seconded by Messrs. Larue, Hunter, Smith, of Santa Clara, and Larkin.

The main question was ordered.

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

The amendment was rejected.

THE CHAIRMAN. The question is on the motion of the gentleman from San Francisco, Mr. Winans, to strike out the section.

The motion prevailed.

[Cries of "division"; and great confusion.]

THE CHAIRMAN. The section is stricken out. The Secretary will read section twenty-four.

THE SECRETARY read:

SEC. 24. In counties or cities having more than one hundred thousand inhabitants no person shall, at the same time, be a State officer and a city or county officer, nor hold two city or county offices.

[Continued confusion and demands for a division.]

MR. GRACE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on City, County, and Township Organization, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., Mr. Murphy in the chair.

Roll called and quorum present.

CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

MR. HAGER. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. Murphy in the chair, for the purpose of further considering the report of the Committee on City, County, and Township Organization.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

MR. REYNOLDS. Mr. Chairman: I call for a division of the House on the motion to strike out section twenty-three.

THE CHAIRMAN. Section twenty-four has been read.

MR. REYNOLDS. The Clerk attempted to read, but his voice was drowned by demands for a division, so that there are not half a dozen gentlemen on this floor who can tell whether the Clerk read section twenty-four, or an editorial from the Record-Union.

MR. CAMPBELL. Mr. Chairman: Section twenty-three was stricken out and it was so decided by the Chairman, and we then proceeded to section twenty-four, which was read by the Secretary, and there was no appeal taken.

MR. HAGER. Being the Chairman of the committee, I presume I can state the grounds for this request. The question was on the motion to strike out. The Chair put the question, "All in favor say aye; contrary, no; the ayes have it." A division was called for by a dozen. I called for a division. A great many others called for a division, and the Chair disregarded the call. I do not know whether he did not hear it or what. But, at all events, the provision was stricken out. In parliamentary usage the Chair rises and asks the house if they are ready for the question, and then if nobody says anything the vote is taken. Those in favor will say aye; contrary, no. The Chair then says the ayes seem to have it, and then any one has a right to call for a division. But we must recollect that our rules are very strict—more so than in any Constitutional Convention that ever assembled. The previous question cuts off debate; ten minutes is all that is allowed members to express their views, and we cannot fairly and squarely consider any proposition. I do not suppose there was any design on the part of the Chair to do anything improper in the matter, but it does seem a little hard if we cannot have a fair vote and a fair expression of opinion. Now, a division was called for distinctly. Whether it was lost by the ruling of the Chair I do not undertake to say, but the division was distinctly called for. This is a matter of no great importance, so far as I am concerned, except as a matter of practice, which should control this Convention. I think we ought to do our business with sufficient deliberation to give a fair expression of opinion. The Chair, after stating the question, would then ask if the Convention is ready for the question. If nobody says anything then put the question. Then he should say the ayes seem to have it, giving an opportunity to members to call for a division. In this case I do not suppose the Chair intended anything more than the dispatch of business.

MR. HAGER. I move that we have a division.

MR. HUESTIS. I object.

MR. LARKIN. I rise to a point of order. Whatever the ruling of the Chair was, it was definite and it is past. The Chair directed the reading of the next section. I may be opposed to the ruling of the Chair, which I am, but that is past and it is not now in the power of this Convention to reverse this decision. The Secretary read the next section, the committee rose, and it is not now in order to reconsider any action by a motion now to take a division on that question. The question I raise is, that it is not in order to take a division.

THE CHAIRMAN. The Chair will have to go by the records of the Clerk here, and decide the point of order well taken. He has no other recourse.

MR. REYNOLDS. If I understand the gentleman, he makes the point of order that the vote was declared, and the committee passed to other business?

MR. LARKIN. Yes, sir.

THE CHAIRMAN. There is no question before the House, unless the gentleman wishes to take an appeal.

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

Seconded by Messrs. Joyce and Stedman.

THE CHAIRMAN: Gentlemen: The question is: Shall the decision of the Chair stand as the judgment of the committee.

MR. REYNOLDS. Mr. Chairman: I care not to spend any time over the matter, but I wish, for the reasons stated by the Chairman of the committee, that this Convention do its business decently and in order. It is all very fine, when, by a little stretch of official authority by the Chairman—whether intentional or otherwise, whether playful or in earnest—it is all very fine when it goes our way; but, sir, you cannot say, when that principle is indulged in, to where it may lead. It may lead to bulldosing, and when it does not go our way we shall, perhaps, find ourselves objecting to it. I think it is just as well for this Convention to declare by this vote that, whereas, a division was called for by a dozen or twenty members on this floor, drowning the voice of the Chairman when he called for the reading of the section, and drowning the voice of the Clerk while he read, that it is proper that the Convention should be heard.

THE CHAIRMAN. The Chair will state that he has no interest in the matter at all. All he goes by is the record of the Clerk.

MR. BLACKMER. Mr. Chairman: I was one of those who persisted in calling for a division upon the vote, and my judgment was and is that a division was called for at the proper time, but I do not see how we can reach that question at all now. In my judgment it is passed beyond our control, and the only thing for us to do is to sustain the decision of the Chair. It is too late to correct that error at this time, and it is not essential to the business, because this matter can be brought up again when this subject comes up in Convention. I think we have nothing to do but to sustain the decision of the Chair.

MR. McCOMAS. Mr. Chairman: I move to lay the appeal upon the table.

The motion prevailed, on a division, by a vote of 59 ayes to 20 noes.

THE CHAIRMAN. Are there any amendments to section twenty-four?

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

THE SECRETARY read:

"Amend section twenty-four by striking out all up to and including the word 'inhabitants' in the second line."

MR. CAPLES. Mr. Chairman: The section as reported by the committee reads: "In counties or cities having more than one hundred thousand inhabitants no person shall, at the same time, be a State officer and a city or county officer, nor hold two city or county offices." Now, I see the propriety of the latter part of the section, but I confess that I am unable to see any reason why in cities or counties having one hundred thousand inhabitants it should be prohibited while being held admissible in counties of less population. If the Chairman of the committee or any gentleman can show any reason why the distinction should be made, or why the same person should be permitted to hold two offices in other counties, I shall be willing to withdraw the amendment. It does seem to me to be a pernicious practice to permit any man to hold two offices.

MR. HAGER. Mr. Chairman: I will state that I am perfectly willing to vote for the amendment the delegate offers, but the committee did not wish it to apply to other counties. It was limited to cities of one hundred thousand inhabitants because the committee did not wish it to apply to the interior counties. That was the object.

MR. CAPLES. Mr. Chairman: There may be reasons assigned, and if there are any reasons I should be glad to hear them. I confess that I am unable to see them. The principle is a bad one, for any man to hold two offices, no matter what their character, whether State, county, or municipal. One office is enough for any man to hold at the same time.

MR. BIGGS. Mr. Chairman: I wish to know if their Sheriff is not holding two offices—one as Sheriff and the other ex officio Tax Collector?

MR. CAPLES. I do not so construe it. The Sheriff is ex officio Tax Collector. The collection of taxes is a part and parcel of his official functions prescribed by law, and I do not and cannot consider it as two separate and distinct offices, when the law itself makes it the same office.

MR. BLACKMER. Is it not a fact that in many counties it is very desirable for the County Clerk to also act as Auditor, and would not this prevent it? The County Clerk often acts as Auditor of the county. This would prevent it.

MR. LARKIN. In our county the Sheriff is County Treasurer, the Clerk is Recorder, and the County Assessor is collector of poll taxes. Under this it would be prohibited, therefore I would like to strike out the section. If you will allow me, I will move to strike out the section.

MR. CAPLES. That would be entirely satisfactory to me, to strike out the section. I withdraw my amendment.

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

MR. WINANS. Mr. Chairman: I move to amend the section by adding thereto, "or a city and county office." As the section now stands, it applies to State, county, or city officer. I understand that the Chairman of the committee does not object to the amendment. It provides for a third contingency, not embraced in the section as it now stands.

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

MR. HAGER. Mr. Chairman: The reason given for this section is, that in the City and County of San Francisco they are in the habit of piling offices upon one man. Some of their perquisites have been more than doubled by giving them some additional office while in office, and this is limited to counties of one hundred thousand inhabitants. I thought that when a county had one hundred thousand inhabitants that no person ought to be an officer in more than one capacity. In a large county, where there is a large compensation, a popular man who is Sheriff, for instance, obtains some other position. I think it ought to apply to all the counties, still, the committee objected to it, and therefore it is applied only to counties of one hundred thousand inhabitants. If a man is Tax Collector and Sheriff, in as large a county as that, he has too much to do; if he is Sheriff and Assessor he has got too much to do. He has got enough to do, in a large county of that kind, to attend to one office. There are plenty of men in the county that do not have any office at all, and that are perfectly willing to take their share of the burden. I say distribute them around, and let every man do his share of public business and public trust, and not give it all to one, because he is a popular man.

MR. BROWN. Mr. Chairman: It appears to me from the explanation given by the Chairman of the committee, that this section was quite well digested, and quite well considered. It does not appear that it conflicts with other counties, as there are very few that have that number of inhabitants. This thing of having a few men hold all the offices is not a proper thing. Since the Chairman of the committee has explained it, I do not see any propriety in striking it out; I think, in fact, that it is a good provision.

MR. LARKIN. Mr. Chairman: Yesterday we adopted section sixteen of this report which provides that "no State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, and the public interest demands it, appoint such officers." Now, there is no State officer there that can be merged with a city and county officer. The people of San Francisco have a right to select one man to do their business. The people of Alpine have the same right. The people of El Dorado consolidated their officers to save expense. I think one third, if not one half of the counties of the State have some consolidated offices, and one half the expense is saved in that way. I do not believe in applying a special rule to part of the State. If the rule is good it should be applied to all. The people of San Francisco are capable of self-government. I think the section is useless and ought to be stricken out.

MR. ESTEE. Mr. Chairman: There is another reason why the section should be stricken out, and that is, that we ought to leave a little for the Legislature. They can regulate this matter. In Napa County the same person is County Clerk, County Recorder, Auditor, and Clerk of the Board of Supervisors, with a salary of two thousand five hundred dollars a year. The Assessor is Tax Collector. I hope the section will be stricken out.

THE CHAIRMAN. The question is on the motion to strike out the section.

The motion prevailed.

THE CHAIRMAN. The section is stricken out. The Secretary will read section twenty-five.

STREET WORK.

THE SECRETARY read:

SEC. 25. No public work or improvement of any description whatsoever shall be made or done, in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable, or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment in proportion to benefits, on the property to be affected or benefited, and shall be collected and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed.

MR. HOWARD. Mr. Chairman: I propose an amendment to that section.

THE SECRETARY read:

"Amend section twenty-five, by adding at the end thereof, 'in any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual or company duly incorporated by the laws of this State, shall, under the direction of the Superintendent of Streets, and under such regulations as the municipality may prescribe for damages, and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connection therewith, so far as may be necessary for introduction into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges therefor.'"

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: This is a different proposition altogether from the one struck out. My provision steers clear of confining this privilege to corporations or incorporated companies. It gives to any individual, as well as to any incorporated company, the right to the use of the streets for laying down pipes for the supply of gas and water, or either. I think that the objection that was taken to the section as formerly introduced was well taken—that it should not be limited to corporations; that any individual, for the public good, should have the right to use the streets for laying down pipes for supplying water or gas. It is in the public interest that it should be conceded, and it prevents monopoly in any sense. It also provides that the city authorities may make a regulation in relation to damages and indemnity; that is, that they may make a regulation requiring all work to be done under the supervision of the Superintendent of Streets, and also, if any damage should be likely to occur, they may, by security or otherwise, guard against it. I leave out also the provision which required the company to supply the city and the school houses, and other public buildings with gas or water free of charge, because I think that an unjust burden. As the distribution of water and gas by any individual or company is for the public good, and if the benefit be sufficient to be a payment for the privilege, I do not see any propriety in imposing upon any party who thus supplies water or gas the burden of supplying the public buildings. Then it provides that the city and county shall have the right to regulate the price to be paid by the inhabitants for the gas and for the water. This is also a necessary regulation I think against the abuses of monopoly. Now, in Los Angeles we have a gas company with a monopoly for twenty years, and several parties have endeavored to get the privilege for laying down pipes in the streets for the purpose of supplying the city and competing with this company, but the company has always had sufficient influence in the municipal government to prevent this being done, and this company has a prospect of exclusive right for twenty years to come. Now, I submit to the Convention that this is a great abuse of public authority, and that it ought to be corrected. We have also there a water company that claims the monopoly, and the private individual who did succeed in laying down pipes, and is to some extent supplying the city with water in opposition to the monopoly, is threatened constantly with suits and injunctions, and if this thing goes on we will have a monopoly, not only of water and gas, but of all domestic necessaries, and then we will have some company that will be peddling it by the tin cup full. It is time this abuse was corrected, and, therefore, I offer this amendment.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: That would be inappropriate to the subject under consideration in section twenty-five. Section twenty-three treated upon that subject, and the section was stricken out. Section twenty-five is on an entirely different subject. It speaks of streets, and upon that subject alone. As to the merits of the amendment, it is so long that by merely hearing it read at a distance it is impossible to understand it. It would be very extraordinary for the Convention to adopt such an amendment after merely hearing it read at the desk. I raise the point of order that it is germane to section twenty-three, and that it is not pertinent to the subject treated of in section twenty-five, which is now before the committee. Section twenty-five deals with street assessments entirely, and no other subject.

THE CHAIRMAN. The point of order is not well taken.

MR. ESTEE. Then I move to strike out section twenty-five and the amendment proposed by the gentleman from Los Angeles, Mr. Howard.

MR. HOWARD. Mr. Chairman: I beg to say that I have no personal interest in this matter. I am not an attorney for the Spring Valley Water Company, nor any other water works, nor any gas company. I move solely in the public interest, and the public interest requires not only that the section itself should be adopted, but that the amendment should be adopted. I did not suppose that anybody in the interest of any monopoly would support my proposition. I do not expect that.

MR. ESTEE. Does the gentleman intimate that I am interested in a monopoly?

MR. HOWARD. No. I do not intimate that; but if the garment fits the gentleman he can put it on.

MR. ESTEE. The gentleman intimated that I was an attorney for some monopoly. I deny it.

MR. HOWARD. I do not know what the gentleman is an attorney for. I say I do not expect the support of anybody in the interest of monopoly.

MR. ESTEE. Certainly the question ought to stand on its own merits.

MR. HOWARD. I do not care who is an attorney and who is not. All I say is that I do not expect the support of any advocate of monopoly. I do not mean to impugn the motives of the gentleman at all. I do not know that he is an attorney of anything; but what I say is that this is a proposition in the interest of the public.

MR. SMITH, of Fourth District. Does not this power exist if the Constitution is silent upon the subject?

MR. HOWARD. It is obligatory. Without this amendment the evil is not reached. The city government, if it chooses, could give the power, but if it chooses to withhold it it can withhold it, and they always have men enough in the interest of monopoly to prevent any party from entering into any competition with it. This is to avoid that. It is to make it obligatory upon a city government, when it is properly secured under proper regulation, which they themselves prescribe, to give any party the right to introduce water and gas, and to compete with any existing monopoly.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I supposed that the fear of my friend from Los Angeles of what he calls centralism, and his extreme ideas in regard to local government, would end somewhere. I supposed at first that he would end at the declaration that the General Government should not do anything to interfere with the State.

MR. HOWARD. I would like to ask the gentleman if he believes that the Federal Government can overrule the reserved rights of the State?

MR. McFARLAND. No, sir; not the reserved rights of the State. Then, when he got down to town and city self-government, I supposed he would end there, but I find that his sliding scale of local self-government ends in a gas company, because he says now that a city or a town shall not have the power to prevent a gas company or water company from tearing up the streets. That is the whole theory. After we have got down in the doctrine of local self-government, so that cities and towns and the smallest political subdivisions can control themselves, if we are going to introduce a proposition here that a city shall not have the power to prevent anybody from tearing up its streets, we are down to the lowest bound of local government, unless you make the wards independent of the city. It is a queer doctrine to me. Suppose a city had given certain privileges to a water company and the gas company, and they were supplying water and gas at rates that were reasonable, and making only a fair profit. Suppose that the people were satisfied. Under this provision there would be no power in the municipal authorities to prevent some blackmailer from starting in and tearing up the streets, and compelling the old company to buy him out. If the government of a city or a town shall not have the power to say who shall tear up its streets I would like to know who should. The gentleman has something in the amendment about the conditions. If you put in that you give away the whole proposition. If the city has the right to say what the conditions shall be you give them the full power to keep them out, but I understand the object is to adopt, really, section twenty-three.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I want to say this right here, this Convention does not know what the meaning of the amendment proposed by the gentleman from Los Angeles is. We cannot pass upon it intelligently. It is nearly a whole page, and it is impossible for us to give it that consideration that so grave a subject deserves, and for us to attempt to adopt or reject it, as presented here at this time, would be unwise in the extreme. That is one reason I am opposed to the amendment. Now, sir, one word as to the personal part of the remarks of the gentleman from Los Angeles. I am not the attorney for any gas or water company; but, sir, if I was, I deny that I would thereby be a rascal. I deny that it would affect my character, upon this floor, or anywhere. I deny that because a man, in the performance of a professional duty represents his clients, that he thereby becomes unworthy of the confidence of the people. I am astonished that the distinguished gentleman from Los Angeles should attempt to bolster up an argument by intimating that some other gentleman was the tool or instrument of the corporation. Let every question rest upon its merits or demerits, not upon the merit and demerit of the man who proposes it; that is the only true way. I have that much to say, because this matter was referred to in a manner to convey the idea that I was here to represent the interests of some corporation, and not the interest of the people.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: This matter has been, to some extent, discussed before, but not upon the same ground that presents itself in this measure of the gentleman from Los Angeles. We find in this case it is different entirely, and covers something which was not covered before. Now, this gives to individuals as well as companies the right to lay down pipes for the purpose of conducting gas and water for utilitarian purposes in these cities. Now, we heard something said before with regard to individuals that had a little more water than they wished, and they were not allowed to lay down pipes to conduct it around through the city to a few squares. They evidently had not enough to supply public buildings, and yet that measure required that public buildings should be supplied with gas and water free. That was highly objectionable. These individuals could not have enough water to supply these public buildings at all. Secondly, section twenty-three was quite indefinite, and it did not answer the purpose and it was so regarded. In this case, so far as any one might have more water than he wished, he could dispose of it. Pipes may be laid down for that purpose without compelling him to supply public buildings. So far as any one going to tear up the streets is concerned, we find, in this last amendment, that the municipalities themselves can lay such restrictions upon such parties as they may deem just. They are under the restrictions of the law, and under the supervision of the Superintendent of the streets in everything that they do. Giving to individuals as well as to companies this right, is simply fair and just, because the object is not to give a monopoly to any one, and for the monopolists themselves to determine whether certain companies shall have this right or not. I do not see any injustice that it can work. It appears to me to be entirely fair. The cities can determine with regard to this, and the damages can be laid so high as to prevent any individuals whatever from laying down pipes if they so choose. And if they wish, they can regulate the thing accordingly and prevent this thing of monopoly that has been spoken of so much. I cannot see why there should be so great objection to this. It appears to me to be eminently fair and just, and if it is connected with section twenty-five, I do not think there is anything irregular or informal in the matter. It embraces a great principle. I shall certainly, in the present case, vote for the amendment offered by the gentleman from Los Angeles.

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

Seconded by Messrs. Moreland, Larkin, Hunter, and Evey.

The main question was ordered.

MR. ESTEE. I call for the reading of the amendment.

THE CHAIRMAN. The Secretary will read the amendment.

THE SECRETARY read:

"Amend section twenty-five by adding at the end thereof: 'in any city where there are no works owned and controlled by the municipality for supplying the same with water or artificial light, any individual or company duly incorporated by the laws of this State, shall, under the direction of the Superintendent of Streets, and under such regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein and connection therewith, so far as may be necessary for introduction into and supplying such city and its inhabitants either with gas light or other illuminating light, or with fresh water for domestic and other purposes, upon condition that the municipal government shall have the right to regulate the charges thereof.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

On a division, the votes stood 43 ayes to 32 noes.

THE CHAIRMAN. No quorum voting; the members will please vote.

The amendment was adopted, on a division, by a vote of 47 ayes to 35 noes.

THE CHAIRMAN. The question recurs on the motion to strike out the whole section.

The motion was lost, on a division, by a vote of 30 ayes to 49 noes.

Mr. HAGER. Mr. Chairman: I have a small amendment which I desire to make. There has been a word left out in line six. I move to amend by inserting the word "levied" after the word "be," at the end of the sixth line, and strike out the word "and" before the word "shall" in the same line.

The amendment was adopted.

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

THE SECRETARY read:

"Amend section twenty-five by adding after the word "performed," in line nine, the following: 'And no municipal corporation shall ever have or exercise the power to levy an assessment upon any property or its owner for the opening or improvement of any streets, or to defray the expense of any street work, which assessment shall be greater in amount than the additional value given to such property by the doing of such street work.'"

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I offer that amendment in the interest of the owners of property in every incorporated city, and especially in the City of San Francisco, and other large neighboring cities. The amendment is drawn and suggested by an attorney in San Francisco, who has been for many years engaged in street assessment litigation, both for and against, and there is no man in that city better prepared or better qualified to judge of what is right and just between the people and the contractors, than he who drew this amendment. He is a gentleman who could not possibly have any selfish interest; it is only the wisdom which comes by experience in street assessment litigation that prompts the suggestion contained in the amendment. Now, the proposition is to prevent a corporation from making street contractor doing street work, and levying street assessments upon property adjoining the work to be done, which shall be greater in amount than the additional value given to such property by the improvement made. I think no man will question the justice of such a proposition. Any-

thing to the contrary is a violation of the spirit if not of the letter of that other provision of the Constitution, which provides that property shall not be taken for public use without just compensation. But under the guise of public necessity this is done every day. This will simply provide that, if you are going to make a public improvement on a street, you shall not take the property adjoining that property for the purpose of improving that street, which shall not benefit that property to an equal amount. If you do, you may absolutely confiscate that property, and this was done in a multitude of cases in the City of San Francisco. Property has actually been confiscated by assessments for improvements, until the property actually became valueless in the hands of the owner, and had to be sold by the Sheriff to pay the street assessments, and still there was a debt left over against the owner of the property. Now, sir, that is the baldest kind of injustice; and, if it should be asked how you are to remedy this, if the public improvement is needed, this is the easiest way in the world. They have done that in numerous instances in San Francisco. First ascertain the cost of the improvement, and then assess the cost of it to the property, and ascertain whether you are going to improve the property as much as the assessment; if you do, collect the assessment of the property, but if you do not, collect to the amount you do improve the property, and let the balance be a charge against the public treasury, and not against the individual, after you have taken all his property away from him. There is no difficulty in proceeding in this matter; we have done it in the case of the Montgomery Avenue improvement, we have done it in the case of Kearny street, and we are doing it in the case of the widening of Dupont street. This practice has been carried out and it works well, and the people are satisfied with it. Take an example. Contractors will start in and find a place where they want to pave a street, or grade it, or fill it; by dint of persuasion they will, perhaps, get a majority of the frontage to vote to consent to it. They get a resolution passed by the Board of Supervisors. And on that improvement there will be some property that will be totally ruined by the onerous assessment raised, and property that is not assessed at all will be benefited by this very improvement. Now, if this amendment passes, it will put the whole city alert; all the citizens will have an interest in these assessments, and they will be on the lookout to see whether there are unnecessary improvements projected, the cost of which, if it exceeds the value of the improvement to the property, will have to come out of the public treasury.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: The gentleman's proposition seems very fair, but I would like to know how any person is going to arrive at the benefits to be derived to the property. Who is going to settle that question? A new street may be projected, and they may assess the property holders at the time for the work, and at the time the street is improved the property will not seem to be much benefited, but in the course of a few months, or a few years, by turning the public travel into that street, their property will receive ten fold the benefits that it cost them to improve.

MR. REYNOLDS. In the case of the Montgomery Avenue opening a Commission was created and made this very adjustment. It works well, and the people are satisfied with it, and there is no fault found with it. There is no reason in the world why there should not be a constant committee if necessary.

MR. OVERTON. At the time the improvement was made it was not worth much, but now it may be worth ten times what it cost. At what time are you going to fix the value of the improvements? What time is the property to appreciate to the amount of the cost. I cannot see, Mr. Chairman, that the thing would be practicable at all. I do not think there could be any way to ascertain what advantage the property is to receive at the time the work is done. There must be some time afterwards fixed, because you cannot ascertain at the time what advantage there is, and it may be worth ten times what it has cost after a while.

MR. REYNOLDS. As I have no right to the floor again I will answer the gentleman. All these questions are taken into consideration by a Commission to adjust the amounts, and that seemed to give satisfaction.

MR. CAMPBELL. Mr. Chairman: It took several years to settle that Montgomery Avenue question, and the Kearney street also, and if we go on amending this section we will find that it is absolutely impossible to open a street in any city. I can see, in the amendment itself, the germ of a thousand injunctions, of litigation pending in the District Court, and going to the Supreme Court. We have already decided that the money has to be in the treasury before any contract can be made, or any improvement, and if we go on and adopt this amendment we shall find that it will be absolutely impossible to open any street in any city. Any person along the whole line of the street who desires to impede the improvement, or to prevent its being made, will immediately run to the Courts for injunctions, and it will be absolutely impossible to make the improvements which are necessary in the growing cities of the State.

MR. SHURTLEFF. Mr. Chairman: I fully agree with the gentleman from Alameda and Sonoma. There is no question but that the evils to which the gentleman from San Francisco has alluded have existed, but the remedy which he seeks to apply will inflict a greater evil. I have been a Trustee of the City of Napa for some three years, and am a member of the Board now, and in my judgment, if that provision should become the organic law, it would put a stop to all street improvements. We are now making two or three miles of improvements of streets by macadamizing them. If that was the law, it is my judgment that you would not see any more street improvements there.

REMARKS OF MR. RHODES.

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

THE SECRETARY read:

"Amend section twenty-five by prefixing the following: 'The Legislature may, by general law, authorize municipal corporations to levy assessments for local improvements, either in whole or in part, on the property fronting on such improvements or specially benefited thereby; and as to the property so benefited, assessments may be levied without regard to valuation; but as to all other real property within the limits of such corporation the assessment shall be by general and uniform tax.' Also, by inserting the words 'or incorporated town' after the word 'city' in line two, and the word 'town' after the word 'city' in line seven; also, by inserting the words 'in whole or in part' after the word 'assessed' in line four.

MR. RHODES. Mr. Chairman: The object of that amendment in the first place is to make this section applicable to incorporated towns. As it reads now it applies only to incorporated cities. I have realized in my own town in the last three months cases where this amendment would have been beneficial. In some cases where assessments were made and taxed upon the property immediately benefited, the taxes were so onerous as to defeat the scheme entirely. The object of this amendment is to provide for levying special assessments upon the property benefited, and also to extend it to the town at large by a general assessment. The object is to enable the town to make a special assessment on the property specially benefited, and then to go for a further assessment upon the town at large. In the case that I speak of, I am satisfied that it would meet a difficulty that has beset us at the very outset.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: If I understand the amendment offered by the gentleman from Yolo, I am certainly very much in favor of it. His amendment goes upon the theory that if a city or town desires to make an improvement for the benefit, to a very great extent, of the whole city or town, that the burden of taxation may be divided between those who own the property in the locality and the whole city or town. It seems to me that this is a very just provision. I have always thought that it was a great outrage for a town or city, for the convenience of the whole population, to a great extent, to compel men who happen to own property in any particular street to bear all the expense of some improvement sought to be made, which, to a great extent, was intended to inure to the benefit of the whole town. Take San Francisco, for instance. She thinks a portion of Dupont street ought to be improved. Perhaps a majority of the people on the street desire it also. But here are some men who own property upon that street who are not able to do it. The assessment is almost a confiscation of their property. Now, it seems to me that where a city or town desires a general improvement of its property by opening or widening streets, and compelling men to cut down their houses or build them over again, that the city itself ought to bear some of the general expense of an improvement which is intended for the general welfare. I think that the amendment of the gentleman from Yolo, if I understand it, is a very good and just one.

MR. BLACKMER. Mr. Chairman: I wish to call attention to what I think is a verbal inaccuracy in the amendment offered by the gentleman from Los Angeles, which has been adopted. It reads as follows: "Any individual, or company duly incorporated by the laws of this State." I think it should read, "duly incorporated under the laws of this State." The law does not incorporate anything, but corporations may be formed under the law.

MR. HOWARD. I accept that amendment if there is no objection.

THE CHAIRMAN. If there is no objection the correction will be made.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I have one word to say on the amendment offered by the gentleman from Yolo. While it is doubtless intended to produce just and beneficial results, it would be apt to lead to very great evils in another direction. Take the City of San Francisco, why, already the property owners off the line of these streets that have been enumerated, have been assessed for the improvements in opening the particular streets on which their property stands; they have, it is true, in many instances, been obliged to pay enormous sums, equaling or exceeding, in some instances, the value of their property. Now, is it just to those who have paid in that manner for the opening of those streets, to say, that if it is proposed to open a street in the outside of the city, which they probably may never use in the course of a lifetime, that they shall be taxed also for opening that? Where do you propose to draw the line, and in what manner? It seems to me that the thing is wholly impracticable. We cannot regulate it and make a certain settled rule here—leave that power with the Legislature; either the State or local Legislature. Who is to determine as to whether it is a general public benefit, or whether it is merely a benefit to the people on the particular streets? The truth is that these streets ought not to be opened, and it is a fair presumption that the local legislatures will not provide for their opening, unless there is some benefit to be derived from their opening. It is generally done at the request of the property holders, or a majority at least, of the property holders on the street, and if they object to it, why, their protest is or ought to be final.

MR. REYNOLDS. Why was this principle applied to the widening of Dupont street?

MR. CAMPBELL. In regard to the widening of those streets there has been litigation and delay for years; and if you adopt the amendment of the gentleman from San Francisco, you will find, in addition to the other difficulties that may arise out of this section, that, first of all, you will have to go through a long litigation before you can determine the assessments. Many years will have elapsed before these questions will be decided, and it will really put a stop to all public improvements in the streets of our growing cities.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: The intent of the section, as reported by the committee, is that where improvements are made upon streets which is chargeable to, or may be assessable upon, private property, that the costs shall be estimated and collected before the improvement is made. Now, if that is done it will save a great deal of trouble, and every person owning property will know exactly what he is going to pay. If any contractor undertakes to do the work he knows that he is going to get his pay. Take Dupont street and Montgomery avenue. It is in litigation yet. The property holders resisted, yet they petitioned for the improvement. Now, if we provide that the assessment shall be paid into the treasury before the work is commenced, every citizen can contest the assessment at the time. That is the rule all over the world. That is the principle involved in section twenty-five, which I think is a good one. I have known of cases where property has been confiscated by these onerous assessments for opening streets. Now, then, the principle involved in the general provision is the correct one. It would be a convenience to every one. Now, in regard to the amendment offered by the gentleman from San Francisco, how are you to ascertain that fact? There is no machinery here for it. You would have to resort to legislation for the means of carrying it out, and it would make litigation in advance for the purpose of ascertaining the fact. The constitution cannot provide the machinery for ascertaining that fact. Therefore I think the amendment is a matter that ought to be left to the laws of the city, or to the general laws of the State, to make provision for cases of that kind. In regard to the amendment of the gentleman from Yolo, I did not hear it read, and I do not know what the purport of it is.

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

Seconded by Messrs. Biggs, Welling, Huestis, and Davis.

The main question was ordered.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from Yolo, Mr. Rhodes.

The amendment was rejected.

ACQUISITION OF WATER WORKS.

MR. SMITH, of San Francisco. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Amend by adding to section twenty-five the following: 'Provided, within four years after the adoption of this Constitution, every city in this State containing one hundred thousand people or more, shall, by condemnation, purchase, appropriation, and construction, become the owner of water works and water rights sufficient to supply its population with good water; provided, no city procuring its supply of water or works by condemnation or purchase, the sum paid for such works shall not exceed ($7,000,000) seven million dollars.'"

REMARKS OF MR. SMITH.

MR. SMITH, of San Francisco. Mr. Chairman: I am in favor of this addition, as it seems to me that it is essential to the welfare of the people of this State, that all cities should be the owner of its own water works, for, sir, by such the people are relieved of one of the greatest evils that could fall upon any city, that is, a monopolizing water company. I find, sir, in the eastern cities where the water works are owned by the city, that it does not cost as much for water by the year, as it costs in San Francisco for one month. Sir, it would be a waste of time for me to illustrate how the people of that city has been treated by this grasping monopoly; they have been taxed to the utmost limits, and that portion of the charter of the water company of San Francisco, as relates to Commissioners, never has been carried into effect until at the session of the last Legislature, when a nefarious scheme to rob the people of fifteen millions of dollars for a lot of worn out works was set on foot; and, sir, not until the people arose in their might, and in thunder tones demanded to be protected against this wrong did the authorities and the water company condescend to appoint the Commissioners, and they only confirmed the evil, and if anything made matters worse. Now, sir, this company, according to its charter, can collect rates for none but for family uses, and we find them compelling the city to pay them for the supply to the parks and public buildings; and when not paid, the supply was shut off, and why? Because the people have allowed this evil to grow, year after year, until now they have control of the city; and, sir, it is only by such a provision as this, placed in the Constitution that this evil can be wiped out. This company has not kept faith with the people of San Francisco. Sir, I do not wish to condemn the works of any corporation without just compensation, and this addition to the section contemplates nothing of the kind; but, sir, knowing the trickery of the present and past politicians that have been in office in San Francisco, I wished to limit the price, in case of condemnation, to the price asked, as I understand, by the company a few years ago, and to-day cannot be worth as much; for I claim it would cost the city at least six millions to get a sufficient supply, and increase the size of the pipes throughout the city, as they are too small and would have to be replaced with those of a larger size and a larger supply obtained; and, sir, at the present time certain parts of the city are not safe in the case of fire. Sir, I understand that other parts of the State are very near in the same situation as San Francisco in regard to this question, and, as these corporations have treated the people, so we should handle them without gloves. Now, sir, by this section it does not limit the amount that a city shall pay for its works constructed by itself. Sir, we have the power under the right of eminent domain to condemn it if the State so choose. I read from Cooley on Constitutional Limitation, third edition, page five hundred and twenty-six, as to what property is subject to this right: "Every species of property which the public needs require, and which Government cannot lawfully appropriate under any other right, is subject to be seized and appropriated under the right of eminent domain, with the exception of money or that which in ordinary use passes as such. Neither of which can it be needful to take under this power." In the case of the Chesapeake and Ohio Canal Company against Key, reported in third Cranch, Maryland reports, the Court held: "That the means of ascertaining the just compensation were left to be decided by the public authority which should have the power to take the private property for public use. All the States prior to the adoption of the Constitution exercised this right, and still continue to exercise it." I cite this authority to show that the State has the right to condemn if it so chooses to do. But, sir, if these companies are not satisfied with a fair price offered, let them keep their works, and the cities will build works of their own, and thereby be relieved from this water curse that has fastened itself upon the State from one end to the other; therefore, I hope the addition will be adopted.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

MR. BARBOUR. Mr. Chairman: I have been expecting the schoolmaster of this Convention to go for this section. I move that the words "made" and "done" in the second line be transposed. I cannot state the rule of grammar, because I have forgotten my grammar, but I understand that these words should be made to occur in the order they apply. It should read: "no public work or improvement shall be done or made." I move that the words be transposed.

THE CHAIRMAN. If there be no objection the transposition will be made.

MR. TULLY. I move that that be referred to Mr. Herrington, of Santa Clara.

THE CHAIRMAN. The gentleman is out of order. If there be no further amendment to section twenty-five, the Secretary will read section twenty-six.

LOCAL LEGISLATION.

THE SECRETARY read:

SEC. 26. The Legislature shall not pass any local or special law in the cases following:

Regulating the affairs of counties, cities, towns, townships, wards, city or county Boards of Education, school districts, or other political or municipal corporation or subdivision of the State;

Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, or parks;

Relating to cemeteries, graveyards, or public grounds not of the State;

Locating or changing county seats;

Incorporating cities, towns, or villages, or changing their charters;

Creating offices, or prescribing the powers and duties of officers in counties, cities, towns, townships, or school districts;

Regulating the fees or extending the powers and duties of county or municipal officers;

Regulating the management and maintenance of public schools, the building or repairing of school or Court houses, and raising of money for such purposes;

Extending the time for the assessment or collection of county, city, or other municipal taxes, or otherwise relieving any Assessor or Collector of county or city taxes from the due performance of the official duties, or their securities from liability;

Legalizing the unauthorized or invalid acts of any officer or agent of any county or municipality thereof;

Directing the payment of money out of the treasury, or by any officer, of any county, city, or town, without the consent of such county, city, and town;

Directing the payment of money from out of the treasury, or by any officer of, or creating any liability against, a county, city, town, or any public or municipal corporation, without its consent.

MR. HAGER. Mr. Chairman: I move to strike out lines six, seven, eight, nine, eleven, twelve, twenty-four, and twenty-five.

The motion prevailed.

MR. SCHELL. Mr. Chairman: I move to strike out lines twenty-two and twenty-three.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I desire to say a word. I will explain this matter. I have stricken out all that has been actually adopted in the report of the Committee on Legislative Department. There are some paragraphs that are nearly the same, but there is a distinction and a difference. If we adopt what remains here it will be engrafted in the report of the Committee on Revision, in the right report and under the proper head. The Committee on Revision will arrange all that is adopted in proper form. Many places could be pointed out where they will have to take a provision from one report and put it in another. If what remains here be adopted, and the Committee on Revision find that the same thing is adopted in the legislative article, they will not put it in twice. There can be no harm done in leaving these provisions in. If the gentleman makes the motion because he does not approve of those lines, all right.

MR. BIGGS. It would be much more work to the Revising Committee. I do not see any sense in adopting a thing twice.

MR. HAGER. Not at all. There is nothing here that is substantially the same as adopted. There is nothing left here that is actually the same; but there is no use of our disputing over the fact of whether it is in or not. If there is anything here which you object to yourself, get up and move to strike it out.

MR. SCHELL. Mr. Chairman: The gentleman spoke particularly of the amendment. Now, I differ with him so far as his proposition is concerned, that we had better adopt the whole thing in toto, and then

let the Committee on Revision and Adjustment fix it up. I believe that the better plan is to make it as perfect as we can. The amendment which I have offered is to strike out this proposition: "Legalizing the unauthorized or invalid acts of any officer or agent of any county or municipality thereof." It is covered fully and more broadly in the report of the Committee on Legislative Department, which is already adopted. This provision applies only to counties and municipalities. The other covers all that and a great deal more. It covers——

MR. HAGER. The one relates to State officers alone, and the other relates——

MR. SCHELL. I hope the honorable gentleman will possess his soul in patience. I move the previous question.

The main question was ordered.

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

The amendment was adopted.

MR. HERRINGTON. I desire to offer a new section.

MR. CAPLES. Mr. Chairman: I move to strike out section twenty-six, and I do so for the reason that I believe it to be the shortest road out of this difficulty. I believe that every material provision is contained in section twenty-five of the report of the Committee on Legislative Department, as amended in Committee of the Whole. However, if after gentlemen have had time to make an examination, they should find anything that is not covered or embraced in section twenty-five of that report as adopted by the Committee of the Whole, there will be time enough to remedy any little defect that there may be in that respect. I have examined carefully, and I find nothing in section twenty-six of the report now under consideration that is not embraced in section twenty-five of the report of the Committee on Legislative Department. It is true, that in some cases the language is a little different, but the subject-matter, I believe, is covered. The provision in the report of the Committee on Legislative Department, as adopted in Committee of the Whole, embraces thirty-three separate and distinct counts. This report under consideration embraces some twenty eight. I think that the action already had by this committee upon this subject, is comprehensive and ample, and covers the whole ground; and, as before remarked, if it should turn out that any matter had been left out, it will be time enough when we get into Convention to remedy the evil. But to adopt this section in the form that it is now in, and throw this and the other report of the Legislative Committee upon the Committee on Revision and Adjustment, makes a confused mass, and may lead to difficulty and confusion in determining what should and what should not be included in their report. Therefore, believing that this is the easiest, shortest, and most direct road out of the difficulty, I move that it be stricken out.

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

On a division, the vote stood 36 ayes to 35 noes.

THE CHAIRMAN. There is no quorum voting. Members will please vote.

A second division resulted in a vote of 37 ayes to 36 noes—no quorum voting.

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

MR. STEDMAN. Mr. Chairman: I move that the committee rise, report the article back, and recommend its adoption.

MR. WEST. I have a new section I desire to offer.

MR. McFARLAND. I rise to the point of order, that no question is in order except the motion to rise.

THE CHAIRMAN. The Chair is unable to decide whether there is a quorum present, and the Clerk will call the roll.

The roll was called, and eighty-four members answered to their names.

THE CHAIRMAN. There is a quorum present. A division is called for on the last motion.

MR. BIGGS. I wish to make a statement. I am in hopes that the motion of the gentleman from Sacramento will prevail. The Legislative Committee took a good deal of time, and went on to enumerate until they got to some thirty-three.

THE CHAIRMAN. The question is on the motion to strike out the section.

The motion prevailed, on a division, by a vote of 44 ayes to 39 noes.

MR. HERRINGTON. Mr. Chairman: I have a new section that I desire to offer.

WATER AND GAS RATES.

THE SECRETARY read:

SEC. —. The rates and compensation for furnishing gas for light to, or supplying any municipality of this State, or the inhabitants thereof, with water, shall be annually established by the Board of Supervisors, or other governing body of such municipality, where such rates are collected by ordinance, which ordinance shall remain in force one year after adoption, and no longer. Any person, corporation, or company collecting gas or water rates in any municipality of this State, otherwise than as established by law, shall forfeit the franchise and the gas or water works of such person or company to such municipality where such rates are collectible for the public use.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: This Convention has seen fit in its wisdom to adopt a system of local governments, and are attempting in this Constitution to arrange for them a new class of communities to act, upon their own judgment, independently of legislative control, and in doing so we have, to a very great extent, defined the powers, jurisdiction, and duties which they are to exercise and enforce. I say that above all things we should not leave these young communities, or these small communities, to be the prey of those institutions which have been found to be almost the masters of even the Legislature itself, as has been announced upon this floor, time after time. This amendment proposes simply to place these young communities, or these small communities, so to speak, in a position where the executive head and the legislative authority shall have the control of the contracts that will be entered into by these young corporations in such a way as that the people will not be imposed upon by extortion. These gas companies have become a necessity to the cities and towns of this State. Water companies have also become necessities to the cities and town of this State, but whilst they have invested their funds in this class of enterprises that is no reason why they should be left to prey upon these communities with but very little experience in transactions of that character. The ordinances are changed from year to year, and unless we fix some certain rule by which they shall be controlled, in every instance they will be dictated by those whose business it is solely to consult their own interests. Their influence becomes unbounded, and while I do not charge that every transaction that is attempted by these organizations is attempted for the purpose of fraud, I do say that, like most individuals engaged in any private enterprise, they work really for their own ends. They are not to be blamed for doing so. It is but the instinct of human nature. It is not to be wondered at that they do so, but I do submit that guards should be placed about these communities in such a way as that these organizations shall be constantly under their control. This section requires that these rates shall be fixed, year after year, by the Supervisors of cities, or cities and counties, that are organized under corporate Acts or charters, giving them power and authority to fix these rates from year to year, and compelling it to be done.

MR. BIGGS. Mr. Chairman: As we have had a great deal of gas and a great deal of water, and as it is considered that the escaping of so much gas is dangerous, I am in hopes that the additional section will be voted down, and I therefore move the previous question.

Seconded by Messrs. Tully, Townsend, Schell, Stuart, and Charles.

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the new section, offered by the gentleman from Santa Clara, Mr. Herrington.

On a division the vote stood: 23 ayes to 42 noes.

THE CHAIRMAN. No quorum voting; members will please vote.

The section was rejected, on a division, by a vote of 33 ayes to 45 noes.

CARE OF ORPHANS.

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

THE SECRETARY read:

"The several counties, and cities and counties of the State shall provide for the care and maintenance of minor orphans, half orphans, abandoned children, and aged persons in indigent circumstances, within their respective limits; *provided*, that from and after the first day of January, eighteen hundred and eighty-four, no money shall be appropriated or drawn from the State treasury for the use and benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property be made thereto by the State."

MR. WEST. Mr. Chairman: We have already, by a different section, adopted by this committee, on the report of the Committee on City, County, and Township Organization, shown conclusively that this Convention is in favor of local self-government; of leaving to the different counties all matters purely local, and all subjects that can be controlled by the different counties. Now, sir, the adoption of this section will enable the counties to provide, in their own immediate localities, for the orphans, half orphans, indigent and aged persons within their counties or cities respectively. I believe it is in accordance with the principles of local self-government as near as possible to the people; therefore I hope that the committee will take a favorable view of this section and adopt it.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I regret very much that my friend from Los Angeles has brought in this proposition here at this day. That thing was brought in here in this Convention when we had a very full house, and it was settled at that time. When there is such a sparse house I regret very much that the gentleman should propose that section here on this occasion.

MR. WEST. It is very different from the section that was voted on in the Committee of the Whole, before. It provides that the counties shall take care of their own orphans and half orphans.

MR. BIGGS. I heard the argument here upon this floor upon that question, and it was said that it was the will and disposition of this Convention, and the people of this State, to place these orphans under the charge of the State. That was the first proposition. Now the gentleman comes in and proposes to place them under the charge of the counties of the State. Now, it is well known that the counties are not in a condition to build asylums for the counties. If you will take the reports of the building of the Insane Asylum, the Deaf and Dumb Asylum, and every public building in this State, you will find that it is proven beyond a doubt that it costs about one thousand dollars per capita. How could counties build these asylums when they are almost bankrupt? My county to-day has to mortgage a large amount of its real estate. Now, gentlemen come up here and ask that the counties do this thing. How will they go on and build their asylums? You may as well abandon these little waifs and orphans; you might just as well turn them out on the streets.

Why, in the name of God, do these gentlemen bring up such a question as this, and try to force it through, because we have got a very small delegation here this evening? When we had a full house there were some ninety odd of these delegates went right square upon the record and voted against the State building asylums to take care of these little orphan children. There is a sort of rivalry existing between the Protestants and the Catholics as to who shall take the most care of these little children, and the result is that they are thoroughly cared for. This city has made up several thousand dollars, and established an asylum where these children are raised in the fear and admonition of the Lord.

Do you propose to put them out to the lowest bidder, who will keep them where their moral training will not be cared for in the least? God knows I hope this Convention is composed of a different element; that they have some feelings of humanity, and some feelings for the little wards and waifs of this State.

MR. WEST. I profess to possess as much feeling for these orphan children as any other gentleman, and I do not propose to abandon the waifs of this State, I propose that they shall be cared for in the localities where their mothers reside.

MR. BIGGS. I asked the gentleman if he proposed to do this, and he nodded his assent. And, my God, has it come to that, that the people of the State propose to abandon these little waifs, and do nothing for them? If so, I say the quicker we leave this State, and emigrate to where civilization, humanity, and religious and moral principles prevail, the better it is for all civilized communities. [Applause.]

MR. WEST. I desire to answer the question. The gentleman has misunderstood me entirely. I do not propose——

MR. BIGGS. I am glad to hear it.

MR. WEST. I propose to keep them where their widowed mothers can visit them, and where their mothers can be aided by local and temporary relief.

MR. BIGGS. I find that my friend has got some soul, although I have got to go through a great deal of rubbish to reach it. He wants them taken care of by the county. I want the gentleman to answer this question. The father is dead, and the mother, upon her dying bed, with her five little children, has not the privilege of saying, my children shall go to a Protestant or Catholic society. Where can the mother visit them then? You propose to let them out to the lowest bidder, who will keep them for the least amount of money. I trust that this Convention will give this section such a rebuke as it deserves. This is a whole souled, sympathetic, philanthropic people, and I ask this Convention to never, no never, allow these poor little wards to be peddled out, like a commodity upon the market, to those who will keep them for the smallest amount.

MR. TULLY. I move that the committee rise and report that they have had under consideration the article on city, county, and township governments, and recommend its adoption.

MR. HAGER. I move the committee rise and ask leave to sit again.

The motion was lost.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I hope that the additional section proposed will be adopted. The gentleman from Butte has entertained us with a very eloquent appeal for the orphans. The additional section proposed by the gentleman from Los Angeles proposes to provide for the orphans of the State. It proposes to provide, through the counties, for other indigent persons that may be residing in the county. In the mining counties of this State, Mr. Chairman, there are many worthy men, who are many of them pioneers of the State of California; men that belong to that adventurous class which formed the pioneers of this State; men who have been in the advance in many of the greatest discoveries that have ever been made in the way of wealth. These men, many of them, have become disabled; they are becoming aged, and many of them are in indigent circumstances. California owes it to herself that these men should be taken care of, and they should be taken care of by the counties in which they are. The orphans should be taken care of, as has been said by the eloquent gentleman from Butte, and we propose through this section to provide that orphans throughout the State shall be taken care of; not only the orphans that may be sufficiently fortunate enough to be placed in one of these asylums, but all of the orphans of the State. I do not know how the gentleman from Butte voted when that proposition was up which provided that when these institutions that had charge of these orphans receive aid from the State that they should take charge of all the orphans.

MR. BIGGS. Do you know of a single instance where an orphan has not been received upon application?

MR. ANDREWS. I know that in my county there are many orphans provided for by the Board of Supervisors of the county. I can testify to this knowledge. I know other orphans that are taken care of by a few private individuals contributing together to take care of these orphans. Now, all this section proposes is that the counties of the State shall take care of the orphans and half orphans and aged persons in indigent circumstances in their county; and it provides that after the year eighteen hundred and eighty-four that the State shall make no further contribution to any institution that is not a State institution. In other words, that from and after the year eighteen hundred and eighty-four the State shall stand where it should stand, upon a sound basis; that the State shall not make appropriations for any other purpose than for State purposes, and for State institutions. That is the proposition. It is just giving notice that after eighteen hundred and eighty-four, no appropriations of this character—that is to institutions that are not under State control—shall be made. I do hope that this amendment will be adopted, because it makes it obligatory to take care of the orphans, and those whom it is the highest duty of the State to see cared for and take care of.

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

Seconded by Messrs. Farrell, Larkin, Moreland, and Wyatt.

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the additional section offered by the gentleman from Los Angeles, Mr. West. The Secretary will read it.

THE SECRETARY read:

"The several counties and cities and counties of the State shall provide for the care and maintenance of minor orphans, half orphans, abandoned children, and aged persons in indigent circumstances, within their respective limits: *provided*, that from and after the first day of January, eighteen hundred and eighty-four, no money shall be appropriated or drawn from the State treasury for the use and benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property be made thereto by the State."

The section was rejected, on a division, by a vote of 37 ayes to 40 noes.

MR. HUESTIS. Mr. Chairman: I move that the committee rise, report the article back, and recommend its adoption.

The motion prevailed.

IN CONVENTION.

Mr. Murphy in the chair.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the article on city, county, and township organization, report the same back and recommend its adoption.

MR. HOWARD. Mr. President: I move that the article be printed with the amendments, and placed on file.

The motion prevailed.

ADJOURNMENT.

MR. LINDOW. Mr. President: I move we adjourn.

The motion prevailed.

And at five o'clock and thirty-five minutes P. M. the Convention stood adjourned.

ONE HUNDRED AND FIFTEENTH DAY.

SACRAMENTO, Monday, January 20th, 1879.

At nine o'clock and thirty minutes A. M., the President and President pro tem. both being absent, Secretary Smith called the Convention to order, and called for nominations for a temporary Chairman.

On motion of Mr. Tully, Mr. Murphy was called to the Chair.

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

PRESENT.

Andrews,	Howard, of Mariposa,	Pulliam,
Barbour,	Huestis,	Reynolds,
Barry,	Hughey,	Ringgold,
Barton,	Hunter,	Rolfe,
Bell,	Inman,	Schell,
Biggs,	Johnson,	Shoemaker,
Blackmer,	Jones,	Shurtleff,
Boucher,	Joyce,	Smith, of Santa Clara,
Brown,	Kelley,	Smith, of 4th District,
Burt,	Kenny,	Smith, of San Francisco,
Campbell,	Keyes,	Soule,
Caples,	Kleine,	Stedman,
Chapman,	Laine,	Steele,
Charles,	Lampson,	Stevenson,
Cross,	Larkin,	Stuart,
Crouch,	Larue,	Sweasey,
Davis,	Lewis,	Swenson,
Dowling,	Lindow,	Swing,
Doyle,	Mansfield,	Thompson,
Dunlap,	Martin, of Alameda,	Townsend,
Estey,	Martin, of Santa Cruz,	Tully,
Evey,	McComas,	Turner,
Farrell,	McFarland,	Tuttle,
Filcher,	McNutt,	Vacquerel,
Freeman,	Moffat,	Walker, of Tuolumne,
Freud,	Moreland,	Waters,
Garvey,	Morse,	Webster,
Grace,	Murphy,	Weller,
Hale,	Nason,	West,
Heiskell,	Neunaber,	Wickes,
Herold,	Ohleyer,	White,
Herrington,	O'Sullivan,	Wilson, of 1st District,
Hitchcock,	Overton,	Winans,
Holmes,	Prouty,	Wyatt.
Howard, of Los Angeles,		

ABSENT.

Ayers,	Glascock,	Noel,
Barnes,	Gorman,	O'Donnell,
Beerstecher,	Graves,	Porter,
Belcher,	Gregg,	Reddy,
Berry,	Hager,	Reed.
Boggs,	Hall,	Rhodes,
Casserly,	Harrison,	Schomp,
Condon,	Harvey,	Shafter,
Cowden,	Hilborn,	Terry,
Dean,	Lavigne,	Tinnin,
Dudley, of San Joaquin,	McCallum,	Van Dyke,
Dudley, of Solano,	McConnell,	Van Voorhies,
Eagon,	McCoy,	Walker, of Marin,
Edgerton,	Miller,	Wellin,
Estee,	Mills,	Wilson, of Tehama,
Fawcett,	Nelson,	Mr. President.
Finney,		

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Rhodes and Beerstecher.

Two days leave of absence was granted Mr. McCallum.

Three days leave of absence was granted Messrs. Van Voorhies and Dudley, of Solano.

THE JOURNAL.

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

PETITIONS.

MR. SCHELL. Mr. President: On Saturday last a petition was received at this place by my colleague Mr. Heiskell, and myself, signed by sixty-three men living at Knights Ferry and the immediate vicinity of that place, in the County of Stanislaus. The purport of the petition is this: It is addressed to this body, requesting this body to adjourn without day, and further requesting myself and my colleague to use what influence we may have to accomplish such an end.

Mr. President, I recognize the inalienable right of the people to petition those in authority, and to petition representative bodies for the redress of grievances, when they deem that they have grievances to redress, whether these grievances are real or imaginary; and I, therefore, as I take it to be a duty, present this petition at the request and at the behest, and out of respect for the gentlemen who have petitioned. But, sir, I must say that so far as I am concerned I decline to take any steps in the matter. I believe that a week or two ago this Convention by a very decided vote, decided against the Finney resolution to adjourn. I put myself upon record against that adjournment. I have to say that I am here by the voice of the majority of the people of this State, and I deem it my bounden duty to stay here until the work of this Convention is completed. As to whether the work of this Convention shall be indorsed by the people, that is a matter to be determined after we have submitted our work. As to whether there shall be any appropriations made for the payment of our per diem here, makes no difference to me. Whether I receive pay for the time occupied in serving the people here, makes no difference. I deem, sir, that I am here at the behest of the people, and until they have spoken in some other more forcible manner I deem it my duty to stay here until the work is completed. Our work will then be submitted, and then it will be time enough to say whether the people of the State require or demand a new Constitution or not. I have here a letter which I have received from the same county, and although it is not addressed to this Convention, it indicates quite a different sentiment. After saying that a few months ago the people did not care anything about a new Constitution, or were not much in sympathy with this Convention, the writer says, that "lately there has a change come over the spirit of their dreams, and I hear nothing but commendation. I think the Constitution will get a majority of the votes in this section." That is also from the County of Stanislaus. I will take this occasion to remark that I returned to my home, at Modesto, a week ago last Saturday. I was there some four or five days, and I must say, and I think it is my duty to remark, in behalf of the people there, that they look very favorably upon the work of this Convention. While many of them have nothing to say one way or the other, they deem it prudent to hold their opinions in abeyance as to the work of this Convention until they shall see what it is, so that they can vote intelligently upon the subject. I believe, Mr. President, that is about all I have to say in regard to the matter.

MR. HEISKELL. Mr. President: I recognize the right of electors to petition their servants, and further, the right to instruct; and when a majority instructs a public servant it is his duty to obey or resign. The petition just received, and purporting to be from citizens of Knight's Ferry, has sixty-three signatures, and among them electors from four, certainly, and, I think, five precincts of Stanislaus County, and electors from the County of Tuolumne. Some of the precincts are large, as to voters, and others small.

Now, sir, there are sixty-three petitioners from the Counties of Stanislaus and Tuolumne, from whose views, as expressed in the petition, I wholly dissent, and some of the signers, with whom I have no acquaintance, and they may represent Stanislaus County. Thus, from two counties, with an aggregate vote of three thousand, only sixty-three requests this body to adjourn. If this petition proves anything, it is that the people indorse the action of this body thus far, or are willing to see the result of their labors before condemning it. Why the electors of Tuolumne County should petition me, I am at loss to know, unless of their ignorance—not knowing who their representatives are, or ignorant of the boundaries of their county. The petition contains a threat; but, sir, sixty-three out of three thousand votes cannot deter me from my duty here by a threat. I will obey a majority of my constituents, but will not be driven by any number by a threat. I will not be bulldozed or bullied by these sixty-three. I think I know the animus of this petition, but will say nothing of it here. It may appear there was wanting a proper respect for this body, from the contents of the petition appearing in the Record-Union newspaper before being presented to this body, but I assure you the petition was not in my charge, nor do I suppose Judge Schell intended it should appear in that paper before being presented here. It is the expiring kick of a few corporationists and capitalists in that section, and I rejoice that it is heartily indorsed by the Record-Union.

MR. HOWARD. Mr. Chairman: I wish to read a short extract from a letter I have just received this morning from Los Angeles, from a gentleman who is honored with the highest position in this State. I read it because I agree with my friend from Stanislaus, that this is the last small kick of the Central Pacific Railroad Company: "I can see a disposition on the part of a portion of the press to belittle the labors of the Convention, and bring upon it contempt; but this is understood. I can see a high grade of conservatism and justice in the action of the Convention. Of course there are many things that cannot be reached until the final result, when we consider the amount of interest represented; but I assure you that the people will sustain the Convention and beg you to give them courage, and tell them not to be in too much haste, but to stay until they can conclude their business, if it takes all the time now intervening until the meeting of the next Legislature." The fact is, Mr. President, that the monopolists see the handwriting on the wall, and that is the origin of all these efforts.

Mr. WALKER, of Tuolumne. MR. President: I must say, in behalf of the people of Tuolumne County, that I am at a loss to understand why citizens of Tuolumne County should be included in a petition sent to the delegates from Stanislaus, unless it is on account of the bad associations by which they are surrounded. I presume they must live some where down on the boundary of Stanislaus. I certainly feel at liberty to say that this does not reflect the sentiment of the people of Tuolumne County. Whenever they are desirous of sending a petition to this body, I presume that they will present it through their representative, and I desire the gentleman from Stanislaus to furnish me with the list of the names which are presented upon this petition as being citizens of Tuolumne County.

MR. HEISKELL. Our neighbors in Tuolumne are very respectable people. I recognize them as such, and I am very sorry that they should go over into Stanislaus among bad associates; and I regret too that they did not know, if they desired to present a petition, that they had a representative here through whom it could be presented. I have no charge to make against the character of the people of Tuolumne.

MR. SCHELL. Mr. President: I neglected to state the reason why this petition was not presented before, and why I suppose the reporters of the papers had received knowledge of it. It came in this wise: I did not receive it until after the Convention had passed the order of business under which it could properly have been presented. Further, I had not seen my colleague, Mr. Heiskell. Of course I did not deem it proper to present it until Mr. Heiskell should see it, because it was directed to Mr. Heiskell and myself. It happened to be put in my box, and I took it out and opened it. I showed it two or three delegates here for some advice in regard to the matter, and that is the way, no doubt, that the knowledge was acquired. I did not give the information to the paper.

THE CHAIR. Does the Convention desire to have the petition read?

[Cries of "read," "read."]

THE SECRETARY read:

To the Honorable Constitutional Convention, now at Sacramento Assembled:

The undersigned citizens and petitioners, of Knight's Ferry, in the County of Stanislaus, regardless of parties, believe the time has arrived when the Convention should adjourn sine die. They have become satisfied, from the nature and character of the discordant elements of which the Convention is composed, that no Constitution can be framed by it that will be ratified by the people. They are in favor of the Finney resolutions, with this amendment, that the adjournment be sine die. We, each and every one of us, also pledge ourselves that we will never vote for a candidate for the next, or any future Legislature, who will not pledge himself to go against any appropriation to defray the expenses of the Convention incurred after the expiration of one hundred days for which provision had been made by the last Legislature.

We also ask our delegates from this county, the Honorables Geo. W. Schell and T. D. Heiskell, to use their best ability and influence to secure an adjournment of the Convention at the earliest day possible.

Believing as we do that it would be for the best interests of the State that the Convention should adjourn, we ask that it do adjourn without delay.

And we will ever ask and pray for this desirable end.

January 7th, 1879.

MR. MARTIN, of Santa Cruz. I move to lay it on the table.

MR. REYNOLDS. I move that the petition be rejected.

MR. TULLY. I move that it be referred to the Committee on Water and Water Rights.

[Laughter.]

THE CHAIRMAN. The question is on the motion to lay it on the table.

The motion prevailed.

EXEMPTION FROM TAXATION.

MR. BLACKMER presented the following petition, signed by a large number of citizens of San Diego County, requesting the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to the members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of San Diego County, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with article on revenue and taxation.

LOCAL OPTION.

MR. WATERS. Mr. President: I move that the Convention resolve itself into a Committee of the Whole, Mr. Murphy in the chair, for the purpose of considering the report of the Committee on City, County, and Township Organization, relative to local option.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the section.

THE SECRETARY read:

SEC. —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

MR. KENNY. Mr. Chairman: I move that the section be stricken out.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope, sir, that the section will not be stricken out. That section seems to be strictly in accordance with the votes that this Convention has been giving for the last four or five days, upon the subject of local self-government, and it seems to me to

come nearer home in the right direction, in my view of the case, than almost any other proposition that has been submitted for the consideration of the Convention. It touches and affects all classes of society, from the oldest to the youngest, and from the poorest to the richest, and from the most weak-minded to the most intellectual of the community. I hope that it will be left so that those who are affected by and interested in the subject shall have the privilege of legally dealing with the question; I therefore hope that the section will not be stricken out, but that it will be retained as a portion of the Constitution of this State, and that, if the entire State is not willing to adopt the principle in practice, that at least it will stand embodied in the very organic law of the land, and that it will give that privilege even to the humblest township or village, as it may be subdivided, in this State; that it would give that portion of a community who desire it, a right to speak, and to speak as they desire upon that subject, and not be left to the mercy of the Supreme Court, or any body else but themselves, to say whether they have that right to speak or not. Sir, I might refer—and it possibly would be permissible to refer—to a circumstance that occurred during my canvass for a seat in this Convention. The question of local option was mentioned incidentally, and it was then that a man who had spent ten years of a valuable portion of his life, and ten thousand dollars, in the saloons, and was then working upon the street, said to me: "Wyatt, stand for local option. I have been the very servant of whisky mills for ten years in this county, and I have drank up and wasted in whisky mills, ten thousand dollars that I have made in this valley. I will support local option to-day, and I want you to stand for local option. I do not want to be deprived of the privilege of voting for local option; it might have saved me from the position I now occupy." I speak in the interest and in behalf of men, women, and children of the high and the low, of the rich and the poor; I ask for them, that the privilege be granted to them of self-government, in that respect. I hope that the section will not be stricken out.

REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. Chairman: I also hope that this section will not be stricken out. I cannot see what objection this Convention can have to people regulating their own affairs in their own districts and municipalities. It certainly is purely self-government. This Convention, on Saturday, saw fit to permit the cities to govern themselves, and establish separate governments and govern themselves in their own municipalities in every particular; and now I think, in any district, or county, or municipality, where the people think that saloons are a nuisance and a detriment, and the majority of the people are against allowing them to exist, that they should be permitted to decide the question for themselves. I cannot see what objection anybody can have to that section. It only allows the people, if they consider that saloons are a nuisance, that they are breeders of crime, that they are a source of great evil, that they fill their penitentiaries and jails and poor houses, to vote upon that question, and see whether they will have them in their midst or not. I hope the section will stand.

REMARKS OF MR. CAPLES.

MR. CAPLES. I hope that this section will be stricken out. The gentleman from Mendocino desires to know why the people of municipalities should not be permitted to govern themselves in this matter. I hope to be able to give the gentleman a satisfactory reason. Now, so far as the evil of intemperance is concerned, I take it for granted there is but one opinion. We all agree that it is a very great evil, indeed. The next question is, can we remedy that evil by prohibitory legislation—and it will be well here to remember that experience is worth something, and is valuable in enabling us to make up our minds in regard to possibilities. What has been the result of an attempt to secure morality by legislation? This experiment has been tried for the last quarter of a century or more in some of the States in New England, and I submit that the only result of it has been to force men to drink behind the door in secret, instead of in public.

MR. TOWNSEND. Are you not aware that wherever this has been tried that that large class of men and boys, particularly laboring men, that congregate around saloons and sit there Saturday nights and spend their money, that that is entirely prohibited, and that it is only the upper crust, that have the means, that can go in the back doors and drink? I will ask you another question. Suppose you was doing a business and had a great many men employed, and in the middle of your harvest some one should come along and set up what is called a deadfall right alongside of your field?

MR. CAPLES. I have had some experience in this matter. I have been in California more than twenty-nine years. I have had a large number of men in my employ. I have suffered as much as any other man from the intemperance of other men. But is it wise to attempt to enforce morality by legislation? What is the result? We have had some experience here in California, and we know what it has been. The direct result is to set the people to wrangling and quarreling about this proposition, and it is no sooner lost than they raise it again, and I venture the assertion that the adoption of this section would cost the State of California more money—in time and in money itself—than the entire expenses of the State government. Yes, double as much. I assert that it would cost twice as much as the State government would cost. People would wrangle over the question week in and week out, and they never would say quit. They would keep up the fight perpetually. I refer gentlemen to the experience that we had here a few years ago. I remember the condition of things then prevalent in many of the local subdivisions of the State. It was a pandemonium. It was a hell on earth, and I protest against a repetition of it. That was the result wherever this contest over local option was made. It was a scene of turmoil and strife—people neglecting their business and engaging in this political struggle. It was a fearful scene, and if we should adopt this section in a constitutional provision, this struggle would be repeated and you would have nothing but a political wrangle. I protest, Mr. Chairman, against the policy, or lunacy, of this attempt. If it was possible for us to secure morality and the just deportment of the people by legislative enactment, it would be desirable to do it, and I would be the first to advocate it. But, Mr. Chairman, if we could do this we could do more, and I should be in favor of going back and repealing original sin; wipe it all out at one fell blow. Why not? Let us repeal the fall of man, and transfer mankind back into the garden of Eden. But we are here to legislate in temperance and reason, and we have got to accept the world as we find it. I deny utterly that it is within the range of possibility to legislate to secure and enforce morality. Besides, Mr. Chairman, what would be the result upon the labors of this Convention? Is there any gentleman here who believes that such a provision would be indorsed by the people of California? A liberty loving people deny to the government any right to control their personal action.

MR. TOWNSEND. Will you allow me to ask you a question?

MR. CAPLES. Yes.

MR. TOWNSEND. Are you aware that gambling is prohibited by law?

MR. CAPLES. Yes; it is attempted to be prohibited.

MR. TOWNSEND. Are you aware that those places where there used to be open gambling and bands of music at the door are prohibited by law, and that the consequence is that that evil is very much restricted? Legislation upon that is no different from any other question, and——

MR. CAPLES. This is my speech, and I propose to proceed. I will say to the gentleman that there is more gambling now than there was at the time he refers to. There is five times as much. Who will deny it? Why the Stock Boards in San Francisco are the source of a greater amount of gambling and a wider field for gambling operations than all the poker games of 'forty-nine and 'fifty. You cannot prevent it by legislation. And I will inform the gentleman that in many places in this State there are gambling games—it is true the bands of music are not there—as flourishing as in the days of 'forty-nine. They are not conducted openly, but the gentleman knows where to go to find them. I will venture the assertion that every gentleman on this floor can find a place if they desire to do so, and I have no doubt that some have found it. [Laughter.] I am and have been, so far as I am individually concerned, although it is not perhaps worth stating here, opposed to every form and shape of gambling. I do not desire to blow my own horn, gentlemen, but the fact is I have been a consistent enemy of this kind of life always, and have suffered by it through others, and have every reason to desire a high standard of public morality, because it conduces to the public welfare in more ways than one; but what we have got to do here is to accept the condition of mankind as we find it and attempt no impossibility. It is our duty to accept the condition of things we find and provide the best remedies that we can, and not attempt to do that which it is beyond our power to do. I assert that it is beyond the power of this Convention, or any law-making power, to secure public morality by statute enactment.

MR. KENNY. I move the previous question.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I did not propose saying anything upon this subject. When there was a liquor subject up a few days ago, and the idea presented with regard to having pure liquors, I then also spoke upon this subject, which I had not intended to do, and thought at that time that a purification of liquors was a matter worthy of the attention and high appreciation of this committee. Now, in this case I look upon the wishes of a number of the citizens from different parts of this State, and they are far more numerous than the petitioners from Stanislaus County, and they demand the attention and consideration of this body upon this very important question. We know that there has been in this State an effort in the line of local option, and we know that citizens of positions of this State have wanted to carry out their wishes in their respective localities, and could not do so. Why? Because they had no constitutional sanction for it. There was a deficiency. They lacked foundation in the organic law of the State. In different parts of the State they have conceived that the sale of ardent spirits has been a detriment to them, great damage to them, and they have desired that this Convention should give them an opportunity in these respective localities to prohibit the sale of liquors by a majority vote. Now, this committee, so far, has adopted the system, to a great extent, of local government, and if the people are to be allowed local government in other respects, why not in this? Is the evil less in this than in any other, that they shall be prohibited this right? Is it not an evil of some consequence? I am not going, upon the present occasion, to perpetrate upon you, in any form, a temperance lecture, but I am going to advocate the rights of the people in various portions of the State to be heard by this body, when they demand that they have a right to do as they please in this matter by a majority vote. It is said by the gentleman last upon the floor that you cannot legislate morality into the people. You cannot do this. If this proves anything, it proves too much. We might, upon the same principle, say that there shall be no laws against stealing, forgery, or any other crime, because upon the broad principle you cannot legislate morality into the people. The idea is to have it in the power of any local subdivision of the county, if they deem this to be an evil, to legislate against it. To take the broad position, that you cannot legislate morality into the people, is assuming too much. You might as well say that because there are laws against stealing and stealing still goes on, that you would do away with all laws against stealing. It assumes too much. I am satisfied that every member of this body must see the utter fallacy of the gentleman's position on this subject. But there is nothing more demanded and nothing more desired by the people than to do as they wish in their respective townships and localities. It is a reasonable request. It has been granted in different places. It will

not conflict with the people elsewhere, and I cannot see why there should be anything of a factious opposition. It was contended all the time that the matter would load down the Constitution, as though it was a camel and this was the last straw, and would break its back. I say it will not, because it does not affect others. It does not affect any locality except those who vote in favor of it. I do contend that it merits the serious consideration of this body, and some action upon the subject, and I hope that the section will not be stricken out.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. Chairman: I hope that this section will not be stricken out. The argument of my friend, Dr. Caples, if it proves anything, proves that we should stop short in civilization and go back into barbarism. The idea of a gentleman upon the floor of this Convention assuming the position that we have not got the right to legislate upon the subject of morality in the direction that the people desire, simply because laws that have been passed to restrain evils have not prevented them entirely! The idea that we have not the right to give to the people in any locality the right to say what is a nuisance and what is not, is wrong and contrary to the principles of our Government! It is undemocratic. The principles of this Government are broad and liberal, and upon that basis this Government must stand or fall. To give to the Legislature the power to say to the people of a district, you can abate a nuisance, is something that the people of this State demand. It is not prohibitory, if you please, as the doctor would have us believe. It is simply giving the people the right to say who shall or who shall not have a right to conduct this business, thereby compelling them to give security for their good behavior. Is it not right that the Legislature of the people of California should have the right to authorize the people to shut up these places where, with two ounces of poison and a gallon of water, they manufacture the deadly compounds they sell over their bar? Whenever I hear one of the sages of this society get up and say that this is wrong, I have been constrained to the belief that this great reform movement never will get an abiding place in the minds of the people until this Bourbon class is in existence no more. Progress in our society is marked, and the old Bourbon ideas must stand back and give place to the ideas of progress. We claim the right as local optionists and temperance people of this State to legislate upon this great question.

I remember a few years ago when the subject of local option was being championed by a very few men upon the floor of this house, that in the short space of eight hours the whisky men and whisky dealers of this State secured and raised a corrupting fund of one hundred and forty-eight thousand dollars, to defeat that measure. But then, as it is now, there was a band of gentlemen upon the floor of the Legislature that were in the interest of the people and humanity, and, sir, that bill became a law against and in spite of all this ill-gotten money. The corrupting fund could not be used. The lobby found themselves in the position of men without a place to invest it. The bill went to the Governor, was signed, and became a law, and the Supreme Court—and I desire to speak kindly of them as possible—decided that law to be unconstitutional; that a district or township, in their local authority and power, based upon a democratic idea of government, had no right to do this thing. But, by way of stultification, they went into Shasta County and there they decided that the local authorities of a certain township had the right to do this very same thing that the people of Alameda were denied. Tell me that the Legislature of this State has not got the right to pass a law that will protect my boys and yours from the vices, from the corruption, and from the sins that beset them upon every hand. I warn you, now, that this is false legislation, and I appeal to you, now, as honest men, in behalf of my boys and yours, and the rising generation generally throughout the State, to stand up manfully and weight down this Constitution with one of the grandest jewels that ever emanated from a legislative body.

MR. MCFARLAND. Mr. Chairman: I am opposed to the section and in favor of striking it out for various reasons. I will only give one or two. In the first place, I am afraid it will load down the Constitution, and injure its chances of adoption [laughter]; and in the second place, I have learned that quite a number of prominent gentlemen, connected with the interests of the corporations of the State, are in favor of the proposition. I think these two reasons should be sufficient to defeat it. [Laughter.]

MR. MARTIN, of Santa Cruz. Mr. Chairman: Some years ago I was very much in favor of local option, but having seen the workings of it once in my own county, and throughout the State, I hope it will be defeated; therefore I am in favor of striking it out. I look upon local option as a fraud.

MR. RINGGOLD. Mr. Chairman: I am aware of who I shall offend by the position I take upon this question, but I care not for that. I am in favor of democracy, pure and simple, and if we divide the State into small territories, I do not see why we should not allow them to have jurisdiction on all sorts of questions. I do not suppose that it will work as the people anticipate, but I support the proposition on principle; consequently I hope it will not be stricken out.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I have voted, sir, throughout this Convention in favor of local self-government, but I am not able to support the proposition on the Secretary's table, because it is not self-government, as I understand it; but it is made obligatory upon the Legislature by the use of the word "shall." The people of this State, as I understand it, once did, when the issue was presented to them as a direct issue, elect a Legislature in favor of local option laws. And they enacted a law which was declared by the Supreme Court unconstitutional. That decision is in the forty-eighth California Reports, in the case of ex parte Wall, and that decision of the Court proceeds upon two grounds. I suppose, of course, if the friends of local self-government wish to enact anything in this Constitution, it would be for the purpose of getting around or removing the objections made by the Supreme Court to the local option law which was once passed in this State. That objection was upon two grounds: first, that the Legislature had no power to delegate its legislative authority; and in the next place, that township government, which was provided for under the Constitution, had not been by the Legislature carried into effect, and that the Constitution was not self-executing, and therefore there was no township organization in the sense of the Constitution, and consequently that the local option laws were void, there being no local legislature such as was contemplated or provided in the Act called the Local Option Act. Now, the Supreme Court, after stating their objections, decided that if township organizations were created, or local legislatures, as they called them, and the power was delegated to them of regulating tippling, or the selling or dealing in intoxicating liquors, that that would be constitutional. I will read from the syllabus of that decision:

"When a system of town governments shall have been established by the Legislature, and when local town legislatures shall have been organized under that system, the Legislature may confide to such local legislatures the right to make local rules, but it cannot delegate to the people living within certain territorial limits, but who have no distinctive political character or governmental organization, the power to make laws."

Now, sir, would it not be sufficient, even admitting or supposing we have not sufficiently conferred upon the Legislature this power—would it not be sufficient, instead of compelling the Legislature to enact laws of this kind, to declare the general principle that they should have the power, when they do create these townships or local organizations—that whenever they have done that they should have the power to delegate them this general power which is spoken of here? Would it not be comprehended under the general power to "make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws," and laws generally for the regulation of their domestic concerns? It seems to me that that is sufficient without flying directly in the face of that business by declaring that the Legislature shall, *ex propria vigore*, go ahead and impose it upon the people of this State—that it is being made a separate issue. I do not think the Legislature should be tied up by the people in that way—a cast iron, inflexible obligation upon the Legislature, whether or no, to enact such a law.

MR. TOWNSEND. I think the gentleman voted for a great many such measures.

MR. BARBOUR. I have voted for a number of measures looking to local government, and I have no objection to it now, provided it is necessary. There is the decision of our Supreme Court. That decision is, that when you have township organizations then you can delegate this power. How can you do so except there is a city, a regular incorporated city, with its regular Board of Supervisors—its local legislature? How can you say that a certain portion of a county not organized, having no local legislature, how can you say that they can go ahead and make laws? I am satisfied that if you do this you have got to go the whole hog and make it compulsory upon the Legislature to provide township organizations. It seems to me that it is already provided for. The Supreme Court objection has been met by our provision number twelve of the report of the Committee on City, County, and Township Organization, and other provisions in this Constitution.

REMARKS OF MR. KLEINE.

MR. KLEINE. Mr. Chairman: This local option business seems to me—I guess it originated in the brains of a few fanatics, I guess. If a man wants to jump into the Sacramento who can prevent him? This local option law, according to the way I understand it, gives the business into the hands of a few. It takes away the liquor business from the small whisky shops and gives it into the hands of the large ones. That is the way it works in Maine. They have a law against selling liquor, and you find just as many drunkards in the State of Maine as anywhere else. The man that wants it will have it. For my own part I never drink it at all. I never spend two bits. I don't smoke and I don't drink. I have no use for it. A gentleman can drink whisky if he wants whisky. If you close the whisky shops he goes to a bigger liquor shop and gets it. According to these local option laws, as I said before, it gives the business all to the wholesale dealers. The man that can afford to buy ten gallons, of course he will have his whisky, and how easy it is for a man to get his whisky at the wholesale liquor store. It is nothing but a crazy idea. I am opposed to it. I shall vote against it.

MR. STEDMAN. May I ask you a question? You say you never drink or spend money for it. Didn't I have a drink with you in a saloon the other day?

MR. KLEINE. Yes, you did. You did, sir; I don't deny that. I can drink myself, but I very seldom drink. I done it. I don't belong to any temperance society. I don't allow any man or any society to bind me. Although I never spend two bits for whisky, nor beer, nor wine, if I am thirsty, you give me the preference of a glass of water or a glass of beer, I always take the water.

MR. TOWNSEND. Why are you working against your fellow laborers? Don't you know that many of them spend all their money for whisky when they might be getting rich?

MR. KLEINE. If a man sees fit to spend his money in whisky it is his own look out. I know many men that do not drink whisky, and they spend their money with bad women. [Laughter.] Who is the most moral man? The man that spends his money with prostitutes or with whisky? [Laughter.]

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. Chairman: I have been handed here a little paper, signed with the grand seal. I should like to ask what kind of a religion it is. It seems to me that it is some kind of a religion or another. Now, section four of the Constitution of the State of California

provides that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever allowed in this State." Now, if we legislate upon this local option we are certainly legislating for a certain class of religion, or a certain society, which is directly against the Constitution. Another thing, a gentleman on this floor has said that the Legislature had a right to protect his children and other people's children. Now, sir, if a father cannot protect his own child, I would like to know how the Legislature is going to do it? Why not pass a law then when the children come to be born, that they must come into world with nothing but virtues, and no vices at all? Are we to regenerate mankind? Can we stop a man from drinking if he wants to? Let everybody go according to his own conscience. He is the one that suffers for it if he makes an abuse of it. Why, in countries where there is no such law as that, where people are permitted to drink whenever they choose, those are the very countries where you see the least drunkards. I hope this section will be stricken out.

MR. HOWARD, of Los Angeles. Mr. Chairman: I wish to move an amendment to strike out and insert.

THE SECRETARY read:

"Strike out all after the word 'section' down to the word 'enact,' and insert the words 'the city and township governments organized under the Constitution may."

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I was elected here on a straight Democratic nomination. I stand here as a Democrat. The original definition of a democratic government—the Greek definition—was that it is a government by the people. Now, sir, I propose that the people, locally, as we have repeatedly enacted here, shall govern in relation to this matter. The main objection to a local option law has always been that it was not supported by public sentiment. But if a majority of the people of a city or township are in favor of the prohibition of this retail trade or traffic, then it is sustained by public sentiment, and then I think it is proper that they should have a right to say whether this poison shall be sold at every corner of a street or not. Now, nobody doubts—my friend from Sacramento knows very well, as a physician—that the Legislature has always, in most of the States, if not in this, and practically in this, exercised the right to regulate the sale of poison. Now, it is true, as I had occasion to say here the other day, that nine tenths of everything we drink in this State is a compound of poisons, mixed up by the wholesale dealer. One of the largest manufacturers of wine in this State told me, the other day, that the wines and all the other liquors are adulterated in every hand through which they pass. That it is destroying the health of our people; that it is sending them to the penitentiary as well as to the insane asylum, is a notorious fact. I was reading the other day an English publication, in which extensive evidence was taken, and there was the evidence of the wife of an English operator, who said that her only chance to get any of the money for the support of the family, paid to her husband on Saturday night, was to go with him to the paying-table, and accompany him home. She testified that between the house of the paying-table and her own residence there were in one block five groceries; that she could get him by two, but when it come to get him by five, he spent all his money before he got home. Now, everybody knows the misery of this thing; everybody knows its immoral tendency; everybody knows its effect upon the health of the people. I think that it will preserve the public peace to have this matter disposed of by the local governments. I know there are two colonies in this State, founded by people who have churches and schools and libraries and societies, who do not want liquor sold in their place. Once or twice parties have attempted to set up groceries in these colonies, but the colonists notified them that they could not do it, and the fact is, that they were obliged to quit, for they saw at once that the moral atmosphere would be made too warm for them if they attempted to force these establishments upon them. This is likely to occur in many places, and—for instance, in the township in which that colony is located—why not allow it to say liquor shall not be sold here, or shall not be sold at retail, or to make such regulations as will protect the morals and health of the locality? On principle, it is certainly right, and I believe that the utility of it would be very great, for this habit of drinking, among our people, is produced by social feeling. A half dozen fellows get into a grocery; one treats, another treats, and another treats, out of pure good feeling, and the first thing they know, half of them have contracted habits of intemperance and habits of dissipation. It does strike me that it is a right thing to be done to leave it to the local governments to say whether this vice shall be perpetrated and perpetuated in their communities or not.

MR. CAPLES. Would the gentleman permit a question? I desire to ask General Howard if his devotions to the principles of local self-government would carry him to the extent of justifying the enactment of a code of blue laws for any city or township?

MR. HOWARD, of Los Angeles. No, I would not prevent a gentleman from kissing his wife on Sunday, but I would prohibit him from making his brother drunk on any day.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I hope the amendment offered by my colleague from Los Angeles will prevail. It certainly is correct in principle. It is sound in theory, and it is one of those cardinal principles that underly true democracy, that the people in every community, in their corporate or municipal character should be permitted to regulate their own affairs. From the commencement of the discussion upon city, county, and township organization, I have voted steadily, constantly, and uniformly in favor of local self government. Now, Mr. Chairman, if there is any subject upon which local authority should be permitted to be exercised, it is upon the protection of the morals of the youth; it is upon those police regulations that either tend to corrupt, or destroy, or vitiate, or tend to elevate, cultivate, and purify the generations of society. I am acquainted with some of those localities to which my colleague referred, in the County of Los Angeles. I will state one instance briefly. A low, demoralized individual, right from the brothels, established a drinking saloon in the vicinity of our public school. By the introduction of sundry little games and inducements he enticed the boys in there.

MR. WHITE. Is not this whole subject covered in section twelve, when it says that the local governments "shall make such local, police, sanitary, and other regulations as are not inconsistent with general laws?"

MR. HOWARD. Will you vote, in the Convention, to sustain section twelve?

MR. WHITE. I will vote to sustain section twelve.

MR. WEST. I am of the opinion that section twelve does sustain the principle, and gives the authority, but I cannot permit this occasion to pass without expressing myself in favor of the right, power, and privilege of local communities to protect themselves against the crushing influence of the sale of intoxicating liquors, if they are disposed, by a majority vote to do so. In these instances to which I am referring, this nuisance becomes intolerable. In the case I refer to, it is said that a tidal wave struck this institution, and in the morning the saloon was found in a ravine near by, all broken to pieces. I hope we will not be compelled to depend upon these tidal waves to destroy these institutions in the future, but that the community may legally protect themselves against them. I hope the amendment will prevail.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I have lived fifty odd years trying to be a citizen of morality and virtue. I have been taught that moral suasion was much better than coercion. I am opposed to the section. I think it is amply provided for.

MR. REYNOLDS. Will the gentleman allow a question? If the gentleman should discover a thief breaking into his store, and extracting money from his till, would he approach him with moral suasion, and beg him, for the love of God and humanity's sake, not to take his money; or would he take him by the throat, and pack him out?

MR. BIGGS. The gentleman might say that, if the moon were made of green cheese, it would be good to feed monkeys on. I am opposed to any legislative body saying what a man shall eat, drink, or wear. I have grandchildren, and a number of them, and I undertake to say, it is seldom you see one of them enter a saloon and take a drink. In my experience in life, I have noticed that, when this local option has been inforced, the result is, that people bought liquor from wholesale places, and the consequence was that they became beastly intoxicated, or else under the influence of liquor, whereas, if they had gone to a saloon, they would have had no bad effect from it. In my travels throughout the east I have seen the effects of this local option, buying by the bottlefull and carrying it in their pockets. I am ready to go hand in hand with every gentleman on the floor, upon the question of morality, but it cannot be forced in this way; they will evade the law, they will buy it by the bottlefull, they will drink it at home. Do you propose to force it upon every township organization to hold this election? You say you shall do thus and so. It is very expensive to hold these elections.

MR. TOWNSEND. It is not proposed to force this upon a community. Suppose a community says, by a majority vote, that they do not want these dens, that they do not want these saloons open for people to go in at all times, or for boys to go in at any time. Why not permit them to rule?

MR. BIGGS. Do you propose to force every community to take a vote upon that direct question? A gentleman has spoken about the Democratic principles. If he has been an old Bourbon Democrat he has lived a long time under the influence of that article. I am very sorry that there has been one hundred and forty-eight thousand dollars made up for a lobby to defeat a local option bill. The gentleman who discloses that information was better posted upon that question than any other gentleman on this floor. He ought to know. He says it was one hundred and forty-eight thousand dollars. Well, sir, there is a large number of the people of this State opposed to local option. Another gentleman made a statement here that he was elected directly upon local option. If that question was at issue before the people I know nothing of it. I heard nothing of it in any portion of the State that I visited at the time. I do think it is unnecessary. It is amply provided for in section twelve. We do not wish to interfere in every business. I am opposed to loading down this Constitution with useless and such worthless trash as this is.

MR. STEDMAN. Mr. Chairman: I believe this matter has been sufficiently discussed. I move the previous question.

Seconded by Messrs. Evey, Kelley, Smith, of San Francisco, and Kenny.

The committee refused to order the main question, on a division, by a vote of 35 ayes to 43 noes.

MR. CAMPBELL. I have a small amendment that I desire to offer to the amendment of the gentleman from Los Angeles, Mr. Howard. I think he will accept it.

THE SECRETARY read:

"Amend the amendment so as to read as follows: 'The city or township governments organized under this Constitution may enact a law whereby the qualified electors of any county, town, city, or city and county, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.'"

MR. HOWARD. I accept that amendment

MR. CAMPBELL. Mr. Chairman: The only object is to strike out "voting precinct," and put in "county, town, city, or city and county," which would be the designation. It does away with the voting precincts, and puts in the designation by which the City and County of San

Francisco is known. The voting precincts in San Francisco, under the existing law, simply consist of two hundred voters, and to submit that question to voting precincts would not practically have any good effect. A man could step across to any other voting precinct and get all he wanted.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: For my part, sir, while agreeing with the moral sentiments that are expressed here—with the views of nearly all who have spoken on the affirmative of this question, or against the motion to strike out, in regard to the evils entailed upon the people by the use of intoxicating drinks, and by having numerous places for the sale of them—I am yet in favor of striking out, or of amending it, for this reason: that it seems to me to be inaugurating a form of government that is not and has not been approved anywhere. I think we have carried the principle of democracy, to which, under a very proper declaration, we are all devoted, as far as it can be usefully carried. We have carried it to this extent, that within the scope of its powers the Legislature of the State shall make laws for the government of the State; and within the scope of their powers, which are made ample, the people of counties shall prescribe laws and regulations for the government of these counties; and still further, that even subordinate municipalities and townships also shall, in accordance with the republican scheme by which the people of the United States are governed, have also their legislative bodies. Now, Mr. Chairman, that legislative body, in the township as well as in the county, has the authority to reach all the beneficial results, in my judgment, that can be reached by legislation in the direction which we are now contemplating, and that under a section that has been adopted in Committee of the Whole—under section twelve of the article on city, county, and township organizations, in the ordinary course of representative government the townships and counties can deal with the question as a matter falling in a general way within their jurisdiction. It is representative government that the American people maintains. It is not that which was known of old in Greece as democratic government. Now, democratic government is exactly the thing which is contemplated by this section here, that measures shall be passed, not through any representative form of government, not through any organized power adopted by the people, but by a direct vote of the individual voters themselves. That has never been found a successful way of dealing with any public question. That was democracy in Greece. There are plenty of gentlemen here who know how that worked, and they know that it is impracticable in anything but a very small community. It is impracticable under any system of government. It is directly opposed to the system of government to which the people of the United States are unalterably devoted. It is opposed to representative government. There is nothing representative about it. I do not myself perceive any reason why we should depart from the system of representative government which characterizes this country. We now propose to narrow it down so as to cover local interest to such a degree as may reach the wants or needs of every small portion of the country. I do not see any reason now that will justify us in abandoning that form of government and resorting to individual action upon this question, more than upon other questions. Why should we not, then, if we are to give up the scheme we have already adopted, in this case, and confer this governmental power upon the townships in regard to the sale of liquors—why shall we not give it up in regard to licensing all games, and in regard to keeping houses of ill fame, and in regard to a hundred questions, and let each one of these be submitted, under the doctrine of local option, to the individual voters, and not to the governmental power that makes the other laws and regulations in the county, township, or other municipality? I object to it upon that principle.

I believe that we have already done all that is required. I believe in the regular and orderly administration of our laws according to our own theory—the theory we have always set up and advocated—and when we secure to the people representative government, we give them a greater good than can be given by the method under contemplation here. We know very well that when we are making an organic law, we desire that it shall apply in a general way, as far as possible, and not, when we have pronounced against the State exercising special legislation, to set ourselves at work making a special legislation in the organic law, pointing out a particular business or a particular interest. I hardly think it is compatible with the nature of an organic law, and whenever we do that there will be a plausible ground for opposition to our work. If we confine ourselves to that which we have done, and which, in my opinion, is sufficient to accomplish the desired result, we will have a system that is in perfect harmony with the Legislature and with everything else. Men are willing to say we will abide by general laws, but they will always resent, and will resent in this particular instance, with tremendous force and effect, any organic legislation pointing out one particular interest. They are able to do it—I wish they were not—and they are able to make it a very different question whether this Constitution shall be adopted than is intended.

THE CHAIRMAN. The gentleman's ten minutes have expired.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I do not like to impugn the motives of any gentleman, but it looks to me as if the gentleman from Los Angeles and his colleague have shapen their course this morning in the interest of Los Angeles wine. They have talked here a great deal about the adulterations of liquors. The only place where you could get pure wine was at Los Angeles. Now, as these local legislatures will have the power to prohibit any kind of liquors that they choose, and except any kind, it seems that it is designed to cut off all other sorts of liquor except native California wines, under the insane idea that it is a healthy drink. Now, sir, did you ever get drunk—I mean, did you ever drink California wine? There is not a man in the State of California able to adulterate that wine and make it any worse than it is. The effect upon the system is something terrible. When a man drinks that wine, instead of a pleasant temporary exhilaration, to be followed by the normal state again, he never gets straight again. It is a chronic drunk when he drinks California wine. When a man uses it for a certain length of time a false skin begins to form all over his body. The disease goes on very much like leprosy. It hardens the ligaments, and the body is encased with an unnatural substance through which the blood does not circulate at all. [Laughter.] There is no healthy and natural perspiration goes on; the man has sunken eyes, and the end of him is insanity and death.

MR. HOWARD. Will the gentleman allow me to ask him a question? Did he ever drink any pure California wine in Los Angeles, or at the vineyards—anywhere?

MR. MCFARLAND. Yes; I drank some they called pure, and as they do not adulterate there, it must have been pure.

MR. HOWARD, of Los Angeles. I would like to state that this is to prevent these Black Republicans from killing off Democrats with bad whisky. [Laughter and applause.]

MR. CAPLES. Mr. Chairman: I have no desire to argue this question further, as my argument has been singularly perverted. I asserted that a statutory morality was an impracticability. I supposed I was talking to gentlemen of intelligence, who could comprehend the difference between this, that, and the other; but it seems that I was mistaken to some extent. Gentlemen have asserted that my assertion amounted to this: that because we cannot have an enforced morality, hence we need not legislate against stealing or murder. Now, if any gentlemen here on this floor lack the intelligence to comprehend the difference between questions of morality and questions of crime, I, Mr. Chairman, disclaim any responsibility for their ignorance. In conclusion, I have just this remark to make in regard to local option: It is a stab at this Constitution that we are making, and it is an act of suicide, and every gentleman of ordinary intelligence who is acquainted with the people of the State of California, knows that to be the truth, and knows that the people of California will refuse, now and forever, to be put into a straight jacket, in obedience to the behests of New England Puritan fanaticism.

REMARKS OF MR. LINDOW.

MR. LINDOW. Mr. Chairman: I would like to see some gentleman give us a clearer state of things. I am just as dark now as I was when it commenced. I see Dr. Caples has been up twice speaking, but I cannot see any light whatever. There is a point there where he could keep people from getting drunk, but it would be just as bad as on this China question—we would go to interfere with the Constitution of the United States. That would be the only way that we could remedy the evil. But if the gentlemen look back where the revenue comes in through the Custom House, you would find that the wine and liquor brings more revenue than any other commerce that comes through the Custom House. There would be nothing done about it. But you look back at the time Senator Booth was Governor of the State of California. They moved for a Sunday law. Well, we knew right away that that would not pass, because the Governor was doing a great wholesale business. Why was it defeated? Because it was making more money than anything else. Now, the only thing what I can see is that they want to go against the small dealers; cut them off, and they will make the people believe that that will make a sober government, and it will remedy the evil. When the truth is out, it will be found that it is to cut off the small dealers and throw it into the hands of the big ones. Now, I recollect the time when the Sunday law was in force in the City of New York, in eighteen hundred and sixty-three. Well, before that the gentleman drank, and the lady, once in a while; but when the Sunday law passed the whole family was drunk. A whole case of brandy was taken into the house, and beer as well, and the father and mother and all the children were tight enough. [Laughter.] And that was the end of Sunday law. There is no government that can go to work and prevent a man from getting drunk. If he is in the habit of doing it, he will do it. I do not see at all that it will give a remedy. I do not say that I don't take anything at all. When I like, I go into a saloon and have it. I cannot say I never was drunk, because four years ago I was as drunk as anything. I made a special business of it, to see how it would go when I myself was tight. I like to go through all experience. At the same time, I would vote for it if it would do good—but you cannot do away with it. It would be just the same as now.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I am as strong in favor of sobriety and as hostile to intoxication as any man upon this floor, yet I am not a teetotaler. I drink whenever I am dry, so far as I am concerned; but I dislike intoxication, and I am in favor of elevating the morals of the community. But, sir, this local option has not that effect, as it was attempted to be enforced in this State at one time. I reside in a city where at one time they had an election to try and prohibit the sale of liquor in that town. Our people defeated it, and the reason why we defeated it was that it would only throw trade out of town. Santa Rosa would never have stopped the sale of intoxicating liquor. They would have got tight just the same as before, because the territory is too limited. They would have gone outside of the city. The result would have been that they would get drunk as often as before, and we would have received no revenue from the parties that sold the liquor. All they had to do was to go across the creek and establish saloons there. So it would be in this city. Suppose you prohibited the sale of liquor here. People would go across the river and there will be just as much drunkenness, and the City of Sacramento will have to take care of them and get no revenue. It is the same in San Francisco. If there were none of these places in the State, if it was universal, I do not know but it would be a desideratum that should be desired. But as it is, to say you shall not buy your whisky in a certain territorial limit, it effects nothing. The

people will have it. Men that want whisky will have it. A man who has got the money can buy his keg of whisky, and keep it in the house; but the man who is so unfortunate that he cannot buy it by the quantity and carry it home, it discriminates against him. I do not say that is an argument here, because that is not my style. I shall vote upon every proposition according to my conscientious convictions, whether it is popular or not; whether it loads down the Constitution or whether it does not load it down. But if gentlemen do want to load this Constitution down, all they want to do is to vote for this local option clause, and put it into the Constitution. I do not believe there are three Germans out of ten in this State that would support this Constitution if this provision should be incorporated in it. This matter is to them very much like the Sunday law. They do not love the Sunday law, and neither do I. I do not believe in any law that is to legislate morals or religion into a community. I do not believe in it. You pass this and the Germans of this State, almost unanimously, will vote against this Constitution if we send it forth with this provision in it. I say, so far as I am concerned, that does not actuate me to favor or oppose it. I am opposed to it upon principle. I do not believe it is right.

MR. RINGGOLD. This is good enough for me. If the people want to vote the Constitution down, I am not going to alter my opinion because somebody says they will.

MR. LINDOW. Mr. Chairman: I hope the amendment will be voted down and stricken down altogether. I move the previous question.

Seconded by Messrs. Howard, Stedman, Vacquerel, and Kenny.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was rejected.

THE CHAIRMAN. The question recurs on the motion to strike out the section.

The motion prevailed.

MR. STEDMAN. Mr. Chairman: I move that the committee rise, report their action back to the Convention, and ask to be discharged from further consideration of this subject.

The motion prevailed.

IN CONVENTION.

MR. MURPHY in the Chair.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the section reported by the Committee on City, County, and Township Organization, in relation to local option, have rejected the same, and ask to be discharged from further consideration of the subject.

EDUCATION.

MR. WINANS. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, Mr. Murphy in the Chair, for the purpose of considering the report of the Committee on Education.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

MR. WINANS. Mr. Chairman: The time has passed when the importance of public education was made the theme for diadactic effort or rhetorical display. In the advancement of civilization and refinement, it has now concentrated into a great fundamental truth, which among all the people finds ——

MR. PROUTY. I rise to a point of order. There is nothing before the committee.

THE CHAIRMAN. The Secretary will read section one.

THE SECRETARY read:

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.

MR. WINANS. Mr. Chairman: It forms the basis ——

MR. HERRINGTON. I rise to a point of order. There can be no discussion until the report has been read, and then the first section. I make that point of order.

THE CHAIRMAN. The point of order is not well taken.

MR. HERRINGTON. I most respectfully appeal from the decision of the Chair.

Seconded by Messrs. Huestis and Lindow.

THE CHAIRMAN. The Chair understands that the reports are read section by section. The question is: Shall the decision of the Chair stand as the judgment of the Committee.

[Cries of "division."]

MR. LAINE. I desire to have the question stated.

MR. HERRINGTON. The point of order taken by me was that the article had not been read in Committee of the Whole, and that it was not in order to consider it section by section until the report was read to this committee. The report of the committee has already been read in Convention, but not in Committee of the Whole.

MR. HOWARD, of Los Angeles. I think the Chair is right.

THE CHAIRMAN. The question is: Shall the decision of the Chair stand as the judgment of the committee?

A division resulted in a vote of 44 ayes to 17 noes.

THE CHAIRMAN. No quorum voting.

A second division resulted in a vote of 50 ayes to 14 noes.

THE CHAIRMAN. There is no quorum voting.

MR. WEST. I move a call of the roll to ascertain if there is a quorum present.

MR. STEDMAN. Mr. Chairman: I desire simply to state that articles when taken up by the Committee of the Whole have always been read as a whole and then taken up section by section, and that is the reason I am voting against the decision of the Chair. It is the precedent; and if a precedent is worth anything the Chair is wrong.

MR. HERRINGTON. I withdraw the appeal.

MR. CROSS. Mr. Chairman: I will request now, for the information of the committee, that the whole report be read, so that we may see the bearing of the remarks which the Chairman of the committee is about to make. I think it will be more satisfactory to him, and I am satisfied that it will be to the Convention.

MR. WINANS. Mr. Chairman: I certainly have no desire that the reading of the report should be omitted if the members of this committee desire to hear it read. The Chair recognized me in the first place, and my remarks were therefore in order; but if it be desirable, or be desired, that there be a reading of the entire report, certainly there can be no objection thereto. I do not intend to speak upon the whole article at this time, under any circumstances, and what I was about to say was eminently brief. But still, if the members desire to have the article read I am very willing to yield the floor.

THE CHAIRMAN. If the committee desire the reading——

MR. LAINE. The history of the article shows that it has been read. It says: "Read, laid on the table, and ordered printed." It has been read once, as its history shows.

MR. BLACKMER. Mr. Chairman: I move that the report of the Committee on Education be read.

The motion prevailed.

THE SECRETARY read:

ARTICLE IX—EDUCATION.

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.

SEC. 2. A Superintendent of Public Instruction shall, at the first gubernatorial election after the adoption of this Constitution, and every four years thereafter, be elected by the qualified voters of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday of January next after his election.

SEC. 3. A Superintendent of Schools for each county shall be elected by the qualified voters thereof at the first gubernatorial election, and every four years thereafter; *provided*, that the Legislature may authorize two or more counties to unite and elect one Superintendent for all the counties so uniting.

SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools, which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted or have been granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State, subject to the provisions of section six of this article.

SEC. 5. The Legislature shall provide for a system of common schools, by which a free school shall be kept up and supported in each district at least six months in every year, after the first year, in which a school has been established; and any school district neglecting to keep up and support such school shall be deprived of its proportion of the interest of the public fund during such neglect.

SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools.

SEC. 7. A State Board of Education, consisting of two members from each Congressional District, shall be elected by the qualified voters of the district at the first gubernatorial election after the adoption of this Constitution, who shall hold their office for the term of four years, and enter upon the duties thereof on the first Monday of January next after their election; *provided*, that such members first so elected shall be divided into two equal classes—each class consisting of one member from each district—and that the first class shall go out of office at the expiration of two years from the commencement of their term of office; and at each general biennial election, after such gubernatorial election, one member of such Board shall be elected from each Congressional District, so that one half thereof shall be elected biennially. The Superintendent of Public Instruction shall be ex officio a member of such Board, and President thereof.

SEC. 8. The State Board of Education shall recommend a series of text-books for adoption by the local Boards of Education, or by the Boards of Supervisors, and County Superintendents of the several counties where such local Boards do not exist, but such recommendation shall not be compulsory. After the adoption of a series of text-books by said Boards, or any of them, such books must be continued in use for not less than four years. The State Board of Education shall also have control of the examination of teachers and the granting of certificates. They shall possess such further powers and perform such further duties as may be prescribed by law.

SEC. 9. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools.

SEC. 10. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in their existing form and character, subject only to such legislative control

as may be necessary to insure compliance with the terms of its endowments, and of the several Acts of the Legislature of this State, and of the Congress of the United States, donating lands or money for its support. It shall be entirely independent of all political or sectarian influences, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I was speaking of the report of the Committee on Education. Public education forms the basis of self-government and constitutes the very corner stone of republican institutions. Ignorance is the parent of vice, and vice soon hardens into crime. Education is the parent of intelligence and virtue. Crime has its temples in the penitentiaries which bristle over the land. Education has its temples in the school houses which rear their stately domes within the cities, or spread their simple structures, white and glowing in the sunlight, throughout the towns and villages, over the hillsides and amid the valleys of this broad domain. As the school houses multiply the penitentiaries decrease. In the earlier Constitutions of the original States the subject of education was merely mentioned. It was declared in the form of a principle, but did not concentrate into any form of legislative enactment. It was merely the broad declaration of a high principle, but as the time advanced and the condition of the people improved, and the nation augmented, this subject began to increase in consequence, and center into the new Constitutions as they were from time to time adopted, in the form of section after section, until at last, it attained to the dignity of a complete article in every Constitution. In all of the Constitutions of the States, it is a noticeable fact, that the declaration of abstract principles upon which they are founded is confined to an original article entitled a "Declaration of Rights," and in regard to the articles upon education that figure through the several Constitutions of the States there is this marked difference, that they are always premised by an original section declaratory of the importance and magnitude of the service, and declaratory of the principle which it involves. This is entirely exceptional in all the other departments of constitutional enactment.

Your committee, sir, although they were late in presenting their report, gave the subject their most patient investigation. They sat night after night in close deliberation, characterized by a harmony of feeling and a propriety of action, until they had discussed the whole question, and examined it in all its bearings, with a thoroughness which entitles the report, that they have presented, to the fair and full consideration of this committee. In consideration of that fact they present it now, and ask that it may be adopted by its several sections.

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

THE SECRETARY read:

"Strike out the section and insert the following: 'SECTION 1. The Legislature shall provide a thorough and efficient system of free schools, whereby all the children of this State may receive a good common school education.'"

MR. WINANS. Mr. Chairman: The section reported by the committee is taken from the Constitutions of Arkansas and Missouri, in part, and from the Constitution of this State. The first portion, "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people," is contained in the same words in the Constitutions of Arkansas and Missouri. The following words: "The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement," are in the Constitution of this State, section two, of article nine. As this is but a declaration of principle, and as it has received the sanction of long time in old and settled communities in part, and in part in this, I cannot see any necessity of or any propriety in effecting a change. The first part was introduced because it was so intrinsically proper in itself, and so truthful an enunciation of the great principle involved. It is general in its character, and does not seem to be a topic of amendment.

MR. LAINE. Mr. Chairman: I am decidedly in favor of the amendment. It seems to me that rhetoric has somewhat gone by. Now, of course, this is a very beautiful declaration, but it is a question that is not disputable. The amendment offered goes right to the point, and directs what should be done, without the glittering generality. We have too much of that already in the present Constitution. It might have been proper and appropriate in the bill of rights of the various States, when the matter was an open question whether common schools were desirable or not, but that day has long since gone by. It strikes me that the amendment is much better, from the fact that it goes directly to the proposition and embodies everything, while the one offered by the committee is simply a glimmering generality. It imposes no obligation upon the State.

MR. HOLMES. Mr. Chairman: I have no objection to the first. It contains a self-evident proposition, which no gentleman on the floor would deny for one moment. The amendment which I send up I have taken from the Illinois Constitution. It is brief, concise, and right to the point.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Fresno.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: Section five of the report of the committee covers the ground of this amendment, and it seems to me in a more complete manner than the amendment does. I will read that section:

"SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year, in which a school has been established; and any school district neglecting to keep up and support such a school, shall be deprived of its proportion of the interest of the public fund during such neglect."

Now why not adopt the first section as proposed, and when we get to that leave it in its proper place in the report following after the provisions that precede it. There is a special object in putting that there in that shape, to say that they shall be obliged to keep up a school for six months. I see no reason for taking a part of that and putting it in here. It is not as complete as it should be, but if we want it let us put in the proper place.

MR. WINANS. Mr. Chairman: Section five, as just read, embodies the whole of the idea proposed in the amendment, and that idea is very properly asserted in that section. Now, it is very proper that where the declaration is made that the Legislature shall provide for a system of common schools, it shall be followed by an enactment that a school shall be kept up and supported in each district. Therefore there is a consistency in having it in that fifth section. It is contained in the present Constitution, in part, and has, in addition, the latter part now presented by the committee. I hope, therefore, that the section, as presented by the committee, will be adopted. It is certainly a proper declaration of the truth, which is not a glittering generality, because it is contained in substance, in one form or another, in almost all the modern Constitutions that have been adopted. Either that or something substantially similar is inserted in each one of them, and I notice that it is a prominent characteristic of articles on education.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: The amendment offered is to strike out this section and insert. Now, sir, I am in favor of the first part of the motion, the striking out, and opposed to inserting. Still, at the same time, I am in favor of the substance of the proposed amendment. But I believe this is the wrong place to insert it. The idea contained in that amendment is contained substantially in section five; and, sir, since it is apparent that we must adopt the provision contained in section two, and very likely in section three, if it is the judgment of this Convention that we continue the office of County School Superintendent; and probably we will want to insert something in the place of section four, but when we get down to section five then the amendment proposed now to section one would be in order. But, sir, as for the section as it stands at present, I am opposed to it, simply because there is nothing in it. If we were making a Constitution entirely pertaining to the subject of education it would be very well, perhaps, to have a preamble to it: and that is all we find here in so-called section one—simply a preamble to a proposed Constitution pertaining to education. I hope the committee will strike out section one and proceed to section two, and keep the amendment until we come to section five, where it properly belongs.

MR. HOLMES. These other sections may not be adopted. I am opposed to sections two and three, and I do not know but what I am opposed to most of section four.

MR. FILCHER. The gentleman was the author of that amendment, I believe.

MR. HOLMES. I took it from the Illinois Constitution. I think if you would adopt the Illinois Constitution, section by section, you would have a very good one.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I do not know whether I understand the intention of this present move or not. I think it represents a strong sentiment in this State. There are two marked ideas of public education, and I speak with some freedom upon this subject, because I was at one time identified with it. There are two ideas. One idea is that no portion of the public funds of this State should be appropriated to the education of the people of the State beyond a certain point, that certain point being an education in what is usually termed the common English branches. Now, sir, that is the view of one portion of the people of the State, and I believe a very large portion. There is another class of people in this State who believe that there is little danger of educating the people of the State too much, and that the education of a few to a high grade at the expense of the State finally proves a benefit to the State, far exceeding the expense of that much education. Now, sir, I believe that each class hold their views honestly. The one say that no funds shall be taken from the public treasury to educate a boy or girl beyond the common English branches; the other says that it is better to educate beyond that limit. Now, sir, if I understand the proposition, the question must now come directly before this Convention. The section as here proposed by the committee certainly does involve the expenditure of public funds for encouraging education not limited to reading, writing, spelling, arithmetic, grammar, and geography, but this to encouraging the promotion of intellectual, scientific, moral, and agricultural improvement. The section as presented by the committee takes the position of the latter class, while the amendment represents the sentiment that education at public expense should be limited to the common English branches. This amendment proposes the education merely of children. For my own part, I believe that if there is in the State of California one boy or one girl of whatever age, a young man or a young woman who is disposed to devote his or her time to the acquisition of knowledge, that it is for the interest of this State to furnish the instruction. I believe it is for the interest of the State, and if it is for the interest of the State we should not impair the power of the State to act for its own interest.

I believe, sir, that if we could have in this State a few thousand educated men, thoroughly educated, that the benefit will reach every man, woman and child in the State. But, sir, if the State can only provide for the education of its children to a very limited degree, then from that point on, must education be limited to the children of the rich or those who have the money to pay for their education. I am not in favor of it. I believe that even the Agricultural College of this State has been a great benefit to it. I believe that a mining college, if it could be

established, would be a great benefit. And while, by a mining college, there may be taken out of the treasury of the State a few thousand dollars a year, I believe that the amount taken out would be returned to the State treasury ten fold—yea, even a hundred fold, year after year. While we build up great material resources of this State, let us at the same time teach the head and heart how to use them, and enlarge them to the highest degree; how to make a proper use of them. What is the highest end in man? It is an intellectual end, and it is intellectuality that makes the man great, and that makes the State great; and the State can afford to pay something for it. Let us understand it right here. I think the gentleman who brought forward this provision will not take issue with me on this, that this is the point at which we are to determine whether the State is to have a right to encourage intellectual improvement, or whether the State, in its appropriation of public funds, is to be limited to a common school system. For my own part I am in favor of leaving this provision in, so that whenever the people of this State shall feel like encouraging a higher intellectual development, they shall have the power to do so. But if, at any future time in the history of the State, the people wish to say that the expenditure should be limited to the common school branches, then, sir, the State should have the power to so limit it. But, I believe that we should not go farther than to provide that the State may say so and so, and leave the people to determine in their legislative body how far they will go in these matters. Do not let us say that they shall spend money for these purposes, but leave the door open for the great intellectual march of progress in this State.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I hope Mr. Holmes' amendment will prevail, because it is clearly to the point. We are now planning for a system of common school education, and if we want another system we must add it on afterward. Let us first attend to the wholesale of this arrangement. Let us first secure a common school education to every child, for if these extravagances in the common schools are allowed, which are creeping in, they will weigh down the whole system. We know that there are thousands and thousands of children to-day that cannot go to the common school. The schools have only been kept open for four months in many places, and the teachers are paid miserably. Let us go forward first and secure the education of all the children in the State; of the poor children and of the rich children, just as they come to the common schools, and let us secure that before we go one single step farther; then let us attend to these others. When our State becomes rich, let us alter our Constitution if we choose, and go on, but let us first secure to the children of the State an education, which they are not getting now. I say we must go forward and begin at the bottom, and keep the schools open eight months in the year. If the people of the State wish to go farther, it is time enough to talk about it when they express themselves. I trust that Mr. Holmes' amendment will be adopted instead of the first section.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: At the session of the Legislature of eighteen hundred and seventy-one-seventy-two, I had the honor of presenting a bill providing for a system of common schools for this State. At that time it met with a great opposition from different parts of the State. It was, after a continued struggle for nearly the whole term, passed by the Legislature, but, from outside pressure, the Governor was induced to pocket the bill. At the next session, Mr. Tuttle, of Sonoma, introduced a similar bill, and it passed and became a law. The idea of that bill—the original bill and the bill Mr. Tuttle subsequently introduced—was to give to each child of the State an equal opportunity of learning the common branches of education: that there should be equality from one end of the State to the other in the facilities to acquire education; that the money appropriated by that bill should be of equal benefit to all; and to that extent, and no farther, it was contemplated in the passage of that bill; but through the immense amount of money that was required in order to accomplish that purpose, step by step changes have been made to the system proposed there until there is probably as much abuse connected with the system as in any other expenditure of State money. The report, as offered here in this first section, deals too much with generalities, and for one, I am in favor of the amendment offered by Colonel Holmes.

In eighteen hundred and fifty-four, I think it was, the money that was originally in the treasury—money that was received from the interest on the school sections—was placed in a general State fund. The interest upon the sale of these lands have educated the children of all the outer counties of this State. It was placed in a common fund in the State treasury, thereby defeating the source of revenue that these counties should have had, and would have had up to the present time. San Francisco now draws forty thousand dollars a year, and if she drew what she was entitled to, she would draw the interest upon two sections, which would amount to ninety-six dollars a year. This land was not donated in bulk to the State; it was only donated as two sections—the sixteenth and thirty-sixth sections. It was intended that this interest should be a perpetual fund to that township. After this interest was placed in a general fund, from which all the counties drew, then the outside counties were compelled to support their schools by direct taxation. Our schools were not properly supported. In many of the small districts we have no schools, and for that reason the public demand, after this fund, that belonged to the children of the different counties, had been taken from them and placed in a general fund, was that the balance necessary to support a system of common schools should be gathered from the whole people of the State, upon the property of the State; but in carrying out that idea we had but one idea in view, and that was to provide a thorough system of common school education. And I believe that is as far as the State should go. I believe we should place that in the Constitution; and whatever more any community or any child desires, they should either acquire at the expense of their friends or their own energy. After a young man has acquired a common school education he will find assistance that will help him on, and he will make a man of himself. He has obtained a common school education. There should be no royal road to education for one half of the children of the State, and none for the other. That child who is in earnest, though not able to buy his books and a suit of clothes, may stand at the head of the line, and he has a right to an equal common school education. So far as any gentleman is willing to go to advance education, I will go; but not a dollar will I allow to any school in this State that each and every child in this State has not got access to. Therefore I hope that the amendment will be adopted. It goes to the point, without any generalities, without any Fourth of July speeches, which are provided in section one.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. Chairman: I am in favor of the retention of section one of the report of the committee. I do not care whether it is called a preamble or not. I take a Constitution to be a philosophic and historic as well as a legal instrument. Judge Cooley, in his work on Constitutional Law, says that a Constitution contains the principles upon which the government is founded. We have here in this first section the principles, in a modified form, that underlie a system of general education. Here, now, is a republican form of government in which the people are sovereign. This Government must have the means of perpetuating itself, therefore the people must be educated. Again, we must have good rulers, and good legislators to make the laws. These rulers and these statesmen must come up from the ranks of the people; hence the people must be liberally educated. Again, the people must understand the importance of the laws that are made; hence the people must be liberally educated. This section expresses that idea: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." The better and more liberally the people are educated, the more inventions and discoveries will be made. Again, to raise great men you must raise the mass of the people. All must rise together. Another reason why I am in favor of a liberal education, ranging from the primary to the university grade, is that it breaks down aristocratic caste; for the man who has a liberal education, if he has no money, if he has no wealth, he can stand in the presence of his fellow-men with the stamp of divinity upon his brow, and shape the laws of the people—shape our republican institutions by his intelligence and speech.

MR. SMITH, of Santa Clara. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

MR. MURPHY in the chair.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Education, have made progress, and ask leave to sit again.

The Convention then took the usual recess, until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., Mr. Murphy in the chair.

Roll called, and a quorum present.

MR. FILCHER presented the following petition, signed by a large number of citizens of Placer County, asking the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Rocklin, Placer County, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

EDUCATION.

MR. WHITE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. Murphy in the chair, for the purpose of further considering the report of the Committee on Education.

MR. HERRINGTON. I move to amend so as to take up also the minority report.

MR. HEISKELL. I call for a division of the question.

THE CHAIR. The first question is on the motion of the gentleman from Santa Cruz, Mr. White.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

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

MR. LAINE. Mr. Chairman: I desire to offer an amendment to the amendment offered by Mr. Holmes.

THE SECRETARY read:

"Amend the amendment offered by Mr. Holmes by adding at the end thereof the following viz.: 'By which system one such school shall be kept up and supported in each school district for at least six months in every year, after the first year in which a school has been established.'"

MR. HOLMES. Mr. Chairman: I accept that amendment.

THE CHAIRMAN. The question is on the adoption of the amendment as amended.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman, and gentlemen of the Committee: If we expect to transact any business it will be our imperative duty to bring ourselves down to every question, and to the closest consideration of it, and to consider it in its bearing in connection with the system that is proposed to be inaugurated here for the future control and management of the schools of this State. Now, I do not understand that it is the province of this committee—while I admit that it can do so—to resolve itself into a committee on revision and adjustment, just simply because it can tear to tatters the report of a committee. While I admit that it is perfectly proper and right to strike out this section, I see no reason for inserting what is already reported here by the committee. Section five reads—and I think in better language than the amendment that is proposed—as follows:

"The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year, in which a school has been established; and every school district neglecting to keep up and support such a school, shall be deprived of this proportion of the interest of the public fund during such neglect."

Can you beat that? If you cannot improve upon the expressions made use of by the committee's report, why haggle the report to pieces just because you can? Now, I am opposed to the first section, and want it stricken out, of course, because it is meaningless. But because this provision is in section five, is no reason for striking out this section and putting it in here. Now, the latter portion of section five can be stricken out, and then you have this amendment, substantially. How much dignity will it add to the honor of any gentleman to have put in an amendment here which already stands in the report of the committee? The only thing that you can do is to strike out section one and put section five in its place, if that is thought advisable. But after this committee have acted upon it, if it is not in its proper place, the Committee on Revision and Adjustment can arrange it. Why not let the committee's report stand as it is in the fifth section, and strike out section one? I, as one of the committee, made a minority report, and was not in favor of the majority report. I do not stand here to advocate that majority report, but I do not care to see gentlemen simply putting in amendments changing the mere words of the committee as reported here, for the distinguished honor of having stricken out a section of the majority report, and substituting something else in its place. I do not think it is fair; I do not think it is right; and I do not think it is a just way of dealing with the report of the committee.

MR. HOLMES. Mr. Chairman: If there is any gentleman in this house who introduces superfluous amendments, it is the gentleman from Santa Clara.

MR. HERRINGTON. Do I ever offer an amendment taken out of one part of the report and put it into another?

MR. HOLMES. Yes.

MR. HERRINGTON. I do not think you can find one. I move to strike out the section.

THE CHAIRMAN. The first question will come on the adoption of the amendment offered by the gentleman from Fresno.

REMARKS OF MR. MORSE.

MR. MORSE. Mr. Chairman: I am rather surprised to hear the objections made to section one of this report. I do not see what objection any one can have. It is certainly a very simple proposition, and one that I can tell the members of the Convention something about. In eighteen hundred and sixty-five when the first Constitutional Convention after Missouri became a free State met, I lived in Missouri. We had a Constitutional Convention, and the first clause in the educational Constitution was very much like this. A similar principle was enunciated in it at least, and I have been surprised since I have come here to find how generally that same idea was adopted throughout the Southern States where free public schools were not known, and the people were not generally in favor of free schools. We started out in Missouri with the idea of free education, and the idea has been copied throughout the Southern States. Section one of the article on education is in other Constitutions almost in the same language that is embodied in this. There is no objection to it, although I admit that it is not essential. The idea is a pretty good one. This amendment only shows that if the multiplication table was introduced here, there would be several amendments to it. There are some in the Southern States, and probably some in this State, who were not in favor of free public schools for all the people in this State. If the question is asked why the State furnishes free education? the answer is here in this section: "A general diffusion of knowledge and intelligence being essential to the preservation to the rights and liberties of the people; the Legislature shall encourage by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." That is the basis upon which you found the whole thing. It seems to me that the idea is a pretty good one. It certainly does no harm, and there is nothing in the world that a man can say against it, only that it is not essential. There is nothing in the world against it, and I hope it will not be stricken out.

MR. SMITH, of Fourth District. Mr. Chairman: I am of the same opinion as Dr. Morse, and I am of the opinion that it means something, too. It provides that it shall be the duty—that the Legislature shall encourage, by all suitable means, a promotion of intellectual, scientific, moral, and agricultural improvement. This makes it the duty of the Legislature to forward this matter in every way that the Legislature may have the power to do. I do not see any reason why the committee's report should not be adopted. It seems to me that it is a good one, and especially that first section. It is a good section, and in the right place.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Fresno, Mr. Holmes, as amended by the gentleman from Santa Clara, Mr. Laine.

On a division, the vote stood 27 ayes to 47 noes.

THE CHAIRMAN. No quorum voting. Gentlemen will please vote.

The amendment was rejected, on a division, by a vote of 34 ayes to 53 noes.

THE CHAIRMAN. The question recurs on the motion to strike out section one.

The motion was lost.

MR. JOHNSON. Mr. Chairman: I send up a substitute for section one.

THE SECRETARY read:

"SECTION 1. The Legislature shall encourage, by all suitable means, the promotion of intellectual, moral, and agricultural improvement."

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I do not see any objection to the section, except that it ought to be consistent. In other words, we start out with certain premises, and the conclusion ought to follow from those premises if inserted in the Constitution; because, as a matter of course, this Constitution will be closely examined, and if the conclusion does not follow the premises it will be subject to critical animadversion. In my amendment I have preserved the conclusion at which the committee have arrived. The premises are these: that a general diffusion of knowledge and intelligence is essential to the preservation of the rights and liberties of the people. A conclusion ought to follow from that, but the conclusion which the committee have drawn is this, that "the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement." Well, what are the premises? A general diffusion of knowledge and intelligence. Well, now, how, from the simple premises of a general diffusion of knowledge and intelligence do we reach the conclusion that the Legislature shall encourage agricultural improvements? I do not see that it follows at all. I am in favor of the conclusion. The only objection is that the conclusion does not follow from the premises with which the committee start out. I leave out the word "scientific," as it is included in the word "intellectual," which leave it simply so that the Legislature shall encourage, by all suitable means, the promotion of intellectual, moral, and agricultural improvement. It is arriving at the same result that the committee arrives at, and that it may not be subject to any critical animadversion, it would be safe to adopt the conclusion at which the committee have arrived without stating the premises. It is said that the premises are taken from certain Constitutions; but they have not stated that they have the same conclusions in them at which the committee have arrived. I think the Chairman of the committee will see that it does not follow at all that because a general diffusion of knowledge and intelligence is essential to the preservation of the rights and liberties of the people, that we should encourage agricultural improvement. It is not a legitimate conclusion, and there is no use of putting in a bad argument here in this Constitution. If we start out with certain premises to reach a conclusion, that conclusion ought to follow from the premises, or the conclusion is wrong.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I think the conclusion is entirely warranted by the premises. The section is introduced in an article headed "Education." It has sole reference to the subject of education. In the present Constitution, under the head of education, section two starts out with: "The Legislature shall encourage, by all suitable means, a promotion of intellectual, scientific, moral, and agricultural improvement." It is under the head of education. It belongs to that topic. Then the section goes on further and says: "The proceeds of all land that may be granted by the United States to this State, for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will, or heir, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State." Now, that is all in the same section which declares as its initial paragraph that the Legislature shall encourage, by all suitable means, intellectual, scientific, moral, and agricultural improvement. I do not know that the children of this generation are wiser than the children of the past. I do not know why the present Constitution, in this regard, should not be maintained, and I hope that the Convention will stand by this declaration of principles, which has the sanction of all these years during which we have lived here together, and the sanction of various other Constitutions besides, many of them of the most recent date.

REMARKS OF MR. LAMPSON.

MR. LAMPSON. Mr. Chairman: I have but one word to say in reference to this section. It seems strange to me that gentlemen should object to saying that "a general diffusion of knowledge being essential to the preservation of the rights and liberties of the people." I wish, myself, I could see it doubly stated. The idea of striking out this declaration, or objecting to it, is strange to me. If I was to strike out either one of the lines, I would strike out the last two and leave that standing as a declaration to the people of America. It reads clear and distinct, and goes on from where I stopped: "The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." All four of these come in strictly under

the true principle of education. The gentleman, in his amendment, leaves out one of them, the scientific. I see no reason for striking out a single word from that section one. It stands exactly as the words that are spoken by every parent, at his fireside, to his child. I think that this Convention could find fault, perhaps, with other sections of this article, but on that section I see no reason for discussion. It is the true principle, that comes from the heart of every parent, that the diffusion of knowledge and intelligence is essential to the preservation of the rights and liberties of the people. The Legislature will do what they see fit to do. I do not think that a single word, even the word "scientific," ought to be stricken out. The Legislature will provide in reference to it.

MR. JOHNSON. My substitute contains the same conclusion as the section.

MR. LAMPSON. The first part of the section stands there as a declaration of principle in the Constitution. I think we should leave it as it is.

MR. MCFARLAND. Mr. Chairman: It seem to me, sir, that there is a great deal of extraordinary criticism of this first section of the report. Now, sir, I notice that this report, compared with the original matter, is the shortest report that has been made by any committee of this Convention. It is not much longer than the provision in the present Constitution, and it may be said that other reports are four, or five, or ten times as long. I do not see any objection to that first section. Gentlemen say that it is composed of glittering generalities. There are only four lines in it. Two are taken from the old Constitution, and the first two are merely a declaration. We have got our Constitution nearly half filled up with declarations of that kind. It does not merit the criticism of gentlemen here. I do not see what objection there can be to it. It simply asserts a principle, and we ought to allow that much space to a declaration of principle in regard to education, considering the size of the balance of this Constitution that we are making. It seems to me that the section should stand as it is. I do not see why gentlemen are so nervous about saying anything in favor of education.

MR. TOWNSEND. Mr. Chairman: I believe we had better save time. I move the previous question.

Seconded by Messrs. Tully, Gorman, White, and Campbell.

The main question was ordered.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from Sonoma, Mr. Johnson.

The amendment was rejected.

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

THE SECRETARY read:

"Strike out the word 'and,' before the word 'agricultural,' and insert after the word 'agricultural,' the words 'and mining.'"

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I think the word "agricultural" there is unnecessary, and I think it is out of place. If it is necessary that we should assert here that the Legislature shall provide a system of agricultural improvement, a kind of public system, can any good reason be shown why the duties of the Legislature, in securing improvement, should be confined expressly to agriculture? I recognize that agriculture, if not now, is fast becoming the great staple interest of this State, and yet, while that is true, it is nevertheless a fact that mining is to-day a large industry; and if it is wise that we should provide, in the fundamental laws of the State, that the Legislature shall provide a system of agricultural improvement, I submit it is also wise that we should direct the Legislature to do something to foster and encourage mining, by providing a system of mining improvement. However, Mr. Chairman, since it seems to be the disposition of this committee to adopt that section as it is, I am in favor of the amendment, so as to at least complete the section.

MR. SMITH, of Fourth District. Is not that covered by the word "scientific?"

MR. FILCHER. I, for one, after ten years hard experience, and after being raised on a farm to the age of maturity, do not believe a thing in theoretical agriculture. I do believe that brains and intelligence applied to the soil will have its effect; but, sir, give to the child, or to the agriculturist, some knowledge of chemistry and some knowledge of general scientific matters, and he is capable of becoming an agriculturist of an enlightened character. I do not believe that it is possible in any University, or in any institution established purely on theory, to make an agriculturist. It is just as necessary that a man should go into the field, and learn by experience, as it is for a lawyer to go into Court and have some practical experience in order to conduct, successfully, an important case.

MR. STEELE. Do you not think that a knowledge of geology, chemistry, etc., assists him?

MR. FILCHER. I say that it does. Give a man a knowledge of those subjects that pertain to the soil and I say it assists him in his agricultural pursuits; but theory alone will not make a successful agriculturist. These things are taught in all the higher educational institutions. But we have an institution especially for teaching agriculture. I do not wish to place myself here in opposition to continuing it, but I say if it is necessary, and if good results would be obtained from a theoretical establishment for the purpose of promoting agricultural improvement, then I submit, will not the same argument hold good in regard to mining? There is certainly, from a scientific standpoint, more science required there than in the development of our agricultural resources. Every department of science, particularly engineering, comes in play in the development of our mines, and men must necessarily be educated and have some knowledge of mechanics and the science of engineering, before they can make a success at all in mining. When mountains are to be moved and immense tunnels are to be run, I say it requires science. I would be the last man in the world to raise my voice against agriculture. But, sir, while one is great the other is very important; and I submit, again, that if it is necessary to add here the term agriculture, in reference to the branches permitted, to our educational institutions, that it is necessarily a matter of justice that we should add that of mining, and not discriminate against at least the second great industry of the commonwealth.

MR. WINANS. Mr. Chairman: When the Constitution under which we are now living was adopted, these people had themselves come hither from the various quarters of the land to constitute a new people in a new region of the earth. At that time mining was almost the exclusive occupation of the people. It was the object of the visit here and the main industry, and yet, in the face of that, our predecessors passed a Constitution in which they omitted that word. Why? Because they fully embraced it within another word, used here in this section, "scientific." In the University there is a college for mining, but it is a part of the scientific department of the University. It comes directly under that head, and therefore the word would be superfluous here. Not so with agriculture. It is one of the leading features of the Government, one of the leading pursuits of the people, and that which is the basis of all patriotism in the State.

MR. ROLFE. Mr. Chairman: I send up an amendment to the amendment.

THE SECRETARY read:

"Amend the amendment by inserting, before the word 'and,' the word 'mechanical.'"

THE CHAIRMAN. The question is on the adoption of the amendment to the amendment.

The amendment to the amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment.

The amendment was rejected.

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

THE SECRETARY read:

"Strike out all after the word 'of,' in line three, and insert 'education.'"

MR. LINDOW. Mr. Chairman: I do not see anything wrong in this first section whatever. I hope that all amendments will be voted down.

MR. JOHNSON. Mr. Chairman: The conclusion there follows the premises. The amendment leaves out these terms, because you might as well say that the Chinese must go, as to say that agricultural improvement should be fostered because a general diffusion of knowledge is desirable. The framers of the old Constitution did not have any such thing in it. This last amendment is consistent. The conclusion there follows legitimately, and if it is intended to insist upon this phraseology, I shall support the last amendment.

MR. KEYES. Mr. Chairman: It appears to me that that is just what we want. It is a question of education. It simply provides in that section that the Legislature shall encourage, by all suitable means, the promotion of education.

MR. WALKER, of Tuolumne. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Strike out in line four the words 'scientific, moral, and agricultural.'"

MR. WALKER, of Tuolumne. Mr. Chairman: That simply makes it read: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual improvement." It seems to me that perfects it. Scientific, moral, and agricultural improvement is simply intellectual improvement. It then meets the premises.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from Sutter, Mr. Keyes.

The amendment was rejected.

MR. HERRINGTON. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Strike out the words 'the promotion of,' in line three."

MR. SMITH, of Fourth District. I move as an amendment to strike out one of the f's in "diffusion."

MR. HERRINGTON. Mr. Chairman: There is some inconsistency in this expression. There is no doubt of it. I recognized it when the committee were enacting it.

MR. REYNOLDS. I would simply ask the gentleman if he will not accept an amendment that I will propose. I think he will accept it. I see that the printer has introduced an extra space in the first line, and I would like to have it struck out.

THE CHAIRMAN. It is out of order.

MR. HERRINGTON. Yes; I accept the amendment. [Laughter.] Now, I ask gentlemen to explain to me—any of these gentlemen who are in favor of retaining this section just as it is—what the encouragement of promotion means. That is what I am trying to arrive at. Now it will read: "The Legislature shall encourage, by all suitable means, intellectual, scientific, moral, and agricultural improvement." It will then read with good sense.

MR. WINANS. It means precisely what it says, and the same thing is said in half a dozen Constitutions of this Union. You can discountenance the promotion of a thing, or discourage it.

MR. HERRINGTON. The Legislature is not telling somebody else to promote it. It is doing the thing directly. In fact it is promoting it, and not encouraging any one else to promote it. I submit that the words ought to be stricken out, and leave the sentence with some good sound sense.

MR. JOHNSON. Mr. Chairman: I move to amend by substituting

for the section the language of the present Constitution: "The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement."

MR. WINANS. That has been voted down once. This has degenerated into a mere verbal debate.

MR. BLACKMER. Mr. Chairman: It seems to me this is a struggle about a very unimportant matter. It is very evident that the gentleman from Santa Clara is not an officer in the militia of this State, otherwise he would realize what would be meant by the Legislature encouraging the promotion of a thing. It might encourage his promotion to some higher position. It is not supposed that the Legislature is going to take upon itself the duty of educating the people of the State, but it is to be done by a system throughout the counties, and they are to encourage its promotion by that means. By the means to be provided by the Legislature they are to encourage the promotion of these particular branches of education, as set down in the report of this committee. Now, sir, I hope it will stand as it is. It is folly to strike out those words. It is good as it stands, and I hope it will be allowed to remain.

MR. RINGGOLD. Mr. Chairman: It is evident that the schoolmaster is not at home to-day, and I am afraid we are loading down this Constitution: therefore, I move the previous question.

Seconded by Messrs. Freud, Wyatt, and Townsend.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

The amendment was rejected.

THE CHAIRMAN. If there be no further amendments to section one, the Secretary will read section two.

THE SECRETARY read:

SEC. 2. A Superintendent of Public Instruction shall, at the first gubernatorial election after the adoption of this Constitution, and every four years thereafter, be elected by the qualified voters of this State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday of January next after his election.

MR. WHITE. Mr. Chairman: I have a substitute for that section.

THE SECRETARY read:

"Amend section two, by substituting the following: 'A State Board of Education, consisting of one member from each Congressional District shall be elected by the qualified voters of the district at the first gubernatorial election after the adoption of this Constitution, who shall hold their offices for a term of four years, and enter upon the duties thereof on the first Monday of January next after their election. The Secretary of State shall be ex officio a member of such Board and President thereof. Said Board shall perform all the duties now performed by County Superintendents, and have full control and superintendence of the public school system of the State, under such regulation as shall be provided by legislative enactment.'"

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I offer this amendment in the interest of economy. The article provides here, in another section, for the election of two trustees, or members of this Board from each Congressional District. We will probably after eighteen hundred and eighty have two more Congressional Districts. We are sure to have one, and, perhaps, two. This would make a very unwieldly Board, and a very great expense. The compensation is not mentioned here, but it is supposed that they can be got to serve for much less than two thousand dollars. We now have a Superintendent in each county, and it is believed that the Secretary of State could do all that is necessary with these members from the other districts; and the County Superintendents are a great expense and very little use in the counties as they are now conducted. These members could each see to his own Congressional District. They could have meetings of the Board here and perform all the duties necessary, and certainly with great economy to the State. It would do away with the Superintendent. I am not tenacious about it at all, but I wish to draw the attention of the Convention to the extravagance of the present proposition; and I hope if this is not accepted, that some gentleman will propose a way by which this can be conducted with less expense than the cumbersome system proposed in this article. I trust, therefore, that this amendment, or some other similar one, will be adopted. I introduce it at this time because it proposes to do away with the State Superintendent, and give the necessary duties to the Secretary of State, who is here all the time. Therefore I advocate its adoption.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: That amendment would be properly relevant, if relevant at all, to sections three and seven. It is not relevant to the present section at all. It strikes me that it is out of order, but if it is in order there is this objection to it—that the school system needs a single executive head in every State. In the Constitutions of Alabama, Arkansas, Florida, Indiana, Kansas, Kentucky, Illinois, Michigan, Mississippi, Maine, North Carolina, Oregon, South Carolina, Virginia, West Virginia, and Wisconsin, there is express provision made for the election of such an officer. He is made a constitutional officer, and I believe in every other of the States there exists, by force of law, under legislative enactment, a Superintendent of Common Schools. If you only have a Board of Education—a State Board—they will lack that responsibility which comes from unity, and they will not be able to discharge executive duties which pertain to an officer of this kind. There may be objections made to the expense of such an officer, in consequence of recent developments and troubles, but that is wise legislation which disregards temporary and ephemeral considerations and looks at the subject-matter in its true light. I do not believe that an educational system which abolishes its head would work well. Those States whose names I have read have adopted it as a part of their constitutional system, and the other States have provided for such an officer by legislation. I believe it to be indispensable to a proper administration of the affairs of the educational department. Article two of the Political Code prescribes the duties of the State Superintendent, which require a large portion of the time of such an officer. I hope gentlemen will pause and reflect before they destroy this system.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope that this will not be entertained, at this time at least. It is not germane to this section; and, besides, it provides for an impossibility, that this Board shall perform all the duties that are now performed by the County Superintendents. Why, sir, what do these County Superintendents have to do at present? I will just read over their duties, as enumerated in section one thousand five hundred and forty-three, of article three, of the Political Code, under the title "Education:"

"It is the duty of the County Superintendent of each county:

"1. To apportion the school moneys of each school district quarterly;

"2. On the order of the Board of Trustees, or Board of Education, to draw his warrant upon the County Treasurer against the school fund of any city, town, or district; he must draw his warrants in the order in which they are ordered by the proper authority; each warrant must specify the purpose for which the money is required, and must be paid in the order in which it is drawn, but no warrant must be drawn unless there is sufficient money in the fund to pay it;

"3. To keep open to the inspection of the public a register of warrants, showing the fund upon which the warrants have been drawn, the number thereof, in whose favor, and for what service drawn, and also a receipt from the person to whom the warrant was delivered;

"4. To visit each school in his county at least once in each year, and for every school not visited the Board of Supervisors must, on proof thereof, deduct ten dollars from the County Superintendent's salary;

"5. To preside over teachers' institutes held in his county, and to secure the attendance thereat of lecturers competent to instruct in the art of teaching, to enforce the course of study, the use of the text-books, and the rules and regulations for the examination of teachers prescribed by the proper authority;

"6. To issue temporary certificates, valid until the next regular meeting of the County Board of Examination, to persons holding certificates of like grade granted in other counties;

"7. To certify to the State Board of Examination the names of persons examined before County Boards of Examination;

"8. To distribute all laws, reports, circulars, instructions, and blanks, which he may receive for the use of school officers;

"9. To keep in his office the reports of the Superintendent of Public Instruction and a file of the educational journal;

"10. To keep a record of his official acts, and of the proceedings of the County Board of Examination, including a record of the standing in each study of all applicants examined;

"11. To keep in his office such works on school architecture and education as may be prescribed by the State Board of Education, and pay for them out of the unapportioned County School Fund;

"12. To (except in incorporated cities and towns) pass upon, and approve, and reject plans for school houses;

"13. To appoint Trustees to fill all vacancies created by failure to elect, or otherwise, to hold till the next annual election;

"14. To make reports when directed by the Superintendent of Public Instruction, showing such matters relating to the public schools in his county as may be required of him;

"15. In all counties containing twenty thousand inhabitants, or upwards, to devote his whole time to the supervision of the schools in his county;

"16. To carefully preserve all reports of school officers and teachers, and, at the close of his official term, deliver to his successor all records, books, documents, and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the County Clerk."

Those are the duties of County Superintendents. I beg to ask, how can four gentlemen perform these duties in the fifty-two counties of this State, in addition to those which are already the duty of the State Board of Education and the State Superintendent of Public Instruction? The idea is preposterous. It cannot be done.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I hope the amendment will not be adopted. The office of Superintendent of Schools is absolutely necessary, not merely because it is necessary to have a head of the school department of the State, but because there are duties to be performed by that officer which cannot be performed by any Board of Education. You cannot send your Board of Education around the State certainly—unless you do it at a very large expense, and make the office a high salaried one—to perform the duties which are now performed by the County Superintendents. You cannot add the duties of the State Superintendent to the office of the Secretary of State, because if you do you must send the Secretary of State traveling through the State at various seasons of the year when his business requires his attendance here at the Capital. Now, among the duties prescribed to the State Superintendent of Public Instruction is that of visiting the schools of the different counties and inquiring into their condition. You cannot send the Secretary of State traveling all over the State, visiting schools and inquiring into their condition. Moreover, he is required by law to visit the different orphan asylums to which appropriations are made and examine into the course of instruction there. These are duties which cannot be turned over to the Secretary of State at all. You must have a head to your school department. It is a false economy. It will not do to fritter away the

powers of this officer, and distribute them here and there at random. When the question of a Board of Education comes up in section seven, it will be time enough to discuss whether it is desirable to elect one or not, but so far as the office of Superintendent of Public Instruction is concerned, it appears to me to be absolutely necessary for the proper management of the school department. I hope this amendment will not be carried.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: I believe when the subject of calling a Constitutional Convention was first being discussed throughout this State by the press, that they pretty clearly indicated what amendments were desired to be made in the reconstruction of the organic law of this State. I have paid particular attention to the discussion that took place in relation to the matter, and I believe, in fact I am satisfied, that during the entire period of time, up to the time when this Convention assembled, no discussion ever took place in reference to a change of any portion of our school system. If there were any demands of that kind I did not happen to see or hear them. I do not believe that the people of this State desire or would indorse any radical change in the educational system of this State, and particularly in this regard. The system has worked well, and I believe is perfectly satisfactory to the people of this State. Now, sir, unless the people demand this change, why should we attempt to make any change in regard to the matter. I hope that the amendment will be voted down.

MR. WHITE. Mr. Chairman: I withdraw my amendment for the present. It has had the effect I intended, of calling the attention of the Convention to the immense expense of the proposed system.

MR. LAINE. Mr. Chairman: I send an amendment to the desk.

THE SECRETARY read:

"Amend section two of the article on education, by striking out all after the word 'salary,' in the fourth line, down to the word 'and,' in the same line, and inserting the following: 'of two thousand four hundred dollars per annum; and no public money shall be appropriated to pay for the services of any Deputy Superintendent or Clerk of the State Superintendent.'"

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: It strikes me that we ought to fix the salary of the State Superintendent of Public Instruction. That will secure the services of a good school teacher. Of course we cannot get along without a Superintendent of Schools, but this Superintendent of Public Instruction, traveling over the State, I do not believe is of any service to the State; I believe that he ought to remain at the Capital. This having offices multiplied on the people I believe is all wrong. I find, that in the estimated expenditures of the last session, that we have piled up the sum of seventeen thousand dollars for this Superintendent's office. I believe that the amount provided for there is sufficient, or in other words, that we should have some officer that does something. The universal plan is to have officers that never do anything, but give it out to clerks.

MR. BARBOUR. Mr. Chairman: I offer an amendment, also in the interest of economy: "Amend section two by adding, at the end thereof, 'provided, that the price of questions shall not exceed in any one year the sum of ten per cent of the salary of a teacher.'"

MR. HUESTIS. Mr. Chairman: In the interest of propriety, I hope that this amendment of the gentleman from Santa Clara will not obtain. I do not believe that we have a right to lower the dignity of that office by making it lower, in point of salary, than other State offices. I think that the office of Superintendent of Public Instruction should receive as great a salary as the Secretary of State. I am in hopes that the amendment will not prevail.

MR. STEDMAN. Mr. Chairman: I hope the amendment offered by the gentleman from Santa Clara, Mr. Laine, will be adopted. I believe that the State Superintendent, without the assistance of deputies, can do all the work incumbent upon that officer. It is purely a statistical office, and I think that two hundred dollars a month is ample pay. I want, sir, the deputies in that office done away with. I want to see the Superintendent of Public Instruction in this State get down to solid work. I believe he can do it. I hope it will be adopted.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I do not know whether I am on the popular side or not, but I know something of the business of school teaching. I know something about the State Superintendent's office. The position is a laborious one; one which requires a good deal of time and attention. And more than all it requires a good and competent man. An ordinary bookkeeper gets two hundred dollars a month, and he is not the proper material for a State Superintendent of Public Instruction. There is no other department which has in it so much of necessity and importance as the department of education. Now, sir, two hundred dollars a month will not pay for a suitable man for State School Superintendent. A bookkeeper gets three or four thousand dollars a year. A man who is fit to be the manager of a commercial house gets a good deal more. A man with a good fair ranch gets from a thousand dollars to ten thousand dollars or more a year; and a man who has devoted his attention to the subject of education for years, until he has become fit to be Superintendent of Public Instruction in the great State of California, and manage a great system of education we should have in this State, cannot be reasonably expected to employ his time and talents in such a position for two hundred dollars a month. The teacher of a Normal School gets more than that. The Principal of a High School gets far more. Our little interior towns pay as much for a Principal of a school. The Superintendent cannot properly perform the functions of his office without being away from home more or less. To be a good Superintendent he should visit the different counties and inform himself as to the exact condition of the schools. How can he superintend public instruction and know nothing about it except, as the gentleman says, from getting statistics? What do statistics show? So many scholars, so much money——

MR. STEDMAN. Is it the habit of the present State Superintendent, or has it been the habit of any other State Superintendent, to visit the schools?

MR. CROSS. Yes, I have seen them spending five or six hours a day in the schools at hard work, developing the system of teaching. I met Professor Bolander in Truckee delivering lectures to the people and stirring up such an interest in the general subject of education as would be worth more than the amount of the salary. Talk about a system by which we educate one hundred thousand youth, and no head to that department! A system by which we distribute nearly two million dollars in the State every year, and no head to that department! To offer a man, with the qualities necessary to perform this duty, two hundred dollars a month, would be ridiculous. The other States do not do anything of the kind, and expect the important functions performed by such a functionary. The report of the committee is about right. Put him on a level with the Secretary of State. It is just in the right place, and I believe the people of the State would be well satisfied with it at that point.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. Chairman: I hope, sir, that the amendment of the gentleman from Santa Clara will not prevail. I am indeed grieved to see that amendment come from the source it does. If there be a subject in which there should be as little of the spirit of penury as possible, it is the subject of education. Why, sir, the office of Superintendent of Public Instruction should be on a par with the other officers of like character in the State. He should receive as much as the Attorney-General. He should receive as much as the Secretary of State, for he should be a man above them all. The people of this State do not want that kind of economy in their school system, and the people of this State will not thank gentlemen on this floor for trying to cut down and belittle their school system.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: The people of this State desire their children taught. They desire the public fund to go into the common school building, and that their sons and daughters be educated, and that it be not wasted in the dignities of office. They desire to have the school brought home to each family; but as it is now we must have high salaried officers, who can afford to dress in silks and satins and broadcloth, and your children are becoming hoodlums. You are educating them in that way, until you find that the educational institutions are going by the board, and that from time to time, year after year, you have to have training schools to take care of the youth. But put them in the hands of men who are brought up to toil, take the boys and girls and make useful citizens to the State, and then the people will be satisfied. I believe I know as much of the interests of the people of this State, as my distinguished young friend from San Francisco. I believe I have lived as long in this State as he. I believe I have paid as much taxes into the school fund as my distinguished friend; and I do know that it is to the interest of the people of this State to have less of this fuss and feathers and more of the solid benefits. Let the golden ducats fall where they belong, and not into the State Capitol to maintain men in lazy positions.

By the report of this committee, it is true, that you provided that the State Superintendent of Public Instruction shall only have the pay of the Secretary of State, but it leaves out all reference to the management of the office. It leaves him to have deputy Superintendents and clerks upon clerks until all the money of the State may be wasted in that way. The people want the money where it is raised as much as possible, and frequently do not have enough to maintain their schools.

MR. CAPLES. Do I understand the gentleman that the present Superintendent gets seventeen thousand dollars per annum? Is that true?

MR. LAINE. For the two years. That is the estimate for the last two years. Six thousand dollars for salaries——

MR. CAPLES. Pretty liberal, that.

MR. LAINE. There is no sense in this peripatetic Superintendent. I have gone to the trustees of schools, those who managed the affairs of the school districts, who have sons and daughters in the schools, and I find that their opinion generally is that these Superintendents are mere parasites. They go there and spend a few hours of hard work—asking some few silly questions. That is your Superintendent, who groans under nothing but two hundred dollars a month. He does no good; but he may stay at the Capitol and save statistics, correspond with other States, and change the general details of the system, and be of some service—and there is where he should be. You might as well send your Governor over the State to see what everybody is doing. You have your own local teachers and Superintendents. If two thousand four hundred dollars be too low, raise it; but do not leave it in the power of the Legislature to prostitute and weigh down our common school system, because these matters that have come to light, of late, have done more to disgrace and dishonor us than anything that has occurred in the State before. I am in favor of education. I believe in giving every son and daughter in this State a reasonable education.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I shall vote for the amendment offered by the gentleman from Santa Clara. The best man for State Superintendent is a first-class schoolmaster, and he can be had for two hundred dollars a month, and it is ample compensation. Now, sir, I am in favor of saving the money and appropriating it to the enlargement of the system; to the increase of the branches of science taught in the schools. Our system here has been costing too much. I

is evident that it is a money-making concern, for some persons at all events. Now, sir, I hold in my hand the report from Massachusetts, and what was the wages in eighteen hundred and fifty-seven-eight. The average monthly wages of male teachers in the public schools of Massachusetts in eighteen hundred and fifty-seven-eight was forty-nine dollars and eighty-seven cents per month. The average monthly wages of female teachers at the same time was nineteen dollars and sixty-three cents. Now, sir, there is no reason or sense in our system costing more than twice as much as the system costs in Massachusetts. I am in favor of curtailing the expenses, and enlarging the sources of knowledge to the pupils of this State.

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: I am opposed to this amendment, for the simple reason that this office of State Superintendent, if we have one at all, is of as much importance as any other office within the gift of the people of this State. I agree with the gentleman from Los Angeles, and the gentleman from Santa Clara, that the expense of the system is greater than it ought to be; but, sir, it just as well applies to every other department of this State. I am with them in cutting down the lot of them, but I am not in favor of making fish of one and flesh of another. There is as much dignity in this office, there is as much responsibility, and it should require as much talent, as any other office in the gift of the State.

MR. WHITE. Had not we better cut them down?

MR. WEBSTER. You have passed them now. This is the only State officer we have in the system, and you start in now to degrade that one office. I will go with you to cut down the salaries of all the State officers. If you had gone at it with more earnestness when the report of the Judiciary Committee was up it would have been better; but when you begin to talk about cutting down one State officer and leaving the rest, I am not in favor of it.

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

THE SECRETARY read:

"Amend section two by striking out the words 'equal to,' in line four, and inserting 'not exceeding.'"

MR. STEDMAN. That amendment is not in order. It is not an amendment to the amendment. Let us vote on this issue.

THE CHAIRMAN. The Chair will entertain the amendment.

MR. SCHELL. Mr. Chairman: I do not desire to make any remarks except to say that that would leave the matter to the Legislature to determine; that is, to say how much the salary of the State Superintendent should be. I think that is the best plan.

REMARKS OF MR. KLEINE.

MR. KLEINE. Mr. Chairman: There seems to be a good deal of sympathy and humanity when it comes to exalted positions. Especially I am surprised that it comes from the member of the bar on my right, Mr. Cross, from the Workingmen's delegates. It is a great work for the Superintendent and the teacher. Gentlemen, is it greater work than the mechanic does? Since I have been here I have heard no single word of the workingman; he is crushed down, and not a single man has handed in an amendment or resolution in favor of him. One dollar a day! But when it comes to these officials, five thousand dollars is too little. Perhaps these gentlemen are unable to hire two or three servants, and go to the theater three or four times a week—that is what's the matter. I think it is about time that we should put down this difference between the mechanic and the school teacher. I say that the mechanic who learns his trade, has just as much right to use his brains as the man that goes to school and learns the boys and girls their lessons—just as much. I don't see why we should establish an aristocracy. I say that the school teacher and the Superintendent of Schools is no better than the mechanic, and not half so good. [Laughter.] I came here not to make a distinction between the school teacher and the mechanic. I do not see why two hundred dollars should not be sufficient for a Superintendent. Two hundred dollars is enough for any man. I remember, the other day five thousand dollars was not enough for a Supreme Judge—just think of it—for a man to sit on the bench three or four hours a day! I say it is an outrage! A man that says five thousand dollars is not sufficient—I don't know hardly what to say to it. I tell you, I look upon men all alike, and I repeat, and I say it again, that the man that works for his bread—and I say I repeat it—he has to use his brains just as much as the school teacher. This is all very well in Europe, amongst crowned heads, amongst established aristocracy, like in England, where the aristocrats looks down upon workingmen, but here, in the American Republic, I think it ought to be an end of it. Some have declared that we can't get able men on the Supreme bench any less than six thousand dollars or seven thousand dollars. We can get as able men for three thousand dollars as for six thousand dollars. Some said that if we don't pay big salaries they will be dishonest. Gentlemen, if a man will be dishonest with three thousand dollars, he will be a dishonest man if he has ten thousand dollars—it is all the same; it is all the same to him, no matter how high or low his wages may be. The man that is a dishonest man, is one anyhow. It is all foolishness. Now, gentlemen, I hope this will pass; two hundred dollars is sufficient, except if a teacher is more than a human being, and I am not aware of it. I hope all these high salaries will be voted down by everybody, especially men that come here as reformers.

MR. RINGGOLD. I would like to ask the gentleman if he has returned any conscience money to the State from his ten dollars a day?

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: I believe it is very well known here that I have always been upon the side of economy, retrenchment, and reform, but I am not much of a Cheap John when you come to officials. I think, perhaps, we have acted unwisely in the salaries we propose to pay our judiciary in this State; but, so far as the Superintendent of Public Instruction is concerned, I think it is the duty of this Convention to make provision that he should receive a reasonable compensation—such a salary as would be sufficient for the occasion—and I undertake to say that the sum of two thousand four hundred dollars is insufficient for the Superintendent of Public Instruction of the State.

MR. WHITE. Are you in favor of a deputy to do all the business and let the Superintendent go idle?

MR. BIGGS. Is that so? How do you know? I undertake to say the gentleman is laboring under a mistake. There is work for the Superintendent and his deputy, too. It has been done, and done well. There is a vast amount of money apportioned amongst the various counties of the State for school purposes. He visits the schools. He gives them lectures upon the subject of education. He infuses life and energy into our schools, and I must say I am in favor of paying him a reasonable salary—just as much as the Secretary of State. I am willing to go before the people on that record, and I don't want any cheap salaried men. I do not want your State and county officials to go together. I do not propose to vote for a dishonest man. Cheap salaries or high salaries do not make men dishonest or honest. I am sorry that my friend from Santa Clara, Mr. Laine, who I have gone hand in hand with in the line of economy, should get up here and propose this amendment. The school teachers in our High Schools receive more than that. I look upon the position of Superintendent of Public Instruction as one of the most important in the State. We should have the right man in the right place—a suitable man for Superintendent of Public Instruction. I am very much opposed to the amendment offered by the gentleman from San José, or Santa Clara, Mr. Laine, and I am in hopes that this Convention will vote it down. Gentlemen of the Convention, just let me appeal to you. If you want good men you must pay good salaries. Don't stand on a question of a few dollars.

REMARKS OF MR. HITCHCOCK.

MR. HITCHCOCK. Mr. Chairman: There has been a time in the history of this State when men were afraid to assert their opinions on this subject. This is the first time I was ever called to a body of this kind. I want no political future hereafter, and can afford to say to the people what I think. I believe that this office of Superintendent is entirely unnecessary, and I am in favor of striking it out. My reason for that belief is based upon conversations that I have had with leading men—teachers, men on the State Board, men on the County Boards—and they believe it is unnecessary. It is a waste of money, that does the children no good. I believe in education, and I believe that the money contributed by the taxpayers of this State should go directly to the benefit of the children, and not be squandered before it reaches them. Now, I am in favor of striking out this, and also County Superintendents. Let the Secretary of State apportion the State funds, and let the Boards of Supervisors apportion the county funds. I believe in the people governing themselves, and the best way to do that is to give the governing power as near as possible to the local authorities. I believe in the County Boards arranging the examinations, and doing away with these conundrums that we have had for the last fifteen years. A man without a State certificate cannot get any school in this State, or any situation in this State, until he has passed an examination by the State Board; but if he has a State, or even a county certificate, he can teach in any county in the State. Then why the necessity of these State certificates? Why this waste and squander of money to keep a few men in positions? As to the State Superintendent, I have never seen him in my life, and I have been in the State a long time. I believe there was one who attended several Granger meetings, but not as school teacher or Superintendent. I have got no axe to grind, and no friends to reward. The people demand this, and we want all these superfluous offices thrown away. I move that the section be stricken out.

MR. SCHOMP. I second the motion.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. Chairman: In regard to the remarks of the gentleman who proposes to abolish the office of State Superintendent and County Superintendent, I do not think it worth while to reply to him. I will say that we have a State Superintendent, and in point of salary he should rank as high as any other State officer. I believe that he should be a first class school teacher. Now, let us see what a first class teacher is. When he teaches in our city high schools he must have the widest range of culture. He must be a man versed in the ancient and modern classics, and must be acquainted with the departments of the higher mathematics, with the history of our world, with the natural sciences, with grammar, etymology, and orthography of our language. There are men within our school system to-day who, if they had given the time to the profession of law or medicine, instead of school teaching, they would have been more independent and more wealthy than they are. As it is now, those who are the best never receive more than three thousand dollars or four thousand dollars a year, and there are only opportunities for a dozen situations of that kind in the whole United States. These gentlemen who have this wide range of culture——

MR. STEDMAN. You speak of the great merits of school teachers. Is it not also true that there are men in our schools buying certificates?

MR. WICKES. I was saying, these gentlemen who have this wide range of culture, such as is found in no other profession, can, at the most, receive three thousand dollars or four thousand dollars salary, while a second rate lawyer or physician can make his ten thousand dollars a year. Now, in regard to the corruption alluded to by the gentleman from Santa Clara, which we have been very late finding out, I will say that corruption has existed in all the departments of the government, but it is found less in the school system than in any other department of the government. With regard to the assertion made by the gentleman from San Francisco, Mr. Kleine, that school teachers look

down upon mechanics, I will say, for one school teacher, that I have never been ashamed to take hold of the shafts of a wheelbarrow, or use a pick and shovel, and I do not look down upon mechanics. I wish to educate my children so that they will not be ashamed of manual labor, and yet be able to write a scientific treatise; but I will never educate them to be school teachers.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I wish to say a word in regard to the statement that was made that the State Superintendent had nothing to do but the official duties of his office—the clerical work. Now, sir, we have heard from the gentleman from Nevada, Mr. Cross, of the State Superintendent being in the northern part of this State attending to the duties of school work. During my residence in the very southern portion of this State, I have known the Superintendent of Public Instruction and his deputy to be there upon three occasions, and I am informed by my colleague that immediately before I came there the Superintendent that preceded him was there upon school work. Twice have these officers attended the school work of that county, for three days at a time; and the last time they visited there they were at work for five days, in my own place, in the school work. Now, sir, that certainly cannot be attended to if we are to provide a State Superintendent who is to do nothing but keep books and look for statistics. It is unjust, it is unfair, to put a gentleman in the position of State Superintendent, and degrade his position by offering him a less amount of money than you pay other State officers, and thereby bring other State officers to look upon it as a kind of fifth wheel to a coach. It is unjust, wrong, and undignified. It is unworthy of the position of the man who is at the head of the educational department of the State. I hope the section will stand as it is reported by the committee. If one is cut down, then let the others go with it.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I am opposed to striking out section two, for the reason that I believe that a Superintendent is absolutely necessary and indispensable to our public school system. I believe that the system could not be carried on without a State Superintendent. And further, I am opposed to starving him; and further than that, I am opposed to making an aristocrat of him. Whether the amendment offered by the gentleman from Santa Clara be the proper figure or not, I shall not undertake to say now; but I desire in this connection to read a list comprising the cost of the system under the existing law: "Salary of Superintendent, three thousand dollars; salary of Deputy, one thousand eight hundred dollars; salary of Clerk, one thousand five hundred dollars." Now, the first idea that strikes one upon reading that is, whether we could dispense with the Superintendent and Deputy, and let the Clerk do the work. This is the first idea that occurs to one; but I think we can do better, Mr. Chairman. I think we can retain the Superintendent, and dispense with the Deputy and Clerk. The gentleman from San Diego tells us that the Superintendent does run around the country; and he is correct, because I find here in this list, "Traveling expenses, one thousand five hundred dollars." But why should he travel? Is it any utility? Is there any necessity? We have County Superintendents to look after the schools in the counties, and the proper, legitimate function of the State Superintendent, as I take it, is to attend to his office at the State capital. I can readily see where it is necessary that he should be there and attend to the business of his office. But why should he perambulate the country? Is it necessary that he should go to the counties to give our County Superintendents instructions about how they are to perform their duties? The presumption is, that our County Superintendents are about as well qualified and understand their business about as well as he does, and they need no instruction or interference from him. I am opposed to his being permitted to run around the country at an expense of one thousand five hundred dollars a year.

MR. BLACKMER. I wish to state that on the three occasions they were there in attendance upon county institutes, twice they remained three days, and the other time, five days.

MR. CAPLES. I took it for granted that he was correct. No doubt they were attending county institutes, but I prefer that they should be here in their office attending to their legitimate business. They have no business to be there attending institutes. It is no place for them. The presumption is now that the Clerk is the real Superintendent. The Superintendent himself goes off around the country and leaves the Clerk to do the work. The Clerk attends to the business, and we have over and above the Clerk two supernumeraries. I am opposed to sinecure officers. I am in favor of instituting and maintaining all necessary and legitimate offices, for the administration of the affairs of the government, such as are demanded, such as are required, and such as have duties to perform and will perform those duties; but I am opposed, to making and maintaining sinecure offices. Here are some more items of interest, Mr. Chairman. After a Clerk comes, "contingent one hundred dollars." I am not prepared to say what that is. "Porter, two hundred dollars." Well, that is pretty good. Besides the Clerk, a Porter at two hundred dollars. That is getting pretty high up. That is quite an aristocratic establishment; very liberal indeed. Next after Porter comes postage and expressage, how much do you think? "Postage and expressage, eight hundred dollars" per annum. Now, it occurs to me, Mr. Chairman, that that Clerk has something to do. If he dispatches mail matter requiring eight hundred dollars postage and expressage, I take it that his office at least is not a sinecure. Then comes "Traveling expenses, one thousand five hundred dollars." Now, sir, I say there is no necessity for the Superintendent to travel at all. He has no business to travel, because we have County Superintendents, who can, and ought too, and are capable of attending to their duties in the counties, and the real legitimate duties of the State Superintendent are in his office at the State Capitol. Now, this little bill of items here foots up a grand aggregate of eight thousand nine hundred dollars per annum. Now, if eight thousand nine hundred dollars are really necessary to run this institution, then I think my friend from Santa Clara has gone too far if he proposes to cut it down to two thousand four hundred dollars. He tells you that this Superintendent may be his own clerk, and there is no use of his traveling, and I think the gentleman is entirely correct in that. The only question is this, is two thousand four hundred dollars enough. Now I, for my part, should have been willing to put at three thousand dollars, and if the gentleman will accept the amendment I would propose to amend by inserting "three thousand dollars" instead of "two thousand four hundred dollars."

MR. LAINE. I accept the amendment. I want to fix him somewhere.

MR. CAPLES. I believe that is in order.

THE CHAIRMAN. There is an amendment to the amendment pending.

MR. CAPLES. I shall move, at the proper time, to amend by substituting "three thousand dollars" for "two thousand four hundred dollars."

MR. SCHELL. I desire then to withdraw the amendment.

THE CHAIRMAN. The question comes on the amendment as amended by the gentleman from Sacramento.

MR. CAPLES. One more word. If I understand, the gentleman accepts my amendment to substitute "three thousand dollars" for "two thousand four hundred dollars." Now, I submit, in all candor, that three thousand dollars is amply sufficient. We have had enough of these plundering perquisites, and I want to cut it off. I want it distinctly understood what every officer is to receive, and not be allowed this perpetual grabbing at the treasury for clerks, porters, and everything else. It is a bad practice, Mr. Chairman, because, even if it is not abused to-day, it will be abused to-morrow. I desire it distinctly stated in the law what every officer shall receive.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: It is well known, sir, to those who have closely observed the signs of the times upon that subject, that there is in this State and throughout the American Union to-day, a deep seated design, composed of elements coming from various quarters, to cripple and injure, and, if possible, to destroy our whole common school system. It comes from people, in the first place, who do not like the public schools, because they teach certain ideas which they think ought not to be taught; and because they do not teach certain ideas which they think ought to be taught. It comes also from many classes of people who have the notion that society in America should be very much like it is where there are a few educated ladies and gentlemen, and that the balance of the community should be uneducated and ignorant boors. It is one of the reactions that meet us all the way along the progress of civilization. There was a time when every voice in America was for a liberal system of public schools, and a full system of public education. But, sir, we hear it now very frequently, that we are educating too much. Those who have the deepest hostility do not attack the system openly or directly, nor through agents whose purposes would be known; but, sir, they try to get other gentlemen who are not, perhaps, opposed to the system, to attack it at certain points, and they hope by striking it down a part at a time, they will finally upset and ruin the whole system. I know there are gentlemen on this floor who have large constituencies which are opposed to public education. I have heard men say that there is too much education among the common people now. Sir, I do not believe a word of it. There is something, undoubtedly, in the objection. There is a little temporary evil just at present. If boys have a certain amount of education, they are too apt at the present time to seek some political position. I admit that; but such a system of government as we have in America can only be maintained by a system of general education, and I believe the time will come when the poorest laborer in the land will be an educated man. I believe it is too late to go back. It is more dangerous than to go forward. This country has started on a popular theory, and that rests alone on popular education. If she can carry out that idea she wins. She has placed her foot upon the burning plowshare, and she must pass the fiery ordeal. This is one of the of the very blows that are aimed at the public school system. They want to commence at the head, sir. Why not abolish the head entirely, and say that there shall be no Superintendent? You want the great system governed and regulated without any head. But, if gentlemen will not do that, then they want to cut down the salaries and perquisites of that office, so as to make it feel its indignity; so that it will be a place that no man of character in the State will take. I am perfectly willing to let this matter stand as the committee has reported it. The salary of the Superintendent shall be that of the Secretary of State. Here it is proposed that the Superintendent shall not even have his stationery found him; that he shall not have even a clerk. Why, sir, do these gentlemen know how much work he has to do? Can they not leave that small matter to those who come after us? Shall you say that in the next twenty, thirty, or fifty years, there shall not be any other pay, without any perquisites at all, no matter how much the work may increase; no matter though the whole people may say that a further sum is needed? Can you not leave that much to the Legislature? I ask gentlemen to pause, and think whether this is not a part of an attempt to strike at our system of public schools; to leave it demoralized and disintegrated, without any head, without any system, without any dignity to it. I shall protest against it. I shall give my vote every time to increase instead of divide the public schools of this State.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I do not think that because an individual wishes to inaugurate a system of economy, or wishes to look into the workings of any department of government, that he necessa-

rily is an enemy to that department of government. I think that I am as good a friend to the public schools as the gentleman who just preceded me on the floor, and I think the mover of this resolution and the supporters of this resolution are just as firm friends of the public schools as he is. Possibly many of them have felt the onerous tax that they are paying, and possibly they are actuated by a feeling of that kind to look into the workings of the public schools of this State. The expense of running the public schools of this State, under the present system, is getting to be enormous, and I do not think a man should be accused of being an enemy to the public schools because he wishes to look into the matter a little. I do not wish to degrade the position of Superintendent of Public Instruction at all; I do not wish to degrade it, and it is not to that end that I speak, neither is it in that view that intelligent gentlemen vote. It is a question of cold fact. Is the service that he performs worth more than two thousand dollars or three thousand dollars? If not, he ought to be paid just what his service is worth; the dignity should not enter into the question at all. Is the service worth that much, or more? If it is worth more, pay him more. Let me here state it as my opinion, that there is something radically wrong in the public school system of this State, and when saying that, I do not aim to be classed as any enemy of public schools, but, as the gentleman from San Francisco, back there, has remarked, I do not see why school teachers should be paid such high salaries. The taxpayers of the State are paying it, and have a right to inquire into it; and I say that the school teachers of this State are getting more pay than any other class of professional gentlemen, for the amount of hours they are engaged in the discharge of their duties. I find in the report I have before me, that a school teacher, a lady, receives sixty-eight dollars and something per month. How does she qualify herself to receive that sixty-eight dollars per month? It was done at the expense of the public. Every single qualification that she has, that fits her for that position, she received at the expense of the public. Here we are educating them, qualifying them for this position, and then they are getting sixty-eight dollars a month for teaching twenty days out of the month, and about five hours a day, when the balance of the State, both men and women, are working for twenty-five dollars and thirty dollars a month; I say it is out of proportion. Some gentleman says we ought not to reduce the salary of the Superintendent of Public Instruction, because school teachers receive two hundred dollars a month. They do, in some cases, receive two hundred dollars a month, and it is too much, and we are paying it. First reduce the head, and then the others. I say that this school system wants, as it were, reconstruction. It is the ruination of the State to-day. Here we are paying three millions of dollars, and gentlemen say we have no right to look after where it goes to. They are even required to buy brushes and combs, soap and towels, and they are bought, and we are paying for them, and they are not taken care of. They are entitled to, and do pay as much as twenty dollars a month for sweeping the floor, and yet the tax-ridden people have to pay this. When I was a school boy we swept the school house floors ourselves, and we carried in the wood; now, we pay for these things. I say that the public schools of this State are pauperizing, as it were, the children of the land. Let them sweep out the school house, and act as janitors themselves. When the proper time comes, I am going to offer a good common school system—not a college, not an academy, or anything of the kind, at the expense of the State.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: As the humblest member of the Committee on Education, I labored on that committee for five or six weeks as faithfully as I could to perfect this report. I was at one time in favor of that report as it stands; in fact I believed in the passage of every provision in it; but, sir, I have since obtained new light from the economists in this Convention. I have obtained new light from the debates in this Convention, not alone upon this subject, but upon several others. I find myself now in favor of striking out this whole report. I find myself in favor of abolishing the common school system altogether, and not only the common school system, but all other educational systems. I propose to be consistent, Mr. Chairman. Your committee has voted to prevent the counties, cities, and townships from contracting debts to build any school houses at all, but give them unlimited privileges of contracting debts for Court Houses and jails. I propose to be consistent, and not have any need for school houses. Abolish the institution altogether. Why, sir, I was astonished how fast I obtained light this morning upon the discussion of this question. I was almost convinced when I heard the debate here upon section one, when gentlemen wanted to strike out the declaration that education was a good thing to have. Why, I am converted, and I want to be consistent and blot the word education out of the Constitution. You have given the City of San Francisco the privilege to go in debt to an unlimited extent to purchase the Spring Valley Waterworks for twice what they are worth, but it shall not build a school building except it collects the money to pay for it beforehand. Let us be consistent, sir. You have voted here this morning to prohibit the counties and townships and cities from putting a stop to the sale of intoxicating liquors, and no man had the hardihood to say that it was not productive of crime and expense to the State unlimited. Well, now, if we are going to have unlimited gin, we do not want any education. You have voted to increase the expense of the judiciary from one to two hundred thousand dollars per annum, and you are opposed to increasing the expenses for education. I will admit, sir, that this is consistent, for if you are not going to have any education you will need more judiciary; you will need more Court Houses, and you will need more jails. Why, sir, we had better go to work and see how many more penitentiaries the State can afford to build. You will want some more penitentiaries. I am in favor of striking out this report altogether, and of placing in lieu thereof provisions that shall offer a premium for a gin mill on every corner, and put a tax on all school houses and on all school teachers. I do not know but that we had better make it a felony to teach school at all. In San Francisco the premium on gin mills would be inoperative, for there is one on every corner now; but I believe there are some corners in this State, perhaps in this city, where there are none. These are some of the reason why I am in favor of striking out this whole report. I want to put a premium on gin. Let us have unlimited rot-gut, but let us have no more education!

REMARKS OF MR. JOYCE.

MR. JOYCE. Mr. Chairman: In my opinion, I think the remarks made by our distinguished friend from Sacramento had really no foundation. I have attended the sittings of this Convention pretty closely, and I have failed to hear any member on this floor oppose the public school system. I believe that if there is any thing more than another that is going to assist the public school system, it is to reduce the expense of it. I was waiting patiently to hear the gentleman from Sacramento introduce some remark to the effect that the selling of school questions would be the wiping out of the public school system altogether. Somehow or other it escaped this gentleman's memory. I believe that there is no man on this floor can deny it, that six years ago it was very easy for any house grainer to get four dollars a day. To-day they can get two dollars and fifty cents. Labor has been brought down to the very lowest point. Why not bring down the labor of school teachers, if there is any labor attached to it, in proportion to the reduction created in other branches of the labor market? Now, according to the Superintendent of Schools, they have got two thousand three hundred and ninety-three teachers employed in this State last year.

MR. WICKES. Have you given up the cry of "cheap labor" in San Francisco?

MR. JOYCE. We are against cheap labor.

MR. WICKES. Be consistent, then.

MR. JOYCE. We are not in favor of having school teachers' salaries kept up, and all other classes of labor being brought down. We are in favor of having the wages brought down to provide the children with school books gratis.

MR. WICKES. Is it not better to raise the salaries of all? What benefit would it be to the laboring man to reduce the wages of the poor man? Had you not better raise the wages of the mechanic?

MR. JOYCE. We cannot do it. According to the nearest reports we can get of the examinations going on in San Francisco, I see that teachers had to pay two hundred dollars a head to procure the questions. That would be four hundred and seventy-eight thousand six hundred dollars for the teachers to procure the questions. Now, sir, a very small amount of that would supply the whole school system of this State with free books. One third of that amount would furnish the State with free books, to say nothing at all of the high salaries. I believe, sir, that the same salary paid the Secretary of State, or even two thousand five hundred dollars would be a very fair compensation for the Superintendent of Schools. I think to-day there are lawyers who cannot average two thousand five hundred dollars a year. He has got to use his brains. I would not give him any privilege to sell questions in any shape. I would declare it a felony. Now, sir, if there is anything, in my opinion, that is going to keep the school system of this State intact, it is economy. As the system is running now, we come to find out that it has got to work consistent with the other departments. Economy being the order of the day, it is almost impossible to keep up the school system as an ornament to look at by the employment of the poor laborers of the State, who are severely taxed to keep it up. It is almost a crime, Mr. Chairman, that we should introduce anything here that would make it cast-iron upon the people to sustain a system that is so extravagant. The average school attendance is only seven months in the year. I do not see what should keep it from being ten months in the year, if these people have to draw a salary for twelve months.

MR. LARKIN. They are paid by the month.

MR. JOYCE. I think ten months' service in the year is little enough. If the country wants to pay that way let them pay. I am opposed to any such extravagance. I am willing to furnish school books free to all the children of the State.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I am opposed to the amendment, and also to striking out the second section. I am in favor of the adoption of the section just as it is reported by the committee. If I suggested, or could suggest, an amendment, it would be that of restricting the privilege of the Superintendent to employ deputies and clerks within a reasonable bound. Now, Mr. Chairman, I believe on all occasions I have advocated a reduction of the enormous salaries that the people of this State have been paying to public officers. The whole system has been inaugurated upon the high pressure principle. But I do not see any reason for reducing the pay of this one officer below the rest, taking into consideration the responsibilities and duties of his office, his far reaching influence for the present and future welfare of the State. We have already adopted a section which says that: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." We have growing up the future statesmen, legislators, Judges, lawyers, if you please, professional men, farmers, and workingmen, and their intelligence and usefulness, and their position in society depends very much upon the character or influence of the Superintendent of Public Instruction, and the system of education inaugurated by that superintendency. Now, let me call attention to section five of this report:

"SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year, in which a

school has been established; and any school district neglecting to keep up and support such a school shall be deprived of its proportion of the interest of the public fund during such neglect."

If that is adopted it becomes necessary that we have a central office. We must have a Superintendent to see that the laws passed by the Legislature are executed uniformly throughout the State. The Superintendent's office is a distributing office of information; he corresponds with the different Superintendents about school questions, and in regard to their duties. He must see that this system devised by the Legislature shall be carried out fully, properly, and honestly; that the public money is distributed honestly, and that it is expended honestly. In comparison with the clerical offices of the State, the Secretary of State, Controller, and the Treasurer, I contend that the duties of the Superintendent of Public Instruction are as important as either of them; his duties are as onerous as either of them; and I protest against placing the salary of this officer lower than the salary of these officers to which I have alluded.

MR. CAPLES. I understand the gentleman to say that he is opposed to the amendment. He is opposed to putting the salary below that of other State officers. The amendment fixes the salary at the same as the Secretary of State. Now, the question is this, does the gentleman wish it to be higher?

MR. WEST. No, sir.

MR. CAPLES. Another question: Do you not think that three thousand dollars is enough to pay that officer and let him perform the duties of his office himself, and not make the office a sinecure?

MR. WEST. In reading section two of the report under consideration I do not find three thousand dollars, or any other amount, specified. I find that the Superintendent shall receive a salary equal to that of the Secretary of State. Now, cut down the salary of the Secretary of State, if you wish, but let us have uniformity and equality.

MR. CAPLES. We have fixed it at three thousand dollars per annum, and the gentleman is mistaken in assuming that we propose to cut it down. We propose to fix it substantially as it is fixed by the report of the committee, but we propose to make the Superintendent do his own work, and we propose to deny him deputies, clerks, and all that. Is the gentleman in favor of making this office a sinecure?

MR. WEST. I am not in favor of making this office a sinecure any more than any other State office. I am in favor of putting it right on a level with the other State officers, and I am in favor of this second section, as it stands, giving the Superintendent the same salary as the other State officers. If you wish a general reduction, if you wish to reduce the salary of your other officers in proportion, I will vote for it. I am not arguing for three or four or five thousand dollars, but I am arguing in favor of equality, justice, and right. I hope the Superintendent will receive as great a salary as you pay to the Secretary of State and Controller.

MR. CAPLES. I protest against this assumption that we propose to cut the salary down below that of the Secretary of State, when we propose to fix it at the same figure.

MR. RINGGOLD. I move the previous question.

MR. WINANS. Mr. Chairman: Under the rules, as I understand them, the Chairman of a committee has a right to address the house last on a subject before the committee and under debate. I have had nothing to say——

MR. RINGGOLD. I withdraw my motion.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: The debate upon this subject has taken a latitude far beyond that which the subject justifies. We have had discussion here about the expense of school teachers, the amount of wages paid, and other things that were entirely irrelevant to the subject-matter. The only inquiries here that are pertinent to the case, are, shall we extinguish and annihilate the office of Superintendent of Public Instruction? and if not, shall we reduce the salary? Sir, I stated before that any department without a head was in a lamentable condition. There must be some one to discharge the functions that devolve upon it. You cannot with any justice to yourselves or the rights of the people, annihilate this office. It belongs to the condition of things; it belongs to the necessities of the case; it belongs to the requirements of the times. The people want it, the affairs of the State need it, and it must remain. Now, sir, it is said that the office is a sinecure, and that there is nothing to be done. Now, let me remind the gentlemen what duties devolve upon this institution, and they will find that its duties, if properly discharged, are quite as ample as the duties of the Secretary of State. If the duties are not properly discharged, correct the abuses, but do not undertake to correct the abuses in the system by annihilating the system. Is that wise legislation? Is that the act of prudent judgment among prudent men, men of thought, men of character, and men who are sent here by the people of the State to advance its highest and dearest interests? No, sir. Let whatever abuses exist in the system be corrected in the proper way, not by the extinguishment of the system, but by the adoption of such legislation as will prevent abuse where it can be reached. If we cannot reach it here, the Legislature can, and we have not yet reached the period of time or advancement of thought in which we are prepared to deny that the Legislature has some efficacy, some power, and some right to power in the State. Now, sir, the State Superintendent of Public Instruction has many duties to perform. I will read some of them:

"To report to the Governor, on or before the fifteenth day of November, of the years on which the regular sessions of the Legislature are held, a statement of the condition of the State Normal School and other educational institutions supported by the State, and of the public schools;

"To accompany his report, tabular statements, showing the number of school children in the State; the number attending public schools, and the average attendance; the number attending private schools, and the number not attending schools; the amount of State School Fund apportioned, and sources from which derived; the amount raised by county and district taxes, or from other sources of revenue, for school purposes; and the amount expended for salaries of teachers, and for building school houses."

This is the labor most comprehensive in its character and extensive in its details.

MR. STEDMAN. Are not these statistics gathered by the County Superintendents and sent to the State Superintendent?

MR. WINANS. They are measureably gathered in that way, but he has to supervise the whole of it. A man has charge of a mercantile establishment and has clerks to perform duties that do not require his personal action, but he must supervise and regulate the affairs of his house to preserve it from what otherwise would result in inevitable bankruptcy and ruin. These County Superintendents are responsible to no power but the county. They have no particular duty to discharge in reference to the State at large, and it requires and demands a State officer to bring all their reports together and make them into a report that shall show the character and beauty of the system. I think the gentleman is answered. Now, sir, again:

"To apportion the State school funds, and furnish the Controller, State Board of Examiners, and each County Treasurer and County Superintendent, with an abstract of such apportionment."

So that these several authorities may be checks upon his wrong doing; so that they may be apprised of the condition of the school fund in the State; so that every department may know how this grand system is working, and whether this department is verging upon corruption, or whether it is discharging the duties which the law prescribes. Again:

"To draw his order on the Controller in favor of each County Treasurer, for the school moneys apportioned to the county."

Now all the school moneys have to pass through his hands. This entire fund, amounting to millions in the course of time, has to pass through his hands in order that there may be an equitable and honest distribution of it. Again:

"To prepare, have printed, and furnish to all officers charged with the administration of the laws relating to public schools, and to teachers, such blank forms and books as may be necessary to the discharge of their duties."

Then this officer has to prepare blank forms and books for all the educational departments of the State. Gentleman have forgotten that this is an immense system, or else they ignore that fact. They have lost sight of the fact that there are about one hundred and fifty thousand youth of various ages now deriving instruction from the educational fountain—drawing it in as living waters, to purify their hearts and educate their brains. Is that not a comprehensive system? Is it not a duty that requires an agent to perform it? But again:

"To have the law relating to the public schools printed in a pamphlet form, and annex thereto forms for making reports and conducting school business, the course of study, rules and regulations, a list of text-books and library books, and such suggestions on school architecture as he may deem useful;

"To supply school officers and teachers, school libraries, and State Librarian with one copy each of the pamphlet mentioned in the preceding subdivision."

Libraries all around the State, in every hole and corner, and every quarter where the ray of educational intelligence can penetrate the darkness and find entrance for the sunlight. And again:

"To visit the several orphan asylums to which State appropriations are made, and examine into the course of instruction therein;

"To visit the schools in the different counties and inquire into their condition; and the actual traveling expenses thus incurred, provided they do not exceed fifteen hundred dollars, shall be allowed, audited, and paid out of the General Fund, in the same manner as other claims are audited and paid;

"To authenticate, with his official seal, all drafts, orders drawn on him, and all papers and writings issued from his office;

"To have bound, at an annual expense of not more than one hundred and fifty dollars, all valuable reports, journals, and documents in his office, or hereafter received by him, payable out of the State Fund;

"To deliver over, at the expiration of his term of office, on demand, to his successor, all property, books, documents, maps, records, reports, and other papers belonging to his office, or which may have been received by him for the use of his office."

And so his duties branch out into a wide detail. Can all this be dispensed with, or what is worse, be delegated to a State Board of Education, poorly paid, responsible to no one, and each man trusting to his neighbor to discharge a duty which should devolve upon him? Now, sir, I say this office must exist. It is not in the power of this body, if it means to do justice and to conserve the interests and the welfare of this people, to extinguish or abolish it. Well, then, sir, if the office be needed, let us look into the terms of its compensation. If this committee had acted upon a perfect system of reduction of expenses; if it had carried out in a uniform method these economic schemes which gentlemen have advocated on this floor, I, for one, should say nothing. If this system was made applicable to all alike, then, sir, there would be consistency in our action, and approval of what we do. But if we begin with one course and follow it up by adopting another at variance with it; if we economize in small matters and expend liberally in large ones; if we talk economy and do not practice it; if we merely make oratorical displays to please the people, then we are not doing what was expected of us, and what will redound to our credit, and will insure the success of the work that we have in hand. Now, sir, as regards the proposition of the honorable member from Sacramento, it is precisely identical with the report of the committee in one particular, and different in another.

MR. CAPLES. I understand the gentleman to say that if we had

started in on the line of economy and a general reduction of salary, he would approve it here. Now, the question is this: We started in by allowing the Supreme Judges six thousand dollars. I want the gentleman to say whether, in his judgment, three thousand dollars for a school teacher is not as liberal as six thousand dollars for a Supreme Court Judge?

MR. WINANS. No, sir; for a school teacher it is, but for a State Superintendent of Public Instruction it is not. The State Superintendent of Public Instruction must combine most peculiar and diverse qualities. He must be an educated man; a man of study; a man who has pursued his studies as long as it takes to make a Supreme Judge. Besides, he must be a man of executive capacity, or he cannot carry out the entire details of this most expansive and ramifying institution which devolves upon him. I say three thousand dollars would not be an equivalent salary to such a man as six thousand to a Supreme Judge. But, sir, I am not objecting to three thousand dollars. The amendment of the honorable member from Sacramento proposes to give this officer precisely what the committee report proposes to give him. The report proposes to give him the same salary as the Secretary of State. The salary of the Secretary of State has been already fixed at three thousand dollars. But I come now to the distinction. The gentleman says he is to have no supernumeraries, no employés, no underlings, no deputy, no clerk, no anything.

Now, sir, conceive of the existence of an officer whose duties are so arduous to perform, and requiring him to do them personally. To brush out and clean the cobwebs of his office, to act as his own porter, to have to shut up his office and abandon it for weeks while he is on a distant and necessary tour; to have no one to do the copying in the office, no one to attend to its various subordinate requirements. Sir, the system is entirely wrong, and no member of this body having the intelligence of the honorable member from Sacramento can fail to see that it would be utterly inoperative. This is eminently a subject which should be left to the Legislature. You need not fear that the Legislature will allow him more than the requirements of the institution and its indispensable requirements shall demand. We are perfectly safe in trusting to the Legislature, and I am willing to trust them a great deal further than seems to be the sentiment of the people now around me. I know enough of the duties of the State Superintendent of Public Instruction to know that his office is not a sinecure. I know that it involves perpetual labor.

MR. CAPLES. I did not say that the office was a sinecure. I said that to allow him a deputy and a clerk would be making the office a sinecure.

MR. WINANS. I have spoken in response to the gentleman from Sacramento in no invidious spirit, in no reflective manner, and I did not use the expression sneeringly, or with the inflection of a sarcasm. He took the view that unless this man was compelled to discharge all the duties of the office, he would derive emoluments which were without equivalent on his part. I say that it will never do to place within the Constitution a limitation upon office employment. The Legislature can do that, and depend upon it that the Legislature will never give to this man more aid than he requires. Have we provided that the Secretary of State shall have no employés? Have we provided that the Controller shall have no clerk? Why do it now? Is this a personal crusade? I have the highest respect for the intelligence of this body, and I do not believe that it is the intention of members to throw this whole system into chaos.

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

MR. STEDMAN. I second the motion.

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Laine, as amended by the gentleman from Sacramento, Mr. Caples.

The amendment was rejected, on a division, by a vote of 33 ayes to 56 noes.

THE CHAIRMAN. The question recurs on the motion to strike out section two.

The motion was lost.

MR. HOWARD. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

Mr. Murphy in the chair.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Education, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. SHOEMAKER. Mr. Chairman: I move that the Convention do now adjourn.

The motion prevailed.

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

ONE HUNDRED AND SIXTEENTH DAY.

SACRAMENTO, Tuesday, January 21st, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barnes,	Finney,	McCoy,
Berry,	Glascock,	Noel,
Cowden,	Gregg,	O'Donnell,
Dudley, of San Joaquin,	Hager,	Porter,
Dudley, of Solano,	Hall,	Reddy,
Eagon,	Hilborn,	Terry,
Edgerton,	Larue,	Wellin.
Fawcett,		

LEAVE OF ABSENCE.

Leave of absence for two days was granted Mr. Dudley, of Solano.

Indefinite leave of absence was granted Mr. Fawcett.

THE JOURNAL.

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

So ordered.

COMMITTEE-ROOM PORTER.

The President presented the following communication from the Sergeant-at-Arms:

To the Honorable President and Members of the Constitutional Convention:

GENTLEMEN: I deem it my duty to inform you, that as the work of the committees is nearly finished, and only occasionally a meeting held, the services of Committee-rooms Porter can now be dispensed with, if you so desire.

Respectfully submitted. T. J. SHERWOOD,
Sergeant-at-Arms.

EDUCATION.

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

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section three.

COUNTY SCHOOL SUPERINTENDENTS.

THE SECRETARY read:

SEC. 3. A Superintendent of Schools for each county shall be elected by the qualified voters thereof at the first gubernatorial election, and every four years thereafter; *provided*, that the Legislature may authorize two or more counties to unite and elect one Superintendent for all the counties so uniting.

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

THE SECRETARY read:

"Amend section three so that it will read as follows: 'Section three—a Superintendent of Schools for each county shall be elected by the qualified voters thereof at the first gubernatorial election after the adoption of this Constitution, and every four years thereafter; but the Legislature may authorize two or more counties to unite and elect one Superintendent for all the counties so uniting.'"

MR. MORELAND. I have an amendment to offer.

THE SECRETARY read:

"Amend section three by striking out the word 'four,' in line three, and inserting the word 'two.'"

MR. MORELAND. Mr. Chairman: The object of the amendment is to have the term two years instead of four, as it is under the present law. All county officers, I believe, are elected for two years. This is a county officer, and I do not see any reason for changing it and allowing him to hold for four years. I think it ought to correspond with other county offices.

MR. WINANS. Mr. Chairman: If I heard the reading of the first amendment, I see no difference between it and the original section, except that it uses the word "but," in place of the words "provided that." In regard to the second, I have to say that, for myself, I see no good reason for making the term of this officer longer than that of the other county officers. Personally, therefore, I shall not oppose it.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: This section, as proposed by the committee, originated with the State Teachers' Association that met in this city a week after the first day of this Convention. That association chose a committee to prepare what in their judgment would be advisable as a proposition to be submitted to this Convention on educational matters, and these were submitted to the association, and this matter was quite thoroughly discussed, and it was held that a County Superintendent, to be as efficient as he should be, ought to hold his office for more than two years; that really the best work that a County Superintendent did was at the last of his term, and for that reason they favored a four years' term instead of two. For myself, I think it is quite a wise provision. It is one of those positions that grows with the work that is connected with it, and the interest in the kind of work that is to be accomplished by the County Superintendent, is more strongly impressed upon him the longer he holds his position. Now, sir, with a term of two years he has just begun to realize the necessities of the work before him. If he has his heart in the work, the last two years of his term will be of much greater value to the county than the first two, and for that reason I hope that this amendment will not be adopted. I see no reason why a person in that position should not hold it for four years. It certainly, to that extent, takes that position out of the political arena, and that is very desirable, that he should not be dependent for his position upon every recurring election, but that when once there, he understands that he has that position for four years. I think the interests of the schools would be much better served by retaining this as it comes from the committee than by amending it. I hope that the amendment will not be adopted.

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

Tha amendment was rejected.

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

The amendment was rejected.

MR. BIGGS. Mr. Chairman: Perhaps I am on very dangerous ground now, but I move to strike out this section. I believe the county Boards can do all that work. I have stood by the committee until I come to this section. I believe it would be wisdom to strike out this section. The County Clerk can make the apportionment as well as the County Superintendent.

MR. BLACKMER. I hope that motion will not prevail—but I have no idea that it will. We certainly would be going back fifty years to adopt such an amendment as that. There are twenty-three States in the Union that have this system of county supervision. Wherever it has been wiped out they have always admitted that they have taken a very serious step backward.

THE CHAIRMAN. The question is on the motion to strike out the section.

The motion was lost, on a division, by a vote of 33 ayes to 56 noes.

THE CHAIRMAN. The Secretary will read section four.

THE STATE SCHOOL FUND.

THE SECRETARY read:

SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been sold or disposed of, and the five hundred thousand acres of land granted to the new States under the Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State, subject to the provisions of section six of this article.

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

THE SECRETARY read:

"Amend section four of the article on education by striking out all thereof after the word 'State,' in the twelfth line."

MR. HOWARD. I wish to offer an amendment to the amendment by adding: "The Regents of the University shall provide for instruction in the same in agriculture and mechanic arts, mineralogy, and applied sciences."

THE CHAIRMAN. It is not an amendment to the amendment.

MR. WHITE. Mr. Chairman: I send up an amendment to the amendment.

THE SECRETARY read:

"Amend section four, by striking out all after the word 'State,' in line twelve, and inserting in lieu thereof the following: 'And no part of such fund, or any money raised by taxation for school purposes, shall ever be appropriated or divided between sectarian schools.'"

MR. WHITE. Mr. Chairman: The reason I offer this amendment is this: I think it is right to strike out these words after the word "State," because they refer to a section that will come up for discussion in the future. The other clause is one which we all wish to have adopted in the Constitution. It seems to come in naturally there, and I therefore hope it will be adopted.

MR. LAINE. Mr. Chairman: I desire to say a word or two in regard to the amendment I offered. The amendment to the amendment embraces exactly the same idea which would be accomplished by the incorporation of section nine into section four. These words ought to go out. This fund ought to be devoted entirely to the common schools, but here it is made subject to the provisions of section six. That provides for normal schools, and technical schools. I think this fund is held by the State for the common schools, and should not be devoted to any other purpose whatever. I hope the amendment will prevail.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: The last clause of section four to which objection is now made, is necessary, if section six should be adopted. Section four is presented here in precisely the same language as that of section two of the present Constitution. With the simple difference, that at the close it provides that it is to be subject to the provisions of this article. In order therefore to properly determine upon the propriety of the amendment offered by the honorable member from Santa Clara, it seems to become necessary to discuss at this stage of the subject the merits of section six. I suppose that was the object of the mover of the amendment. Now, section six is as follows:

"SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools."

Now, the only effect and objects of that section are to declare what constitutes the school system. That section involves no change whatever from the existing system. It confines the public schools which receive the public money of the State. [Confusion.] I do not speak so much in anger as I do in sorrow. I hope the gentlemen will patiently listen to the discussion of these questions at least until they become tedious and annoying, and thereby enable those who wish to hear to have an opportunity. It is impossible for any man within the radius that embraces his own hearing of his own voice to tell what is going on here at times; but I will try and make myself heard even amidst the storm of lower conversation that seems to reign. I say, sir, that section six, while it merely declares what constitutes the public school system, does not deviate from the system which now exists. The present system embraces primary and grammar schools; and it also embraces in those quarters where such institutions are desired, high schools, and evening schools, and the normal school, and technical schools. The difference between this section and the present Constitution is, that this section declares what shall constitute the public school system, while the old Constitution leaves that matter to be determined by the Legislature; and the Legislature in this State has determined it and created it in the form proposed by section six. Section six has the merit, if it is any merit, of creating a consistency in this plan, by showing what its character is. It will be observed that it jealously guards the public money. It provides that none but primary schools and grammar schools shall ever enjoy the revenue, or any part of the revenue, derived from the State School Fund and State school tax. It is more particular and rigid in that respect than the existing Constitution. It limits forever, if adopted, the employment of all public moneys belonging to the schools—that is, all State moneys belonging to the school department—to the culture and development of those in the primary and grammar schools. It has been said, sir, as I have heard from outside sources, that certain members are not aware of what constitutes grammar schools, or that they think the term indefinite. Sir, there is among educational men and in the educational department no term that is better defined than that. The honorable member from Santa Clara well knows what the term means, and every one who does not, can ascertain by inquiring. There is no uncertainty in reference to its meaning. There is no difficulty in construing what it means. The public schools, in their lower department, or in their general State department, are divided into two classes now. One constitutes the primary schools, and the other constitutes the grammar schools, which are the highest class of schools known to the system as it exists throughout the length and breadth of the State. These grammar schools now give the highest education given under the general system, except where localities, municipalities, or townships, or subdivisions of the State in any form, have adopted a higher course of education in the shape of high schools, or another course of education in the shape of evening schools, and another in the shape of technical schools, and a State Normal School, which has its existence now in Santa Clara County, and which this section six does not seek to subvert or destroy. Therefore, the discussion of the amendment offered by the honorable member from Santa Clara involves the discussion necessarily of the merits and propriety of section six. I say, sir, when we come to consider that section, I believe that if there is any point upon which a majority of this committee will concentrate in preference to all others, it is this section six.

There are objections made, sir, that we should not have high schools; that we should not have normal schools; that we should not have evening schools. Why, sir, a large portion of the education of this State is gleaned from evening schools by those whom the necessity of labor compels to devote themselves to some industry during the day. This scheme

only proposes that these institutions, such as high schools and evening schools shall exist in those localities where the people desire their existence, and provide means for their support. It studiously excepts them from the reception of the public moneys. It studiously excepts them from any claim whatever upon the large State fund that belongs to the public schools, and it only gives to each locality a right to have these schools when they want them. But, sir, the objectors to this scheme in section six wish to prohibit high schools, to destroy evening schools, and deny to every locality the right to have them when they want them. They would stifle education in its higher reaches and more grand developments; would prevent the people from going on in that march of progress which comes from knowledge and enlightenment diffused through public sources. Sir, could anything be more arbitrary; could anything be more contrary to the spirit which has actuated this committee in delegating to all the local quarters, so far as practicable, throughout the State the right of self-government, and the right to manage their affairs in accordance with the wishes of their people. I do not propose to debate this section six at the present time, but only to point out its character, and to show that unless we intend to strike a blow that will destroy the high schools, one of which rises grand and majestic within sight of this hall, we must preserve this section; unless we wish to destroy that system, we must keep this section still alive.

Now, sir, in regard to the other amendment, it is entirely covered by section nine, which I will read:

"SEC. 9. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools."

That is the declaration of a general principle, applicable to the entire department in all its branches and in all its ramifications, and should exist as an independent section. The amendment proposes to dovetail it in with another section. Instead of simplification it creates confusion.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Santa Cruz.

MR. CROSS. I would like to ask the gentleman if section nine does not cover the same ground?

MR. WHITE. It covers the same ground, but I think it properly belongs to the present section. I think this is the proper place for it to go in.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: I think that the first part of the amendment proposed by the gentleman from Santa Cruz is desirable, for the reason that section four relates entirely to common schools. Section six relates both to common schools and to some other schools included in the term public schools. Now, I do not see that there is anything existing in section six to which section four should be subject at all. If, as undoubtedly is the fact, it is meant that the term "common schools," in section four, shall mean what is commonly understood by that term, then it can only introduce confusion to add the words "subject to the provisions of section six." I think that so much of the amendment of the gentleman from Santa Cruz as strikes out the words "subject to the provisions of section six of this article," is good, and should be adopted; but the remainder, which is incorporating substantially the provision of section nine, I do not think is good. I think that matter is of sufficient importance to be embodied distinctly and concisely in a separate section. It refers to a different matter from the chief matter of section four, and refers to a principle of great importance, well deserving to be embodied in a distinct section. I hope the amendment, as offered, to the amendment, will not be adopted, and that the amendment, as offered by the gentleman from Santa Clara, Mr. Laine, will be adopted, simply striking out the words "subject to the provisions of section six of this article," which, so far as I can perceive, would be only conducive of a confusion of ideas. I understand the gentleman from San Francisco, Mr. Winans, to point out no particular service which these words, in section four, "subject to the provisions of section six of this article," would accomplish, for there seems to be nothing in section four which can be made subject to section six. They are independent. I would ask the gentleman if there is any purpose which these words can serve?

MR. WINANS. Mr. Chairman: I will explain to the gentleman what is the import of these words. I did not do so before because I thought it was apparent, but I see now that certain members are not informed as to the relevancy of the language, therefore I will attempt to explain it. Section four provides that all the school fund that exists or belongs to the State properly, from every quarter, "shall be inviolably appropriated to the support of the common schools throughout the State." Now, section six defines the common school system, and if that last clause were not in section four, section four would apply to that whole system, or might be construed or claimed to apply to it; and, therefore, the argument would be adduced, from the language of section four, that the revenues of the school department throughout the State should be applied to the public schools, namely, the primary and grammar schools, and the other schools named in section six. To avoid any possible claim or construction that the public school money of the State should ever be appropriated to high schools, technical schools, or normal schools, or the like, it is expressly provided, in section six, that the entire revenue derived from the State school fund shall be exclusively applied to primary and grammar schools; and then, by making section four subject to that, the appropriation of the money spoken of in section four is limited to these departments.

MR. JONES. Mr. Chairman: Now, I think that the reason given by the gentleman for putting in those words is a reason the other way. I think that the very object which he states here is the very object which we do not want to serve at all. We do not want, in my judgment—I do not want the common schools to be mixed up and be made what would be tantamount to the term "public schools," and the large definition which may be given to that term; nor I do not want it to be made uncertain as to what is meant by common schools. Section four provides that the common school fund "shall be inviolably appropriated to the support of common schools;" then come in these words, which I think are mischievous, "subject to the provisions of section six." When we turn to section six, we do not find that that treats of common schools. We find that that refers to public schools, high schools, technical schools, night schools, etc. If these words are allowed to stand there, there might arise an interpretation of the article which would say that, being subject to section six, these funds may be appropriated to the support of all grades of public schools embraced within the term of public school system, as represented here. It seems to me, that when we provide a section in regard to common schools, we do not want to say then that it shall be made subject to some other section which treats of other schools than common schools—high schools, technical schools, etc. It seems to me indisputable that, to accomplish that which is desired by section four, we should strike out these words, which are worse than ambiguous. For one, I hope that the amendment offered by the gentleman from Santa Cruz will be rejected, and the amendment offered by the gentleman from Santa Clara adopted.

MR. HUESTIS. I would ask if the amendment offered by the gentleman from Santa Cruz is not substantially the same as the other.

MR. LAINE. The amendment I offered only proposes to strike out the words "subject to the provisions of section six of this article."

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope this amendment will not prevail. It refers to section six, and the only object of section six is to define the public school system of this State. That is the intention of section six. The last part of it, which is really a proviso to that section, was put in there for a special purpose to refer to section four, or to the funds that are to be raised by the State for school purposes. Now, if that is struck out of section four, it certainly will follow that we must strike out the proviso in section six, which refers to the State School Fund. If gentlemen want to open the door and say that the State School money may be used for any of these purposes which are referred to in this definition of the public school system, let them strike out that; but if not let them retain the two. After defining the public school system we go on to say in express terms that the entire revenue derived from the State School Fund, and the State school tax, which is provided for in section four—and there can be no other fund—must be used exclusively for the support of primary and grammar schools. Now, the two want to stand or fall together. If you strike out of section four the reference to section six, then you want to strike out that provision of section six, which says that the entire revenue derived from the State School Fund and the State school tax, shall be applied exclusively to the support of primary and grammar schools.

MR. LARKIN. Why does the committee use the words "common schools" in section four, and "public schools" in section six.

MR. BLACKMER. It is more common to use the term "public school system," when speaking of the schools supported by the State, than it is to say "common school system;" perhaps, section six is for the purpose of not only defining what the public school system is, but further to say that whenever these schools are established they shall come under the care of the public school officers.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: We commence the sixth section with "the public school system," and not with "the common school system," as if it were a different system. Now, confine it either to the common school system, or the public school system. I believe, from what I have learned, that it was intended to devote a portion of this common school fund to other than common schools. Unless it was intended to pervert a portion of this money for other than common schools, I think the same terms should be used where the same meaning is intended, and not play upon words.

MR. BLACKMER. If the gentleman is opposed to using the word "public," let him make it "common."

MR. LARKIN. I am very glad to have the gentleman make the suggestion. Members of the committee differ as to the meaning of it. And now I ask that the amendment of the gentleman from Santa Clara be adopted.

MR. MARTIN, of Santa Cruz. Mr. Chairman: I am opposed to section six. It is contrary in its terms, and its matter may be safely left to the Legislature. Technical schools may be dancing schools for all I know, or Woodward's Gardens and all the monkeys. I will support the amendment of the gentleman from Santa Clara.

MR. WEST. Mr. Chairman: I believe the question is on the amendment to strike out and insert.

THE CHAIRMAN. Yes, sir.

MR. WEST. I would call, then, for a division of the question.

MR. CHAIRMAN. It cannot be divided.

MR. WEST. Then I shall vote against the amendment.

MR. WINANS. Mr. Chairman: I wish simply to state that when section six comes up I shall move to substitute the word "common" for the word "public," so that it will read "common school" instead of "public school." The language will then be identical with the language of section four.

THE CHAIRMAN. The question is on the adoption of the amendment to the amendment, offered by the gentleman from Santa Cruz, Mr. White.

The amendment to the amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Laine.

The amendment was adopted, on a division, by a vote of 72 ayes to 29 noes.

THE CHAIRMAN. The Secretary will read section five.

TERM OF SCHOOLS.

THE SECRETARY read:

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year, in which a school has been established; and any school district neglecting to keep up and support such school shall be deprived of its proportion of the interest of the public fund during such neglect.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: The section is substantially similar to section three of the present Constitution, and I will point out the difference which exists. Section three of the Constitution says: "The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year, and any district neglecting to keep and support such a school may be deprived of its proportion of the interest of the public fund during such neglect."

This section inserts the word "free"—"by which a free school shall be kept up and supported." Again, section three of the Constitution says, "at least three months." This section says, "at least six months," because it was deemed by the committee that three months tuition per annum was not sufficient, nor what should be properly demanded by the people from the schools. This amendment again says: "in every year, after the first year in which a school has been established." That language is not in the present Constitution, and was inserted in order to meet the cases where schools are established in the latter part of the year, as they sometimes are. There is no change in principle whatever from the declaration in the section of the present Constitution. Then the Constitution further says: "and any district neglecting to keep and support such a school, may be deprived of its proportion of the public fund during such neglect." The language of this section now presented is similar, so that section five is really a presentation of section three of the present Constitution, with the changes I have mentioned, which were merely for accommodation, and the substantial change of six months tuition every year instead of three.

MR. LARKIN. Mr. Chairman: I move to strike out all after the word "established," in line four. The last clause, which I propose to strike out, is this: "and any school district neglecting to keep up and support such school, shall be deprived of its proportion of the interest of the public fund during such neglect." There may be cases where contagious diseases, or fire, or flood, would preclude a school being kept up, and if the school lost one day they would lose their appropriation. I think it unjust, as the people of this State are at liberty to have schools, and unlimited as to time. If they succeed in getting one five months they ought to have their share of school money. There are schools that sometimes run down to one or two scholars. It is unreasonable and unjust. It is unnecessary there, and should be stricken out.

MR. LAINE. Mr. Chairman: I second the amendment, and the gentleman has certainly given very good reasons for it. There may be districts in which there are but few people, where a local tax could not possibly be raised sufficient to keep up the school, and yet under the Constitution it would be deprived of the use of any of the State money. I would like to see a school for eight months, or twelve months, but let us not deprive a district of the little school it might have because it cannot keep one up for six months in each year.

MR. BARBOUR. It seems to me that the use of the words "of the interest of the public fund," would not deprive them of the money raised by taxation.

MR. LAINE. It deprives them of the proportion of State money.

MR. BARBOUR. The language is: "shall be deprived of its proportion of the interest of the public fund during such neglect."

MR. LAINE. This money is in the general school fund. It comes from the interest on the sixteenth and thirty-sixth sections, and the five hundred thousand acres granted by Congress. It is the interest that we are using.

MR. BARBOUR. I understand that they receive their proportion of the money raised outside of that.

THE CHAIRMAN. The question is on the amendment moved by the gentleman from El Dorado.

MR. WINANS. Mr. Chairman: The language proposed to be stricken out is precisely that of the present Constitution. For thirty years we have lived under that instrument, and our school houses and our school system have flourished, and I, for one, cannot see any necessity for change in that particular. There is no defect pointed out in the system, such as has demonstrated its evils or mischief during that period of thirty years, and yet gentlemen favor the idea of constitutional changes for the mere purpose of effecting a change. I think that we should stand by the Constitution in all particulars and instances, except where reform is demanded by the condition of the times.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I am aware, sir, that theories frequently may be very fine, and appear decidedly reasonable. I am also aware that frequently theories that appear to be very fine, reasonable, and correct in practice, do not work. Now, sir, it appears to me that this portion of section five reads correctly, and it has evidently worked well. I know several instances in which the utmost effort has been made to keep up a school the required time, for fear of losing the money that was coming to this particular school or district. It has this effect: when money is connected with the matter under consideration, it frequently has an effect upon men that even the abstract idea of education itself does not have. This system has evidently worked well, and has tended to rouse men to the necessity of keeping up their schools, so as not to lose the money that is coming the next year. I do not see that there would be any advantage whatever, but decidedly a disadvantage, in striking this out, and it might tend to a degree of sluggishness of thought and of action upon this subject, whereas, just so soon as the idea of losing money the next year is brought in, it rouses the people, and they wish to have that which they think should properly come to them. In this way education has been promoted and advanced, and, as it has worked well heretofore, I cannot see any propriety whatever in any change in this respect. I am in hopes it will not be stricken out.

MR. LAINE. Mr. Chairman: I know that this is the language of the old Constitution, and that we——

THE CHAIRMAN. The gentleman has already spoken once on the amendment.

MR. VAN DYKE. Mr. Chairman: I wish to call attention to the fact that the old Constitution was three months, and it has been increased to six months by this, which would make some difference.

MR. WINANS. It is six months now in the Code.

MR. VAN DYKE. This would be inflexible.

MR. WINANS. If you do not put in this provision they will draw it. They will not have schools, but they will get the money. That is what the Constitution undertook to avoid and avert at the outset, and that is what should be the desire of the people as well.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: As stated by Mr. Van Dyke, the system which we have been working under, and under which our common schools have been conducted, has been subject to the provision of the Constitution that such schools should be kept up three months in the year, or if not so kept should forfeit their right to a proportion of the State school fund. It was a safe limit, because people would hardly organize a common school anywhere unless they could support it three months. Notwithstanding a long time has elapsed since that Constitution was framed there are yet very large portions of this State in which, to get together fifteen or twenty children, you have to strike an area of five miles square or ten miles square. I know many a small common school, or district, where children ride on horseback a distance of five or eight miles to school in the morning, and home at night. I know cases where the amount of money to which the district is entitled from the State and the amount to which it will be entitled from the county fund is not sufficient to keep school for six months, and if not sufficient, then they are to forfeit their right to any public assistance. It is true that they may, out of their own pockets, provide the means to continue the school, but the constitutional provision, as reported by the committee, does not contemplate that they are to do that, for section five declares that these schools shall be free schools—that is to say, that they shall be supported by public money. A free school is a school at which pupils may attend without charge; but if money has got to be raised they have got to pay, and they will not have a free school, and practically it will not be a free school system for a large portion of this State. At the present time, if they are required to keep it six months, the time will come when even eight months would be a reasonable requirement. Is it not better either to strike that out, or else to adopt the words of the present Constitution, "three months?" Is it not better to strike it out entirely, and leave the Legislature, from time to time, according to the population of the State and the wants of the people, to fix the time that a school shall be kept to entitle them to public money? It is made six months by the Code now, I am told. It may be made anything by the Code. The Legislature may, every two years, modify it, by making it shorter or longer, according to the necessities of the case; but the Constitution cannot be adapted to the varying wants of this community for twenty-five or fifty years together. Legislative enactments can be. We forfeit nothing and we risk nothing by leaving it to the Legislature, and I certainly think it is not prudent to insert this term "six months."

MR. WILSON, of First District. Mr. Chairman: I move to substitute the word "three" for the word "six," in this section.

MR. WINANS. Mr. Chairman: I think the Committee on Education will accept that modification, so as to place the section in the identical language in which it now stands in the Constitution, at least so far as this three months is concerned. I have no objection to it, and if there is no objection on the part of any member of the committee, I will accept, as the report of the committee, the word "three," instead of the word "six."

MR. HOWARD, of Los Angeles. I understand that no amendment can be accepted. I merely wish to state that if we make it six months the money should be provided in the State levy, and the districts should not be relied upon to make it up—and for this obvious reason: a district never gets a tax levy right. I have never known one to stick yet. They always neglect some essential thing, and the levy of the tax under it, the Court decides, is void. That is the case with regard to every attempt to build school houses, so far as I know. I am in favor of the motion to strike out for that reason. If you require a school to be kept six months, the expense should be defrayed from the whole property of the State, and the money devoted to each district accordingly. I am in favor of as large an appropriation as can be conveniently supported by the people of the State for this purpose; but I am inclined to think that we ought not rigidly to require three months' schools.

MR. WILSON, of First District. Mr. Chairman: I now send up my amendment.

THE SECRETARY read:

"Amend section five by inserting the word 'three,' in lieu of the word 'six,' in line three.

MR. LAINE. Mr. Chairman: I am opposed to the amendment. I am in favor of a half year's school, and that it should be at the expense of the State; and I desire to state now what I proposed to state a moment ago in regard to this limitation in the Constitution. This tax must be raised by local Boards, and they are never able to frame a tax levy that the rich men don't escape. They have done it in our county every time. They have tried it. You will find that in every case the rich

men who are able to resist escape the payment of the tax, and it falls upon a few poor men to keep up the three months, or six months school; but when it is levied by the State it falls upon all alike. I think these words should come out of the Constitution, whether it be three months, or six months. I desire to give every child a chance for a half year's school, and let the State support it.

MR. BARBOUR. Mr. Chairman: I hope the amendment offered by the gentleman from San Francisco will not prevail. I am in favor of extending these educational facilities so far as it is possible to do so with the means we have, and the very reason that is given by the gentleman from Los Angeles, General Howard, ought to be a reason why he is in favor of it. Now, it certainly cannot be complained that the people of San Francisco are making captious objections, because, as I understand it, under the present levy, San Francisco is paying fifty thousand dollars a year and over to the support of the schools in the interior.

MR. ESTEE. Over one hundred and fifty thousand dollars.

MR. BARBOUR. So much the worse—one hundred and fifty thousand dollars. Now, it is certainly unfair—proceeding upon the principle that the State has this interest in the education of the youth of the State, and we are willing to allow the system to continue of paying this by way of tax upon property—to say that they cannot keep longer than three months schools in the interior. If we are to make this large contribution we have a right to insist that there shall be some efficiency in the schools, and six months is certainly a small enough time to require them to attend to their schools in a school district with the assistance they have received from us, and the increased assistance that they are entitled to receive when the amendments to the tax law shall increase the assessment so much as we expect to do.

MR. WEST. Mr. Chairman: I hope the amendment will not prevail. Section five simply directs that the Legislature shall provide for a system. We are not supposed in this Constitution to provide for a system. We are simply directing that the Legislature shall provide for these contingencies, and that the Legislature shall provide a system by which these schools will be surrounded. I have lived in frontier counties, and I know that the Legislature can provide a system by which a free school can be supported in every school district. I hope this section will be left just as it came from the committee, and that the Legislature will be permitted to devise a plan, and that we will not go into the little details. But let us say that a school shall be kept open in each district for six months in each year, free to all the children inhabiting that neighborhood or community.

MR. WICKES. Mr. Chairman: I am in favor of striking out the last clause of this section. I believe it is entirely unnecessary.

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

The amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from El Dorado, Mr. Larkin.

The amendment was adopted, on a division, by a vote of 54 ayes to 45 noes.

THE CHAIRMAN. If there be no further amendments to section five, the Secretary will read section six.

THE PUBLIC SCHOOL SYSTEM.

THE SECRETARY read:

SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools.

MR. HERRINGTON. Mr. Chairman: I send up a substitute to section six.

MR. WINANS. Has the committee the right to substitute the word "common" for the word "public?"

THE CHAIRMAN. The Secretary will read the substitute offered by the gentleman from Santa Clara.

THE SECRETARY read:

"Substitute for section six: The common school system shall include primary and grammar schools, the State Normal School, and such evening schools and technical schools as may be established by any municipality or school district of the State; and no other than the English language shall be taught therein. The revenue derived from the State School Fund and State school tax shall be appropriated exclusively to the support of primary and grammar schools. No sectarian or denominational instruction shall ever be imparted in any of the public schools of this State."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am sorry that the time is so limited for the consideration of this question. I would like it exceedingly if I could obtain the attention of the committee on this subject, because, in this question is contained the entire public school system of this State; and upon this section depends the future conduct of the whole system. It will be observed, Mr. Chairman, that this committee, in their report, have struck a blow at the State Normal School, ignored its existence, and practically destroyed its efficiency, so far as the State Normal School is concerned. It seeks to place a portion of the counties of this State in an attitude where they will stand upon an unequal footing with that portion which can maintain normal schools. It seeks to tear down a State institution that has for its object an efficient system for the education of public school teachers, by declaring that there may be established in every county, in every school district, and municipality of this State, normal schools for the education of school teachers. It is well known that there are numerous portions of this State, diverse school districts, that are wholly unable to maintain these institutions. It is frittering away the very purpose for which the State Normal School was established, namely, an efficient system for the education of educators; leaving it crippled in its efficiency, and without resources to carry it on; its importance dwindled into insignificance, its patronage destroyed, and the whole system scattered and abandoned, with the exception, perhaps, of large cities like San Francisco and Oakland, while the poorer districts are left without any adequate protection in that regard; and leaving the State school system, so far as the normal school system is concerned, an utter wreck. I have sought, by this amendment, to reconvey into the system the State Normal School, and to destroy the system that is attempted to be established here, of building up, in every particular locality where the people may see fit to undertake it, an inefficient normal school.

The next proposition that presents itself, so far as the amendment has sought to affect this system is concerned, is, that I leave out of this system the system that is attempted to be engrafted here as a constitutional measure—the system of high schools, as now established in this State. It is an ironclad rule, and it is fixed in the Constitution, Mr. Chairman. There is no uniformity in it. These particular localities that are able to teach every kind of language that is now on the face of the globe, will teach any language they see fit, ancient or modern. No two particular districts in the State will adopt the same language. The German and French will be taught in one locality, and Spanish and the Italian in another, and the Chinese and some other language in another, and so on, *ad infinitum*, all over the State. It entails upon us the most costly class of educators, men whose salaries will be the highest known among teachers. It requires that class, and that class alone, to impart this sort of education. But the worst possible objection, the one which presents itself with the most persuasive force to the mind, is this: it entails a local tax upon communities for the support of these schools—a heavy and enormous tax, beyond what is required to support the public school system as it is attempted to be established by this amendment. It follows that their schools will be, to say the least of it, local in their nature. Those who live outside of these particular districts, and whose interests and taxable property are all outside of these particular districts where these high schools are maintained, will remove and reside in those districts, while all their valuable property is in some other school district. It cannot but be well understood that nine tenths of the school districts of the State will be unable to support this high school system. I say that those districts that do maintain high schools will be depleted in their resources by outside parties, whose property is in other districts, moving in and sending their children to these high schools. It is entirely local, and affects particular localities. Discrimination becomes the general rule, instead of uniformity of operation. It affects the taxes in the same way. Not only so far as the educational system is concerned are your people affected, but the whole tax system is affected by it, and an unequal burden imposed upon those who uphold these schools, while those who do not pay will receive the benefits of them. I am not objecting to them on the ground that poor persons will have an opportunity of having their children educated there. The objection is, that persons who reside outside of the districts can take advantage of the districts that are able to support these schools. They will move in there and educate their children there, while their taxable property is outside. These objections are insurmountable as against the system proposed by the committee, and I submit that it is a system that ought not to be tolerated or supported by the State. While we are all in favor of a good common school education, this system proposes to engraft upon us a high school education, boundless in extent, limitless in capacity, and all-comprehensive, in the districts where they are legalized. The amendment, as proposed, confines education exclusively to the English branches, and I do submit, Mr. Chairman, that that ought to be the rule. While I am perfectly willing that the system shall embrace every class of education that is capable of being conferred in the English language, between the ages of five and seventeen, or twenty-one years, I am utterly opposed to loading this system with every language that is known upon the face of the globe, besides the dead languages that may have existed heretofore.

There is another feature in the amendment. Sectarian and denominational instruction is not excluded by this system proposed by the committee, except so far as the University is concerned. That provision I have added to the amendment, and I have no doubt the committee intended to exclude that in their system. I wish to make no particular point upon that proposition, but I do submit that the system ought to be confined to the English language exclusively, and it ought to be confined to the primary and grammar schools.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I am surprised to see my friend from Santa Clara, Mr. Herrington, go jumping and bounding into this section, and introducing an amendment of the character and kind that he has introduced. Now, Mr. Chairman, section six, as reported by the committee, is not, when properly considered, subject to the criticisms made upon it by Mr. Herrington. He says that the section is a blow at the normal school of this State, located at Santa Clara, where he comes from.

MR. LAINE. San José.

MR. BEERSTECHER. Well, he practices law at San José. He says the section is a blow at the normal school at San José. I deny it, Mr Chairman. "The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature." The Legislature has the power and control over the common school system. Normal schools are specially mentioned. It is no blow at the normal school, nor is it intended as a blow at the normal school. That seems to me to be an answer.

MR. HERRINGTON. I will ask whether it does not authorize the establishment of a normal school by any municipality or school district of the State?

MR. BEERSTECHER. It may be construed as permitting that.

MR. HERRINGTON. Does not that destroy the normal school?

MR. BEERSTECHER. No, sir. The Legislature has full power to establish normal schools in this State to-day. It is not changing that thing at all, and the gentleman's amendment about to be voted upon is subject to another and very grave objection, and that objection is that it limits the tuition in these schools to teaching in the English language. It wipes out and destroys the cosmopolitan schools of the City of San Francisco. That matter was commenced before the Legislature last in session. The matter was agitated throughout this State, in places where they were instituted, and more particularly in San Francisco. Indignation meetings were held in that city—meetings attended by the wealth and respectability, and the taxpayers of that city—to protest against the invasion, and striking at the law permitting the teaching of other languages than the English in the schools of San Francisco. The section here localizes this matter. It allows the inhabitants of a city to pass upon it by vote whether they desire to have cosmopolitan schools or not. Now, if the taxpayers of San Francisco, if the taxpayers of Sacramento, if the taxpayers of San José, or Stockton, by a vote say they desire to have other languages than the English language taught; if they say they desire to have the French, or German, or Latin, or Greek, taught in cosmopolitan schools established and kept up by the revenues raised in that particular locality, whose business is it? What right have we to put into a Constitution an ironclad clause to prevent these people from doing this?

I do not believe, Mr. Chairman, that this committee will entertain the proposition for a moment. It ought to be left open. It ought to be left to the Legislature to provide that the people of a particular locality, like San Francisco and other cities, should have the right to say whether they desire to establish cosmopolitan schools or not, and to say whether they desire that languages other than the English language shall be taught in these schools. I do not desire to threaten, or to say to this committee that this would certainly be a blow in the nature of a death blow to this Constitution, but it certainly would be a fatal mistake to embody anything of this character in the Constitution. There is a strong sentiment in San Francisco to-day, and the sentiment is not among foreigners by any means; but it is among the intelligence of that city, and the respectability of that city, and people who desire to see the youth of this country educated, and who are willing to pay for a broad, liberal, and comprehensive education. If the gentleman desires to wipe out cosmopolitan schools, if he desires to prevent the teaching of other living languages than the English language, why not limit the instruction in those schools to reading, writing, arithmetic, and geography? Why not limit the time that the child could go there? There is no argument against it, only solely and alone the argument, that the men who pay the taxes do not want to pay the taxes. Republican institutions are based upon intelligence, and the more intelligent the people are the better for this country, and I hope that the amendment will be voted down.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I am in favor of this amendment in part. I think we should have but one normal school in the State, and for that we should make ample provision. I have been unable to ascertain from the reports, or from any member of the Committee on Education, what is the annual expense of the normal school, and I regret that we are in that state of information in relation to it; but since this report has been under consideration I have looked over the statutes and the regulations in relation to the normal school. The statutes provide that twenty-four or twenty-five thousand dollars shall be annually appropriated for the support of the normal school. But we should have but one, and that one should be made efficient. I observe a comment upon the normal schools in the message of the Governor of New York, Governor Robinson. He says:

"So far as I can learn, the normal schools established in various parts of the State are, with two or three exceptions, wholly useless, and fail almost entirely to accomplish the objects for which they were established, and for which the State is annually paying large amounts of money from the treasury. I recommend an inquiry into the working of these institutions, and a discontinuance of all those which fail to accomplish the purpose of their establishment."

Now, sir, I think that we should not cripple the normal school we have. We should provide amply for one, where teachers may be instructed, and liberally instructed, in the various branches of knowledge. Now, there is a provision here also that I think should come out of this section, and that is for technical schools. My own view is that the University should be the only technical school, and that it should be amply endowed for that purpose, and well supported for that purpose; but that we should not have a multiplicity of inefficient technical schools.

There is another provision in the amendment of the gentleman which I am in favor of, and that is, that nothing but the English language shall be taught in the common schools. If parents wish their children taught in German, in French, and in Spanish, which are very useful branches of knowledge, they should be taught privately, and at the expense of the parents, and not from money levied for that purpose upon the people. The Greeks taught no language but their own, and it is the most perfect language of which we have any knowledge. The French, under their school system, teach no language but French.

Now, in relation to this whole system of education at the public expense, I desire to have the Secretary read a paragraph, in addition to what I read, from the message of the Governor of New York, which strikes me as eminently sound and just, and contains enlightened views.

THE SECRETARY read:

"In former messages I have given fully my views in regard to the extent of the schools that should be maintained by general taxation. All my subsequent observation has confirmed the opinions expressed upon this subject. To the extent of giving to every child in the State a good common school education, sufficient to enable him or her to perform the duties of American citizenship, and to carry on intelligently and successfully the ordinary labors of life, the common schools are and should be objects of the deepest concern to the whole community. To the few who desire and are capable of a still higher education, and who have an ambition to shine as professional men and in the arts of literature, music, painting, and poetry, the door is wide open for them to win distinction in those callings. But to levy taxes upon the people for such purposes is a species of legalized robbery, and even the recipients come to know it. Their sense of justice cannot fail to condemn it. It lowers their standard of morality, and helps to debauch, instead of purifying, public opinion. It also breeds discontent on the part of those who are educated to something above that for which they are fitted. It really disqualifies them for those duties and labors to which alone they are by nature adapted, so that not only great injustice, but great demoralization is the result of a system which collects money by force from one man to educate the children of another man for callings which they never fill. The argument sometimes advanced, that this system is a benefit to the poor, is an utter fallacy. The children of the poor man generally leave the schools with a common school education, and go to work for themselves or their parents. Yet, while the poor man's children are thus at work, his little home is taxed to give to the children of others a collegiate education. Nine in ten of those educated in the so-called high schools at the public expense would far better pay their own bills than to have them paid by the people of the State. These views are so manifestly just, that I have no doubt that they will ultimately prevail. Indeed, there seems to have been already a cessation of efforts to establish high schools, academies, and colleges, and support them by taxation."

MR. HOWARD. Now, Mr. Chairman, the term grammar school, which I am in favor of retaining, includes everything necessary to be taught in a public school system. In a system of grammar schools we can teach that which is equivalent to a liberal education—the English language thoroughly, and English literature to a certain extent, grammar, rhetoric, logic, arithmetic, algebra, geometry, trigonometry, the history of the country, the general principles of political economy, the Constitution of the country to a limited extent. For instance, Judge Story has made an abridgment of his own work which would convey to the ordinary student all the general principles of constitutional law. In other words, our common school system should educate every man and boy up to the duties of American citizenship, and the grammar school could prepare every man for a profession if that was deemed necessary.

I am in favor of a free school system. I do not agree with those people who assail this system, and call it a Godless system. I regret that any preacher or priest should have taken upon himself to indulge in that strain of comment; and I regret most of all that of late some of the persons in the Episcopal Church, to which I am attached, and to the support of which I contribute, should have taken upon themselves to denounce the free schools of this country as Godless schools. I think they mistake the public interest. They mistake the interests of their churches, and they mistake the public interest when they undertake such an office. They are warring on the inevitable. Napoleon said, when the Pope excommunicated him: "His Holiness is mistaken; it is a thousand years too late." These preachers who undertake now to attack the free school system are at least two hundred years too late. For more than two hundred years that system has prevailed, and I am in favor of retaining it.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. Chairman: I have listened with a great deal of pleasure to the eloquent remarks of General Howard. I agree with him in all that he says, but I think I will not be charged with presumption when I say that the gentleman, in one regard, has departed from his general practice of consistency in adhering to local government—in adhering to the principle that a local government shall control itself. I agree with the gentleman that a citizen should not be compelled to pay for any other than the common branches of education; but, sir, I also believe that if any municipality desires to instruct its children in any other than the common branches of education, that right and that power ought to be conceded to that municipality. That, sir, is the principle that General Howard has been putting forth here on all occasions. It is the principle of local self-government. The State can lay down a certain course of instruction, and declare that no county, no town, and no city shall depart from that system, in so far as decreasing or diminishing it is concerned, but I do not think that the State ought to declare that that municipality shall not increase, shall not elevate, shall not add to that system.

MR. HOWARD. I will draw your attention to the fact that this provision would authorize the Legislature to establish a normal school in every town in the State. I am opposed to the Legislature having any such power.

MR. FREUD. I agree with the gentleman in that case also, but relative to the languages, I think a city should have a right to declare that its children should be taught in any other beside the English language. I do not see what objection there can be to a municipality taxing itself to teach its children in any other language.

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. Chairman: I am opposed to the amendment offered by Mr. Herrington, and shall sustain the report of the committee. It seems to me that we are trying to lower education instead of bringing it up. It has been asserted very often I know that free schools were a charity. I say it is not. It is a public duty. It is a right that

every child possesses, to be educated freely by the government, or by a school supported by the government. What makes the American public school system superior to any other in the world, sir? It is a system, the principle of equality, and that is the principal foundation of republicanism. It is that very principle that you see to-day swaying every nation of the world. There is not one that does not try to copy the American system of free schools. It is the fight in Europe to day. They want to establish the system, while we try in California to put that system down. Why, the gentleman from Los Angeles says that in France they do not teach anything but French in the free schools. I deny the assertion. They did not do it as long as the priesthood had the control of it; but, thank God, it is done now. They teach the English and German language, and all the languages that the children want to learn. If you adopt the other course you destroy the principle of equality. Now, if we want to restrict the teaching of foreign languages, I say that the man who can speak three or four languages is equal to three or four men. Sir, I hold that this principle would take us back one hundred years. The poor would be denied the rights of education, because they would not have the means to be educated with. It would destroy the principle of equality, and then comes sectarianism. I have been educated at a sectarian school, and it took me twenty years to do away with the wrong opinions I had in my mind. I hope there will never be one established in this State; therefore, I shall support the report of the committee and vote against the amendments to section six.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. Chairman: At the proper time I shall offer an amendment so as to except Latin. I think that the Latin language ought to be taught in our high schools and in our normal schools. There are many reasons why the Latin language should be taught. As civilization advances language becomes more complex. It should be the aim of our scholastic institutions to provide for that expansion of language which is demanded by advancing civilization. Where should we go to get the necessary compounds? Should we go to the roots of a living language? I have too much pride in my own tongue to approve of that. I think that we should go to a dead language, the Latin, which now enters largely into our tongue. I say I take a pride in my own language, and I am opposed to any other tongue being spoken or taught in our institutions of learning.

REMARKS OF MR. LAVIGNE.

MR. LAVIGNE. Mr. Chairman: I am in favor of the cosmopolitan schools, and I do not see any reasonable cause for their abolition. The cosmopolitan schools in San Francisco (seven) cost for the teaching of French and German languages, three per cent. of the total amount paid for the teachers' salaries. Now, sir, in order to reduce expenses, the Board of Education last year, following the system introduced by Mr. Bolander, in the Bush street primary school, favored the plan according to which all primary classes in cosmopolitan schools must be taught by teachers holding a German and a French certificate, besides their English one, and at the present time most all our cosmopolitan schools are taught by teachers thus duly qualified. The system has proven to be satisfactory, and has reduced the expenses to nearly one half. Therefore the teaching of foreign languages in San Francisco does not exceed one and one quarter per cent. of the total amount of teachers' salaries (twelve thousand dollars). Now, Mr. Chairman, thousands of children have had the benefit of our cosmopolitan schools, and have been instructed in French and German, and it is a mistake, sir, to think that only the children of German and French origin have the benefit of this institution. The number of children studying German and French in the public schools is three thousand five hundred and five, distributed as follows: German, two thousand five hundred and thirty-eight; French, nine hundred and seventy-seven; American, one thousand one hundred and twenty-eight. This shows that thirty-two per cent. of the whole number are Americans, and it is the last report of Mr. Herbst, Principal of the South Cosmopolitan Grammar school. Now, Mr. Chairman, I am in favor of the teaching of modern languages, because the education of the people is of the highest importance to a State like the State of California. The State of California is cosmopolitan, and very often in the course of life it is necessary for a man to be acquainted with several languages. By abolishing the cosmopolitan schools you create more difficulties to the working classes at the profit of the rich, because the system of public schools enables the poor to acquire enough instruction to become, if he is intelligent, the equal of the rich. If you abolish cosmopolitan schools, the rich will send their children to private or sectarian schools, thus creating two distinct classes of people, and we will soon have the regret to see our public schools, which were one of the greatest creations of this State, supplanted by sectarian schools. Mr. Chairman, we cannot give a too liberal instruction to our children, and we must not, through a false idea of economy, pull down one of the main pillars of our grand free school system. I hope the amendment will be voted down.

MR. LAINE. Mr. Chairman: I desire to offer an amendment to the amendment.

THE SECRETARY read:

"Amend the amendment by striking out all after the word 'system,' in the first line, down to the word 'but,' in the fourth line, and insert the following: 'of this State shall include primary and grammar schools, the State Normal School, and the University of California.'"

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: As it is, the amendment has reference to municipalities. I think that here we should provide a system for the State, and let municipalities alone. Much objection has been raised on the ground that the municipalities, especially in San Francisco, desire to maintain certain high schools. I have no objection to it; but we should deal here with a State system and nothing else. Now this section, as it is worded, is most pernicious. I do not believe that it is proper for us to give the Legislature the power to organize in this State high schools, because if it is a State matter they are State high schools, and ought to be State high schools. Nor do I propose to give them the power to organize more normal schools. We have enough of them. I doubt very much the value of any normal school, and were it an original proposition I should oppose it; but we have one and that is enough. The Legislature has the power under this section to establish, under State authority, more State normal schools, because it reads: "The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature." Not by municipalities, but by the Legislature, or municipalities. I do not believe in giving to the Legislature any such power. We have enough. And this matter of technical schools is another. I think that the State should support the normal school we have. I think the State should support the State University. I think the State should support the common schools, and there the State should stop. When it comes to the organization of municipal schools, matters of that kind, within local jurisdiction, let them do as they please. But when they say the public school system what do they mean? Do they mean the public school system of the State or of the municipalities of the State? I think it should begin and end with the State, and, in my judgment, the primary school, the grammar school, the State Normal School, and the State University is enough. When you come to municipalities that is another matter. That is the reason I oppose the amendment of the member from Santa Clara; it embraces too much. I do not care to have technical schools. I do not know what may be included in the term technical schools. I believe it means a school of art, and it may mean dancing and fiddling for all I know.

MR. MARTIN, of Santa Cruz. I move to strike out section six.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: It seems to me that each of the amendments, and much of the discussion which has arisen here, is the result of misapprehension as to the effect of this provision if it were adopted. Now in our State treasury we have different funds. One is the school fund. Now this provision is, that the entire revenue derived from the State School Fund and the State school tax, shall be applied exclusively to the support of primary and grammar schools. That is, when the tax has been levied for school purposes, the amount of that tax can be appropriated only to what was designated here yesterday as common schools—primary schools and grammar schools—in which the rudiments of education are taught, such as are supposed to be absolutely necessary to every man and woman in order to make them good citizens. Now that is the whole principle of the section. The former part of the section provides this, that "the public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority." Then if any of these higher grades derive any support whatever from the State, it shall not be done out of the State School Fund, but shall be drawn from the General Fund. For instance, if the State Normal School needs support from the State, it shall not be taken from the common school fund which has been raised for primary and grammar schools, but an appropriation by special Act of the Legislature, for the express purpose of supporting the Normal School. Allow me to suggest that this is the manner in which the State Normal School is supported to-day. If the State University needs support, that support must be drawn from a special appropriation by the Legislature, made from another fund; generally, I believe, from the General Fund.

Now, sir, objection is made to the State doing anything for the support of technical schools. The gentleman from Santa Clara says they are schools of art. I submit to the gentleman that agriculture is an art, that mining is an art, that the different departments of mechanics are arts, and that our State is now doing something for the support of art schools. I have no fear that this State will ever reach a stage where the Legislature will make an appropriation for an art school of music and dancing. But even if we had more music in our State, and less growling, I am not sure that it would be a bad thing. Perhaps the little vocal music which has been so much spoken against is not a bad thing, and the man who can sing a little at home with his wife and his children, is not so bad as the man who wastes his money in the saloons and gambling houses. I am not sure that these little refinements introduced in the public schools are such a bad thing. I am satisfied that they reach a good purpose, having been a teacher myself. I have come to understand that a little music in school makes the tasks of the scholars more pleasant, as a little music in the household makes home more pleasant, and perhaps does as much to prevent hoodlumism and crime as do reform schools and penitentiaries.

Now, sir, about evening schools. This provides that there may be in the State evening schools: and certainly if there is any class of schools that all the world over the poor people patronize it is the evening schools. These evening schools offer opportunities to boys and girls who have to work daytimes, to acquire such knowledge as shall make them useful citizens and enable them to perform useful parts in life. To strike out this provision would be a most unfortunate change.

Now, sir, as to the high school. This provision is, that the Legislature, or any municipality, may provide for high schools. That results in this: First, that the Legislature may provide for a uniform system of high schools, and if they are established under such a law, the Legislature has control of them. For instance, say one high school was established at Stockton, at San José, at Marysville, at Sacramento, etc. They would be a department, and fill up the space between the grammar school and the State University; so that a boy who came through the primary and grammar schools would find a school which covers the space

between the grammar school and the University, so that the whole system would be complete. It further provides, that if no such State law is passed, still a municipality may establish such a school. For instance, San Francisco may have a night school if it wants it, even though the State would not provide for it. San José could have a night school or a high school if it desired, and the normal school would not be cut off from support by this provision; but the support, instead of being taken from the Common School Fund, would come from the General Fund of the State.

Now, as to the normal school, I will insure the gentleman from Santa Clara a monopoly. They have a handsome normal school building there. Perhaps in the growth of this State, fifteen, twenty, or fifty years from now, we may need another normal school; and perhaps if the gentleman from Los Angeles should be living then, he might want it in Los Angeles. The growing wants of the State might require it. We ought not to put a gate in the way of anything like intellectual progress; we ought not to put anything in the way of increasing the capacities of the great public school system, but we should leave the door of progress open, so that in the future of this State, without constitutional amendments, we may make intellectual progress at the public expense.

MR. REYNOLDS. I desire to ask the gentleman one question. I understood him to say that he was in favor of music. Now, I want to know whether the gentleman is willing to go on the record as willing to expend money for teaching the girls music?

MR. CROSS. Yes, sir. Put the record on your desk there, and I will come and stand on it. [Laughter.]

MR. REYNOLDS. Will not their future husbands need all the money to play poker? [Laughter.]

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I am in favor of the report of the committee. The first part reads: "The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority." Then it goes on: "But the entire revenue derived from the State School Fund and the State school tax, shall be applied, exclusively, to the support of the primary and grammar schools." I think we can very safely let the Legislature have the opportunity of establishing these schools, providing the necessities of the occasion require it. For one, I am in favor of leaving that power vested in the Legislature. Now, I think the gentleman from Nevada made a very good point when he said that we had one normal school now, but the time might come when we would want two. We have a great many evening schools now—and if the amendment should be adopted we would necessarily have none—in very many of the counties of this State, and I understand that Santa Clara is not an exception to the rule. I believe it is recognized everywhere that the schools of that county are one of its chief attractions. If its representatives desire to go backwards, I really hope this Convention will not. It is perfectly safe, I think, to leave this question in the hands of the Legislature.

But there is a still more fatal objection to the amendment offered by the gentleman from Santa Clara, Mr. Laine, and that is, he proposes that under the common school system of the State shall be ranged the State University. I object to that.

MR. LAINE. The public school system, not the common school system.

MR. ESTEE. I object to that. Every Legislature will commence handling the University. I hope to have that great institution kept outside of politics. Our Insane Asylums are outside of politics, and our State Prisons will be outside of politics; but the gentleman from Santa Clara proposes to put the chief educational institution of the coast back into the hands of the Legislature, to tamper with it at every session. I hope that that will not be done. I hope that the section presented by this committee will be adopted. I hope that the common schools and the University will be placed upon such a plane that no future Legislature can affect its usefulness. I indorse most heartily the remarks of the gentleman from Los Angeles, so far as one point went. I believe in the common schools of this country; but when the Convention takes a step backward, the people of this State will not sanction it. We should risk everything we have to promote the fullest educational advancement on the part of every child born in this State, and every child that comes here to be educated, so far as he can be. For one, I am not here to argue about technicalities, about learning this language or that language; I am willing to leave that to the future intelligence of this State. I think it is not wise to teach French, Latin, or German in the schools, but I think it safe to leave these great questions to the Legislatures, or to the people who may come after us. If they desire to teach their children any of these languages and pay for it, let them do it. I would be very glad if every child in the State were educated.

Now, sir, for these reasons, among others, I am opposed to these amendments. I shall oppose all amendments to section six unless some more potent reasons are given for changing it than have yet been advanced. I think that the section as it stands is an excellent one. Why, sir, in San Francisco there are several thousand children that would have no education at all if it were not for the evening schools. And the idea of placing upon record here, in the organic law of the State, that no part of the public money shall be given to teach these children in the night time, seems to me to be wrong.

REMARKS OF MR. RINGGOLD.

MR. RINGGOLD. Mr. Chairman: If there is one evil in the school department, so far as San Francisco is concerned, that is greater than another, it is the cramming process that is in use now. When my son was in the fourth grade, we had a teacher who undertook to teach the boys to speak French, but when the examination day came round the boys who had confined themselves to the English branches carried off the honors. It appears to me that this section might cover that ground and continue the teaching of languages, consequently I cannot support it entirely as it reads now.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I take the same position as Mr. Estee in respect to this section. I think these amendments ought to be voted down. I think that all that the needs of the times demand is simply an exclusion of any other language than the English from our common school system. That is about all, and that was very well elaborated by General Howard. In that portion of his argument I heartily agree with him. With that simple amendment added to this section, I believe that the section is not subject to any criticism.

Now, as the gentleman from San Francisco explained very clearly in the first place, about the use of the term "public school system," or "common school system," I would prefer the term "common school system," and I believe the Chairman of the committee proposes to introduce that language. It will then read: "The common school system shall include primary and grammar schools," etc., giving the Legislature or municipalities power to establish these high schools, normal schools, etc. It seems to me that that permissive power ought to be given. I see no objection to it. I do not see that it would be abused. People who are interested in these matters are the best judges, and the tendency is to relegate all these matters of a local character to the respective communities; so I see no objection. But when it comes to taxation, I do not care from what source you derive the tax; you say that the people of this State shall not be taxed to enable children to acquire any other language than the English language in our common school system. There is a boundary which divides, or should divide, the common school system from the private school, and from the State University. If you introduce the Latin language, or tolerate it, in our common school system, as suggested by my friend from Nevada, you make all these boys simply smatterers. The curriculum is not lengthy enough to enable them to acquire any knowledge of the Latin language. They cannot go, outside of this State, to any institution and enter a Freshman's class. It is different in other States. In Massachusetts they have their grammar schools, but they are entirely different from our grammar schools here. There the pupils go through a regular term in Latin grammar and Greek grammar, and graduate regularly. Here the pupils are taken through the *hic, heac, hoc*, and left there. They know nothing of the Latin language. They know nothing of the construction of the English language. These mellifluous compound words are derived mostly from the Greek, but they can never obtain any knowledge either of Latin or Greek in our common system such as we have here in California. The divisional line between our common school system, the private schools, and the University, is this: in the latter, let the patrons patronize the languages; in the former, none but the English. I am willing to extend a liberal education to all, but I am not in favor of giving pupils a few month's instruction in French, Latin, or Greek, under inefficient teachers, and then sending them out as educated. I think this age is utilitarian. It is different from the ancient age. That was the age of beauty, of sculpture, and of painting; of statuary, of architecture; of grand masterpieces in the arts. But it is science now which claims the vantage ground. This is the age of utility, and anything like a technical school I think should be sustained. Anything that will add one increment to the amount of knowledge which we have of utilitarian subjects should be encouraged.

I am therefore in favor of section six as it stands, but I do think, and I am indebted to General Howard for the suggestion, that we should add to it something of this kind: "and no language except the English shall be taught in any department of our common school system."

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I believe that it is the best indication that a law should be passed, or a fundamental principle laid down, that it has grown out of some necessity. Now, sir, the section that is presented here as section six of this report, grew out of the necessity for it in the City of San Francisco, and I state this upon the authority of ex-State Superintendent of Public Instruction, Swett. When he first made an effort to establish the evening schools in San Francisco, he was met time and again with this objection: "You cannot raise the money for this purpose, because it is not recognized in any part of the school system at all. If established it will be entirely outside of it." Of course, that objection was used by those who objected to the school entirely. This necessity of a recognition in some part of the fundamental law, or in the definition of the school system, of these evening schools, was the very starting point of this section. This was considered by the State Teachers' Association, and I think the section itself, in its original form, was written out by Mr. Swett. Now that is a case where a thing has grown out of a necessity for it. It should be recognized. Following the line we have already established in the report of the Committee on City, County, and Township Organization, it is giving to these localities the right of local self-government in education as in other things. Why should we say that no municipality, no county, no town, shall of its own motion establish anything but a primary and grammar school? Why should we say that they shall not have a right to establish any school that they see fit to establish, and to pay for it out of their own money. Sir, it is going far beyond the province of the Constitution to do any such thing. They should have the right to establish any school that they see fit to establish, and when they have done that, it is the right of this Constitution to say that being established, that school shall be a part of the public school system of this State, and shall be under the control of the public school officers. That is all that this section does. It gives them the right to establish these schools when the necessity arises. It says that whenever they are so established that they shall become a part of the public school system, for they are supported

by the money raised by taxation voted by these municipalities, and therefore should be under the control of the public school officers.

Then all there is of the rest of the section is that no part of the State School Fund, or the State school tax, shall ever be used for the support of anything but the primary and grammar schools. I cannot see where the objection can come to this section. I think it is eminently just, eminently right; and if we fail to put it in here we shall fail in a part of our duty, in my judgment.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: I do not understand, myself, sir, that the section, as it is reported by the committee, pledges the State to the support of the schools established by the Legislature, or by municipal or district authority; neither do I understand that the amendment would prevent municipalities or districts from establishing such schools as they might choose. I have no objection myself, however, to the section as it stands, with one modification, which I hope to see inserted whether the amendments prevail or whether they are not adopted and the section is adopted instead. It will rid this section of one objection in the minds of members who have spoken here. That is, to strike out the words "primary and grammar," where they occur in the first and sixth lines, and insert instead the word "common," so that we should speak of this institution as common schools. The word "grammar" is not known to the present Constitution. It has no legal definition in this State. It only comes into use through the word adopted by the State Board of Education, in which they say that, for the purpose of designating the grades of schools more correctly, schools for beginners shall be called primary schools; those for the more advanced shall be called intermediate schools; and others, for those still further advanced, shall be called grammar schools. That is all the foundation there is for the adoption of the phrase "grammar school," as a phrase having a distinct signification agreeable to the wishes and purposes of this Convention. In point of fact, the term "grammar school" does imply more than this Convention has contemplated, and more than the committee designed to include in this section. It implies a school in which languages are taught, and especially the Latin and Greek. That is the meaning of the term as defined by lexicographers. A grammar school is a school that teaches the science of language. Webster says: "A school in which grammar, or the science of language, is taught; especially, a school in which Latin and Greek are taught." And it is true that under the name of grammar schools in some of the United States now Latin and Greek are taught, and any other language may be taught; and some other languages are taught—modern languages—in grammar schools. Now that, I do not think, is what this Convention desires to embody in this section. That difficulty can be obviated by dropping a useless form of words and using a term about which there has been no doubt for a hundred years, and can be none in this State—the term "common schools."

MR. BLACKMER. That term is so well defined in our own State that there can be no question about it.

MR. JONES. It is defined in this State only by the work of the Board of Education. The Constitution does not use the term. The Board of Education adopted that designation for the purpose of facilitating their work. If we mean common schools, why not say so, then the State Board may call it what they please—third grade school, or first grade school. But let us not adopt a phrase here that has a well defined meaning, the world over, as a school for teaching the science of languages—not merely the English language, but languages in general, and particularly Latin and Greek. There can be no harm in it. If we mean to be definite; if we do not want to have any uncertainty about the Constitution, let us use the term "common school," which I never knew a person to be in doubt about. We understand a common school to be a school devoted to instruction in the primary branches of an English education; to giving good, sound elementary instruction, and, so far as practicable, a perfect and complete instruction in reading, writing, and speaking the English language; in arithmetic, geography, and the grammar of the English language. There may be added to that, as there has been added in this State, under the Constitution we have, such elementary instruction as may be deemed wise, in natural philosophy, botany, physiology, and one or two other matters. This will accomplish all that our common school system contemplates. I desire greatly to see this adopted, and I shall ask the gentleman from Santa Clara if he will not accept an amendment to the amendment he has proposed, to insert the word "common," instead of the words "primary and grammar?"

MR. LAINE. I have no objection. I accept the amendment.

MR. JONES. If that be considered as inserted in that amendment, it will be one of the considerations in favor of the amendment; and if it be not, I shall hope to have an opportunity to offer it hereafter.

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

Seconded by Messrs. Freeman, Murphy, Hunter, and Larkin.

MR. WINANS. Mr. Chairman: I believe the Chairman of the committee is entitled to address the committee.

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

The main question was ordered.

THE CHAIRMAN. The first question is on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Laine.

The amendment was rejected.

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

The amendment was rejected.

MR. HOWARD. Mr. Chairman: I send up an amendment to go in at the end of the section.

THE SECRETARY read:

"In the primary and grammar schools, no language but the English language shall be taught."

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

THE SECRETARY read:

"Amendment to section six: add the following after the word 'schools,' in line six: 'The course of instruction in the public schools shall, when practicable, include lectures by the teachers thereof upon the subjects of labor and agriculture.'"

THE CHAIRMAN. The amendment is not in order at present.

MR. HUESTIS. Mr. Chairman: I desire to offer an amendment to the amendment.

THE SECRETARY read:

"Substitute for section six: 'The public school system shall include common schools, and such high schools and evening schools as may be established by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of common schools.'"

THE CHAIRMAN. It is not an amendment to the amendment.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I know of no objection to the amendment proposed by the honorable delegate from Los Angeles. It is a declaration of the system as it now exists. If it be objectionable at all, it is simply so because it is putting a provision in for all future time, which may become inoperative and objectionable hereafter; but it is the present system exactly as it now exists; therefore I do not think the committee are strenuous upon the subject. But as we have that system already, and there is no disposition on the part of any citizen of the State, at the present time, to change it, for the time being I do not see any necessity for its coming in at the present time.

MR. McCALLUM. I would like to ask if the foreign languages are not now taught in San Francisco?

MR. WINANS. No, sir; they are in the cosmopolitan schools.

MR. HOWARD. I know that they are in Los Angeles.

MR. McCALLUM. Is not that a primary school alone?

MR. WINANS. No, sir.

MR. McCALLUM. I am told that before they learn the alphabet children are taught foreign languages in the cosmopolitan schools.

MR. JOYCE. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Education, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and quorum present.

EDUCATION.

MR. WINANS. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Education.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment of the gentleman from Los Angeles, Mr. Howard.

MR. HERRINGTON. When it is in order, I desire to offer an amendment to the section.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I wish to say one word as to the objections raised to the use of the word "grammar" as applied to schools. The word "grammar" is defined by the lexicographers as the elementary principle of any science or branch of knowledge. I understand the Chairman of the committee to say that they are not opposed to that.

MR. WINANS. I understand there is a great difference of opinion as to whether that will cut off the cosmopolitan schools in San Francisco. If it would, then we are opposed to it, because we want to leave the localities to administer their own affairs.

MR. HOWARD. It would cut them off from teaching Latin and Greek in the grammar schools. It would not prevent any municipality that chose to establish high schools, from teaching anything they pleased. Therefore it does not trench upon the principle of local government. But it will prevent State taxation for any locality to teach Greek, or German, or French, or Spanish, in the primary or grammar schools. That is the object of the amendment. I see no propriety in teaching anything, as far as languages are concerned, but the English language. If a man wants his child taught the languages, let him pay for it. If the municipalities want to teach the languages, let them vote to establish such schools, and pay for them. Now, the section also says that the Legislature may establish any number of technical schools. The word "technical," according to the dictionary, embraces any particular science or business, and under that provision the Legislature might establish law schools, medical schools, theological schools, and tax the people of this State to pay for them. Now, I imagine that is not the sentiment of the people of this State. I do not suppose that the people of this State, if a vote was to be taken on it, would vote to teach Latin and Greek, or to educate lawyers or doctors, or that they would vote to organize medical schools, or law schools, or theological schools. Therefore I am opposed to this thing. I see no propriety in it, no justice in it. The widow woman may be assessed and taxed on her bed and sewing machine, to support such schools, and under the law as it now stands, the Tax Col-

lector can seize and sell them for taxes. Under this system of taxation I see no propriety in taxing the people to teach Latin and Greek, and other languages, Hebrew, and special professions. It seems to me eminently proper, that as far as the primary and grammar schools are concerned, they should be confined to the English language. Almost all the different denominations have colleges, in which they teach the languages, and some of them teach them in an eminent degree. I may mention the College of Santa Clara, where the languages are taught as well as they are anywhere in the world. Now, I propose that all this matter of the languages be left to private management, to the ordinary institutions of the country, and that the people shall not be taxed to teach either the ancient or modern languages in the common schools.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: If this amendment should be adopted, the section will then provide merely that the entire revenue derived from the State School Fund and State taxes, shall be applied exclusively to the support of primary and grammar schools; and that in the primary and grammar schools, no language but the English language shall be taught.

MR. HOWARD. This section will not prevent them establishing any amount of schools, but it provides that they shall not be paid for by the State.

MR. McCALLUM. This then, will simply provide that these primary and grammar schools, which are supported out of the State School Fund, shall teach no other than the English language. That is right, I think. I ask the Chairman of the committee, if it is not true that, in these cosmopolitan schools, they teach the foreign languages? I think it is the case. It is true in Oakland, moreover, that the infant classes are taught the foreign languages, and the children are taught the French alphabet at the same time that they are taught the English alphabet. This system is simply ridiculous. The only argument I ever heard was that children can learn the foreign accent better at that age. This is the very worst system of cramming. It is difficult enough to learn English, without being taught the foreign languages at the same time. My own judgment would be, that, in all public schools, the teaching should be in English. I am willing to waive my personal judgment, and support the other feature of this report, that these schools may be established in local districts, and paid for by the districts. If they want to teach the foreign languages, let them do it, and pay for it; but, so far as the State fund is concerned, it seems a contradiction of terms to say that the funds provided by the State, contributed, in a great part, by the National Government, for the common schools, shall be diverted to that sort of teaching that is not common teaching, but is of a higher grade, and not properly classed with it. I trust the amendment of the gentleman from Los Angeles will be adopted. I should prefer it to read in this way: To leave out the words "primary and grammar," and insert "common," so as to read, "common schools." I will move to strike out and amend as I have indicated.

REMARKS OF MR. WELLER.

MR. WELLER. Mr. Chairman: The gentleman from Alameda speaks very learnedly of our common schools. According to his argument he wants it to apply to the cosmopolitan schools in cities and towns where the cosmopolitan schools are taught separately. But in the country we have no other except the common school system. The tax-paying portion of the community support these schools, and they would be restricted as to what they should teach, irrespective of what they pay. They can pay their money and employ teachers, but they are not to be allowed to teach only certain things. They are obliged to be restricted in what they teach, but they have to pay just the same. The tendency will be to lower the grade, and lower the occupation of teachers, who only arrive at a certain point that they may be able to teach common schools. It is an old saying that a teacher cannot know too much. Even at the wages we are paying at the present time, we cannot employ first class teachers for our graded schools. If we want the benefit of first class instruction for our country children, we are obliged to send them into town. There are certain ages when children are better fitted to study certain things, when their time would be better devoted to those things; when they are too young to send from home, and then is when they must have a stone placed on their heads; when these restrictions come, when we are not permitted, even though we pay for it, to have the same things taught that we are taught in the cities and towns. It is an outrage to put a restriction of that kind in the Constitution of this State. If you want to put this kind of a provision in, put in a restriction as to taxes, but don't compel us to pay just the same, and then restrict us. We have to pay our teachers so much any way, and they are often capable of doing a great deal more work than they are required to do, and there is no reason why they should not be allowed to do it. If this restriction is placed in the Constitution designating a certain course of study; that the children shall only go so far, it is certainly going to have a discouraging effect, and will destroy the real benefit and object of education that this very money is appropriated for. It is not right to restrict them and say how far they shall or shall not go. Give the children an opportunity of getting all they possibly can for the money. Give them all the benefits they can get, for it is their right. I would rather see the school fund restricted than to see that provision put in, saying that they shall be hampered and allowed to go only so far. It is placing a stone upon their heads which will allow them to rise only so far. I say it is wrong. The evil is, if an evil exists, that we are not doing enough, not that we are doing too much. I want perfect liberty in this matter, and the Legislature is fully competent to redress all the evils that may arise. They have full authority to do so under the Constitution. And a provision in the Constitution would be no stronger than a statutory provision to the same effect, provided the people want such a law.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I am in favor of the amendment of the gentleman from Los Angeles. I think it is much better than the proposition of the gentleman from Alameda. Section five says the Legislature shall provide a system of public schools; and section six says the public school system shall include primary and grammar schools, and such high schools as may be provided for. Now, if you desire to prohibit the teaching of foreign languages in the primary and grammar schools, say so. Don't say "common schools," for that applies to all the schools in the system. Therefore, I think it is much better to allow the word to stand, if the committee is in favor of that system. I certainly favor it. I have had something to do with observing education during the past few years, being connected with it officially. It seems to me the great problem is, how to train and educate the young; how to foster the intellectual growth without interfering with their physical growth. I would not give a cent for a man, be he the most cultured and finished scholar in the land, if he has no physical constitution. Our system now includes as much as any boy or girl can master without impairing the physical growth.

MR. WELLER. That may apply to the children of towns and cities. But give them plenty of exercise, and there is no danger.

MR. McFARLAND. I think something is due to our city children. It is claimed that the county children are not educated at all. I say that there is too much cramming. Children should have more time for play and exercise, and I believe they have all the studies now, without any foreign languages, that they can master. I think it is a waste of time, to say nothing of money, to allow them to study any other but the English language. They get nothing but a smattering of it at best, and what they do learn of it is forgotten in after life in ninety-nine cases out of one hundred. Where it is necessary to give them a more finished education, let it be done at the high schools, or at private schools. I believe the American nation should teach nothing at the public expense but the American language. I believe the great difficulty will be for the next generation to nationalize this country. I believe that one of the first things necessary to accomplish that result is to nationalize the language, and to give to all those who come here from foreign countries to understand that this is an English speaking country, and that at the public expense no language shall be taught save the language of the nation.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: The adoption of the amendment to the amendment, proposed by the gentleman from Alameda, Mr. McCallum, would destroy the character of the section as it now stands, and subvert this plan. The section provides that the public school system shall include primary and grammar schools, and such high schools as may be designated. The proposed amendment reads that the entire revenue derived from the State School Fund, and State school tax shall be applied exclusively to the support of common schools. Now, sir, the words "public schools," and "common schools," mean the same thing. In this connection the word "public," and the word "common," are convertible terms.

MR. McCALLUM. I will withdraw the amendment to avoid discussion.

MR. JONES. Mr. Chairman: I wish to renew the amendment of the gentleman from Alameda, just withdrawn.

SPEECH OF MR. JONES.

MR. JONES. Mr. Chairman: In regard to that matter, it is a mistake to suppose that there is no distinction between the words "common schools" and "public schools." The committee propose, in a section here, that the common schools shall receive money from the Common School Fund, and subsequently they say the public school system shall consist of primary and grammar schools, high schools, etc. The system is composed of parts having some relation to each other. The common school is one of these parts by their own admission. The high school is another of these parts; the technical school another of these parts. Then what is the use of telling us that when you name one of these parts it includes all the others. The system of instruction includes all the educational institutions supported and authorized by the State, and nothing else. But one of these institutions may be a common school.

Now, sir, I move to restore the words which the gentleman from Alameda had moved to insert and then withdrew. In doing so I have this in view, which I will submit to the Convention, and that is, that we shall say in this Constitution just what we mean, as near as we can; that we shall not juggle with words; that we shall not use words in a double sense; that we shall select words that will convey our meaning as near as may be. Now, if we mean primary or grammar schools, let us say so; if we mean common schools, let us say so; and if we mean something else, say so in so many words. The simple truth is, that there is nothing in this section five to indicate that there is any school system in the State. It does not allude to common schools, whereas, in the previous section, it has been provided that a common school system shall be established, and that those common schools shall receive certain funds from the revenues of the State. In the section now under consideration, nobody can discover that there is any such thing as a common school. It no more provides for common schools, in words, than it does for high schools or technical schools. Therefore I feel like urging, that if we mean primary and grammar schools, we say so; and if we mean nothing else, let us know it so we can act accordingly. It is not with a design to limit or prescribe the course of education in general, at all, but only prescribing the course in one particular in the common schools. It is said here, let them all be taught. But there is a limit to all things, and the man who tries to accomplish too much, accomplishes nothing. The common school system is not capable of furnishing an elementary education in all the arts and sciences. As soon as we allow it to pass

beyond common bounds, beyond certain reasonable limits, it becomes worthless; and the muddled child will come out of school, having gone through everything, and knowing nothing well. Our Constitution, which we are now endeavoring to amend, provides for a common school system. It says nothing about primary and grammar schools. If it prescribed that the common school system should consist of grammar and primary schools, it would have defined it. But this was not done. The Constitution said nothing about grammar schools or primary schools, and for that reason the term common schools, a term having an American common law signification, as distinct as any other term in the English language. But the term grammar school has no well understood significance. The State Board of Education, as a matter of convenience, uses it for the advanced grade. It is a designation of a certain grade in the common schools. They designate the course of study. When the scholars are so far advanced, they belong in the grammar school, and have a certain course of study.

Now, my theory is that there is too much cramming. Still, that is a matter that may well be left to the Legislature, and to the educational Boards in future. Sir, I cannot help recalling the words of Edward Everett, when speaking of common school education and its value. He says it is a system in which the elementary branches are taught; reading, writing, and speaking the English language; in which arithmetic, in which physical geography, constituted a good education. Now, when to that is added a knowledge of physiology, history, the Constitution of the United States, and of the State in which the child resides, he has got an excellent education. I do not object to education to the utmost limit. All I claim is that the languages, when taught, should be separated from the common school system to prevent its being gorged. Those of our foreign born citizens who have children in the public schools ought to stand by me in this view. They come here from foreign lands for the purpose of becoming good and useful American citizens, to participate in the affairs of this Government, and they know that the business affairs of this nation will be carried on in the English language. So there can be no line drawn here between native and foreign born citizens, for there is no such issue.

SPEECH OF MR. WINANS.

MR. WINANS. Mr. Chairman: It appears to me that the amendment offered by Judge Jones creates the very confusion which he says he wants to avoid. I was about saying that the word "public," and the word "common," were convertible terms, when the honorable member from Alameda saw the force of the objection, and withdrew the amendment. Now, section six is entirely clear. It provides that the public school system, which is the same thing as the common school system, (public schools is the term used in New York and elsewhere; common schools is the term used in the books, and they mean the same thing) shall embrace primary and grammar schools, and such high schools, evening schools, and technical schools, etc., as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools. By the direct force of language, most clear and explicit, it provides that high schools, evening schools, and technical schools, are not to be sustained by the public moneys of the State—not to be supported out of any fund. It is to be applied exclusively to primary and and grammar schools.

MR. JONES. What is there in the section that says these primary and grammar schools are more than common schools.

MR. WINANS. I am talking about the preceding section. Had the gentleman not pressed the amendment to section four, which was carried through, there would have been no difficulty. He was paving the way then, for the very difficulty which he urges now. But the language of section six, as far as it controls the section, is plain and distinct, and it controls the language of section four, because section four declares the general principle. Now, the question is, what is the meaning of primary and grammar schools? From the very organization of the State Government, primary and grammar schools have been in existence in one continuous, unvarying form. They exist now as they existed five and twenty years ago. Their character is distinctly defined, and their distinction thoroughly known, and the status of this system is just as complete and manifest to the people as that of the State University. When you say that the public moneys shall be applied exclusively to the support of the primary and grammar schools, if there is any force in language, it means that it shall not be appropriated to other schools.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Barbour, Steele, Webster and Evey.

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

Carried.

THE CHAIRMAN. The question is on the amendment to the amendment, proposed by the gentleman from Mariposa.

Division being called for, the amendment was lost by a vote of 52 ayes to 54 noes.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Los Angeles, Mr. Howard.

Division being called for, the amendment was adopted by a vote of 72 ayes to 37 noes.

MR. HERRINGTON. I offer an amendment.

THE SECRETARY read:

"Insert, after the word 'school,' first occurring in line two, the words 'State Normal School.'"

MR. HERRINGTON. That question was before the Convention in another amendment, but it was so connected that it could not be well separated. I think the State Normal School ought to be included in the system, and it ought not to be ignored; it ought not to be left out.

MR. WINANS. That would make bad wording. The words "Normal School" would occur twice in the same line. It would advance the Normal School beyond the position which it now occupies. It would alter the meaning of the section entirely, because it does not occupy its present existence under the Constitution. The term "such normal schools," is quite sufficient to include the State Normal School. The State Normal School is not sustained out of the common school fund, but by a separate appropriation.

MR. HARRISON. Mr. Chairman: Is my amendment in order now?

THE CHAIRMAN. The question is upon the amendment of the gentleman from Santa Clara, Mr. Herrington.

Lost.

MR. HARRISON. I offer my amendment now.

THE SECRETARY read:

"The course of instruction in such schools shall, when practical, include lectures by the teachers thereof upon the subjects of labor and agriculture, in order to inculcate their necessity and importance in the promotion of human happiness and civilization."

MR. HARRISON. This may be stated in a few words. It is a notorious fact that a vast proportion of the youth of the present age is growing, especially here in California, are growing up with notions averse to labor, and with a desire to live without doing any work or follow any useful occupation. This is a deplorable state of affairs, and it is our duty to devise some means to correct these erroneous ideas. I believe one of the best means of correcting this wide-spread evil is to inculcate, by lectures in our schools, the great necessity of labor—that every human being should be a worker, and not a drone. The amendment provides for this very necessary instruction. I hope many of the lawyers won't vote against the amendment. I am sure the farmers and mechanics will not. I do not believe there is any gentleman on this floor who would like to see his sons grow up in idleness, and become worthless hoodlums, and prey upon other people for a living, instead of living upon their own honesty and industry.

MR. WINANS. If this amendment should be adopted it would be the first attempt at introducing a course of study into the Constitution.

SPEECH OF MR. LINDOW.

MR. LINDOW. Mr. Chairman: I can't see why the gentleman opposes so much the foreign language. I am a foreigner myself. I have got five children, and I don't educate them in my own language. Now, sir, it is a true fact that the American people want to have education, more so than anybody else. When I come in my own house I talk to my children in German, and I have given them private lessons in French. I would not give a cent for all the French or German the children learn of some of the teachers. It is not worth a cent. But it ought to be taught well, so it would be some account. Now, I shall not vote for the section as it stands. Now, if the gentlemen who have seats on this floor want to have this section adopted, and this Constitution adopted, they must not go to work and strike out the foreign languages.

MR. MORELAND. I move to amend Mr. Harrison's amendment by adding: "Provided, that such lecture shall not exceed ten minutes in length, and shall not be delivered in broken English." [Laughter.]

THE CHAIRMAN. The question is upon the adoption of the amendment.

Lost.

THE CHAIRMAN. The Secretary will read section seven.

THE SECRETARY read:

SEC. 7. A State Board of Education, consisting of two members from each Congressional District, shall be elected by the qualified voters of the district, at the first gubernatorial election after the adoption of this Constitution, who shall hold their office for the term of four years, and enter upon the duties thereof on the first Monday of January next after their election; *provided*, that such members first so elected shall be divided into two equal classes, each class consisting of one member from each district, and that the first class shall go out of office at the expiration of two years from the commencement of their term of office; and at each general biennial election, after such gubernatorial election, one member of such Board shall be elected from each Congressional district, so that one half thereof shall be elected biennially. The Superintendent of Public Instruction shall be ex officio a member of such Board, and President thereof.

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

Carried.

THE CHAIRMAN. The Secretary will read section eight.

THE SECRETARY read:

SEC. 8. The State Board of Education shall recommend a series of text-books for adoption by the local Boards of Education, or by the Boards of Supervisors and County Superintendents of the several counties where such local Boards do not exist, but such recommendation shall not be compulsory. After the adoption of a series of text-books by said Boards, or any of them, such books must be continued in use for not less than four years. The State Board of Education shall also have control of the examination of teachers and the granting of certificates. They shall possess such further powers and perform such further duties as may be prescribed by law.

MR. ESTEE. Mr. Chairman: I move an amendment.

THE SECRETARY read:

"The Legislature shall have power to provide for a State Board of Education, and prescribe its duties."

MR. O'SULLIVAN. I offer a substitute for the section.

THE CHAIRMAN. There is already one substitute pending.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: For one I am opposed to both sections

seven and eight in the report. I did not think, nor do I now, that it is necessary to have an elective Board, if any. But at the suggestion of some members, instead of striking out section eight, it was thought best by some to leave the Constitution elastic, so that the Legislature at some future time, if they should want a Board of Education, might provide for it, and prescribe its duties, and therefore I have proposed this amendment. Sir, section eight, without some such amendment, would be meaningless. We would have to strike it out. But instead of that I propose a substitute for it.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. If this school book question is not provided for in section eight, there will be nothing done about it, and it will remain as it is at present.

MR. ESTEE. As far as I am concerned, I do not wish this Convention to do anything about the school book question. I speak my own sentiments.

MR. BLACKMER. If there is any one question, it seems to me, that ought to be taken away from the Legislature and put somewhere, in order to rid that body of the influence of a powerful lobby, it is this. It is a well known fact that the Legislature now has power to say who shall determine what the text-books shall be. It is provided that the State Board shall require uniformity.

MR. ESTEE. Has not the Legislature full power now, without any constitutional provision, to prescribe the rules and regulations relative to text-books?

MR. BLACKMER. Yes, sir; and the Legislature has never done anything, except to make the text-books uniform throughout the State, and so have left this matter where it stands to-day. In my judgment it is an evil that ought to be corrected. This section makes it the duty of the State Board to recommend a series of text-books which, in their judgment, are the best that can be procured. It is then left optional with the local Boards of Education, or in places where local Boards do not exist, the Supervisors of the county are to adopt, if they see fit, one of the series; or they may adopt some other. It provides for county uniformity, which is certainly a very desirable thing; but it obviates State uniformity, from the fact, that while the recommendation of the State Board will naturally carry great weight with it, there is nothing obligatory about it. These are certainly very desirable things. It would be certainly a very undesirable thing to allow each district in the county to decide for itself, because it might result in having two or three different kinds of books in the same county. A child going out of one district into another, would be obliged in that case to procure new books. For this reason we should insist on county uniformity. I hope something of this kind will be adopted in this Constitution, for the purpose of removing this vexed question from the Legislature, where it has been a curse; for the purpose of securing county uniformity, and, in a measure, State uniformity. I think it is an improvement on the old system, and I know that those who have watched the course of this text-book question for the last eight or ten years will be satisfied with this provision.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: I am opposed to the amendment of the gentleman from San Francisco. I was desirous of striking out section seven, and I would certainly desire to place something in its stead that would prevent the Legislature from imposing upon us a State Board. I desire to leave this matter to the counties, and I will read to the committee an amendment which I shall offer, if the pending amendment is voted down. "The local Boards of Education, or the Boards of Supervisors and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools for their respective counties. The text-books so adopted shall continue in use for not less than four years. They shall also have control of the examination of teachers, and grant teachers' certificates within their respective jurisdictions." This carries it home to the control of the people, and gets rid of the infamous lobby around the Legislature. Let us have it among ourselves, so as to control the text-book matter and the examination of teachers.

MR. WINANS. Mr. Chairman: Is it in order for the member from Santa Clara to offer an amendment now?

THE CHAIRMAN. He can offer an amendment to the amendment.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I will second that amendment. This amendment will lodge the power in the local Boards, where it should reside. This matter of State uniformity has done great evil to the State and mischief to the people. Wherever it has been tried the same thing has almost invariably resulted. It induces these men who publish books in other States to come here and purchase their entrance into our schools by the use of bribes. We are ashamed to contemplate it, and yet every man knows it is true. You destroy the method, and entirely overwhelm the possibility of its further existence, when you adopt this system of allowing every locality to determine its own course of education, and you realize the highest interests of the people. As we have adopted the general principle of local legislation, we should certainly adopt the same course here. I think the gentleman has reached a most complete method of getting rid of this evil. I certainly not only second the amendment he offers, but shall support it, and I hope to see it adopted by this Convention. When this matter shall have been taken away from the Legislature, the community will be at peace.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I hope the amendment will be adopted. I am opposed to a State Board entirely; and we certainly want to take this matter out of the hands of the lobby and the Legislature. I am opposed to the State Board, because there is almost always frauds practiced in regard to the examination questions. It is not as honest as a local Board, and is not, and never will be, as competent as a local Board.

MR. O'SULLIVAN. Mr. Chairman: I wish to offer a substitute.

THE SECRETARY read:

"The Legislature, at the first session after the adoption of this Constitution, shall provide by law for the compilation and printing of a complete series of school text-books, all the necessary mechanical work connected therewith to be done in the State Printing Office. The text-books thus compiled and printed, shall be the only text-books used in the public schools of this State after the first day of January, eighteen hundred and eighty-one, and shall be furnished to all scholars in said schools, free of cost."

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. That will do away altogether with this lobby. In presenting this substitute to section eight, I have no other motive than the strongest desire to subserve the interests of the people of this State, firmly believing that the section which I propose, will, if adopted, work in that direction, and to the public satisfaction. We are all aware that this question regarding the adoption of text-books to be used in the public schools, has been a source of never ending wrangling for the past twenty years, between rival book houses, who had been seeking to secure the selection of their particular books by the authorities in this State; and these miserable, competing, rival book houses have stopped at nothing to accomplish their ends. They have corrupted the School Department, and at every session of the Legislature, whenever any proposition in regard to school books came before the Legislature, one of the most corrupt lobbies that has ever gathered in this building has besieged these halls. These are notorious facts, Mr. President, and these things will be done away with if you adopt my proposition. At the last session of the Legislature, bills were introduced, one by Mr. Smith, of Los Angeles, and one by Senator Johnson, of Sacramento, both proposing to take this vexed question away from the Legislature, and away forever from the corrupt lobby influence, by having the State compile and print school text-books. But Bancroft had his agents, attorneys, and lobbyists upon the floors of your halls, and the bills never became laws. McGuffey and Bancroft are powerful in this building. I understand that both firms have their legions hovering around this Convention. Some of our teachers are simply agents and lobbyists for Bancroft & Co. Some of them receive a royalty upon books sold. Now, the State can do this work, and furnish these books cheaper that any private publishing house can do it. We have one of the finest and most complete printing offices in the world, lying idle more than half the year, and with the addition of a book-bindery, costing three or four thousand dollars, all the work can be done here as well as in the east, or anywhere else. The compilation of the books may cost five or ten thousand dollars. You would save an immense amount of money. You have every guarantee of economy in getting out these books. It would be a vast benefit to the people of this State, and destroy the occupation of one of the most infamous lobbies in the country. It would save to the State a half a million dollars every two or four years, which the people lose by reason of the frequent changes in text-books. Finally, if the State prints these text-books, and distributes them free to all alike, no one can object, and the feelings of parents, poor parents, will not be hurt.

MR. ESTEE. Mr. Chairman: I will withdraw the amendment I offered. The amendment presented by the gentleman from Santa Clara is in accordance with my views; I am in favor of home rule.

THE CHAIRMAN. There being no objection, the gentleman has leave.

MR. LAINE. Then I will offer my amendment.

THE SECRETARY read:

"Strike out all after the words 'section eight,' and insert the following as a substitute: 'The local Boards of Education, or the Boards of Supervisors and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools for their respective counties. The text-books so adopted shall continue in use for not less than four years. They shall also have control of the examination of teachers, and grant teachers' certificates within their respective jurisdictions.'"

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I am in favor of the proposition of the member from San Francisco, that a series of school books, to be determined upon by the proper authorities of the State, shall be printed at the State Printing Office. I think that would entirely do away with this text-book lobby, in favor of this series or that series. I have before me some estimates as to the cost of text-books printed at the State Printing Office. For the first thousand, complete in every respect, and equal to the Pacific Coast Readers, the total cost would be five thousand nine hundred and thirty-six dollars and twenty-six cents. That is for the first thousand, and for each additional thousand the cost would be one thousand one hundred and sixty-eight dollars and forty-cents. There are five books in the series, and that would bring each book to a cost of about twenty-five cents. I don't know what price is being paid to these agents from the east for the readers, but I believe it is in the vicinity of seventy-five cents per volume. There would be a saving to the people of fifty cents on each volume. Now it is a fact that this State has, at large expense, established, within a few rods of the Capitol, one of the finest printing offices in the United States. There is hardly any species of printing which cannot be done there as well and as cheaply as it can be done in any State in the Union, and it would be proper, it seems to me, for the State to utilize the office in this way.

MR. HOWARD, of Los Angeles. Mr. Chairman: I would like to ask

my colleague if the books are to be selected by the local Boards, in the counties, how can the printing be done at the State Printing Office, because each county might select a different set of books? They must therefore be the same. If that course is taken there would have to be some central authority to select the books.

MR. AYERS. I am speaking on the question on the supposition that we may establish some central authority which would authorize the compilation of these books. I don't think it would be a very great disadvantage to the children of the State to have a uniform series of readers throughout the State. The great objection now is lack of uniformity; it has led to speculation and corruption. I don't think there would be any serious objection to uniformity, and the State can lay down a rule by which a series of readers can be compiled by the State, the State owning the copyright and printing the books, and then all this corruption about text-books will be done away with. I believe it would be of great benefit to this State, and I believe we have plenty of writers capable of compiling a series of text-books.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I am opposed to centralization, as much so on matters pertaining to education as I am on political matters, and I am under the impression that the principles embraced in the amendment offered by the gentleman from Santa Clara are correct, and I hope they will meet the approval of this committee. It is in accordance with the principles which this body has already adopted. It gives to certain parts of the country certain rights and the control of their own affairs, and it avoids thereby the vicious influence of the lobby upon the Legislature of this State, by granting to the local Boards of these counties the right to choose the kind of books which they may, in their judgment, think best. It is a sort of freedom that will tend to keep the people of the counties awake, because they will feel a personal liability and responsibility resting upon them in matters of education, and in this way they will be made to feel that the interests and the success of the rising generation depend upon them, and they will therefore be alive to the importance of the trust reposed in them. And having the teachers to examine, either by the Board of Supervisors or other local authority, as a matter of course there will be a degree of interest throughout, and I am under the impression that this will be a solution of the whole difficulty. I hope the members will consider this proposition in its true light, in accordance with its importance, for it is a matter of no small consequence. I am under the impression that when we look at it well we will consider this amendment to be right.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I am in favor of the amendment offered by Mr. Laine, and opposed to the other amendment pending. I don't think this State wants to go into the business of printing and publishing books for the children of this State. The way it is now, nearly all the taxes of this State are used up for the common schools. It costs more than as much again as all the balance of the departments of government. Now, in addition to that, they propose that this State shall go to work and print free text-books. Why don't they ask for the rest, and require the taxpayers to clothe the children, and furnish them with shoes as well as books? I think the cases are parallel. You might just as well ask the taxpayers to furnish clothes as to furnish books. Nor can I see how it will tend to prevent jobs and corruption, because if the State enters into the business of publishing school books, there will be just as many jobs as ever, on the part of those who are interested in furnishing materials and supplies, and the people will have to pay for it. I believe the children should buy their own books; then the parents will take some interest in the way the children take care of them.

MR. LINDOW. Let me ask a question. If the State furnishes the books, they would be only entitled to one book to one child. Wouldn't they be taken care of? If the child he took and tore it up, he would not be allowed in that school until the parents got another one. I know cases in Germany where you had to go with a broken book. [Laughter.]

MR. OVERTON. Have you got through with your question? I don't think the children would take as good care of them as they do now. The parents would not take so much interest in them. Independent of that, we have no right to use these books unless the State buys the copyright; and if we do that, there will be the same chance for jobs that there is now.

THE PREVIOUS QUESTION.

MR. HITCHCOCK. Mr. Chairman: I move the previous question. Seconded by Messrs. Winans, Estee, Biggs, and Tinnin.

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

Carried—Ayes, 60; noes, 27.

THE CHAIRMAN. The first question is on the amendment of the gentleman from San Francisco, Mr. O'Sullivan.

Division being called, the amendment was lost, by a vote of 41 ayes to 63 noes.

THE CHAIRMAN. The question is upon the amendment of the gentleman from Santa Clara, Mr. Laine.

Adopted.

THE CHAIRMAN. The Secretary will read section nine.

THE SECRETARY read:

SEC. 9. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools.

MR. RINGGOLD. Mr. Chairman: An amendment to section nine.

THE SECRETARY read:

"Add to the section: 'Nor shall any sectarian or denominational doctrines be taught or instructions therein be permitted, directly or indirectly, in any of the common schools of this State.'"

MR. HERRINGTON. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"No sectarian or denominational books shall be used, and no sectarian or denominational instruction imparted in the public schools of this State."

REMARKS OF MR. RINGGOLD.

MR. RINGGOLD. Mr. Chairman: I don't see that the amendment to the amendment is any better than the amendment.

MR. HERRINGTON. It adds to it.

MR. RINGGOLD. There is more in that amendment than you may suppose. I could mention the name of a lady teacher in San Francisco, who makes a business of knowing the particular faith of the parents or guardians of the children in her class, and I assure you that some of the children are more favored than others. The thing is done often, and I want to guard against any such influence in our public schools.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I am in favor of the amendment proposed by the gentleman from San Francisco. It is a very proper addition to section nine. The section prohibits the appropriation of public moneys to the support of sectarian schools, but it does not go far enough and prevent the teaching of sectarian doctrines in the common schools. Therefore it seems to me to be a very proper amendment to adopt. The amendment of the gentleman from Santa Clara is on the same subject, but in my judgment is not so comprehensive as the other. One excludes such books, while the other goes farther, and says, that no such instruction shall be given, directly or indirectly. It not only includes the exclusion of books of that character, but forbids any instruction of that kind, in any way whatever. Therefore I think it covers all that is intended by the gentleman from Santa Clara, and is more compact in its phraseology.

MR. WINANS. Mr. Chairman: I see no objection to the amendment offered by the gentleman from San Francisco. I believe I am not allowed to accept amendments for the committee. I would accept it if I could. I am satisfied the committee have no objection to it.

MR. HERRINGTON. Mr. Chairman: I am no great stickler for this amendment. If the gentlemen of this Convention don't see fit to exclude sectarian books from the public schools, and yet exclude sectarian doctrines from being taught, I have no objections. My own opinion is, however, that sectarian books as well as sectarian doctrines, ought to be excluded.

THE CHAIRMAN. The question is on the amendment of the gentleman from Santa Clara, Mr. Herrington.

Lost.

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

Adopted.

THE CHAIRMAN. The Secretary will read section ten.

THE SECRETARY read:

SEC. 10. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in their existing form and character, subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and of the several Acts of the Legislature of this State, and of the Congress of the United States, donating lands or money for its support. It shall be entirely independent from all political or sectarian influences, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs.

MR. HOWARD, of Los Angeles. Mr. Chairman: I offer an amendment to add to the section.

THE SECRETARY read:

"The Regents and Managers of the University shall provide for instruction in agriculture, mechanic arts, mineralogy, and the applied sciences."

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I think there ought to be an agricultural department in the University. I am somewhat surprised that this provision in relation to agriculture has been neglected. The State University is endowed with two hundred sections of land, and with that they can have a department for mineralogy and agriculture without any material increase in the expenses. The mechanic arts ought also to be taught, and the applied sciences ought also to be taught. With such an endowment this ought to become a great and useful institution. It was endowed as an agricultural college in part, and these sciences ought not to be neglected. And I think the agricultural interest in particular, the cultivation of the soil, and all that pertains to it, ought to be taught. The mechanic arts ought to be taught; the applied sciences ought to be taught. We are fitting out too many men for the professions; we are overstocking the professional field, and we are not educating children sufficiently in the practical duties of life. We are not educating them or preparing them for the great productive employments. I believe the University ought to be prepared to teach all these things, and thus the students can select their own course of study, and study whatever branches may be necessary to fit them for the occupation or calling which they may desire to pursue. They ought to be allowed here to select their course of study, as they are in many of the universities in Europe, so that they may be fitted for the occupations which they are to follow in life.

MR. WEBSTER. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"The University of California shall constitute a public trust, subject to such legislative control as may be necessary to insure compliance with the terms of its endowment. It shall be entirely independent of all political or sectarian influences, and kept free therefrom in the appoint-

ment of its Regents and in the administration of its affairs. The Legislature shall provide for the proper investment and security of the several funds of the University; *provided*, that all the proceeds of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two, and the Acts amendatory thereof, for the support of a College of Agriculture and Mechanic Arts, shall be invested in a separate fund, and the interest thereon to be appropriated exclusively for the benefit and support of said Agricultural and Mechanic Arts College, as specified in said grant, and the Legislature shall provide"——

THE CHAIRMAN. The amendment is not in order at present.

SPEECH OF MR. FREUD.

MR. FREUD. Mr. Chairman: I rise to speak in defense of the University of California. As a member of the Committee on Education, I desire to express my approval of section ten of the report, perpetuating our State University in its existing form and character. As a graduate of the University, I feel that I owe it as a duty to the people of this State to speak frankly and fairly of their highest institution of learning. It has fallen to my lot to be the only alumnus of the University in this Constitutional Convention. I, therefore, feel compelled to ask your kind attention and earnest consideration of the few facts and thoughts which I shall here endeavor to present. Should I overleap the allotted time, I hope the committee will indulge me a few moments longer.

It is needless for me on this occasion to rehearse to you the inestimable value and importance of a good system for the higher education of the youth of our country. You who have shared its blessings know full well their worth. Those of you whom fortune has not favored with so precious a privilege are, nevertheless, ready to admit its magnificence, and ever zealous to bestow it upon your children. In every pursuit of life, be it ever so high or so humble, it is, after all, grit, and brains, and intelligence that in the end will carry the day. A free and pure public school system is the imperishable corner-stone of the American Republic. The lonely school house on the distant mountain slope, beside some trickling stream, is its basis of power, and the majestic university in the vanguard of civilization and progress is its tower of strength. Enlarge, perfect, complete that splendid structure, and upon it will be erected a republic, whose foundation shall rest in the eternal rocks of truth and wisdom, and whose career shall brighten with age and prosper with time.

Many favorable circumstances have combined to give to California a University of which she may well be proud. Numerous and valuable grants and gifts from the College of California, from Congress, from the State, and from private individuals, united to create and foster it in its infancy, and now maintain it in its growing maturity. Its course has been directed and guided by many wise and faithful men. But ten years old, it has risen from a mere infant, an obscure college, to the rank of one of the best and most famous universities in the land. In eighteen hundred and sixty-nine it started with but forty students. To-day it has over three hundred, and including the professional colleges, a grand total of over five hundred. It has to day, in active operation, eight complete colleges—Agriculture (three), Engineering (two), Chemistry, Law, Letters, Mechanics, Medicine, Mining, with all their subordinate branches, are fairly and fully represented. The University library numbers over fifteen thousand volumes. The museums, cabinets, and laboratories are among the most complete of any this side of the Atlantic. The rapid progress and prosperity of the University of California is a most marvelous event. It stands without a parallel in the recorded history of either ancient or modern learning.

The University of California has been established by the Legislature in accordance with the Constitution, and intrusted to the care of a Board of Regents, consisting of the Governor, the Lieutenant Governor, the Speaker of the Assembly, the State Superintendent of Public Instruction, the President of the State Agricultural Society, the President of the Mechanics Institute of San Francisco, the President of the University, and sixteen appointed Regents. The office of Regent is wholly honorary. There is no pay attached to the position. The instruction and government of the students at Berkeley are intrusted to the Academic Senate, consisting of some thirty-six professors and instructors. They have been selected for their special qualifications for the lines of inquiry and work assigned to them. They are recognized authorities in their respective departments, and many of them are men renowned, not only in this country but also in Europe. The benefits of the presence of a body of men so able and learned cannot be overestimated. Under this system of administration, in scarcely a decade, the University has grown and prospered with so much satisfaction and such marked success. I take this opportunity to publicly express my unqualified admiration for the general policy of the Board of Regents, and the zeal and nobility of the Faculty of the University. Say what you will of their failings, and charge what you may to their mistakes, there nevertheless stands in dauntless majesty a masterpiece of intellect and skill that has redounded to the honor and credit of California, and shall keep the memory of their services forever green in the minds and hearts of a generous posterity.

I cannot believe that this committee, or the people of the State, is prepared to change and sacrifice a system of administration that has proved so efficient and faithful. Objection has been raised to the appointment of a portion of the Board of Regents. It is urged that they should be elected directly by the people. No person more sincerely objects to appointment of public officers than I, whenever it can be avoided with policy and wisdom, but, sir, experience has invariably shown that the election of Regents involves the destruction and ruin of the University. Political prejudices and conspiracies creep into the institution and poison its best blood, and vitiate its highest energies. It sets the University adrift upon the boisterous sea of politics, sure to wreck to pieces on the rocks of partisan strife and party contention. A careful research into this matter has thoroughly convinced me that no surer and quicker way could be devised to strangle our young University than thus to hurl it into the cesspool and whirlpool of politics.

Now, a word or two as to the agricultural department. Many rumors, nearly all utterly unfounded, prevail as regards the nature and management of the agricultural department of the University. These rumors have sought to bring that department into some disrepute. For example, I have heard it said that there was but one student enrolled in that college. The fact of the matter, however, is that there are at present some twenty students regularly attending the college of agriculture. The work in this department includes both practice and theory, experiment and observation. To be sure, the students are not exercised in plowing, and hoeing, and reaping, and threshing, for these are mere mechanical operations of agriculture, and are best acquired on the farm at home; but they are taught why to plow, when to plow, and how deep. They are taught what crops to sow in certain soil, and what rotation of crops will best maintain the fertility of the soil; in a word, they are taught all the several principles which govern the development of plants under all variations of circumstances and conditions, and that, after all, is the rational, scientific, and only true agriculture. This department has already begun an agricultural survey of the State, and Berkeley is now an experiment station to investigate the varied soils of California. I need not dilate upon the immense value of such a work to the farmers throughout the land. It will furnish the basis for an intelligent and comprehensive conception of the marvelous agricultural resources of the Pacific Slope.

Again, sir, it has been urged that the Agricultural College should be detached and separated from the rest of the University, so that it may be more efficient under the direct control of the farmer. I hope, sir, that a proposition so monstrous will not be entertained by this honorable body, and least of all, by any farmer upon this floor. What farmer would consent to withdraw agricultural education from contact with higher culture in other branches? Where is the farmer who would make his sons the mere hewers of wood and drawers of water? That, sir, is not the ambition of the farming people of California. If you would have the young farmer look with pride to his profession, and deem it as it should be, the peer of any other on earth, then, sir, never, never, I say, for one moment permit the institution where its principles are taught, to be divorced from your State University, where are reared all other educated men in the State. But, sir, this system of separate organization for agricultural colleges has been tried in this country and in Europe, and has always proved a backward step, and in many cases a disastrous failure. In course of time the labor colleges have either developed into universities, or dwindled into second-class and low grade boarding schools. Divide the University of California, and you inevitably wound its efficiency and destroy its utility.

I admit that I love the University as the student loves his alma mater. I have spent the four happiest and proudest years of my life amidst its sacred groves and within its solemn halls. I have seen it rise from the tiny acorn to the stately oak. While I know and cherish all its virtues, yet I am not blind to its failings. As human nature is far from perfect, so human work lacks perfection. But, sir, take it all in all, and I frankly pronounce the University of California the best and grandest investment of the people of this State. That institution, sir, is paying a dividend to the State of California that shall increase and multiply with years. It is a noble monument to the enlightenment and munificence of the people of this commonwealth.

The section, as reported by the committee, perpetuates this great and sublime work. With no other interest than the welfare and prosperity of California; with no other feeling than a love for an institution that radiates knowledge and ennobles labor; I appeal to you, gentlemen, to sanction it with your approval. Especially do I call upon the workingmen and grangers to cheer it on with your encouragement, and push it forward with your support. The University of California should be the favorite child of the laboring classes throughout the land. Its doors are free and open to all residents of California, without regard to sex. The son of the poorest peasant, no matter how lowly, wherever his birth, or whatever his creed, may find at Berkeley an institution to carry him to the furthest realms of knowledge, and fit him for the highest functions of citizenship. Three fourths of the students at the University are the sons of poor men, hailing from every portion of the State. And, sir, if there be a spot on earth where poverty and wealth are measured by the sole standard of manhood and worth, it is the University of California. That institution, sir, is the very essence and epitome of democracy. The rich man can send his son to the East or to Europe for a college education. The son of the poor man must find at home the food to nourish his ambition, or forever grope in darkness and despair.

The University is still struggling in its infancy, but its future is resplendent with promise already. Generous men are showering upon it endowments of wealth. It is now very nearly self-supporting. In a few years more it will no longer require State aid. In a few years more it will live and thrive upon its own resources. We only ask that it may be kept aloof from the avarice and turmoil of political parties. We only ask that it may be left to prosper in the future as it has in the past, and many of you will live to see the University of California the first and foremost educational institution on the American continent. [Applause.]

SPEECH OF MR. WINANS.

MR. WINANS. Mr. Chairman: The amendment of the honorable member from Los Angeles is unnecessary, because the objects which it seeks to attain have already been reached. I will refer you to the report of President Gilman in reference to the Department of Agriculture, from which I read as follows:

"The most noteworthy changes in the College of Agriculture are the appointment of a new professor in that department, the commencement of field and garden work, and the enlistment of special lecturers to sup-

plement the regular instructions of the professor. The outdoor work is subordinate and auxiliary to the class-room instructions of the Professor of Agriculture, but its general direction is intrusted by law to the Secretary. Under him an accomplished and experienced gardener has been employed.

"On the first of February, eighteen hundred and seventy-five, Secretary Stearns made the following report of the work which he had commenced. A more extended statement may be expected before the session of the Legislature:

On the first day of June, eighteen hundred and seventy-four, work in this department was commenced, and has been pursued with energy. A portion of the grounds dedicated to practical agriculture has been thoroughly plowed, graded, and otherwise prepared by deep trenching and working over, for nursery purposes

Two propagating houses have been constructed and were ready for use in the latter part of August, eighteen hundred and seventy-four, and a commodious and convenient building for workrooms, with suitable benches for potting and handling plants constructed, with storage arrangements for prepared soil, pots, tools, etc., and a suitable office for gardener, and sleeping-room for watchman. The propagating houses are of the dimensions, respectively, of thirty by twenty feet, and sixty-four by fifteen feet, and in the rear of the latter is a laboratory pertaining to said houses, sixty-four feet in length by twelve feet in width. These buildings are arranged so as to facilitate the work, and so conveniently placed that the whole is easily supervised by the gardener. The propagation of plants of economic value, as well as such species as are more particularly required for the purpose of illustrating general botany, and ornamenting the grounds, in pursuance of the general plan devised by Mr. W. H. Hall, was at once commenced, and such vegetable forms as are valuable to the pomologist, and necessary to illustrate floriculture and arboriculture, have already been produced in large numbers. The entire domain belonging to the University includes two hundred acres, sloping to the west, a parallelogram in general shape, and presenting quite a diversified topography; its lower portion being about two hundred feet above the level of San Francisco Bay, and rising toward the east into hills, the summits of which are about nine hundred feet above the sea-level. Some forty acres are reserved for agricultural purposes and experiments, and the remainder to illustrate the principles and methods of landscape ornamentation, forestry, botany, and allied studies.

A well designed and convenient barn, thirty-six by forty-four feet, and a story and a half in height, has been built, and the principal road which traverses the farming grounds has been marked out and partly graded, to facilitate the farm work.

The propagating houses were ready for use on the twenty-second day of August, since which date ten thousand plants of twenty species of eucalyptus, five thousand acacias of twenty-five species, two hundred species of native and foreign conifers, also numerous rare forms peculiar to Australasia, South and Central America, and elsewhere, and many species of textile, medicinal, and other economic plants, have been produced. We may mention one hundred and twelve varieties of roses, thirteen of azaleas, twelve of camelias, and six of magnolias, for ornamental purposes The planting of a standard orchard, for the purpose of correcting the nomenclature of the fruits already in cultivation, and for furnishing hereafter scions and plants for distribution through the State, as well as for the introduction of new varieties to be distributed as above, has received proper consideration.

Now, if gentlemen will give me their attention, I will endeavor to show them how the University stands, and I do hope they will pay such attention as the importance of the subject demands. Sir, the Act of Congress provided for a land grant of one hundred and fifty thousand acres, and that the moneys realized from the sale of such land shall be invested, and shall constitute a fund, a perpetual fund, which shall remain forever undiminished, the interest of which is to constitute an endowment fund, for the support and maintenance of at least one college where agriculture and the mechanic arts are to be taught, but not to the exclusion of other studies. Now, it is an entire mistake to assume that this University was to be entirely an Agricultural College. Even the Agricultural College, so far as the Congressional enactment and donation extend, was not limited to agriculture. On the contrary, it is provided that there is to be not less than one—there may be more than one—not less than one college, where the leading object is to be, without excluding other studies, the promotion of such branches of learning as relate to "agriculture" and the "mechanic arts;" and both those terms are qualified, because the Act declares that the studies are to be such as are related to the subjects of agriculture and the mechanic arts.

This includes, in a measure, the entire scientific course, because all the departments of the scientific course are related to agriculture and the mechanic arts. Then there is also military instruction, which is made essentially a portion of the requirements of the Act. Then there are still other studies, classical and scientific, which the Act says must not be excluded. Furthermore, the Congressional grant provides that the modes of instruction shall be conducted in such manner as the Legislature of the State shall prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. What is meant by the term "liberal education?" It is such as shall constitute a liberal, practical education, in the several pursuits and professions of life. That is what the Act itself declares. It does not contemplate teaching agriculture alone; it is to teach, not to the exclusion of other scientific and classical studies, such studies as relate to agriculture and the mechanic arts, in order to promote the liberal education of the industrial classes, and in order to promote the higher education of the people in all the departments of learning, in all the departments of industry, in all the departments of intellectual advancement. This is the very thing that the Federal Government has been doing, and designing to do ever since it had public lands to dispose of for the purposes of education, and devoted them to that object.

Now, sir, the Act of the Legislature establishing the University was in exact accordance with the Act of Congress donating these lands. I will read again from President Gilman's statement:

"The State of California, like most of the newer States of the Union, received from the General Government a certain portion of the public lands for the use of a seminary of learning; and the Constitution of the State provided for the bestowal of these and other funds upon a State University. This was the nucleus of the University of California.

"Independent of State action, a private corporation, established in Oakland, maintained for several years an institution of learning under the name of the College of California. It acquired lands, funds, and good-will. When the University was organized it relinquished the field and gave up its property to the State, on condition of the perpetual maintenance of a College of Letters.

"In eighteen hundred and sixty-two, the National Government bestowed on the various States of the Union a certain amount of scrip in the public lands, for the maintenance in each State of 'at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts, in such manner as the Legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.'

"The scope of this national endowment has been well defined by many writers, but by none more clearly than in the following paragraph, which was written by Professor Atherton, once of the Illinois Industrial University, and now of the Rutgers Scientific School in New Brunswick, New Jersey. After referring to the terms of the grant as prescribed by Congress, he says:

This language certainly does not contemplate the teaching of "agriculture" alone, but of all the natural sciences which underlie its laws and processes, all the mathematical and physical sciences which are the basis of the mechanic arts, and whatever else is adapted to promote "the liberal and practical education of the industrial classes," not even excluding classical studies. It is, in short, the statement of a comprehensive scheme for promoting the higher education of the people—a thing which the government has been doing ever since it first had public lands to dispose of. The institutions thus founded have come to be generally spoken of as "agricultural colleges," simply for want of a more convenient designation, and probably, also, because "agriculture" happens to be the first important word in that part of the law just quoted.

"After prolonged discussion among the friends of higher education, the Legislature organized the University of California, by an Act, approved March twenty-three, eighteen hundred and sixty-eight, which was somewhat modified by the passage of the Political Code, and has since received some additional amendments. The 'Organic Act,' thus modified, still governs the University. It is printed with the last legislative revisions in the University Registers for eighteen hundred and seventy-four and eighteen hundred and seventy-five. The Board of Regents, on whom these laws devolved the administration of the University, was originally constituted as follows, in four distinct classes:

a. The Governor Lieutenant Governor, and State Superintendent of Schools, all elected by popular vote, and holding office for four years, and the Speaker of the Assembly holding office for two years, and elected by members of the Assembly, were the official representatives of the State.

b. The President of the State Agricultural Society and the President of the Mechanics' Institute in San Francisco, elected annually by these societies, were the representatives of the agricultural and mechanical interests of the State.

c. Eight members of the Board, holding office for sixteen years, were appointed by the Governor, with the approval of the Senate.

d. Eight members of the Board, holding office for sixteen years, were elected as honorary Regents, and were chosen "from the body of the State by the official and appointed members."

"The law expressly declared that no member of the Board should be deemed a public officer by virtue of such membership, but he should be deemed as discharging exclusively a private trust. The Regents were furthermore required to become incorporated under the general laws of the State. These provisions were intended to secure stability in the Board, and the removal of the University from political interference; while at the same time the official representatives of the State had power to prevent and correct abuses. Care was also taken, by providing six different modes of membership, and tenures of office which vary in length from one to sixteen years, that the Board should not be the representative of any class or faction. Sectarian and ecclesiastical influences were precluded by a requirement that a majority of the Board should not be 'of any one religious sect, or of no religious sect.'

"It would be well for the State if these historic statements in respect to the origin of the University of California were more generally remembered. It is frequently asserted that the University was founded as an agricultural college, and that the College of Letters should have no place in the organization; whereas the truth is, that the State, in its Constitution, provided for the establishment of a University, and all subsequent legislation has tended toward a liberal and comprehensive institution, in which all higher studies should be taught."

Sir, I desire that the committee should understand that the University exists in exact accordance with the organic Act of the Legislature of the State of California, which Act is in entire accordance with the terms of the Congressional grant. We have kept it up and maintained it for ten years upon precisely the same terms and conditions as those which were originally prescribed by Congress. In the first place, before it was organized, the College of California, a private institution of large wealth and influence, came forward and donated its entire property to the State, on condition that a College of Letters should be perpetually maintained and constitute a portion of the State University. The State accepted that donation, which was entirely independent of the Congressional grant. Thereupon the University of California was created, in accordance with both the donation and the terms of the Congressional grant.

Let us inquire what property the University now holds outside of what the grant conferred. It has property that amounts now to nearly three million five hundred thousand dollars, besides what has been derived, and is to be derived in future, from the Congressional grant, which amounts to about seven million dollars more. That includes all which has been received, and is to be received hereafter, from the grant. Thus, while the grant will realize more than seven million dollars, the University has property of its own, derived from other sources and situated in Oakland, amounting to three millions and a half. And it has no present debts. Although it has been said on this floor that the institution is in debt, that assertion is untrue. And the whole of its property, both real and personal, is entirely unincumbered. Now, the President of the University explains its financial condition, and that of its different funds, and shows the extent of its properties, as follows:

ENDOWMENTS—(FROM CONGRESSIONAL GRANTS).

Land Fund—From sales of land, grant 150,000 acres	$356,273 03	
Seminary Land Fund—From sales under grant of seventy-two sections	19,505 99	
Forfeited Seminary Land Fund—From sales of forfeited lands resold by the Regents of the University	480 00	
Total cash receipts from Congressional endowments		$376,259 02

INCOME—(FROM CONGRESSIONAL ENDOWMENTS).

Land Fund Interest—From interest received on deferred payments of principal, grant of 150,000 acres	$182,776 82	
Land Fund Fees—From fees on applications, certificates of deposit, and patents	9,252 50	
Interest on excess payments	3,372 46	
Seminary Land Fund Interest—On bonds)	1,111 50	
Seminary Land Fund Interest—On deferred payments, Controller's warrants	698 48	
Forfeited Seminary Land Interest	546 82	
Forfeited Seminary Land Fund Fees	16 00	
Special Investment Fund Interest—From investment of excess payments in bonds	1,042 00	
Interest on Certificates of Deposit—From interest on preliminary deposit of one dollar per acre, made by applicants for lands under the grant of 150,000 acres; said deposits held by the Land Department of the University, awaiting action by the United States Land Offices	14,599 56	
United States Endowment Interest—From interest on bonds purchased from proceeds of sales of land belonging to the grant of 150,000 acres	35,609 03	
Seminary and Public Building Land Fund Interest—From interest on deferred payments of principal, Controller's warrants	27,217 00	
		$276,242 17
Total cash receipts from Congressional endowments and income therefrom		$652,501 17

TRUST FUNDS.

Excess Payments—From collections of $1 25 per acre on double minimum lands	$61,974 84	
State Geological Survey—Collections on account of	4,417 85	
Total cash receipts from Trust Fund		$66,392 69
College of California—From amounts received from sales of real estate, etc	$83,235 00	
Building Fund—From amounts received for construction of buildings	357,396 37	
		$440,631 37
Amounts of income received from the State to pay current expenses		662,150 42
Total cash receipts from all sources		$1,821,675 65

"What have the Regents of the University to show for their expenditure?

"1. They have secured a corps of professors and instructors of ability and reputation, and established a curriculum of studies which, for its range and variety, bears comparison with the oldest and best endowed institutions in the Eastern States.

"2. They have, in the course of nine years, succeeded in establishing an institution of high grade, which already assumes an acknowledged rank among the Universities of our country—in which instruction is imparted in all branches of culture and useful knowledge, free to all residents of California, both male and female. No money consideration can represent the value of such an institution to the State.

"3. The amount expended for instruction in its various forms, for free scholarships, and for support (during a short period) of a Preparatory Department, has of course, gone beyond recall. For this they have nothing tangible to show. It is represented by the knowledge imparted to hundreds of the youth of our State. It will assuredly bear its fruits in time, in the form of wise statesmen and legislators, accomplished scholars, original thinkers and investigators, able jurists, public benefactors, and virtuous citizens. Dollars and cents cannot represent the value of these contributions to modern civilization.

"4. But, aside from the intangible blessings conferred by the University, the Regents have properties of great value to show for the money expended. The State now owns:

(1.) Two hundred acres of land at Berkeley, with cost of ornamenting, grading, and improving site—valued at	$250,000
(2.) Three first class buildings at Berkeley, with the furniture of the same	397,000
(3.) A museum, embracing extensive collections of geological, mineralogical, botanical, and ethnological specimens; also, works of art, etc., mostly private donations	50,000
(4.) A library, containing over 14,000 volumes—expended by Regents	18,000
Private donations (estimated value)	17,000
(5.) Collections of apparatus, physical, chemical, and other aids to instruction	25,000
(6.) Eight (8) cottages for students	24,000
(7.) Gymnasium building—recently the gift of Mr. A. K. P. Harmon	7,000
(8.) Printing office property	2,500
Printing press—gift of Dr. Samuel Merritt	1,500
(9.) Propagating houses, barn, farm implements, and orchard containing over five hundred varieties; also, many varieties of grapes, etc.	4,800
(10.) Forty-seven acres of land near Oakland—a gift from the late Edward Tompkins—present value	40,000
(11.) Toland Medical Hall, in San Francisco—a gift from Dr. H. H. Toland	75,000
(12.) Medal Fund—a gift from friends of the University	2,600
(13.) Brayton property—mortgaged notes	68,530
Brayton property—investment in bonds	20,140
(14.) Seminary Land Fund—invested by Regents in six per cent. bonds—cost	19,380
Total	$1,022,450

And these funds are invested in the best securities that can be obtained, which securities are deposited in the office of the Treasurer of the State. There is no danger, therefore, of any pecuniary loss being sustained hereafter; indeed, no possibility of its occurrence.

That is the condition of the University of California. It is a strong institution—strong from the magnificent endowment of Congress, and strong from the large donations derived from private sources, both of which exceed in the aggregate a total of ten millions.

This institution exists in a conglomerated form. It is open to both sexes. It is intended for all classes. It is subservient to all interests. It is designed to give the student the advantages of one department or of several, or of all, in his election. There is no distinction of persons—all men stand there alike, upon a common platform.

Permit me to read further from what President Gilman says, in reference to the advantages which the poor enjoy in common with the affluent:

"One of the best characteristics of the American colleges is the bringing together, on terms of equality, free from artificial and conventional distinctions, young men of different pecuniary conditions. The sons of the rich and of the needy grow up side by side, and the honors which they receive from one another, and from the Faculty, are bestowed without any reference to the homes from which they come. Thus year after year many of the highest distinctions are bestowed upon those whose struggles for an education have been carried on in the face of extreme poverty, and sometimes of other great embarrassments. In the University of California, as in other kindred institutions, the honors of literary and scientific distinction are thus bestowed upon the most meritorious, without any reference to their antecedent training. It is a great advantage of a system of public education, particularly in this country, that it brings together, on terms of complete scholastic equality, those whose material circumstances differ so widely. Almost every college of the country has found it expedient, in some way or other, to provide suitable encouragement to young persons while pursuing their courses of study. During four years of the history of the University of California, there were five scholarships the incumbents of which received each an income of three hundred dollars per year, from the beginning to the end of their course, and some of the most meritorious scholars here graduated owe their education to this timely assistance; but the change in the law effected by the Political Code abolished these scholarships, and no such aid is now given.

"The authorities of the University, however, have done all in their power to throw into the hands of those who wished it opportunities to earn money in various ways. Some students have given private instruction to other students who needed assistance in their studies; others have been employed on holidays and in vacations, and in their leisure hours, in rendering assistance in various manual occupations, both in work upon the grounds and elsewhere; some have taken care of the buildings, and some of the heating apparatus.

"Another agency by which many have found it convenient to add to their income has been employment in the printing office. The printing office was commenced soon after the University was removed to Berkeley, by the purchase of type and a press at a cost of one thousand three hundred and fifty dollars, which was given to the University by one of the Regents Subsequently, the Regents appropriated the sum of two thousand five hundred dollars for the purpose of expanding this office. It has been found an exceedingly convenient part of the apparatus at Berkeley, and has been the means also of imparting to many of the students a knowledge of a useful art, and of enabling many deserving persons to add considerably to their income. So far as students have desired work in connection with the farm and garden they have been allowed the opportunity, and in this, as in all other cases, have been paid the usual wages for their labor. At the same time it should never be forgotten that the scholastic duties of the various courses of instruction are so severe as to task all the powers of the young men who are here studying, and to diminish their capacity for manual labor. The ability to add to one's income by hard work while pursuing a course of study varies very much with individuals. Some are able to do a great deal in this way without impairing their standing as scholars; but, as a general rule, it is obvious that the chief business of every student should be the mastery of his lessons.

"A Students' Loan Association has been organized by a number of liberal gentlemen, though as yet no funds have been paid in. To this association we may look with confidence for aid in the future to deserving students."

Sir, an institution of that kind should be tenderly fostered and cherished by the State and by the people. It should be beloved by every citizen, and guarded with a zealous care. I trust this Convention will stand by it and refuse to obey the behests, or be beguiled by the artifices, of those who seek to destroy it.

MR. MORELAND. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Education, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. TULLY. I move that the Convention do now adjourn.

Carried.

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

ONE HUNDRED AND SEVENTEENTH DAY.

SACRAMENTO, Wednesday, January 22d, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barnes,	Edgerton,	Larue,
Berry,	Estey,	Noel,
Cowden,	Fawcett,	O'Donnell,
Crouch,	Finney,	Overton,
Doyle,	Freeman,	Porter,
Dudley, of San Joaquin,	Gregg,	Reddy,
Dudley, of Solano,	Hall,	Terry.
Eagon,	Hilborn,	

LEAVE OF ABSENCE.

Indefinite leave of absence was granted Mr. Edgerton.

THE JOURNAL.

MR. LINDOW. Mr. Chairman: I move that the reading of the Journal be dispensed with and approved.

So ordered.

PETITIONS.

MR. VAN DYKE presented the following petition, signed by a large number of citizens of Alameda County, asking the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to the members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Mission San José, Alameda County, California, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

Messrs. Graves, White, Burt, and Nason presented similar petitions.

Laid on the table, to be considered with the article on revenue and taxation.

Messrs. Howard, of Los Angeles, and Van Voorhies presented similar petitions.

Referred to the Committee on Revenue and Taxation.

NEW PROPOSITION.

MR. CASSERLY. Mr. President: I desire to present a proposition, and ask that it be ordered printed and referred to the proper committee.

Following is the proposition:

ARTICLE —.

STATE INDEBTEDNESS.

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

THE PRESIDENT. If there be no objection it will be ordered printed and referred to the Committee on State and Municipal Indebtedness.

EDUCATION.

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

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section ten and pending amendments are before the committee. The first question is on the amendment offered by the gentleman from Los Angeles, Mr. Howard, to add to the section: "The Regents and managers of the University shall provide for instruction in agriculture, mechanic arts, mineralogy, and the applied sciences."

MR. HOWARD. Mr. Chairman: If there is no objection, I will change the word "mineralogy," to the word "metallurgy," as that is the word used in the Act of Congress.

No objection was made.

MR. WINANS. Mr. Chairman: In regard to the amendment of the honorable member from Los Angeles, although it is not permissible for the committee to accept it, I want to say that the committee do not object to it. It is in effect now, and they are perfectly willing that it should be made a constitutional enactment.

SPEECH OF MR. MORELAND.

MR. MORELAND. Mr. Chairman: It was not my intention, sir, to say anything upon this subject, but section ten of this article, as reported by the Committee on Education, contains such extraordinary propositions that I cannot suffer it to pass unchallenged. Now, sir, in the first place, we are called upon, in section ten, to continue the University of the State of California in its organization and government, perpetually in its present and existing form and character. Now, sir, I do not know that that institution, at this time, has any particular form, or has yet made a character. That institution is yet in embryo in this State. That institution has only been in existence some eight or nine years. It has assumed no particular form, and I think it would be unwise in us to say that that institution should be continued in its existing form. It has always been my opinion, sir, that it required time, that it required decades and centuries for institutions to make a form and character that ought to be perpetuated. We are not only asked to continue this institution in its present form, but in its present character, whatever that character may be. I do not know what it is. It may be good, it may be indifferent. This institution asks us to give it a certificate of character, and it not only asks us to do that, but it asks us to give it a certificate which we cannot possibly revoke, no matter what naughty things it may do hereafter. That is one proposition that we are called upon to indorse; another is, that we are called upon to indorse, in this section, the several Acts of the Legislature of this State, in reference to that section. Now, sir, in eighteen hundred and sixty-two, the Congress of the United States passed an Act entitled "An Act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and mechanic arts." I wish, gentlemen, to notice the title of the Act. In section four of that Act we find the following language:

"And be it further enacted, that all moneys derived from the sale of the lands aforesaid, by the States to which the lands are appropriated, and from the sale of the land scrip hereinbefore provided for, shall be invested in stocks of the United States, or of the States, or some other safe stocks, yielding not less than five per centum upon the par value of said stocks; and that the moneys so invested shall continue a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section fifth of this Act), and the interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this Act, to the endowment, support, and maintenance of at least one college where the leading objects shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the Legislature of the States may respectively prescribe."

What I particularly want to call attention to in this section is, that the interest of this fund shall be inviolably appropriated to the objects of this Act. Now, sir, it seems to me that that language is plain. It seems to me that under that language the Legislature of this State could not divert that fund. It seems to me that they could not consolidate that fund with another; but, sir, they have done that thing, or they have attempted to do that thing, and we are called upon to ratify these acts of the Legislature. I say that we are treading upon dangerous ground. In the year eighteen hundred and seventy-eight—last year—the nineteenth day of March, an Act was passed consolidating the funds

which the State had control of, the funds of the University and this agricultural fund, and placing it in the hands of the Board of Regents of that institution. The funds which have been given for the support of this University, consist, in the first place, of the old original College of California and its property, which was turned over to this University; the ten sections of land which were given to this State for public buildings; the seventy-two sections which were donated to the State for the use and benefit of the University; and the sale of the tide lands, which I believe at the present time amounts to a little over eight hundred thousand dollars. That is what is called the University fund. It is a separate and distinct fund, calculated for the purposes of the University. But the Agricultural College fund is the proceeds of the sale of the one hundred and fifty thousand acres of land donated to this State, under the Act of Congress of July second, eighteen hundred and sixty-two. That is another fund. It is a separate fund, and has no connection whatever with the University fund. But in the year eighteen hundred and seventy-eight the Legislature of this State consolidated this agricultural fund with the others, and said that the money so invested shall constitute a perpetual fund, to be known and designated as the "Consolidated Perpetual Endowment Fund of the University of California." They consolidated this fund with the others, and they say that they shall constitute a Consolidated Perpetual Endowment Fund of the University of the State of California, in direct contradiction of the terms of the grant of Congress, it seems to me. The second section says:

"That all interest, profits, or revenue, arising from or growing out of said 'Consolidated Permanent Endowment Fund of the University of California,' shall be placed in the general fund of the University, and subject to disbursement to meet the current expenses of the University of California."

But they have gone farther than that. They have placed this University in the charge of the Board of Regents, and they have given charge of all these funds to that Board. They have further said this Board of Regents are not officers of the State, but it is a private trust. In another Act they place these funds under the control of this Board of Regents.

Now, sir, we see here that the Legislature of the State, in direct contradiction of the terms granting this land to the State, have consolidated this fund with the other funds of the University, and have placed it in the hands of this Board of Regents, to disburse in whatever manner they see fit, whether it be for the benefit of a College of Agriculture or whether it be for the benefit of other branches of that institution. Now, sir, the fame of this section ten of this report of the committee, I see by the morning papers, has reached the State of Kansas. On the last page of the Record-Union of this morning, fourth column, will be found the following from the Western Homestead, published at Leavenworth, Kansas:

"If Congress should appropriate half a milion of dollars to each State for the maintenance of a plow factory, and the Legislatures should use the money for the manufacture of astronomical telescopes or gilt-edged Hebrew dictionaries, people generally would indulge a faint suspicion that the Congressional appropriation had been grossly perverted; and, in due time, there would be an able-bodied row about it. That illustration is not a bit too strong when one seeks to set forth the difference between industrial colleges for the education of the working classes, and universities for the education of the professional classes. Yet Kansas is the only State in the Union which has fully recognized this difference and squarely shaped its course accordingly. In a few other States the agricultural college is a distinct institution; but in a great majority of cases it is only a 'department' of some more or less high toned 'university.' And, too, in the few States where the agricultural college is a distinct institution, the course of study is precisely that of the professional colleges with 'lectures on agriculture' added.

"From the inevitable logic of things, such colleges must grind out precisely the same graduates as do the professional colleges; and, therefore, such colleges must and inevitably will be failures, in the matter of giving a practical industrial education as distinguished from gilt-edged professional education. Nobody claims that the daily work of the lawyer is in any respect like that of the farmer or mechanic. Nobody claims that the same knowledge, plant growth for example, has the same practical value to the lawyer that it has to the gardener. And how anybody, who hasn't an axe to grind, can claim that the best education for the lawyer is the best education for the future farmer, is one of those dark and bloody mysteries which defy all logic as well as all common sense.

"And yet, with a few rare exceptions, the Congressional endowment for industrial education has been boldly and bodily gobbled up by the professional Universities in the several States; and, after consummating the fraud, the several Boards of Trustees of these Universities have patted themselves on the back for their arduous labor in the cause of 'education,' and have thanked a justice-loving God for enabling them to hook for their particular University so fat an endowment! Nevertheless, these same gentlemen would be the first to denounce the fraud of an executor who should use money bequeathed for the building of wagons for the very different purpose of making astronomical telescopes. Perhaps not more glaring than many other instances, but certainly more recent, is that of the University of California, which prides itself on having all the latest agonies in the shape of twelve-buttoned 'classics,' and kid-slipper 'fossils.' Its Board of Management is a close corporation, filling all vacancies. The institution has a fine endowment in its own right. And it now seeks, by a clause in the new Constitution of that State, to forever secure to itself the million or more granted by Congress to an 'Agricultural College,' and which million or more it gobbled several years since, despite the protest of the farmers and mechanics of that State."

SPEECH OF MR. WICKES.

MR. WICKES. Mr. Chairman: I must say that I am heartily in favor of the section as reported with the amendment proposed. It is difficult for me to estimate or weigh the temper of this Convention. I trust that it will sustain this section and sustain the University. We should build our educational structure upon a broad basis, and then we can elevate it higher as we proceed. I make an appeal to you for the State University. I am for it, first, because it represents a higher and progressive education. It takes the High School graduate by the hand and leads him to the highest education this State can give. As my young friend, Mr. Freud, eloquently said yesterday, the workingmen by all means should sustain the University. It is open alike to the rich and the poor, to the male and the female. It is true there are some rumors floating about in the popular mind that the funds have been mismanaged; that funds set apart for special purposes have been misapplied; that undue prominence has been given to some studies to the exclusion of others; that the useful has been sacrificed to the ornamental: that the standard of morals in the University is low; that the discipline is loose; that the teachers are inefficient, and that the institution is worthless. Now, I say these are floating rumors. Some of them originate in the minds of those who are interested in doing away with the institution. Others in the minds of some who are hypercritical and faultfinding. I see nothing tangible in these rumors, but I do say if there are any reforms needed in that institution, we here in this section deputize the Legislature to attend to them. The Legislature should direct the conduct of that institution, the principle upon which it is to be conducted, both as to the study and the discipline, without going into the minutia. The Legislature should sharply define the responsibilities of the Regents and hold them to a strict accountability for its management. They should inquire into its management, from time to time, and see that strict discipline be enforced; that due prominence be given to the studies of agriculture, mining, and the mechanic arts; that its course embraces the cumulated knowledge of the age. Let it borrow luster from the British Universities, and go ahead of them by identifying itself more fully with the spirit of the times. Again, let it teach a pure morality. Let it foster the spirit of religion for the end of all knowledge is to recognize in the forces of nature that will power and intelligence which pervades the universe; for the end of all knowledge is to have glowing conceptions of the wisdom, power, and glory of God, and be brought into harmony with his laws. Let the teachers of that institution be God fearing-men, for I tell you that moral and mental aptitudes are hereditarily transmissible, and are modified by the laws of society. Let the University be guided and directed by the spirit of Anglo-Saxon civilization so auspiciously inaugurated by Albert the Great, and it will be a monument to perpetuate our greatness as a State, and the memory of that good man and eminent scholar after whom it is so signally named.

MR. WEBSTER. Do I understand that the amendment of the gentleman from Los Angeles, is withdrawn?

THE CHAIRMAN. No, sir. It is not.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I do not like section ten, as reported by the committee. I am inclined to think, sir, that it would be going it too much blind, to use a homely phrase, for the Constitutional Convention to adopt the University of the State of California, with all of its officers, flesh, blood, and bones, together with all that it has done, good, bad, or indifferent, with all that it proposes to do in all future time, and canonize it as being the perfection of wisdom and goodness, and crystallize it into a monument that never could be changed by any future age or people. I am therefore opposed to the section, and am opposed to the amendment of General Howard, upon the principle that it would do no good as attached to section ten, and is not sufficiently comprehensive as a substitute for section ten.

Now, sir, in the Chronicle of yesterday, among the telegraphic dispatches from Washington, is a statement that Mr. Davis, the Congressman from the San Francisco district, has introduced a bill in Congress, at the request of the Regents of the State University, asking that Congress pass a law to confirm to the University forty-five thousand acres of land, I believe located in excess of the one hundred and fifty thousand acres granted by the Congress of the United States in the Agricultural Act of eighteen hundred and sixty-two. The dispatch states that Mr. Davis said, that while he introduced it at the request of the Regents of the University, he withheld his approval of the bill until he knew what the merits of the bill were.

The Act of Congress of eighteen hundred and sixty-two, granting land to States for agricultural colleges, granted to the State of California one hundred and fifty thousand acres. It seems that in taking up this one hundred and fifty thousand acres there has been taken forty-five thousand acres in excess of what was granted by the Act of Congress, and as it has been sold to private parties, and as it is not probable that title can be perfected from the United States, unless by the passage of an Act of this kind, it would leave the State of California with a large law suit, and she might be compelled to confirm title to forty-five thousand acres of land. I am opposed to the State of California being invited to that law suit, and possibly to that fraud. I am opposed, again, to section ten, as reported by the committee, because the Act of the last Legislature, as I understand it, consolidated the funds which belong to the University of the State of California and the funds which have been derived by the State of California under the Agricultural College grant of eighteen hundred and sixty-two. There has been realized from that, I think, about four hundred thousand dollars, and the probabilities are that there will be realized from seven to eight hundred thousand dollars. If it should turn out in the future that the Act consolidating the Agricultural College fund with the University fund should forfeit the Agricultural College fund, then it would be that the University of California

would have the entire donation of the five hundred thousand acres, or the one hundred and fifty thousand acres of land—whatever amount of money was received from that—and the Agricultural College would be without a cent. Then it would be for the State of California to make good the trust that she is here taking, and to appropriate seven or eight hundred thousand dollars, or a million or five million, as it may accumulate in interest upon that amount, to make good the Agricultural College. I am, therefore, opposed to it for that reason—that it is calculated to steal for the University, possibly, in the future, the entire fund, and make California put up another fund for the purpose of supplying that which has been taken by the consolidation Act. I am opposed to it, then, for that reason.

I am opposed to it for the further and third reason that, by the legislation of the State of California the conduct of this University is made a close corporation and above the law, and it is intended to crystallize it here above the law. The trouble now is to find out what it has done, what it is doing, or what it proposes to do. It only reports to the Legislature annually that it wants more money, and it is usually granted by the Legislature. Now, it has a fund, by the showing of the Chairman of the committee, of about three million five hundred thousand dollars of money and property. That is an immense fund for an educational institution of that character, and ought to be sufficient to run it for a vast number of years without calling upon the Legislature for any help. But it is too much money to be placed in the hands of men without any responsibility except simply to say that they are gentlemen, and that they will do no harm, and that they will do right, and that they are doing right. That is not the theory upon which we conduct business, upon which we conduct law, upon which vast funds are held in trust for specific purposes. But I want it so that the Legislature of the State of California can do away with the present regency if they see proper to do it; that they can put them all under bonds if they deem it necessary; that they can turn them all out and substitute new men if corruption has found its way within the precincts of the administration of that University. I am utterly and unalterably opposed to putting up these men as masters—like kings, who can do no harm. I therefore hope that section ten will not be adopted, nor that the amendment of the gentleman from Los Angeles will be added to it; but that it will be supplied by a new section which will place the whole matter in the hands of the Legislature to be dealt with as occasion shall require that it shall be dealt with. I want it further, so that——

THE CHAIRMAN. The gentleman's ten minutes have expired.

[Cries of "Leave!" and "Object!"]

MR. WYATT. I do not want leave.

SPEECH OF MR. MARTIN.

MR. MARTIN, of Alameda. Mr. Chairman: There seems to be some misapprehension in this Convention as to the proper administration of the lands granted by Congress to this State for the maintenance of the University. Congress made this grant to this State, and the State of California passed a special law transferring these lands to the Board of Regents for their administration. The Board of Regents have had the absolute control of this grant, and for the purpose of its proper administration they established a land office, the same as the Government of the United States. All parties who were desirous of being the beneficiaries of this grant had the opportunity to come into the office of the University and to make their application in due form, just as if they were making their application before the Land Office of the United States. When this application was made in that form, it was certified by the Land Agent of the University to the Land Office of the United States, where contests often rose between the University and individuals making application in the Land Office itself. That was the only way in which the Regents or the public could arrive at a proper understanding as to the position of applicants in the Land Office and in the University. All of these questions were adjudicated by the United States Land Office, and when there was no further objection in the Land Office of the Government in Washington it was then certified back that the land was open to those applicants. Then it was, and for the first time, that the certificate of purchase was issued to the applicant to the University. In all cases the University demanded that a certain percentage should be paid to the Treasurer of the University in order that the party should be compelled to carry out his contract with the University in good faith; therefore, he deposited twenty per cent. of the principal. All of the sales by the University of this Congressional grant were made for the period of five years. Twenty per cent. was paid, which went to the Federal Government. The Government was to receive one dollar and twenty-five cents an acre for all the lands sold by the University. The University in its contracts agreed to sell their lands for six dollars and twenty-five cents an acre; therefore, realizing to the University five dollars clear profit for every acre of land that was sold.

Now, Mr. Chairman, I merely wish to say this, that so far as that grant is concerned, it has been properly, honestly, and intelligently administered. Every dollar that has been received on that grant is in the treasury of this State, in this building, and it is proposed to put every dollar of it there, and keep it out of the hands of those who are to succeed the Regents that now have the administration of that trust.

I have before me a report from the Land Agent, who states that up to this time certificates of purchase have been issued for one hundred and thirty-two thousand one hundred and thirty-one acres. Lands yet undetermined in the Land Office of the United States, and before the General Commissioner at Washington, amount to seventeen thousand eight hundred and sixty-nine acres, which, taken with the land sold, makes up the one hundred and fifty thousand acres of land. The amount of principal received for the sales of this one hundred and thirty-two thousand one hundred and thirty-one acres of land up to this time, and deposited in the State treasury, invested in bonds of this State, and of cities and counties of this State, is three hundred and sixty thousand four hundred and fifty-seven dollars and twenty-nine cents. The amount of principal yet to accrue on these sales is three hundred thousand two hundred and two dollars and twenty-six cents, making a total amount of six hundred and sixty thousand six hundred and fifty-nine dollars and fifty-five cents. This three hundred and sixty thousand four hundred and fifty-seven dollars and twenty-nine cents is now on deposit, and the interest is paid annually. Of this three hundred and sixty thousand four hundred and fifty-seven dollars and twenty-nine cents, two hundred and eighty-six thousand six hundred and forty dollars and thirty-one cents is bearing interest at the rate of ten per cent. per annum, and thirteen thousand five hundred and sixty-one dollars and ninety-five cents is bearing interest at the rate of eight per cent. per annum. It is by these amounts, sir, taking the amount that is deposited in the treasury of the State, and all the amounts drawing interest, that the Regents have been able to carry on the University at all. It has been by their management that this sum has been raised up to one hundred and four thousand dollars a year. Every dollar that is paid upon this Federal land grant, and is now drawing ten per cent. interest, when invested in the bonds of this State simply brings in six per cent. interest. Therefore, we have not been in a hurry to realize this money, as long as we believed that it was properly and safely placed. There is in the treasury of this State to the credit of the University one million two hundred and eight thousand dollars, which represents the tide land grant of eight hundred and eleven thousand five hundred dollars, and this three hundred and sixty thousand four hundred and fifty-seven dollars and twenty-nine cents that has been deposited by the State Board of Regents.

Now, Mr. Chairman, these gentlemen have spoken about the consolidation bill of the last Legislature. I say this, sir, that the consolidation bill passed by the Legislature was for the purpose of incorporating funds that had no existence in any of the endowments of the University, but which were property belonging to its endowments. Here is eighty-six thousand dollars that the Regents received from the sale of real estate in Oakland, which had no place in the funds of the University, and could have been used by the Board of Regents in the payment of its current expenses. It properly belonged to its endowments, and in order to place these funds in the treasury of the State, and in order to consolidate these funds that had no existence, this seminary fund, the land grant fund, and various other funds of that kind, the Regents thought it best that a consolidation bill should pass, for the purpose of placing these funds all together in the treasury of this State, where they would have no difficulty in getting the interest. Why, Mr. Chairman, this Convention cannot for a moment believe that an Act of this Legislature could vitiate the Act of Congress. There was no intention of the kind. There never has been any intention of the Board of Regents to step outside of the Congressional Act, nor of the organic Act of the University. I say before this Convention, and I stake my reputation upon it, that the Regents, in every respect, have administered this University in a proper manner, and that there is not one dollar that has not been properly appropriated or that cannot be accounted for.

MR. VAN DYKE. I would like to ask Mr. Martin a question. Did the Regents request the passage of this bill just introduced in Congress?

MR. MARTIN. I have never heard of it at all.

MR. WYATT. Did you read yesterday's Chronicle?

MR. MARTIN. I have never heard of it at all.

MR. WYATT. It is a bill asking for forty-five thousand acres in excess of the one hundred and fifty thousand acres granted.

MR. MARTIN. Well, if it is asking for an additional grant, I hope they will grant it. I forgot to state one thing in reference to the lands sold by the Regents. The Regents have sold in excess of this grant, I think, because these lands are in contest in the Land Department, and when the application of the Regents fails somebody else gets the land. That has always been the case with the Board of Regents. We do not give titles. We do not sell anything until we have a perfect understanding with the parties that make the application. It is only in the event that the land becomes the property of the University that it will be conveyed to them. There is no contract at any time that binds the University in any respect, but it is the express understanding with these parties that they only get the land if the University gets it.

MR. MILLER. Do you mean that the Board has located more land than it has sold?

MR. MARTIN. We receive applications. That is all.

MR. WYATT. What do you receive on lands?

MR. MARTIN. Twenty per cent.

MR. WYATT. On all applications?

MR. MARTIN. Yes, sir.

MR. WYATT. You have located forty-five thousand acres more than was granted.

MR. MARTIN. We receive all applications. If we do not get the lands they receive back their twenty per cent. It is a perfect understanding.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I wish to say a word on this report For one, I heartily indorse the section as reported by the committee. I believe it is right, I believe it ought to be adopted. I believe that this fund is a public trust, and I believe that it ought to be declared so by this Convention. As to the Act under which this grant was made, it has been read, and I desire to comment upon it. We find in section four, that "the interest shall be inviolably appropriated by each State which may take and claim the benefit of this Act, to the endowment, support, and maintenance of a least one college, where the leading object shall be, without excluding other scientific and classical theories, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts." The leading object must be the teaching of such branches of learning as are related to agriculture and the mechanic arts. They must not exclude other scientific and classical studies, and

they must include military tactics. My friends here who object to what they call fuss and feathers, will have to decline this donation unless we have a little military. Now, the law says they must teach such branches of learning as are related to agriculture and the mechanic arts. Now, what are these branches of learning? I wish to turn over to the seven colleges that have been instituted under the statute. There are seven colleges—now eight—two of which have been endowed by private individuals—one, I believe, the law, and the other medicine. Is that so, Mr. Martin?

MR. MARTIN. Yes, sir.

MR. ESTEE. One of law, that is supported by the munificent donation of Judge Hastings.

MR. BIGGS. It is not supported entirely by private donations. Did not the State make an appropriation for the Law College?

MR. ESTEE. There was a private donation of one hundred thousand dollars, made by Judge Hastings, for the maintenance of that college, and the State pays the interest on that sum. There is just one hundred thousand dollars invested, and one of your citizens gave the money, and the mechanics, and the farmers, and lawyers did not give a dollar of it. Now, there is the seventh and eighth colleges that are supported entirely by private donations. The first six are supported by the funds, and they are as follows: First, the College of Letters. I claim that they cannot exclude other scientific and classical studies under the donation. That is my point. And so the College of Letters was endowed. But they were entitled outside of this to establish it. Look at the donations received elsewhere, outside of the donations made by the General Government. That has been explained by some of the Regents.

The next college was the College of Agriculture. Some of my friends—my friend from Butte, who takes a lively interest in almost everything, and especially taxation, and some in education—say that there are not many farmers there. I tell you, Mr. Chairman and gentlemen of the Convention, the fault is with the farmers. The professors are there, and the opportunity is there. The farmers do not send their sons there to learn agriculture. They want to make lawyers, and doctors, and preachers, and mechanical engineers of them. In other words, they want to occupy a sphere different from that which they have been filling. That is the reason. Produce the boys, and the university will furnish the education. Next comes the College of Mechanics; next, the College of Mining; next, the College of Engineering; and lastly, the College of Chemistry. Every one but the first relates directly or indirectly to either the mechanic arts or agriculture. Now, that is the way it is established, and it is a popular fallacy to say that any particular branch, or any particular interest is favored in that University. It was my privilege to be a member of the Board of Regents for two years, ex officio, as Speaker of the Assembly, and I say it with a great deal of pleasure, that I never saw a more painstaking, earnest, faithful, and honest administration of any public trust in my life. Time out of mind these Regents met there, and were all day engaged in the public interest, without money and without price, men who had business at home. The leading men of this State devoted their best time and the best moments of the day to the interests of this University without pay.

MR. HALE. How many of these Regents are practical farmers?

MR. ESTEE. One is, I know. The President of the Board of Agriculture ought to be. If he is not then the farmers better elect the right man.

MR. FREUD. The last gentleman who was appointed on the Board was a graduate of the University, and he is one of the leading agricultural gentleman of this State.

MR. ESTEE. I do not know what their business is. I do know that these men were faithfully devoted to the interests of the University and all of its departments. I do know that a more honest, upright set of men could not be selected anywhere within the range of my knowledge in this State. There was the Governor and Lieutenant Governor, the Superintendent of Public Instruction, the President of your State Board of Agriculture, the President of the Mechanics Institute in San Francisco, and sixteen others, appointed from the leading walks of life in this State; and there was always a quorum, and they always attended to the business before them. I confess, sir, that I am somewhat surprised to hear gentlemen get up here and deliberately charge that something is wrong; that money has been misappropriated; that there has been some stealing, without pointing out wherein it has been done. I tell you it is too common a thing for us all to charge against others what we would not permit others to charge against us; to say that this thing has been done in a surreptitious or wrongful manner, without pointing out wherein it has been so done. I wish to say here, that if you know anything against the integrity of these Regents, or anything against the faithful administration of the affairs of that University, let these statements be made now and here. Let us know the facts. Let us know wherein it has been unfaithfully and improperly administered, so that the friends of that great institution can have an opportunity to defend it, if defense be necessary.

SPEECH OF MR. WEST.

MR. WEST. Mr. Chairman: I protest, on the part of the farmers of this Convention, against the charge that that element of this Convention is making any war upon the University whatever. I protest against the insinuation that the agricultural gentlemen charge that the Board of Regents are not a high, honorable set of gentlemen, and that their motives are not pure and patriotic. I protest that the farmers are not opposed to the higher class of education. I realize the necessity of it, and I believe that agriculture is benefited by a proper maintenance of a higher grade of university learning in the State. But what the farmers do protest against is, under the name of Agricultural College, to so overshadow and so swallow up the agricultural department, that it amounts to nothing, so far as its benefits to agriculture are concerned. Now, it is well known that our agricultural scholar that goes to the Agricultural College, where he is brought into contact with the students pursuing studies in the other departments of the college, will naturally be attracted, and they take these students, one by one, from the Agricultural Department to the other departments. Now, what we complain of is this, that the greater will swallow up the lesser; that the College of Letters will swallow up the agricultural department; that they will make the whole thing a mere shadow, without the substance. What the farmers want is, that this fund that was made for the Agricultural College shall be appropriated to the legitimate purposes for which it was given, and to no other; and that it shall be placed upon a basis where it cannot be subverted by the present Board of Regents, or by their successors in office, to subserve the interests of the University, and not especially the interests of the agricultural department. The youth of our country are ambitious—properly so—and it is just as natural as life, when a young man enters college, to be led away by the popular drift in that college. Now, sir, every professor and every teacher in the college will induce every student there to take the grades of the higher branch, to study Latin and Greek and the languages, and little by little, the students are led away from the strictly agricultural department into the College of Letters. Ninety-nine out of a hundred will go into the study of professions, and agriculture is not benefited, only in the ratio that it is benefited by the maintenance of a higher grade of education.

MR. WINANS. By whom are they led off? What tempts them?

MR. WEST. By the necessities of the circumstances. You throw the two institutions together.

MR. WINANS. Not at all.

MR. WEST. They get up a rivalry of caste between the students of the two departments of the college, and the students of the agricultural department will inevitably fall in line.

MR. WINANS. They are entirely separate, and each student has a right to pursue a separate course.

MR. WEST. We do not deny that they have the right. What the farmers want is an experimental farm in connection with the Agricultural College, where practical instruction can be given in the culture of the soil. Experiments can be made there under the eye and under the instruction and teaching of experienced teachers. We fear very much that this kind of a practical education for farmer's sons cannot be acquired in this institution; but, of necessity, it will lead them right off the farms, into the learned professions, and agriculture will receive only nominal benefits.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: The issue that has been here raised in the matter of argument upon the tenth section this morning, seems to me to be a false issue. Now, the opponents of the tenth section do not in any degree desire to oppose the University as it is constituted. This is not, as has been maintained upon this floor, a battle against education. It is not a battle against intelligence. It is not a battle against the University of California as an institution of learning. The trouble here is that it has been charged upon this floor that each opponent of the present management, and the present system of management, is an opponent of education, and is trying to limit and restrict the educational facilities of the people of California and the Pacific coast. That is not the true issue, Mr. Chairman. The objection that we have to the tenth section—and I am free to say that I object to the tenth section, and shall not vote for it—the objection that is raised to the section is this: the section says: "The University of California is hereby declared to be a perpetual institution of this State, organized to administer a great public trust."

MR. ESTEE. Is it not a public trust?

MR. BEERSTECHER. I will explain in the course of the argument. That is not the main objection. The main objection that we have to the section is that it attempts to legalize every act of the Board of Regents since the University was instituted and established. Now, gentlemen, if the Board of Regents have acted honestly, if they have acted purely, if they have acted legally, then they do not need any white-washing from this Convention. What is legal, is legal now. What is unlawful in their actions, is unlawful now—if there be any such thing—and I do not charge it.

It is said here: "The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in their existing form and character, subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and of the several Acts of the Legislature of this State, and of the Congress of the United States, donating lands or money for its support." It must be perpetually continued in its existing form and character. Now, what is the object of putting that in? Why should there not be a power to change its form, and to change its character, if the people see that it is necessary to bring about a change for the good of the people themselves and in the interest of education? Every man having a seat upon this floor, and having observed the tendency of education during the last ten, fifteen, or twenty years, knows that the systems have changed; that universities have undergone a radical change. This will raise great and grave questions, and it is unnecessary. It is truly asserted that the University is a State institution, or, if you please, a State trust. That is sufficient. It is an institution of learning, and it shall be perpetual. We desire to make it perpetual. We desire to bequeath it to posterity as the best University in this Union; but we do not desire to hedge it about, or to build a granite wall around it, and say that its management shall continue just exactly the way it is to-day, and to build up bulwarks around this matter, so that no one can go up and scrutinize what has been done. We claim the right to examine into the workings of that institution, and if the Board has done wrong, we do not desire, by a constitutional amendment, to protect them from punishment

for that wrong. I do not know as they have done wrong, and I do not charge it. It is claimed, sir, that they have done wrongful acts.

MR. TULLY. Who claims it?

MR. WINANS. Where is it claimed? Who has ever said it?

MR. BEERSTECHER. I have heard more than five thousand persons in California talking about it. They talk about that University all over the country, and the people are dissatisfied with the management of it.

MR. TULLY. Will the gentleman name one person?

MR. BEERSTECHER. No, sir; I do not name individuals, nor do I attack individuals. I do not attack the Regents, and I am only giving what is the public sentiment. Now, this section attempts to perpetuate the University in its present organization and government; to make it perpetual; to continue its existing form and character. It not only does that, but it endeavors to perpetuate all the legislative Acts up to the present year. It says that all subsequent legislation must be in conformity with the legislation that has already been had upon the subject. Now, suppose we find out next year that all the legislation upon the subject has been wrong; then we are powerless and cannot remedy it, because we put in a clause in the fundamental law of the land that it must be in accordance with the prior legislation, no matter how wrong. It is, in other words, guaranteeing the acts of an agent without having the power of review, which is absurd in itself. If everything is right, why, of course, we certainly ought to have the right to review at any time. It says: "Subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and of the several Acts of the Legislature of this State, and of the Congress of the United States, donating lands or money for its support." Where that section refers to the Acts of Congress donating lands for its support, and that it shall be managed in compliance with these grants, it is surplusage, and it means nothing, because it was the contract between this State and the United States, upon the acceptance of these grants, that it would be so managed. It is entirely unnecessary to put any such thing into the Constitution, because the Courts of this State and the Courts of the United States would enforce compliance with these grants, and every lawyer and every intelligent man upon this floor knows that to be the fact. It is entirely unnecessary to refer to these grants. If that question ever rises upon these grants, the Courts will say they were given for a specific purpose, and if you draw the benefits, of course you must carry out the object and put into effect the purpose. Common sense dictates that, and it is surplusage and useless language.

THE CHAIRMAN. The gentleman's ten minutes have expired.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I shall confine my observations to the amendment proposed by the gentleman from Alameda, Mr. Webster. I object to this amendment, sir, upon the ground that it is a gross violation of a contract, and would be void if engrafted into the system. It is clearly void under the principles decided in the case of the Dartmouth College, and that it is so, I think, any lawyer will conclude when he comes to scrutinize that decision and the amendment. The fund granted by Congress and accepted by the Legislature under the decision in that case constitutes a contract, and a contract which is protected by the Constitution of the United States, and which neither the State Legislature nor this Convention can violate, for the Constitution of the United States is as much over us as it is over the State Legislature. Now, the fund granted is granted as an entirety, and it is not in the power of the State to separate it and to say that so much shall be applied to agriculture, so much to mechanics, and so much to science; and the moment you attempt it you violate that contract, and the thing becomes a nullity. It is obvious that if it were done the Congress of the United States, for a violation of a contract, could resume the grant. And not only that, every one that has made a donation to this institution upon the faith of that contract could recover his donation. For instance, take the case of Mr. Lick. He has made his donation upon the faith of this contract as he finds it in the Act of Congress, and if you violate it every lawyer knows that his heirs-at-law could recover the donation which he has made. We had better take care how we treat upon this subject. And so of every other person who has made a donation to this college.

Now, sir, what is the language of the Act of Congress: "And the interest of which shall be inviolably appropriated by each State which may take and claim the benefit of this Act, to the endowment, support, and maintenance of at least one college, where the leading object shall be, without excluding other classical and scientific studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the Legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

Now, it must be in its entirety, you cannot separate it. If you could, you could say that the whole fund should be devoted to the classics, or to military tactics, or the mechanic arts. It is obvious that this is impossible under this donation. You must keep the fund together. You may argue under this Act that there shall not be more than one college, but if you do, that college must teach the languages, must teach science, must teach the mechanic arts, must teach agriculture, must teach military tactics, and metallurgy, that is the language of the Act. Now, how are you to divide these funds? How are you to take one portion and give it to one department over and above the other. It would be an obvious violation of the contract. The proposition of the gentleman from Alameda, is that the Legislature shall provide for the proper investment and security of the several funds of the University, and that the proceeds of public lands donated to this State, by Act of Congress, approved July eighteen hundred and sixty-two, and the Acts amendatory thereof for the support of a college for the benefit of agriculture and the mechanic arts, shall be invested and used exclusively in the teaching of agriculture, mechanic arts, and military tactics. It is obvious and clear that such a provision cannot be maintained, because it violates the contract between the State and the Federal Government, to say nothing of the contract between every individual who has made a donation and the State. It is a clear violation of the foundation of the college, and that it is so cannot be mistaken. That no such amendment can be supported as a proposition of law seems to me too clear for argument or controversy.

Now, as to the management of the institution; there is no evidence before us that it has not been fairly managed. I believe it has been. There may have been mistakes; there may have been errors; but that does not affect this amendment. This amendment looks to a practical destruction of the fund, because the very moment you divide it out you would be in the same condition as if, instead of appropriating the school fund to free schools it was taken and divided out among the different religious denominations of the country. The amendment is not practical. When you come to the principal of the thing it can be done, but when you come to the law of the thing it is, in my estimation, so clearly unconstitutional that it ought not to be entertained by this Convention for a moment. We may say how languages shall be taught; we may say how agriculture shall be taught; we may say how any of these branches of knowledge mentioned in the donation from Congress shall be taught; we might say that the agricultural department should be managed as other agricultural departments are in some of the States, by permitting the students to work a certain portion of the time upon a farm attached to the college, and be allowed credit for the work; but when you undertake to take any portion of this fund and devote it exclusively to agriculture, you undertake to do that which we have no constitutional power to do, and which would clearly impair the obligations of a contract, if it did not destroy the whole fund.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: It seems to me that there is considerable misapprehension here in regard to the scope of the section. Of course, no one can deny that it is a great public trust, but objection is made to the provision that its organization and government shall be perpetually continued in their existing form and character, subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments and of the several Acts of the Legislature of this State and of the Congress of the United States donating lands or money for its support. Now, the first object which the framers of this provision had in view was, doubtless, to prevent the Legislature from overturning the organization as it exists. It is proposed to perpetuate that organization, so as to place it beyond the caprice of any Legislature to change the organization; so as, for instance, to throw the University into politics, or connect its management with political elections and matters of that kind. In other words, to insure the government of the University by a body free from all political influence, not liable to the shifts and changes of political maneuvering, but a body on which the community could rely for a firm, just, and honest administration of the affairs of the University. It is a matter well known to many gentlemen here that there are to-day a large number of persons possessed of large means who desire to make endowments to this University—some by will and some during their lifetime—but who are reluctant to do so until the University is placed on a basis where the changes in the political sky cannot affect it; where it cannot be thrown into the hands of politicians and taken out of the management of men who will continue its affairs simply with a view to its glory and its growth and its grandeur. These donations are, to a large extent, with them now with a view of having the University placed on a basis where changes of that description cannot be made. Yet, at the same time, it is the universal desire that it should be so far under control that all abuses in its management could be inquired into and remedied; and I undertake to say that all that this section does is to protect it in its organization, so that it cannot be made a kind of legislative foot-ball, but at the same time to preserve to the Legislature the right and the power to correct abuses. It says: "subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and of the several Acts of the Legislature of this State and of the Congress of the United States donating lands or money for its support."

Now then the Legislature, under this section, has full power to exercise such control as may be necessary to insure compliance with the terms of its endowments, from whatever source—from Congress, from the Legislature, from private individuals. The Regents are not permitted to divert the property of the University from its original purposes. They are not permitted to trample upon the Acts of Congress or of the Legislature; but for all such purposes they are placed under complete legislative control. Now can it be said that this is raising up a power beyond all control—beyond all reasonable control? It is simply saying that the Legislature may not destroy the organization, but it may help the organization within its proper limits. It may correct any attempted abuse within it. It possesses all the power which is necessary to enable it to see that this great public trust is duly administered; but it has no power to destroy the organization which has been adopted, and the advantages of which have been already so largely developed. I know nothing of the interior details of the management of this University; but I have seen something of its general results. I have had the pleasure of being acquainted with a number of the gentlemen who are engaged in that institution as professors. I know them to be gentlemen of the highest character, of great learning, of reputations in many instances extending beyond the limits of California, and beyond the limits of the United States; and I find that when the students come forth from that institution as graduates—those that I have met with—I find accomplished gentlemen, learned, and fit to enter into any and every career of life, whether it be letters, science, agriculture, or mechanics. And this is all the fruit of ten years.

Now, let me give an instance in regard to the difference between general management here and general management in other States. Why, this donation in many of the other States was frittered away in the course of a few months, and much to our injury. The college scrip of some of the States was thrown in the market and sold at forty cents, to land monopolists, who entered upon it and monopolized a large amount of the public lands of the State of California. We know that Pennsylvania college scrip was bought up at forty cents on the dollar, brought to California, and placed upon the land here. Has any such thing been done here by our Regents? On the contrary, they have administered the trust, in all its important and leading features, in a manner to challenge the admiration of the people. I hope that this section will pass.

I am perfectly willing to see General Howard's amendment to it. It is a very good and acceptable amendment. I do say this, that as it is administered now, the Regents are doing everything in their power to carry out the trust according to its original intention. We find here established all these colleges, and so far as the Agricultural College is concerned, if those who are particularly devoted to it are not as numerous as those who are devoted to other branches, it is simply because of circumstances, or because the parents or guardians of the students have designed that they should follow another path in life. It is open to them. There is the college, and there are the professors. You cannot expect, gentlemen, that within the short limit of ten years everything can be accomplished which will be done in a greater space of time. Gentlemen who do not find everything exactly according to their wishes, who do not find flourishing farms with students over them, engaged in the practical as well as the theoretical study of agriculture, will find that the time has been too short to make all the improvements which it is contemplated to make in the course of time. But if they preserve this organization as it is now, they will find donations flowing in, in large quantities, from every quarter, which will enable the Regents to realize that idea more fully of teaching the science of agriculture in a practical manner. The institution is in its infancy, and we do not expect that the infant will do what the full-grown man will be able to accomplish. I know that if this section is adopted, and if this Constitution is adopted, that there will flow into the treasury of this institution large sums of money which I am certain will be kept out if you leave it as a matter to be changed from time to time, as the will of the Legislature may suggest. I hope that the section will be preserved intact, and will be carried into effect by the Convention.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: I have been a member of the Board of Regents, and am somewhat conversant with the management of the University. Having been a member of the Legislature, I am somewhat familiar with its history, but I must admit that I have heard more with regard to the misdeeds of that institution this morning, than I have during the twelve years that I have been a member of the Board of Regents. I do not know that I can answer all the objections that have been made against the administration in the course of ten minutes, but I would like to satisfy this Convention, if I could, that the letter of the Act of Congress has been complied with, and that the Act of the Legislature, organizing this institution, has been complied with. It has been stated here, or some one says, that this Board of Regents is a luxurious set of persons; that they indulge in champagne and things of that kind This is all new to me; I have never seen any champagne flowing at the meetings of that Board. We meet in the fourth story of a building in San Francisco. It is a very onerous duty. It is not a pleasure. I am willing to give up my position on that Board of Regents to any of you gentlemen who feel competent to administer it and to take it off my hands. I do not want it. I do it because I take an interest in the University. I do not do it for profit, and no other Regent does. In the course of time that I have been there I have spent money out of my own pocket to the extent of perhaps three or five hundred dollars a year, and I have yet to see the first dollar that ever come into my pocket by way of salary, or into the pocket of any other Regent. I know that the opposition to this Board has arisen among men who want to control the funds of that institution, not in the interest of the public, but for their own private gain and advantage. I know the intrigues that have been going on throughout this State, and I know where they originated; but I care not here to allude to private matters, but if any one wishes information, I will give it to him in private if he desires. Now, as to the complaints that have been made here by five thousand people. Five thousand men may constitute a rumor, or five hundred men may, or five men. Out of his five thousand let him name five men that will come up and make the charges against the Board of Regents of the University. That is little enough to ask. I would like to hear them and know them. If there has been any stealing there I know nothing about it.

MR. HEISKELL. Did not an investigating committee of the Legislature find that there had been gross mismanagement, if nothing else?

MR. HAGER. I do not know that they did. I was sworn as a witness, and I stated there, under oath, what I state here, that if there had been any stealing, I did not know anything about it. It is not an easy matter to get up here and explain in detail, matters that cover fifty or one thousand dollars.

MR. BARTON. Will you allow me to name five men? I refer you to the committee appointed by the Speaker of the House, during the session of eighteen hundred and seventy-three-seventy-four, to investigate the condition of affairs at the University. They found thousands of dollars for which the Regents could not produce vouchers.

MR. HAGER. I do not think they found thousands of dollars——

MR. BARTON. I make the charge.

MR. HAGER. I do not believe that any Regent of the University has ever misappropriated one dollar of its funds. There have been a great many honorable men upon that Board. Governor Haight was a Regent most of the time. He was our attorney after he ceased to be a Regent, and the Board did not take any action except it was concurred in or recommended by him, for years past. I do not know what the Legislative committee referred to did, I was absent at that time, but I do say this, that I do not believe they ever traced one dollar of the funds of the University to the pockets of any Regent, or that any Regent ever made a dollar out of the trust, and I defy all proofs to the contrary.

Now, then, Mr. Chairman, as I have stated I would like to explain how this institution originated, how it was formed in connection with the Act of Congress and the Act of this State. Now, there is one mistake here, that has been made in all the arguments, that we have violated the Act of Congress. How have we violated? That we have departed from the very Act of Congress which was to establish an agricultural college and mechanical art college. Is that true? What says the Act? "The interest of which shall be inviolably appropriated, by each State, which may take and claim the benefit of this Act to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts." How? "In such manner as the Legislatures of the States may respectively prescribe." Why? "In order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." The State Legislature, gentlemen, has the control of this matter under the Act of Congress, and if its administration has been conducted according to the direction of its laws, who has violated the Act of Congress? Suppose the State Legislature has directed and authorized every Act that the Regents have done, would that bring any violation of the Act of Congress if the Regents followed the direction of the Acts of the Legislature. I say that this trust has been administered under this Act in this State better than in any other State in the Union. Congress made a special law by which we could locate on unreserved lands, by means of which we got five dollars an acre instead of one dollar and twenty-five cents. That is the bill that was passed while Mr. Casserly was in the United States Senate. In order to benefit this fund, the Regents went to Congress and asked them to pass a special Act, not that they should squander what they were allowed to spend, but that they might increase that fund, by locating their lands on unreserved lands. Yet we are told here that we have stolen the money and squandered the fund, and there it is in the treasury of the State of California, locked up in its vaults in bonds preserved to the State of California for the education of its youth as it was intended and designed. How many of you learned men could better administer that trust than it has been administered? Who of you would have stolen less of these funds than have been stolen? Look at the administration of public affairs in the State, city, county, and municipal governments. See how they have been administered, and compare it with the administration of this fund belonging to the University of the State of California. Now then what does the Act say?——

MR. WYATT. Will the Judge allow me one question. You do not pretend to defend the action of the Board of Regents upon the principle of comparative steal between that and any other steal, do you?

MR. HAGER. I only intend to defend them against the charges which have been made that they have stolen these funds, or improperly applied them. Had the charges not been made I would have never got off upon that subject.

THE CHAIRMAN. The gentleman's ten minutes have expired.

[Cries of "Leave" and "Object."]

MR. REED. Mr. Chairman: I wish to give the time allowed to me to Judge Hager.

THE CHAIRMAN. The gentleman has the right to give him the time if he desires it.

MR. STEDMAN. I object.

MR. HAGER. I do not speak upon these matters because I desire to speak, but because I think this Convention is under a misapprehension, and I want to set them right if I can; and I want to show that the Regents have complied with the law. The University was organized under an Act of the Legislature, passed in eighteen hundred and sixty-eight. What does that Act authorize to be done? That Act is in conformity with the Act of Congress, and provides the manner in which this fund should be made use of. I cannot of course read the Act, but I refer to it so far as I think it is necessary to bring the attention of the Convention to it. The first section says: "The University shall have for its design to provide instruction and complete education in all the departments of science, literature, art, industrial and professional pursuits and general education, and also special courses of instruction for the professions of agriculture, the mechanic arts, mining, military science, civil engineering, law, medicine, and commerce, and shall consist of various colleges, namely: "First, Colleges of Arts; second, a College of Letters; third, such professional and other colleges as may be added thereto or connected therewith."

Section three says that "the said Board of Regents shall endeavor so to arrange the courses of instruction, that the students of the different colleges and the students at large may be largely brought into social contact with each other, by attending the same lectures and branches of instruction."

Section four provides for the establishment of a college of agriculture, and section five for the establishment of a college of mechanic arts. Now, section seven says: "But provisions herein, and hereinbefore contained, regarding the order in which the said colleges shall be organized shall not be constructed as directing or permitting the organization of any of the specified colleges to be unnecessarily delayed, but only as indicating the order in which said colleges shall be organized, beginning with the College of Agriculture, and adding in succession to the body of instructions in that and the other colleges successively in the order above indicated. Only the first year's course of instruction

shall be provided for in each college at first, the other successive years' courses being in each year as the students advance to the same, until the full course in each college is established; *provided*, however, that the Board of Regents may organize at once the full course of the College of Letters, if, in their judgment, it is expedient so to do, in order to allow the College of California to immediately convey the residue of its property to the State for the benefit of the University, and to become disincorporate and go out of existence, pursuant to its proposition to that effect."

There is the authority to organize the College of Letters first, in order to obtain the grant from the College of California, which was disincorporated. Were they not authorized to institute this College of Letters? Now, perhaps it is not generally known that the College of California had a property. Its property was donated to the State of California for the benefit of the University. This institution was the successor of the College of California. The College of Letters has, therefore, been established in accordance with the directions of this Act, and the College of Agriculture, and the College of Mechanic Arts, and all these colleges, have been organized in accordance with the directions of this Act, by the authority of the Act of Congress, and not, as I said before, in violation of its provisions. We have organized a College of Mechanics, and for civil engineering and chemistry; and we have a medical college, which has been donated to the College of California; and we have a college in farming, that has been established; and we have a College of Letters, and the College of Law, which has been referred to, and which was a donation. Now, take the College of Agriculture. Its Faculty are the most enlightened and most intelligent men on that subject in the State of California. I put Professor Hilgard as the first man in agriculture and agricultural teaching in the State of California, and he is the leading Professor in that institution.

Mr. BIGGS. How may graduates have been turned out from the department of agriculture?

Mr. HAGER. Now, if we have a College of Agriculture and students will not go there to be taught agriculture, what will you do? The fact is you cannot teach agriculture in a college of this kind. I know something about this matter. I do not care to talk about my private life, but I was brought up on a farm, was raised on a farm, have worked on a farm. I know what it is to be a farmer, and if I had five hundred sons that I wanted to make farmers, practical farmers, I would not send them to the University of California, or to any agricultural college. Every farmer knows that you cannot learn practical farming at an agricultural college. It is not the place. There is something that you may learn in connection with agricultural chemistry and the admixture of soil, that is to be obtained in the books; and in horticulture you may learn a great deal from books. But men do not go to agricultural colleges to become that kind of farmers that go out to work practically on the plains of California. My friend Mr. Biggs never would go to the University of California to know how to carry out practical farming. He might go there for various matters connected with science and chemistry, and he might be enlightened. These students all have the opportunity. It is not a college. It is a university, and any man may go there and attend a lecture, whether it comes from the Professors of the College of Letters, of Mines, of Medicine, or any other department. There is no such thing as going into a school room to study over your book, with a teacher there to stand by and see that you are performing your duty. You go there and hear the Professors lecture on any subject that you see fit You bear an examination to see whether you have attended to your duties, and you get a diploma or certificate as to what you know. Any one can go there and connect himself with any of the departments.

Now, the first college built there was a brick building, and it cost a great deal more than it would have cost, by the State saying that it should be done by the day, and that eight hours should constitute a day's work. I do not object to eight hours being a day's work, but when a mechanic goes and works eight hours for so much a day, then he concludes that he can work two or four hours longer and get credit for another day. Some men worked ten hours a day, and in that way we paid a very high price for that institution. We have put up, recently, a Mechanic Arts College, and it cost us but thirty-five thousand dollars. It is the most extensive building on the ground, and well adapted to the use for which it was constructed.

SPEECH OF MR. LARKIN.

Mr. LARKIN. Mr. Chairman: I am surprised at the line of discussion that this question has brought forth here. It is not new. When anything affecting the State University, or the management of it, or the conduct of it since its organization, comes up, members of the Board of Regents have considered themselves bound to at once rise to a question of privilege. Yesterday we were informed, in the elaborate argument of a learned and distinguished member of that Board, that there were a number of very wealthy people who would probably die soon and leave the University a large amount of property. Of course, we should be glad to have them, when they die, leave the property to that institution. The opposition to this tenth section is not opposition to the gentlemen who compose that Board of Regents. It is not because the members of this Convention desire in any way to cripple that institution, or desire in any way to retard its progress, or in any way to hinder the objects for which it is created. It is the language of the section, and its effect. Under our form of government the Constitution of the United States may be changed, as it has been from time to time since the organization of the Government. In our State, provision is made for a change of the Constitution, but this remarkable section provides that this institution, created by law, shall not be changed. Now, it may be perfect, but some future generation might determine that they could make an improvement upon it. I, for one, believe that all knowledge will not cease with this Convention. I believe that there will be men come after us that ought to have a right to change the management of that institution. I believe the University of California should constitute a public trust. There is no question in my mind, but what the funds derived from the one hundred and fifty thousand acres of land are a public trust, and should be received as such; but that particular fund that was donated for an Agricultural and Mechanic Art College, is not all the State University. I believe that that section should be so amended that the fund of the University of the State of California should be considered a public trust.

Mr. WINANS. Will the gentleman allow me to explain? Heretofore the Constitution of this State has provided that the term of certain officers should not exceed four years. There will probably be a similar proviso in the document we are framing. It was held by some that the Regents, whose term was fixed at sixteen years, could not hold their offices for that length of time, because they were limited by the Constitution; but the Supreme Court finally held that it constituted a public trust, and that therefore they were not officers, under the Constitution, and therefore could hold sixteen years. I state distinctly, and in all good faith, that these words are used exclusively to meet that objection, and to answer that end, and for nothing else. There is nothing concealed or clandestine about it.

Mr. LARKIN. The gentleman explained the same yesterday. The opposition to the section rests mainly against this language: "and its organization and government shall be perpetually continued in their existing form and character." Now, so far as the matter of this discussion is concerned, each member of that Board of Regents upon this floor, excepting the gentleman from San Francisco, Mr. Casserly, has made it a point to rise to a question of privilege. I do not think that he has done it. They have placed themselves in a false position before the world, and before the people of this State, by making a personal matter of it, the moment you allude to them. Now, if their conduct is good and correct—which I have not questioned—there is no necessity for their jumping to their feet here when it is asked to put it in the power of the Legislature to examine into their affairs; and if, at some time the people desire to change this matter, it is well to have that power. We have never been able to inquire into the workings of that institution; to inquire into the financial relations of it. There may be no necessity of it now, but there may be a time, when these honorable gentlemen have passed away, that it would be necessary, and the Legislature should have the power to inquire into the management, and to change the form of the management. These are some of the reasons why we desire this change. We believe that the money derived from the sale of this one hundred and fifty thousand acres of land should be set apart as a separate fund; should be secure, for the purposes of the grant, and should be carried out in good faith, and not devoted to any other purpose. Is that wrong? I desire to carry out the Act in good faith; and we hold that that tenth section does not carry it out in good faith. We desire to amend the section so that it shall carry it out in good faith; so that the Legislature shall have the power to inquire into the working of that institution, and, if necessary in order to carry out the provisions of that grant, shall have the right to change the management of that institution. Is there anything wrong in that? Is there any necessity for each and every gentleman to denounce us as opposed to that institution, because we desire to have the right to correct abuses that may grow up after these honorable gentlemen may have passed away? These are the changes that we have sought to make in this amendment. I have not heard one of the opponents of this section intimate in a syllable that he was opposed to that institution. All we desire is to act for the welfare of the people and the prosperity of that institution. I hope that the gentlemen will stop their allusions to each other, and let us proceed to the discussion of the merits of the question.

SPEECH OF MR. BROWN.

Mr. BROWN. Mr. Chairman: I concur with the gentleman who has been last on the floor with regard to the propriety of considering section ten. It may be that there are other subjects in connection with this matter that are of consequence to this body and cast light upon it, but section ten is the section which is before us for investigation, and for action or nonaction upon it. I am convinced that there is not a gentleman in this honorable body who is opposed to education. I am convinced that there is not one who is opposed to the University, but all are anxious that institution should flourish, and that it should be handed down to future generations intact and in a degree of grandeur greater than it now possesses—owing to the progress of time and to other circumstances. But it is a matter of some consequence that the proper means should be taken in order to accomplish this grand consummation. Now, we hear it stated before this body that Congress gave to the Legislature of this State the right to control that institution. We are aware of all of this, but the idea is, shall this State still retain that control? Shall we put an enactment here in this organic law which shall declare that it shall not have that control? Shall this body, by an organic act in the Constitution of this State, declare a restrictive principle that will prevent the Legislature of this State from examining into the business affairs of that institution? If we were in favor of that, in my opinion, we could not strike a more fatal blow against the University of this State, but if we manage in such a way as to have it at all times open to investigation, to see that everything is going on right, then we hand it down to posterity, and have it now, even as it was intended.

Now, it is only necessary to examine this section ten:

"The University of California shall constitute a public trust"——

I shall not dwell upon the public trust, as that has been sufficiently treated of.

—"and its organization and government shall be perpetually continued in their existing form and character"——

Gentlemen have said that it may be necessary hereafter to change that form and character; that human institutions and human progress make it necessary to have changes; that to change is mortal, and that we do not know that we have reached perfection in these respects. Then it

goes on further with regard to a subject which I contend special attention should be directed to.

—"subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments."

Now, I am fully convinced that this is wrong. There is to be no legislative control in this matter; none except what is necessary to insure compliance with the terms of its endowments, and of the several Acts of the Legislature of this State. These Acts have already been passed, and now here there is a restriction placed upon the Legislature that it shall have no further control except to confirm these Acts; nothing else; excluded from all further investigation of the affairs of this institution. Now, it is a matter of the most serious consequence that we should take into consideration whether we shall have this institution on such a basis. Although the present officers may be just, and true, and good, we do not know that it will always have such, and if there is not a word to say against it at this time, we do not know but at some future time it may be highly important to investigate the affairs of that body. Now, to give up control in these respects, and say that the Regents have conducted it all right, and for the future it will be the same, I am under the impression that it would be unjust to the people of this State. We should not restrict the Legislature in this respect. I might go on with arguments to show that this clause forbids legislation, except so far as to confirm the endowments and the Acts of the Legislature which have been passed. Do we wish to have the Legislature forbidden to take any action with regard to this body in the line of investigation of its conduct? I am sure that a majority of the members here do not wish it, and I am opposed to the section.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: It seems to me that this is a most extraordinary controversy. In the first place insinuations are made against these Regents, as to how they have managed the trust which has been placed in their hands, and when they get up here and explain the manner in which that trust has been managed, gentlemen say that they are nervous; and instead of defending the policy of the section they are undertaking to defend themselves. They are required to be silent when they are charged with mismanagement. Why do not these gentlemen specify in what they have been dishonest? If they have stolen anything, why do not these persons indicate where and when? There has been but one specific charge, and that was by Mr. Barton, who speaks of a report of a committee of the Legislature. I do not recollect the terms of that report exactly, but at the time I read it over and made up my mind that it was all bosh. It was because the contractor putting up the building did not put in the right sized timber. He did not complete all the provisions of his contract. No fault of the Regents was demonstrated by that report, according to my recollection. The amendment which is proposed by the gentleman from Alameda, as the gentleman from Los Angeles has correctly stated, would give Congress a chance to nullify the grant. This grant must be used for the purposes for which it was donated, and the action of the Legislature and of the Regents has not been in violation of the Act making the donation. This trust must be administered according to the terms of the grant itself. The Act of Congress has been read here repeatedly. While agriculture, very likely, is put forward as one of the more important elements, it is just as distinctly specified that the others shall not be excluded. The amendment offered by Mr. Webster is to exclude the others, and is therefore in direct conflict with the terms with the grant of Congress.

Now, the gentleman from Tulare seems to think that this section deprives the Legislature of all power of control over this Board of Regents. I understand this first clause of the section simply to perpetuate the form and continue the Regents as a body in force and in power. Now I wish to know what gentlemen wish to point out. Are you going to have the Legislature appoint a committee to regulate it? What are they but Regents under a different name? If it is a specific body appointed a specific authority, what is better than the Regents? Why the gentlemen are entirely silent upon that question. They do not point to anybody else. Is it not apparent on the face of it that there has got to be somebody? Then what is the difference whether you call them Directors, Trustees, Committee, or Regents? I cannot see. "That which we call a rose, by any other name would smell as sweet." They wish even to change the appointing power. What is the reason why we should take it from the Governor? I cannot see any propriety in it. Now, as to the subject of legislative control. The section says that it shall be subject to such legislative control as may be necessary to insure compliance with the terms of its endowments. What does control mean—advice? I understand the word control to be mandatory. It is the right to direct. The Legislature, then, has the right to control and direct this institution so as to insure compliance with the terms of its endowments, and to insure compliance with the several Acts of the Legislature of this State, and with the Congress of the United States. Does not this section allow the Legislature to judge what shall be necessary to insure compliance with the terms of the endowments? They have the right to enforce it. If the Regents undertook to take this land and misappropriate it, the Legislature has the right to prevent their doing it. I cannot see the slightest objection to it. The language is as good as it possibly can be. I hope this will be maintained as it is. One trouble is that the farmers do not want to educate their sons to their own business. When the truth is known they are ashamed of their business, when they ought to be ashamed of their own false pride. It is true that you cannot make farmers simply upon theoretical instruction alone. But you can teach many things that would be useful in that pursuit. I hope the section will stand.

MR. STUART. Mr. Chairman: I am sorry to see the course the farmers are taking upon this subject. I am in favor of the section as reported by the committee. I was going to say something, but as the hour for recess has arrived, I will move that the committee rise, report progress, and ask leave to sit again.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Education, have made progress, and ask leave to sit again.

The Convention then took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

PETITIONS.

MR. WYATT presented the following petition, signed by a large number of citizens of Monterey, asking the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Monterey City, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

Messrs. Campbell, Tully, Wickes, and Jones presented similar petitions.

Laid on the table, to be considered with the article on revenue and taxation.

REPORT.

MR. WINANS. Mr. President: I wish to send up a report from the Committee on Education.

THE SECRETARY read:

To the President of the Convention:

The Committee on Education report that they have considered, approved, and recommend the adoption of the amendment offered by Howard, of Los Angeles, to section ten.

WINANS, Chairman.

THE STATE UNIVERSITY.

MR. WINANS. Mr. President: I move that the Convention resolve itself into Committee of the Whole, President Hoge in the chair, to further consider the article on education.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section ten and amendments thereto are before the committee.

SPEECH OF MR. STUART.

MR. STUART. Mr. Chairman: I am sorry to see the opposition that is made to this tenth section, and against the University, by the farmers on this floor—by many of them, at least. I approve of the report of the committee generally, and will stand by it, and I hope the Convention will carry it out. A few words first, in regard to the education of our children. The gentleman from Los Angeles, Mr. West, I believe, said that the studies had been placed on a higher plane than they had intended to go. I think he is mistaken, because it is well known that four or five years ago—about the time the University moved into its present quarters—there were but four or five students during the whole term in the Agricultural College. I know, for among them was my son. I also had him placed in the Mechanic Arts College, besides other branches of learning. It was hard to find enough scholars to form a class in the Agricultural College, for the reason, I suppose, that the farmers are just as apt to want to educate their sons in the professional walks as any other class. Whatever studies they choose they can take. I have been greatly surprised at the position taken here by the Workingmen and farmers upon this subject. This is an educational institution, where all farmers' sons, all poor men's sons, are taught without cost or charge; an institution that any man may attend by simply having enough to bear his personal expenses during the time. The legal and financial standing of the institution has already been explained by those who know more about it than I do. I could name a number of eminent men who have sent their sons to this institution, and they have come forth endowed with a brilliant education, and thoroughly fitted to buffet with the world. The youngest member of this body is a graduate of that institution, and stands to-day an honor to his preceptors, and one of the brightest intellects on this floor. I have no doubt in saying that. These graduates are scattered all over the State. They do not come from the cities altogether, nor are they confined to rich men's sons. They are workers, engaged in the various pursuits of life. They receive practical instruction, which is of use to them in making a living. I believe that is all I have to say, or need to say. There are other and more able gentlemen who desire to make remarks on this subject.

MR. WINANS. Mr. Chairman: I ask that the amendment reported by the committee be accepted as a part of the report.

THE CHAIRMAN. It can only be accepted as a recommendation.

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: There are many things to be considered in connection with section ten and the proposed amendments. We know, as a matter of fact, that the University of California has been of slow growth, and that it has been owing to the fostering influences and donations which it has received from this State and from the Gen-

eral Government, that it has risen to its present proud position. We have many older institutions of learning in this country, they too have attained their status and reputation by reason of munificent donations from the patrons of education. There is Dartmouth College, for instance. That institution stood by its rights, those rights which it had acquired from and under its colonial charter. It was compelled to resort to litigation to maintain those rights, and when the Supreme Court of the United States passed upon the question, they said the attempt to interfere with the institution in that way was a violation of the Constitution, in that it was impairing the obligation of a contract. The then little institution, by dint of perseverance and the aid of friends of education, was thus enabled finally to place herself upon a secure and imperishable foundation. So other institutions have grown up by eleemosynary aid, until they became strong in development, and were recognized and inspired confidence as established and permanent institutions. Men when dying, when leaving their last legacies and bequests, have often coupled with them a legacy for some institution of learning; but, sir, this, as prudent men, they would never have done had they believed that the institution was on an insecure foundation, and the means which they had acquired with so much toil and unrest would, after their death, be scattered to the four winds. Believing that the institution was firmly established they were willing to place it on a still more solid foundation; and I tell you, sir, that if you cripple the University of California, in the way now proposed, it will have a powerful effect upon this class who have a disposition to endow the institution with a portion of their abundant wealth. If they believe that the University will be permanently changed, that the funds will be squandered and segregated, that the institution will stand upon a questionable foundation, they will not endow it and then contemplate the dissipation of their own fortunes in a vain endeavor. Nothing that we could do would be so hurtful to the growth and progress of the University, nothing so suicidal as to lessen the public confidence in the stability and permanence of the institution. These donations, these endowments for specific purposes, are in the nature of a contract which cannot be violated without going contrary to the decisions of the highest Court in the land, and that is precisely what the amendment offered by Mr. Webster does.

Again, it has no merit whatever, over and above the section reported by the committee. In the first place, the Webster amendment proposes the segregation of the University funds, the Agricultural fund from the other funds. Is there anything in the Act of Congress to warrant that segregation? I challenge it as antagonistic to the Act of Congress. There is placed in this amendment a clause segregating these funds, when there is no such segregation authorized by the Act of Congress, either directly or by implication.

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

Sir, the framers of this Constitution, whose seats we now occupy, when they incorporated that provision into the Constitution, had the idea of a University, with a permanent, indestructible fund. That was the object of this provision in the Constitution. This provision antedates the congressional legislation in respect to this fund. The congressional Act was passed in eighteen hundred and sixty-two, but as early as the adoption of our present Constitution and its ratification by the people, it is apparent that the framers of it and the people who voted for it, thought there ought to be a permanent University, with a permanent fund.

Now, sir, I have referred to only one of the cardinal principles of departure contained in the Webster amendment, the segregation of the funds. I will now cite another, which is equally alarming, which is the superseding of the broad, general culture contemplated by the Act of Congress, by an agricultural school. I will read only so much of the Act of Congress as relates to this particular subject which I am now considering. "The leading subject shall be, without excluding other scientific and classical studies," and if you do not exclude them, you must include them; if you have no power to exclude, you must necessarily include, "the teaching of such branches as are related to agriculture," not simply agriculture, but such branches as are related to agriculture, "in such manner as the Legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life."

This education is not to be in one pursuit or profession of life, but in the several pursuits and professions of life. It is to be both liberal and practical. Now, in looking over the provisions of this amendment offered by the gentleman from Alameda, I do not see that he has provided for this liberal education. I think he has signally failed to include those other scientific and classical studies contemplated by the Act of Congress. I think he has ignored the several pursuits and professions of life, and confined his attention exclusively to one department—the department of agriculture.

[At this point in the speaker's remarks the gavel fell.]

MR. SMITH, of Santa Clara. I will give the gentleman my time.

THE CHAIRMAN. The gentleman will then proceed.

MR. JOHNSON. I thank the gentleman from Santa Clara for his courtesy. I have but a few words more to say. The gentleman from Alameda has eliminated from his amendment the cardinal principle of the congressional legislation, which says in effect that the education provided for shall be in the several pursuits and professions of life. Therefore, sir, I say that it is in direct conflict with the Act of Congress. I say, also, that it is in violation of the obligation of contracts; that it stands upon the same plane as the Dartmouth College case, and that if passed, it will encounter the same opposition and the same decision.

I ask the gentleman from Alameda, why should we seek to apply the iconaclastic hand to such an institution as the University of California? It has grown up under the benign influence of the donations from the people of this State and from the Congress of the United States, together with the liberal funds given to it by the College of California.

Look across the bay at her sisters. There she sits, the bride of the Pacific, her foot touching the waters, and her head resting upon the foothills of the Contra Costa range. Her outlook is over the islands and the Golden Gate of commerce for the Pacific Coast. With such surroundings, to which may be added a most salubrious climate and inviting shade, we are forcibly reminded of Milton's description of the gardens of Pluto, where "the attic bird trills her thick-warbled notes the Summer long."

In spite of all this, shall we do away with this thrice-fostered institution and dismantle her walls? Shall we compel our farmers to pay tribute to other colleges outside of this State, and send thence their children to acquire a liberal education, which, but for our hostile acts, might as well have been acquired at home? The effect of it will be to take a large amount of means from this State and send it to other States, and change a now liberal and satisfactory curriculum of study into an agricultural specialty.

Aside from the law of the case, I appeal to the State pride of the gentleman from Alameda, aye, more, to his home pride; for the institution whose claims I am now advocating is located in his own county.

It appears to me to be unwise to antagonize Congressional legislation on this subject. The Legislature would have to interpret the provision which we may adopt. Would they pass laws to carry out if they knew it was unconstitutional? that it was in conflict with Congressional legislation? They have repeatedly refused to go contrary to the laws of Congress, and they are entitled to a great deal of credit for so doing. Shall we ask the Legislature to undo what they have already done in giving unity of design, and providing for a liberal course of study in the University of California? Shall we annul, or try to annul, the Congressional Act? and, lastly, shall we do violence to those men who have made their bequests, and died in the hope that this institution was to remain an established entity, and intact in this State? Now, sir, I have no fight to make with agriculture in this State, nor have I any fight to make with labor in this State. I think, generally, my sympathies have run in the direction of both; but, sir, I am not in favor of experimental legislation, or an experimental constitutional provision, which is in direct conflict with the Act of Congress, the general sentiment of our people, and seeks to build up foreign institutions of learning at the expense of our cherished University.

So far as the Regents are concerned, there is some idle clamor against them. Some of these men have records in this State. Those who have been associated with that Regency will bear witness to what I say, that these aspersions are a gross injustice to the memory of the dead, and as for those who are living, it is not for me to defend them when they are so amply able to represent themselves. But I will simply say that this cry against them is mere idle clamor, which cannot be substantiated by the facts. Sir, I admit that iconoclasm is sometimes right, when some mouldy moss-grown wrong is to be removed out of the pathway of progress. This is something else. It is an institution built up by domestic and national generosity, which has diffused and is still diffusing a broad and general culture throughout the State. Aside from what nature has so liberally given us, it is nearly all that we have to be proud of as Californians.

Pass the Webster amendment, and after the great wrong shall have been done, it will be too late to try to remedy the evil. After the funds shall have been segregated, and the present colleges shall have merged into a college of agriculture, the public confidence will be gone and will never crystallize again around any institution of learning in this State. This cannot be done with my vote. Amid the ruins I should feel as guilty as the man who fired the temple at Ephesus. I do not attack the motives of the opposition, and only hope to succeed in showing them that their position is ill-advised.

Why, sir, the Act of Congress gives no possible excuse for such a provision as the Webster amendment. It says there shall be at least one college, and that the leading object shall be those studies which relate to agriculture and the mechanic arts. You may have more than one college then, may you not? If you have several colleges the Act does not say that the leading object shall be the same in all of them. I therefore humbly submit that the section, with the amendment of the gentleman from Los Angeles, is all that is required, and nothing else should be adopted. I want no son of mine to have the bitter reflection that it was his father who attempted to destroy this great institution.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I cannot indorse the report of the committee, neither does the amendment offered by the gentleman from Alameda entirely meet my views. I believe the question is in such a position at this time that no amendment can be accepted. I have drawn a section which comes nearer meeting my views in relation to what the Constitution should contain, than the amendment of the gentleman from Alameda. I will read it for information:

"SEC. 10. The Legislature shall take measures to preserve the funds which have accrued or may accrue from the disposition of such lands as have been or may hereafter be reserved or granted by the United States for a college for 'the benefit of agriculture and the mechanic arts;' and the funds accrued or accruing from the rents or sale of such lands, for

the purposes aforesaid, shall be and remain a permanent fund, the interest of which shall be applied in strict conformity with the terms of said grant; and said college for the benefit of agriculture and the mechanic arts may be combined with other colleges of the University of the State, but not so as to impair the terms of the aforesaid grant. It shall be the duty of the Legislature, as soon as may be, to provide effectual means for the investment and permanent security of the funds of the University of the State."

The objectionable part is left out—"the University of California shall constitute a public trust." Now, sir, there is a trust which exists in regard to the donations made by Congressional grant. That is a trust which it is incumbent upon us to preserve. Now, the question is: Have these trusts been observed, or have they been violated? Has this particular trust been ignored? Now, sir, I say it is not for us to say that all these trusts have been carried out. It is not for us to show affirmatively that these trusts have not been carried out. It is for the other side to show that they have been. It is for those who advocate this section to show that no part of the trust has been ignored, and that it has been observed, and kept, and fulfilled. I have no war to make upon the University. I believe the people whom I represent desire to see an institution upon this coast that will confer as good an education as any institution in the United States. I believe that is the desire of the constituency that I represent. I believe that is the desire of the people of California. I believe that California wants to be able to say that she has an Athens upon the Pacific Coast. Why engraft this in the Constitution? Why is it necessary? Now, they say, in relation to the proposition offered by Mr. Webster, that it segregated the funds. I have not had a chance to examine the proposition critically, but, if I understand it, it simply proposes to engraft into the Constitution the Act of Congress, and if it segregates the funds, the Act of Congress does so. If there is any segregation of the funds, therefore, it is a segregation by the Act of Congress.

MR. CHAPMAN. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"Amend by adding after 'affairs' in the line, 'but reports shall be made annually to the Governor of the State, with reference to its general management and the custody, receipts, and disbursements of all its funds.'"

MR. WINANS. Mr. Chairman: The committee have no objections to requiring such reports to be made.

SPEECH OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: That clause of the amendment segregating this fund from the other fund, is of no consequence whatever. By consent of a number of gentlemen it has been stricken out. It is not formally before the Convention yet, and we have stricken that out. But since the interest derived from this source must be applied specially for that purpose, as set forth in this Act, the presumption is it must be a separate fund. But it is not necessary at all. If the interest is annually applied as provided for, that is all that is necessary. It is not necessary that that clause should be there at all.

Now, sir, the criticisms that have been made here in regard to the management of the University, is not, in my opinion, any part of this debate. It is simply a matter of fundamental law for the government of the University. If there is anything wrong in its management, that is a matter for the Legislature, but it ought not to be brought in here. This amendment was offered in good faith, and with the exception of that part in relation to separate funds, it is absolutely and in fact the Act of Congress, with the exception of the words not included there, "scientific and classical studies." That, there is no objection to adding. You add that, and you have the Congressional Act, the gist of it, in short form. That is all there is of it. Now, sir, it is well known that the history of this Congressional Act dates back to eighteen hundred and forty-eight-nine. I believe the first inception of it was, in some of the eastern states, by concurrent resolution of the Legislature, calling upon Congress to make an appropriation of land to the several States, for the purpose of endowing a College of Agriculture and a College of Mechanic Arts. Now, sir, that bill was before Congress for a number of years. In eighteen hundred and fifty-nine the bill passed both houses of Congress, but was vetoed by the President, for some reason. For a while the old colleges of this country fought these agricultural donations upon the ground, that it was to set up an independent set of colleges. In eighteen hundred and sixty-two this bill came up again, at a time when there was great feeling in regard to military tactics, and it was passed. So after the bill had passed, the several great colleges of this country, and some other ones, applied to their several States to take these donations, and agree to carry out the provisions of the Act of Congress. They succeeded in many of the States in doing this very thing. Now the only object I had in offering this amendment, was, that it might be maintained and conducted in the spirit, and for the purposes, as set forth in the Act. In my opinion, section ten, as reported by the committee, is in conflict with the Congressional Act itself, and for this reason: It says here, "subject to such legislative control only, as may be necessary for a compliance with the demands of its endowment, and of the several Acts of the Legislature of the State."

Now, sir, in passing this section you confirm and establish, not only the Act of Congress, as a duty enjoined upon the Legislature, but the Acts of the Legislature which have been passed. Now which ought to take precedence? They are both in the same section. Shall the Acts of Congress be complied with or the Acts of the Legislature? Now, sir, I hold that the consolidation Act of the last Legislature is incompatible with the Act of Congress, for that reason. It provides that the State Treasurer shall pay over from time to time the profits and revenue arising from such stocks and bonds, upon the demand of the Treasurer of the University, to be disbursed by him to meet the current annual expenses of the University of California. The question, then, is, which shall take precedence, the consolidation Act or the Act of Congress.

Now the gentleman from San Francisco, Judge Hager, says it is impracticable to teach practical education in agriculture in that college. Now, sir, I want to call his attention to the organic Act establishing this University, and see what the Legislature thought of it at that time, and what the Board of Regents subsequently thought of it. Section four of the Congressional Act says, "in order to promote the liberal and practical education," etc. What does that word "practical" mean? Here is what the organic Act says:

"SEC. 4. The College of Agriculture shall be first established, but in selecting the professors and instructors for the said College of Agriculture, the Regents shall, so far as in their power, select persons possessing such acquirements in their several vocations as will enable them to discharge the duties of Professors in the several Colleges of Mechanic Arts, of Mines and of Civil Engineering, and in such other colleges as may be hereafter established. As soon as practical a system of moderate manual labor shall be established in connection with the Agricultural College, and upon its agricultural and ornamental grounds, having for its practical education in agriculture, landscape gardening, the health of the students, and to afford them an opportunity by their earnings of defraying a portion of the expenses of their education. These advantages shall be open in the first instance to students in the College of Agriculture, who shall be entitled to a preference in that behalf."

[Here the gavel fell, objection being made to the speaker proceeding.]

MR. LEWIS. I give him my time, though I shall vote against his amendment.

Mr. WEBSTER. Now, sir, here is the organic Act which contemplated two colleges, one for agriculture and the other for mechanic arts. Now, sir, here is section one thousand four hundred and four of the Political Code, which reads as follows:

"SEC. 1404. A system of moderate manual labor must be established in connection with the Agricultural College, upon its agricultural and ornamental grounds, for practical education in agricultural and landscape gardening."

Now, sir, the Regents themselves, at that time had in contemplation practical teaching in agriculture, as will be seen by reading their report at that time. I don't know whether they have changed their opinions since that time, but they certainly had an idea then that there was such a thing as practical instruction in agriculture. Now, sir, I do not want to put anything in this amendment that will be superfluous. To simply provide that these legacies and endowments shall be applied to the purposes for which they were intended, and stop right there, might be considered sufficient, because it would be the duty of the Legislature to do it anyway; but there is hardly a Constitution in existence that does not have more than this; they generally have, in a concise form, the critical points of the Congressional Act. This is not an improper thing for us to do here, because there is not ten per cent. of this body, I presume, who have read that Congressional Act, and if you put it in here it will be reaffirming the provisions of that Act.

THE PREVIOUS QUESTION.

MR. WATERS. I move the previous question.

Seconded by Messrs. Murphy, Schell, Kenny, and Smith.

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

Carried—ayes, 61; noes, 51.

THE CHAIRMAN. The first question is upon the amendment to the amendment offered by Mr. Chapman.

Adopted.

THE CHAIRMAN. The question is upon the amendment of the gentleman from Los Angeles, Mr. Howard, as amended.

Adopted.

THE CHAIRMAN. The amendment of the gentleman from Alameda will now be in order.

Lost—ayes, 37.

MR. GRACE. I move to amend.

THE SECRETARY read:

"Amend section ten by adding thereto the following: 'Provided that women over twenty-one years of age, and citizens of this State, may be appointed Regents of such University, and one or more of such women shall always be members by appointment to the Board of Regents.'"

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: I have always been in favor of the University of California, and I am in favor of it to-day, and I am in favor of doing anything and everything that will promote the education of the youth of this land, and I believe that the members of this Convention are in favor of doing what they believe to be right. I hold that women should have as much right there as men. If it is a place built for farmer's sons, it ought to be a place for farmer's daughters. I believe that women should be represented in every department of this Government, and I tell you, sir, if women had a voice in the management of our educational institutions they would be better managed. [Applause.] I believe that women are entitled to live, move, and have their being. If they are the weaker sex, all the more reason why the strong, protecting, fostering arm of the law should be thrown around them. Put this in the Constitution, and you need have no fear but what the people will indorse your action. We will do justice to ourselves, justice to the women, and we will have a government in truth and in fact, of the people, by the people, and for the people. [Applause.]

THE PREVIOUS QUESTION.

MR. MURPHY. I move the previous question.

Seconded by Messrs. Tully, Beerstecher, Shoemaker, and Biggs.

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

Carried.

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

Lost.

MR. WINANS. I move that the committee now rise, report back the article to the Convention, and recommend its adoption as amended.

Lost—ayes, 47.

MR. AYERS. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"SEC. 10. The University of California shall constitute a public trust, and its organization and government shall be subject to such legislative control as may be necessary to insure compliance with the terms of its endowments, and of the several Acts of the Congress of the United States, donating lands or money for its support. It shall be entirely independent of all political or sectarian influences, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs."

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: It will be seen that I have eliminated most of the objectionable features from the section as reported by the committee, and I offer this as a compromise measure. I have stricken out the part which perpetuates the character and form of the present organization, and the Board of Regents, by implication, conforming to the legislation on this subject heretofore passed. Mr. Chairman, at the beginning of this discussion I must confess that I was imbued to some extent with the prevalent prejudice against the management, or rather the manner in which the University was carried out by the Board of Regents, as a trust. But with the discussion upon this floor, with the remarks of gentlemen who are connected with that institution, and who know all of its inside workings, I am satisfied that a great deal of the clamor and prejudice existing is unfounded. But at the same time this debate has brought me to the conclusion that it would not be well for this State to set up the University as a close corporation, one which would not be sufficiently controlled by the authority of the State, and my amendment, if it should be acceptable to the committee, I think will strike out those portions which have raised so much opposition, and leave that institution entirely controllable and amenable to the authority of the State. I think if gentlemen will consider my amendment they will see that it is just what is needed.

SPEECH OF MR. LAINE.

MR. LAINE. Mr. Chairman: I take it for granted that it is unnecessary for any one to speak in regard to the advantages that flow from education. We are all convinced in regard to that matter. I am satisfied there is no gentleman upon this floor who desires to antagonize the University of California. Most of the members of this Convention are old Californians. They are proud of her name and proud of her history, and the name of this University alone would endear her to all of us who have grown up here, and we all desire to make this institution an ornament to this State. But we must ever remember that no institution can flourish unless it be fostered. We cannot shut our eyes to the proposition that popular sovereignty has the control of this measure. Make the University of California popular, and from one end of this State to the other let a finger be raised against her prosperity, and that individual will be at once denounced. Now, we are all desirous, I have no doubt, of making a good institution. We desire to see her rise from her recumbent position into proud and lofty station. We want to see her take her feet from the waves of the bay, and her head from the hills, and stand erect, the proud and glorious institution of this glorious State. We desire to see her pouring forth an unbroken stream of youth in this land, armed with an education that they dare advance to the battle of life, as with an armor of iron and steel. We all know that in the battle of life an education is better than sword or shield. Now, we know that there will always be attempts made to traduce the parties who manage public institutions, in any land and in any country, and there will be a feeling among people that something is wrong, even though they can give no reasons to justify it. And I am satisfied there has been a feeling throughout the length and breadth of this State that something was wrong about this institution, and none can tell why. And the legislation which we are attempting to enact, and the conditions placed here, will have a tendency to keep up that feeling of dislike towards the institution. Now, we should in all things so frame this Act that justice will be done, and that this suspicion would not thereby be strengthened. It is not necessary to stir up embittered feeling. These men are officers of the State, and they are liable at any day to be called on to give an account of their stewardship. These men are but human, and are liable to make blunders like the rest of us. But in all things, as far as my observation has gone, I believe they have labored for the best interests of the people of this State. Why, do you think there is no pride in the human heart that it should want to be connected with a failure? The members of this Convention would not want it to go forth to the world that we had failed in our efforts here. Now, it became my duty, as a member of the Legislature, to investigate this matter—in the Legislature of eighteen hundred and seventy-three four. The report of our proceedings can be found in the Journal of the Senate and Assembly of that session. It was a joint committee, and we went to the University. We brought before us those who were clamoring against the administration, and we made just as thorough an investigation as our time would allow, and the conclusion which the committee arrived at was that the Regents had done well, considering all things; that they deserved the sympathy and support of the people at large for their management of the University. That was our judgment after deliberate examination. Something has been said in the argument here about charges made against the Regents by Professor Carr. I call your attention to the sworn testimony of that gentleman on page thirty-four of the report, wherein he refutes that statement. Again, on another page, in answer to a question as to whether he had found the yeomanry friendly to the University or not, he answered that he had never found anything to the contrary. Hence I am satisfied that much of this clamor has arisen from a misconception of the facts.

Now, I am opposed to section ten. Now, it is the privilege and the duty of members to offer suggestions and amendments, but amendments should not be offered or clung to unless they are intended to accomplish some good purpose. There should be no pride of opinion. Now, it is not that my amendment or your amendment, my course or your course, should be adopted, but what is best for this institution, what is best for the whole State? That is the question that is before us now. Now, it has been said by one member here, that they feared the cutting off of these bequests, and that if this section was not passed the Legislature would have power in some way to divert or misapply these donations. Hence, they desire to place the institution upon a firm foundation, so that some mere passing, temporary excitement will not remove or destroy it, together with the monuments of those who have gone from earth and left the labor of years to endow this institution. This, of course, is proper, because no man desires to leave a legacy to an institution unless he can be assured that it will stand amid changing times, long after his own bones are crumbling into dust. I do not believe the section, as reported, will accomplish the result aimed at, because it seems to me you place it in bands of iron, so that it can never grow or expand: so that she can never become greater; so that an additional college could never be added. Hence, I have drafted a substitute and I will trouble the Convention by reading it:

"The University of California is hereby declared to be a perpetual institution of this State, organized to administer a great public trust, and the Legislature shall have no power to impair or divert any gift, grant, or donation made to it, from the purposes or objects of those making such gift, grant, or donation; its officers shall hold office for such time as the Legislature may prescribe. Instructions shall be therein given, in addition to other matters, in agriculture, metallurgy, the mechanic arts and applied science; it shall be entirely independent of all political and sectarian influences."

They have a number of colleges now. By the tenth section they can never have any more, because there never can be any change. In order to meet the difficulties which I can see will arise if the tenth section is adopted, I offer this as a substitute.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. Chairman: I rise for the purpose of refuting, if possible, as far as I am concerned, the charge that the farmers of this State, especially the farmers in this Convention are opposed to the educational interest in this State, and especially that of the University of California. As for me, having lived in this State over a quarter of a century, coming here as I did when we had but a few sparse mission schools, there is no man in the State of California who has watched the practical progress of education more than I myself, and therefore I deny that the charge has any foundation. The country elements in this State to-day are the very ones, more than any other, that are desirous of seeing the onward march of progress and education. It is not my desire to make a rehash of anything that has been said, but inasmuch as I am charged with having broached the subject, I cannot, and will not, with the permission of the Convention, sit still and see the matter whitewashed, without rising to refute it. In regard to the tenth section now being considered by this body, I desire to say that it does not meet with the approval of the farming element here, for the reason that it takes the matter out of the hands of the people, the proper and correct persons to whom these Regents should be responsible. That is my objection to the tenth section. In regard to the statement made by the gentleman from Santa Clara, in regard to the investigation made by the Joint Commission of eighteen hundred and seventy-three-four, I would inform this Convention that the committee was so surprised, and believed that they had been appointed and created for the purpose of forestalling the action of the committee of the lower branch of the Legislature, which was investigating the Board of Regents, in which business it had been engaged for a number of days, perhaps two weeks, before the appointment of this joint committee. When we had been at work some days, we were informed by the papers that there was a joint committee appointed, and that it would be in San Francisco the following day. It came there. The first intimation we had of it officially was a note received from the Chairman of the committee, asking us to join them in a joint investigation of the Board of Regents and the affairs of the University, after we had been investigating some days, perhaps two weeks, ourselves. Our reply was that inasmuch as we had been investigating already, it would be impossible for us then to retrace our steps and enter into a general investigation with them. And I know what I say when I assert that the joint committee had not time to make an investigation of the books, records, and documents of the Board of Regents, because during the four or five weeks of our investigation there was no possible show for these books to have passed out of our hands, because they were actually in our possession.

MR. REED. I will ask the gentleman if the two committees were not upon different subjects—one upon public buildings, and the other upon the management of the University?

MR. BARTON. Yes, sir; perhaps that is correct. However, I want it distinctly understood that I am not desirous of waging any war against the public educational institutions of this State. All I want is that these men shall be held responsible to the people. They have the right to always control it, and I do not want to pass a section that will place it beyond their control.

SPEECH OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I am glad to see good feeling

prevailing in reference to the University. The objections of gentlemen seem to be not so much to the management of the Board of Regents as to the Acts of the Legislature in carrying out the Act of Congress. Now, sir, I think the Legislature of this State has, not only in spirit, but in letter, carried out the Act of Congress in regard to these donations; and I think, further, that the Regents of the University, in acting under the several Acts of the Legislature, are entitled to credit, and to the thanks of the people of this State for the manner in which they have, so far, managed the donations of Congress. And I remark here, further, that Congress itself has indorsed the action of the State Legislature in its manner of treating this fund, for the reason that Congress recently passed an Act allowing the Regents of the State University to locate lands embraced in the grant, upon unsurveyed lands, and to ask a price not exceeding five dollars an acre. What is the result? It at once made them preferred lands, and the Regents of the University have realized from that grant about five dollars an acre on the average, whereas, in the other States they only realized about one dollar per acre in currency, whereas our Board realized five dollars per acre in gold coin. And I say that Congress, by that Act, virtually recognized and approved the Acts of the State of California in carrying out that grant. I say, therefore, that the Regents have done well, and are entitled to the thanks of the people of California.

Now, sir, I am opposed to any project that seeks to divide or impair this fund, because if that is done it will have the same effect as dividing and impairing the common school fund, and it would weaken and destroy the State University. It will destroy confidence in it, and this is an institution that cannot exist without the confidence of the community, because these great institutions of learning must depend for support upon endowments, in a great measure. I was reading some time ago an account of the great Universities of the country, and the amount of property they own. The Harvard University stands first in rank as to wealth, having over six million dollars. Of all that vast fund belonging to that college, only about two hundred and sixteen thousand dollars came from the State of Massachusetts, and the rest of this immense sum came from private endowments. Now, that will be the case in reference to the University of California if it is allowed to be placed upon a firm foundation. These bequests will not be made so long as it is subject to change by the Legislature. Fix it permanently in the organic law, and there will be complete confidence, such as the older institutions of the country enjoy, and it will be the recipient of frequent and generous endowments. It is known that the late Michael Reese in his first will, had proposed to give to the University two hundred and fifty thousand dollars. Why did he change that will? Why, because the Legislature attempted to make a raid upon the University, and the very fact that this assault was made, weakened his confidence in the permanency of the institution, and he modified his will. We do not wish to place it beyond legislative control. No one desires that. We are willing that it shall be under legislative control, the same as Harvard and other Universities are, but we do not want the Legislature to have power to destroy it or impair its usefulness. It must be made permanent in order to enjoy the public confidence.

THE PREVIOUS QUESTION.

MR. TINNIN. I move the previous question.

Seconded by Messrs. Wyatt, Lindow, Van Voorhies, and White.

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

Carried—ayes, 59; noes, 27.

THE CHAIRMAN. The first question is upon the amendment of the gentleman from Santa Clara, Mr. Laine.

Division being called for, the amendment was adopted, by a vote of 68 ayes to 49 noes.

MR. MORELAND (aye), paired with Mr. Campbell (no).

THE CHAIRMAN. The question is upon the amendment as amended.

Adopted.

MR. MURPHY. Mr. Chairman: I move that the committee rise, report back the article to the Convention, and recommend its adoption as amended.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report, that they have had under consideration the report of the Committee on Education, have adopted sundry amendments thereto, and recommend its adoption as amended.

MR. WINANS. I move that the report be ordered printed.

So ordered.

MR. SHOEMAKER. I move that the Convention do now adjourn.

Lost.

MR. INMAN. I move that we take up the bill of rights in Convention.

LAND AND HOMESTEAD EXEMPTION.

MR. LARKIN. Mr. President: I move that the Convention resolve itself into Committee of the Whole for the purpose of considering the report of the Committee on Land and Homestead Exemption.

Carried.

IN COMMITTEE OF THE WHOLE.

THE SECRETARY read the section reported by the committee:

SEC. —. Hereafter the homestead, consisting of the family dwelling-house, outbuildings, improvements, and lands appurtenant thereto, of each head of a family resident in this State, of the value not exceeding five thousand dollars, shall not be alienated or incumbered, except by the consent, in manner to be prescribed by law, of both husband and wife where that relation exists, and such homestead shall be exempt from seizure or sale for the payment of any debt or liability, except for the purchase-money and the payment of taxes, laborers' and mechanics' liens, and obligations for the improvement of such homestead, and for debts incurred before the adoption of this Constitution. And in case of the death of the husband and wife, the surviving member or members of the family, if any, shall succeed to the title and possession of such homestead, with the like exemption herein prescribed in favor of such head of family. And the Legislature shall, by general law, not inconsistent with this section, effectually secure the benefits of such homestead exemption.

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

THE SECRETARY read:

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

MR. WILSON, of First District. I move to add to the section: "Provided, that nothing herein contained shall impair any homestead right existing at the time of the adoption of this Constitution."

MR. ROLFE. Mr. Chairman: I call attention to the fact that the substitute which I offer is word for word the same as the old Constitution. It is section fifteen of article eleven. Now, under that provision I do not know of any injustice or wrong that has ever been done. The Legislature, at one time or another, has always provided exemptions from forced sale for the homestead and certain other property. We have always had very good homestead laws in the Constitution, and in the Codes. The Constitution says what we shall have, and the Legislature carries out the details. Now, when it has stood the test for twenty-nine years, I see no reason for changing it.

MR. LAINE. Mr. Chairman: As this is a matter of considerable importance, I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Land and Homestead Exemption, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. McFARLAND. I move the Convention do now adjourn.

Carried.

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

ONE HUNDRED AND EIGHTEENTH DAY.

SACRAMENTO, Thursday, January 23d, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barnes,	Eagon,	Gregg,
Campbell,	Edgerton,	Hall,
Cowden,	Estey,	Hilborn,
Cross,	Fawcett,	Noel,
Crouch,	Finney,	O'Donnell,
Doyle,	Freeman,	Porter,
Dudley, of San Joaquin,	Graves,	Terry.

LEAVE OF ABSENCE.

Leave of absence, for two days, was granted to Mr. Cross.

Indefinite leave of absence was granted Mr. Estey.

THE JOURNAL.

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

So ordered.

PETITIONS.

MR. SMITH, of Santa Clara, presented the following petition, signed by a large number of citizens of Santa Clara County, asking the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Milpitas, Santa Clara County, California, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

Messrs. Brown and Morse presented similar petitions.

Laid on the table, to be considered with the article on revenue and taxation.

NOTICE.

MR. VAN DYKE. Mr. President: I wish to give notice, that after the consideration of this report of the Committee on Land and Homestead Exemption, I shall call for the consideration of the general file in Convention, for the purpose of taking up some of the articles and disposing of them, so that they can go to the Committee on Revision and Adjustment.

LAND AND HOMESTEAD EXEMPTION.

MR. SMITH, of Santa Clara. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Land and Homestead Exemption.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the section and amendments.

THE SECRETARY read:

SEC. —. Hereafter the homestead, consisting of the family dwelling-house, outbuildings, improvements, and lands appurtenant thereto, of each head of a family resident in this State, of the value not exceeding five thousand dollars, shall not be alienated or incumbered, except by the consent, in manner to be prescribed by law, of both husband and wife, where that relation exists; and such homestead shall be exempt from seizure or sale for the payment of any debt or liability, except for the purchase-money and the payment of taxes, laborers' and mechanics' liens, and obligations for the improvement of such homestead, and for debts incurred before the adoption of this Constitution. And in case of the death of the husband and wife, the surviving member or members of the family, if any, shall succeed to the title and possession of such homestead, with the like exemption herein prescribed in favor of such head of the family. And the Legislature shall, by general law, not inconsistent with this section, effectually secure the benefits of such homestead exemption.

Substitute offered by Mr. Rolfe:

"Amend by substituting: 'The Legislature shall protect, by law, from forced sale, a certain portion of the homestead and other property of all heads of families.'"

Amendment offered by Mr. Wilson, of First District:

"Amend by adding to the section: '*Provided*, that nothing herein contained shall impair any homestead right existing at the time of the adoption of this Constitution.'"

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

MR. MCCALLUM. I desire to know if that is not to be added to the amendment of the gentleman from San Bernardino?

THE CHAIRMAN. It is to be added to the section as reported by the committee. The question is on the adoption of the amendment offered by the gentleman from San Francisco, Mr. Wilson.

The amendment was adopted.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from San Bernardino, Mr. Rolfe.

MR. SWENSON. I have a substitute for section one.

"The Legislature shall protect, by law, from forced sale"——

THE CHAIRMAN. There is already a substitute pending.

MR. HAGER. Mr. Chairman: I believe this is the same provision that is in the existing Constitution. The law has been well settled in this State, in regard to homesteads, under that provision in the Constitution. It is settled and determined, at this time, with exact certainty, by the decisions of the Courts, what constitutes a homestead, and I think that, as it is settled, we had better adhere to the old Constitution. We had better leave things alone, unless there is an absolute necessity for change, and a certainty of effecting some useful improvement.

MR. VAN DYKE. Mr. Chairman: For the reasons assigned by the gentleman who has just taken his seat, I am in favor of the adoption of the substitute offered by the gentleman from San Bernardino. It is the section in the present Constitution; it has worked well, and I see no reason why we should depart from it for some new and untried scheme.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: I rise, sir, not for the purpose of making a speech on this subject, but merely to state that I hope that the amendment of the gentleman from San Bernardino will be adopted. I believe that our Legislature has made the most ample provision for the protection of the homestead, and there is no complaint on that head. I would rather leave it where it is. I have heard some complaints, however, from some quarters, that it is too high, that the amount exempted is too great. If the people of this State should, in the future, determine that it was too great, that it was exempting too much, why, then the Legislature, if you leave it as it is now, may alter it, but if this amendment reported by the committee should be adopted, it would be impossible to change the amount at all; I think a close examination of the report will reveal the fact that it is decidedly inconsistent with the existing statutes upon that subject, and, as has been remarked by the gentleman from San Francisco, Judge Hager, the law is well settled upon that point. I think we had better leave well enough alone. I hope that the amendment of the gentleman from San Bernardino will be adopted.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I hope the amendment will not be adopted. I do not concede that there are any well established principles that should be adhered to in this particular. I deny that the present law does sustain, in fact, the idea of a homestead, and if there is any one point more than another that the people of this State should be entitled to, it is the protection of a home to every family. Now, how does the law and the present system work? The husband gets a piece of property with the earnings of his wife and himself, and pays for it. The deed is given in his own name. That is the universal custom. That is the settled principle which California has adopted—the deed is made to the husband. Perhaps his health is impaired and he incurs indebtedness; or he embarks in foolish speculations without the knowledge or consent of his wife. His wife, trusting in her husband, and supposing that everything is passing off properly and right, finds at last, that her home is gone.

MR. SCHELL. Do you not know that the husband cannot alienate or impair the homestead property under the existing laws without the consent of his wife.

MR. WEST. I do know that, providing the wife has gone and made a homestead of the property; but she cannot prevent it unless she has had her homestead recorded under the existing law. It requires a special act upon the part of the husband or wife, either of them; and in nine cases out of ten, the wife, confiding in her husband, does not avail herself of her rights. The point I wish to make is, that the first deed shall be a homestead, and if the parties wish to alienate—if the husband wishes to borrow money on a mortgage, he can do so by the consent of the wife joining with him in the mortgage. I deny the right and the justice of a husband to alienate the home or dwelling place of his wife and children without their knowledge or consent. But in order to make it a homestead it must be so recorded, which is not the uniform practice in this State. The uniform practice is that the husband buys and sells as he pleases.

MR. SCHELL. I will state to you, sir, that it has been well settled here, by the decisions of our Supreme Court, that no alienation, no sale of property, can be made without the wife joining in the deed.

MR. WEST. But in ninety-nine cases out of one hundred that declaration of a homestead is never made.

MR. SCHELL. The husband or wife may either one file the declaration of homesteads.

MR. WEST. I claim that every family is entitled to a home, and that the laws should secure the family a homestead, and if it is to be alienated it should be by a certain act of the wife joining with the husband. Now, I am certain that this proposition is advocated only by the lawyers upon this floor. They have got well settled rules of procedure——

MR. BEERSTECHER. I would ask the gentleman how the head of a family would acquire a homestead under this section?

MR. WEST. If I understand the section—I would say that this section is not as binding as I would like it. I would make a homestead entirely inalienable for any purpose whatever.

MR. BEERSTECHER. Wouldn't it be necessary to file a declaration under this section, before the benefits could be secured?

MR. WEST. According to the section, as I understand it, a husband buying a little homestead and moving his family there, it becomes a homestead, and cannot be alienated without the consent of the wife.

MR. BEERSTECHER. I think it would be necessary to file a declaration. I think there is no question about that.

MR. WEST. In the Western States it does not require the separate act of either husband or wife, to go and declare their homestead. If the family resides there, it is a homestead, and should be so declared in our law.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. Chairman: I am in favor of this amendment, and it does seem to me that the argument of the gentleman from Los Angeles falls of its own weight. If he wishes to settle the question, this is no safe course to pursue. Now it may be a fact that lawyers have got settled principles to go by, but it seems to me that those very principles protect the citizens, if you view it in the right light. Now how would this rule of his work, would it not allow parties to claim three or four homesteads, if they could make a homestead simply by residing there a month? How many homesteads can the parties have? Tell me where

the limit is. Tell me whether they could not change from one to another. It seems to me that the present system has afforded ample protection. It seems to me that we should leave well enough alone. These laws are for the protection of the citizen, and they are based upon good and sound reason, every time. I hope the amendment will be adopted.

MR. WICKES. Mr. Chairman: I object to the section as reported, and also to the substitute, principally because of the amount covered—five thousand dollars. Now I do sincerely wish, with the gentleman from Los Angeles, that every family had a home; but there is not one in one hundred that will acquire a home of this value—five thousand dollars. So far as my experience goes, those who have taken advantage of this intended beneficent provision, have been those who were unscrupulous in their dealings, and have objected to paying their just debts.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I desire to offer an amendment to the substitute. It is the same as was offered to the original section.

THE SECRETARY read:

"Amend by adding to the substitute: 'Provided, that nothing herein contained shall impair any homestead right, existing at the time of the adoption of this Constitution.'"

MR. VAN DYKE. The schedule provides that no existing contract or law shall be impaired, but that they shall continue to be as valid as if this Constitution had not been adopted.

MR. MCCALLUM. If there is any such general provision as that in the schedule that may be unnecessary. I desire to say, with reference to this report of the Committee on Homesteads, that if there is any one provision in our Constitution which I think would be more particularly dangerous to tamper with than another, it is the homestead provision. If lawyers of this Convention desire to vote in such a way as to increase litigation I would suppose they would all vote for this section, in view of the present legislation and the decisions of the Supreme Court. For about ten years, I think, our homestead law provided, as this seems to contemplate, for a homestead, without recording; and for about seventeen years, I think, we have had this system requiring a homestead to be recorded; and I undertake to say that there is not a head of a family, there is not a married man or married woman in the State of California who does not know what the law requires. They know that a record is required. As stated by the gentleman from San Bernardino, unless a record is required, in many cases it would be impossible to tell what is a homestead. Parties have residences in different places, and it was for that reason mainly that the law was changed so that it would be known distinctly what the homestead claimed by the parties was. This proposition is, according to my recollection, substantially the statute. It is legislation which it is proposed to put into the Constitution, and to be consistent, it should not stop with the first section of the legislation upon the subject, but should contain all of the statute, with all its provisions. There is no necessity for change. A remark was made by the gentleman from Los Angeles that the purchase is usually made in the name of the husband; so it is. There cannot be a homestead unless the parties reside upon the premises. The wife can file a homestead, and it is just as secure a homestead as if it was filed by the husband.

MR. WEST. I am aware of that condition of affairs. The point I make is this, that the confiding, trusting wives consider it an impeachment of the husband to go and file a declaration of homestead, and therefore, to my certain knowledge, it is neglected, and the result is the family is oftentimes swept out of their home.

MR. MCCALLUM. In about a quarter of a century's practice in this State, I have never known a wife who desired to file a homestead who did not do so. In many cases since they are required to record it they deem it better that they should not file it, because where the homestead is filed the property is thereby made exempt from execution, and tends to destroy the pecuniary credit of the husband. That is the reason. It is very frequently the case that no homestead is filed, and it is at their option whether it is filed or not. I have never known a case where it was desired to be filed, where it was not. The substance is that the gentleman wishes to change this rule, which has existed since eighteen hundred and sixty-one, requiring the recording of a homestead.

MR. WEST. The proposition I wish to arrive at is this: that by virtue of purchasing and paying for the same, and the family occupying it as a homestead, that it shall be in fact and in law a homestead, and to alienate that homestead the wife must join with the husband.

MR. MCCALLUM. That was the law up to eighteen hundred and sixty-one. The gentleman wishes to repeal this law which has existed for seventeen years. I think that would be a very bad business for us to engage in. Under the decisions of the Courts the law has become thoroughly settled and people understand it, and if this Constitution should have such a provision as this in it, many of them would not know of this change. There is no necessity for putting such legislation in the Constitution. I submit again, that if we have nothing left to be done in this Convention except some legislation to repeal statutes, the sooner we adjourn and go home the better.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: The gentleman said that in all his practice he had never known of a single case where a woman wanted to file a homestead, but what she could do so. I am not as old a man as the gentleman from Alameda, and, perhaps have not had so wide experience in law, but I know of more than one case where the most of the property was bought with the woman's money, and her husband was a man that would gin up a little with the intoxicating beverage, and he told her that she must not do it, and she could not go and do it without getting into a little domestic unpleasantness. If I was a lawyer I should go right in favor of this provision, just as it has stood in this State for the last seventeen years, because now if you want to record you have first to make out that declaration, you can do it yourself if you are capable of doing it; but there is not one in ten thousand of the common working people of the State who can sit down and file a declaration of homestead, such as can stand the test in Court. So you are forced to go to some lawyer and pay him the cash right down to get him to write out a declaration of homestead, then go to the Clerk and have it recorded. I am in favor of a law that would allow a man or woman, if they want to file a homestead, to go right up to the County Clerk, who is paid a salary and sitting there idle and doing nothing, and declare this intention and pay for the recording of it, without paying eight, or ten, or fifteen dollars of a lawyer's fee for writing up the declaration. The people are not satisfied with the law. They want it made plain and simple, so that the hod carrier, and the bricklayer, and the common workingman can understand it, and make this declaration without any lawyer. He can go and record it there, and he will have a homestead. When that is done and sent out before the people you will find that this is just what they want. They do not want to be forced to pay a fee to a lawyer to keep them riding around in carriages. When they start for the City Hall they can have a coach, and the hardfisted people pay for it. These men have been lording it over us, and have wrung the money from the hardfisted toiler of the country, and we are sent here to eradicate this evil in some way; and now what we want to do as statesmen, as representative men of the country, is to try and get up some system and make it plain, so that the humblest citizen can go up to the Clerk and declare his intention, and put some of these eminent gentlemen to shoveling sand. [Laughter.]

MR. HERRINGTON. Mr. Chairman: I call the attention of the committee to the first part of this section. I do not think that that argument is really conclusive, and if I could get the attention of the committee for a moment or two, I would like to have a word to say upon it. Gentlemen of the committee, I call your attention to the first part of the section—to its verbiage. I presume there are none of us but what know the substance of this section: "Hereafter, the homestead, consisting of the family dwelling-house, outbuildings, improvements, and lands appurtenant thereto," etc. Now, the section, as it reads, seems to carry with it the idea that there can be lands appurtenant to this dwelling-house which may not form the basis upon which the house itself rests. There is that difficulty in this section that should be corrected; and if I am permitted to do so, I will offer the following amendment: Strike out the first line and the second line down to the word "of," and insert, "The homestead, consisting of the lands, and family dwelling-house thereon, and the improvements and outbuildings appurtenant thereto." As a matter of course there may be a tract of land that was wholly disconnected. It should be amended in that respect, in my opinion. I desire to make that amendment before this section is finally passed over.

MR. MCCALLUM. I withdraw my amendment.

MR. HERRINGTON. I send up my amendment.

THE SECRETARY read:

"Strike out the first line and the second line down to the word 'of,' and insert "The homestead, consisting of the lands and family dwelling-house thereon, and the improvements and outbuildings appurtenant thereto.'"

MR. HERRINGTON. Mr. Chairman: I do not desire that there should be any trouble of recording this homestead. I desire that it should remain pretty much as it is in this section; that it shall not be alienated by either spouse without the consent of both. There may be a question connected with this subject that deserves very grave consideration in connection with this homestead matter, where there is no record required. The husband's debts possibly might affect the status of the wife, so far as the residence is concerned. I think it would be well for the Convention to consider that question, and not hurry too rapidly over this section. I may conclude myself, before this section is adopted, that such a course would be best, and that it would be better for the wife and family, that there should be a record.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. There are some things which it seems to me must necessarily be left to the Legislature. The old Constitution contains a mandatory clause: "The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families," and upon that we have had considerable legislation, until the matter has been reduced to a pretty good system. This section which is reported by the Committee on Land and Homestead Exemption either goes too far or not far enough. It should either codify all subjects of homestead exemption and adopt pretty much the whole of the law as it now is, or else it should leave it to the Legislature, because the subject embraces a good deal more than is covered by this section. This merely embarks us upon a sea of uncertainty, and places poor people who have homesteads and nothing else in a very unfortunate situation, while the law as it is protects them perfectly. In the very beginning this report of the committee utterly ignores the different kinds of property which exist in the State, and which has not been changed by the Constitution. In the first place, we have community property which the man and wife are the common owners of, and upon the death of either it is divided as between the survivor and the heirs of the deceased. It is commonly called the common property, the property of the communion. We have beside that the separate property of the husband, and, third, the separate property of the wife at the time she is married. Here are three kinds of property: the common property, the property of the husband, and the property of the wife. The Code undertakes to dispose of all these different kinds of property, and makes a very proper system with regard to these different classes of property.

This section ignores any such distinction, and therefore will be a hotbed of litigation and trouble and strife. The wife may have a very handsome separate property. She gets married and the husband and

wife live upon a portion of the property. Under this section the woman's property would become a homestead, and would ultimately go to the husband and the children of the husband, and would be taken away from the children of the wife. It would pass to the heirs of the husband in case of her death, and so various questions, which any lawyer will see at once, would arise upon this very section. The Act as it now exists provides for the selection, either by the husband or wife, from the community property, the property of both, or the property of the husband; but it cannot be made from the separate property of the wife except by the consent of the wife, which is a very proper provision in the law. All of this, I say, is ignored in the section on homesteads reported by the committee. I call the attention of the committee to this for the purpose of showing that in the very nature of the thing there must be legislation upon it. It is not the proper place in the Constitution here to lay down all the different rules which will apply to all the different kinds of property. Of course this last clause provides for legislation, but it is legislation not inconsistent with this section; it is legislation in furtherance of this section; and it depends upon the fact of the existence of the homestead instead of some declaration that the parties intend to select a homestead. There are various other reasons why I object to the section. It may be that the husband and wife are living upon a piece of property temporarily; that they do not want to make it their homestead; that they have, in fact, another place that they desire to select and file upon, or another piece of property which they desire to improve. Now if you attach a homestead interest to one part of this property there is no provision by which they can abandon it and change their homestead to another place. It would make it very difficult to ascertain whether there was a good and valid title to any piece of property. You could not tell whether a conveyance was good or not without inquiring if it was a homestead, whether the husband and wife was entitled to a homestead, and what has become of it since, and all the circumstances attending it; so that no searcher of titles or lawyer can tell upon a single piece of property whether the title is good or bad, because it depends upon a fact which it is difficult to ascertain. The system provided by the Code is simple and is very cheap. Forms are printed and there is no sort of difficulty about it. It is within the reach of everybody, and for about four bits a homestead can be declared. That puts it upon the record and ascertains the fact. It shows the will of the husband and the wife, and attaches to the piece of property. Then when they want to abandon that homestead there is a simple method of doing it, by filing a simple declaration of abandonment in the same way. The best way, in my judgment, is to adopt the provision of the old Constitution and let the law stand, and if there are any defects in it the Legislature can correct them. It is a good thing to let well enough alone.

REMARKS OF MR. MILLER.

MR. MILLER. Mr. Chairman: I agree with the gentleman from San Francisco, Mr. Wilson, that the present homestead law is a good one, and I doubt if we can improve it. As a general rule, I think that all such matters should be left to the Legislature; and the objection to the report of the committee is, that it attempts legislation; attempts to frame a system. I believe that we are all agreed that we are to have some laws on homestead; that there should be a certain amount of property set apart and not subject to sale for ordinary debts. There is only one objection I have to the present homestead law, and that is, that it permits an incumbrance of that property by mortgage, by the consent of both husband and wife, where the relation of husband and wife exists. I think it would be an improvement to put it out of the power of both the husband and wife to incumber the property by mortgage. The Legislature may do that, and they have not done it. That is the only objection that I have to the present system. It is idle to say that the homesteads shall not be mortgaged except by the consent of the wife, because in nine cases out of ten, if the husband desires to go in debt and incumber the property, he will persuade his wife by arguments of one sort or another—the character of these arguments depending a good deal upon the character of the man—to consent to mortgage, and thus incumber the property for the purpose of raising money to go into stocks, or something else, and it results in taking the roof from over the heads of his wife and children. I would place it beyond the power of the husband in any way, either with or without the consent of the wife, to incumber the property. The question is, whether it is proper to put such a provision or restriction in the Constitution. For my part, I should be in favor of it, and would move an amendment to that effect whenever it is in order. I would adopt the old Constitution with that amendment, that the homesteads should not be incumbered, except for the purchase-money.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I agree with very much that has been said by Mr. Wilson upon the subject, and also what has been said by General Miller. I think, however, in order to make the present provision of the Constitution certainly effective as to homestead, it should be amended so as to say that the Legislature should not reduce the value of a homestead to a less sum than five thousand dollars. It now reads: "The Legislature shall protect, by law, from forced sale, a certain portion of the homestead and other property of all heads of families." The language there seems to convey the idea, or the general idea would be, that whatever a man owned and lived on, would be a homestead, and that the Legislature could carve out any such portion of that as they saw proper to protect from forced sale; that is to say, they need not protect five thousand dollars, or two thousand dollars, or one thousand dollars, but they could protect five hundred dollars, or seventy-five dollars, and comply with the Constitution of the State of California in their protection of a homestead. I think that the Legislature should be prohibited from reducing the amount to less than five thousand dollars that should receive protection as a homestead. I would, therefore suggest, as an amendment, to add, "provided, the Legislature shall not reduce the value of the homestead to be protected from forced sale, to a less amount than five thousand dollars," then I think we can not do better than to leave it to the Legislature as to the precise manner in which the title of the homestead shall be protected or founded upon the record. In other words, I do not believe we can make a homestead more effective, so far as securing title is concerned, both for the parties, and tracing it for the benefit of the community, than to say, that it shall be recorded and abandoned, as at present; but I do believe further, that after the homestead has been recorded, as prescribed at present, then that it should remain a homestead, and be inviolate for all character of debts except taxes, until an absolute sale shall take place; that no husband shall have the privilege of reasoning his wife, or teasing his wife, or forcing his wife into signing mortgages for the incumbrance of the homestead. It is equivalent to no homestead at all; it gives up the homestead right, and surrenders the wife to the weakness, the drunkenness, or the worthlessness of the husband, and affords no protection. The homestead should be a homestead, and it should stand inviolate, except as to an absolute sale, otherwise than for taxes. I am therefore in favor of the old Constitution, amended with reference to limitation. Then the Legislature must necessarily make some law pointing out how title shall be ascertained, how particular homesteads shall be defined and known, and to avoid the constant litigation which would grow up without this manner of defining and pointing it out. I am in favor of making the homestead a homestead, with all its fruits exempt from forced sale or execution. In many cases where a crop has been cut from a homestead, it goes into the hands of the law, and not into the pockets of the family. What good does it do a man to raise fruits if these fruits have to go into the law to satisfy executions and judgments that stand against the homestead? The fruits of the homestead ought to be exempt from forced sale. What has the wife and family to live on if the fruits that result from the homestead are to be taken by Constables and Sheriffs? Make the homestead, and all that which is raised upon it, exempt. If the husband then sees proper to apply it in the payment of other debts, let him do it, and if he sees proper to squander it for whisky, let him do it. If the corner grocery man has a mind to trust them, let them do it. I want to make laws that will prevent men getting in debt; I want to make laws that will make men cautious about giving credit; I want to make laws that will make men pay as they go. The idea seems to be that the principal business of the community is to go in debt, and have mortgages foreclosed on them. May God help that idea. May it be put out of this community at the earliest day possible. If I had my way, I would say that no debt should be collected by law. Of all the most helpless communities in the world, it is those communities that carry debt from year to year, and who have settlements by foreclosures of mortgages. I want the community put upon the basis of paying as they go, and the corner grocery man will not credit this man with a homestead, if he is entitled to the fruits of it for himself, as against executions.

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman: The distinction between the present code or law which has been framed under the provision of the Constitution, and the article reported by the committee, seems to be this. It will be noticed that in the Constitution, as it is, no rule is prescribed for the establishment of homesteads, and the matter is entirely relegated as to legislative action. Therefore, in making a comparison with the article as reported, it should be with the code of laws, established in the manner authorized by the existing provision of the Constitution. In our laws as they now stand, and as they have stood during most of the time since the adoption of the Constitution, there has been no provision made for a homestead, except upon an affirmative act done either by husband or wife or by husband and wife. In other words, no matter how much property may belong to the husband or wife or to the community, no homestead is protected except by a declaration filed in the manner prescribed by law. That has been a source of much dissatisfaction. A person owning property of considerable value, a part of which is occupied by the family as a home but not dedicated as such, has good credit. If the property is not dedicated as a homestead it is subject to execution under our law, and remains so, although occupied by the family until the declaration of homestead is filed. Now, then, a person doing business obtains credit upon the basis of his property. That is the common basis of credit. The common practice has been to give credit upon all property not dedicated as a homestead. Notwithstanding, the party may be largely in debt, and may have obtained credit upon the basis of his property by his own act, or by the community act of himself and wife, or by the act of his wife without his knowledge or consent, a declaration of homestead is filed and a large portion of the property, perhaps the whole of it, may be at once segregated and taken away from the benefit of the creditors. That is the reason of the common complaint. The other difficulty resulting from that is this: There are many men—and it is a weakness, if you may so call it, and I think properly—especially men engaged in business, who do not desire to dedicate any portion of their property to homestead, perhaps because it will impair their credit in business. Now it is delusive, as we have already seen. By reason of his carelessness the husband may take no step to secure a homestead; the wife, in nine cases out of ten, will know nothing of the procedure, and the first notice she will have of the necessity of action will be an execution running against the husband, and the homestead is gone. The purpose of the article formulated by the committee is to obviate that difficulty. That is, that whenever a man or the head of a family is possessed of such a home as is mentioned in the first lines of this section in fact, this provision, if incorporated in this Constitution will be self-executing, and will of itself work a dedication of that as a homestead. There is no other construction to be put upon it. You remember the property possessed by husband and wife is divided as community property, and as separate property. I need

not recount the provisions of the law on this subject. They are familiar. The operation of this clause, as presented by the committee, will be that whether the property be community property, or whether it be the separate property of the husband or the separate property of the wife, so that the family, or heads of the family, dedicate it by occupancy and use as the residence of the family, this is self-executing and will dedicate it as a homestead. That is right. Furthermore, upon the death of the husband or wife this dedication continues for the benefit of the other members of the family. That is going somewhat beyond the provisions of our present law, as every lawyer will remember. I agree with the gentleman from San Francisco, Mr. Miller, upon one point, that the Constitution should prohibit the incumbering of homesteads. I think the section ought to be amended so as to reach that point if this property is to be protected for the defenceless children. A system that does not go to this extent will fail in the accomplishment of this wise purpose. I would not prevent or deny to the heads of families the power of alienation, because it frequently may happen that the husband may desire to sell the homestead for the purpose of getting a new one; but the incumbrance of it should be prohibited. I hope that with the amendment suggested by the gentleman from San Francisco, Mr. Miller, this article may be adopted as a part of the organic law.

MR. MILLER. Mr. Chairman: I send up my amendment.

THE SECRETARY read:

"Amend the substitute offered by Mr. Rolfe by adding the following: 'and such homesteads shall not be incumbered by mortgage, or otherwise, except for the purchase-money or improvement thereof.'"

SPEECH OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: I am opposed to this report of the committee. It has been criticised, and justly criticised, too, I think. While there have been remarks made by some of the gentlemen who have supported this report and urged its adoption, I think the general opinion of this Convention must be against it. It has been said by one gentleman here that this report of the committee ought to be adopted because the lawyers charge four or five dollars for drawing up a homestead declaration.

MR. GRACE. I made some remark of that kind, but I want it understood distinctly that I have no affinity with this report. I am opposed to the report of all the amendments, and the lawyers too.

MR. BELCHER. Mr. Chairman: I am not opposed to some provision for a homestead. I believe that we ought to have here a provision for a homestead. It is true that men and women are sometimes improvident. It is true that they need to have a home exempt from execution; that they need to have some personal property; they need to be protected from their imprudence in times of prosperity; and I believe that it is well to provide that some kind of a homestead shall be set aside to them, and saved from being taken under execution. One gentleman wants to have it fixed at not less than five thousand dollars. I am opposed to that. I do not know what in future may be best. So far, during the history of this State, we have had an exemption of five thousand dollars. So far we have trusted the Legislature in this respect, and I see no reason why we might not in the future trust the Legislature. Perhaps three thousand dollars will be enough five, ten, or fifteen years hence. Why not trust the Legislature in that respect? Why must we say here again that you cannot trust the people in protecting themselves?

Now, sir, I am opposed to this amendment, which fixes it at five thousand dollars, and this report of the committee; because, if adopted it throws all titles into uncertainty. If adopted, it will make litigation tenfold more than it is now. If adopted, you will have employment and a demand for lawyers, instead of getting rid of the necessity for lawyers. Who will know what his title is? Who will know, as has been said here, when you go to examine the record, whether there is any title in the party who is about to sell? Who can tell, unless he can go back and trace the history of it for ten or twenty years, and ascertain whether some one has lived upon it and made it a homestead? Litigation will grow up, and there can be no certainty of title. I am opposed to anything that leads to litigation. I am a lawyer, and I have been during all my manhood, and I think I have been a lawyer long enough to see that the lawyers want good government, and no uncertainty about it. I believe, if you will go to the lawyers of this convention, you will find that they are among the most prudent, the most cautious and conservative legislators that you can find in this Convention. Now it is not true that lawyers are trying to make litigation. It is not true that they do it here, and it is not true that they do it, probably, in the Legislature—though I was not in the Legislature of this State to observe them. But if you were to take an expression, you will find that all the lawyers have opposed the amendments which would lead to litigation, and have spoken in favor of one which has cut down and destroyed, almost wholly, litigation in reference to homesteads.

Now, sir, I have no objection to the amendment offered by the gentleman from San Francisco, General Miller, that there shall not be any mortgage upon a homestead, though it is not very easy to see why. If I have a homestead and it becomes necessary for me to use some money, and my wife, knowing the purpose for which I propose to use it, agrees that I may do it, and goes, not in my presence or hearing, before a Notary Public, and having been informed of what I want, willingly and voluntarily subscribes to a mortgage, it is not easy to see why we may not be permitted to do it. I have no particular objection to that, but I do object to any amendment fixing the amount to which a homestead shall be exempt. We do not need any legislation in the Constitution in reference to it. We need simply the pure declaration of the old Constitution. It is better than anything that we can frame. I submit, therefore, Mr. Chairman, that the report of this committee should be rejected, and that the amendment offered by the gentleman from San Bernardino should be accepted, pure and simple. It is enough, and it meets the requirements. It is all we want. Anything more will work mischief rather than good.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. Chairman: I am in favor of the amendment of the honorable member from San Bernardino, Mr. Rolfe, with the amendment thereto of the honorable member from San Francisco, General Miller. I favor the amendment which introduces the present clause of the Constitution on the subject of homesteads, for the reasons which have already been stated by the honorable member from San Francisco, Mr. Wilson, and others, and so fully and clearly stated that they seem to me to amount to a demonstration. To the reasoning they have presented, I have nothing to add. I indorse it fully, and I think to all who heard it, its cogency was so complete, that not only was nothing left to be said, but nothing was left to be doubted. I am in favor, however, of the amendment of the member from San Francisco, General Miller, because I consider that the present provision of the Constitution, and the provision of the laws under it, amounts to a precept rather than a practice. The husband has entire control of the situation. The wife, in all well regulated households, to a great extent is under the dominion of the husband, if not, as is too often and unhappily the case, arbitrarily controlled under the oppressive influence of her regard for him. In every well regulated household the wife is really under the dominion of her husband; in some instances in the way of compulsion; in most instances in the way of confidence and kindness. When the husband is imperious, the wife yields to his request. But not only is the wife to be considered here. The children are to be protected, and they are oftentimes young and unable to speak for themselves. They should be the wards of the State in all instances where their rights are affected or capable of being prejudiced by their parents. We should take care of the rights of these little helpless things who are incapable of protecting themselves, and for their sake we should upon this floor become their champions, and sustain their rights in this matter.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I am opposed to the report of the committee entirely. It is full of contradictory ideas. I attribute its character to the want on that committee of any of that odious class called lawyers; and it is just about such a production as I should be likely to furnish if I were to attempt to make a pair of boots for the Chairman of the committee. Now, I must be pardoned for giving a little history of this matter. The homestead right and the right of the separate property of the husband and wife should be considered together. They are transcribed from the Constitution of the State of Texas. I happened be upon the committee which reported both of these provisions to that body, and therefore I have some attachment for them, and I am in favor of the motion of the gentleman from San Bernardino to adopt the section of the old Constitution, together with the amendment of the gentleman from San Francisco; though I would suggest an amendment to it so that the homestead, for taxes, should not be exempt, because if a man has a homestead in land he can afford to pay taxes, and ought to pay taxes. I presume, probably, he would have no objection to accepting such an amendment. Now, in relation to the provision in regard to the separate property of the married parties, the committee in the Texas Constitutional Convention made a digest both of the French and civil codes of Spain, and they added to it, if I may so express myself, the American common law doctrine of registry of the separate property of married women. In regard to homesteads, they said, "The Legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families." That was original with that Convention. It was the first provision of that kind adopted in any of the States, and has been since followed up by most of them. And I think it a wise provision. But subsequently, in Texas, for the purpose of really nullifying the homestead provision to a large extent, they provided for a registry law for a homestead. That was followed by legislation in our statutes and code providing for the registration of the homestead, and that put the matter of the homestead entirely in the power of the husband. In this State, in the first instance, we did not provide for the registry of the homestead, and the Supreme Court held that the settlement upon a particular tract of land by a family gave to it the character of a homestead, and protected it from forced sale. I think that was the sounder provision—the sounder legislation—because that offered some protection to the married women. But the rule of registration nullified that provision practically; but with the amendment of the gentleman from San Francisco no registration will be necessary. A wife that is worth having would agree with her husband to transfer the property, if he wanted to transfer it, and, therefore, it is no protection at all. The amendment offered by General Miller connected with the provision as it exists in the present Constitution, I look upon as a perfect homestead law, and the one I trust which we shall adopt, because then we shall have made a provision which will protect the family. It is of less importance that the searcher of titles, alluded to by the Chairman of the Committee on Judiciary, should be compelled to inquire into whether the property a man is proposing to sell or mortgage is a homestead or not, than it is to subject the wife and families to the dangers of the registration. If we adopt the Constitution as it exists, with this amendment offered by General Miller, I think we will have it as near perfect as we can get it.

REMARKS OF MR. STUART.

MR. STUART. Mr. Chairman: I am opposed to this amendment offered by the gentleman from San Francisco, General Miller. I am in favor of the old Constitution as it stands. It is well known, Mr. Chairman and gentlemen, that most of the buildings built in San Francisco were built on the homestead principle. The property is bought by installments or cash, and buildings are erected thereon. The streets are

improved and frequently—you may say nine times out of ten—the owners find that at the end they have incurred more indebtedness than they anticipated. Then assessments for street improvements must be paid for, or the property will be sold for taxes. The owners go to the different savings banks, or to their friends, and borrow money to pay this indebtedness off. That they could not do under this amendment offered by General Miller. I am in favor of the old homestead law. That provides that individuals owning homesteads shall file these homesteads. Therefore I am in favor of the amendment offered by the gentleman from San Bernardino, Mr. Rolfe.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: I am in favor of the old Constitution, pure and simple, so far as this part of it is concerned, and I desire to say a word or two in regard to the amendment offered by General Miller. I am satisfied that in practice it would prove both a delusion and a snare, because as it now stands it requires the joint action of both husband and wife to mortgage it. Providing we adopt this amendment it shuts off mortgages altogether, but by the joint action of both parties they may either sell or abandon. Now, five thousand dollars is considerable money, and invested in our farming country it is a good big farm. A drought comes on, or something happens, and the result is that a man owning five thousand dollars worth of land, on which he may have two hundred acres plowed, is utterly powerless because he is unable to raise money to buy the seed to seed his ground. What would be the result? He would abandon the homestead, because it is the only way to save them from starvation. So it will be in a thousand cases. They will abandon the homestead, or sell and buy a smaller one. It is all the protection that you can give it when you require the joint action of both to deal with it. You have placed them in a position of strength. You have given them the protection they need, and anything more instead of being protection is an injury. It is rendering less valuable the thing to them, and they cannot enjoy it in the least degree. I think if any member will reflect a moment upon it he will see that I am correct. I know it appears all right, and I believe is offered for a good purpose. I believe that when we have said that it shall not be mortgaged without the consent of both, we have done all we ought to do, and if we go a step farther we begin to injure and mar our work.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I think the amendment proposed by General Miller would work badly, if adopted. I call the attention of the committee to the fact that the Legislature passed an Act prohibiting the incumbrance of homesteads. The result was, that in order to raise money—as suggested by the gentleman from Santa Clara, Mr. Laine—the parties were obliged to abandon the homesteads. The consequence of the abandonment of the homestead is, that it lets in judgments. If there are any old judgments, the liens of which have not expired by the lapse of two years, the parties cannot abandon the homestead without listing in these judgments. The result is, that it will sweep away the homestead. Now, it is much preferable to have it as it is by the present Act; that is, to allow the parties, by the consent of both, to raise money by an incumbrance upon the homestead. It is altogether preferable to compelling them to abandon the homestead to raise money. There may be cases where the parties will be driven to incumber the homestead in order to live upon it until they could raise a crop, or they will be compelled to sell it. I think the amendment, although designed well, would work badly. I think the old section of the Constitution should be adopted, pure and simple.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: When I first heard the amendment of General Miller, I was favorably impressed with it, but upon reflection, I think it would be attended with evils instead of good. In my section of the country we are subject to periodical droughts. The next season comes on, and we have nothing to buy grain with to sow our crops, or to buy provisions for our families, and nothing to sustain us until the crop is made the next season. If we have the privilege of mortgaging until the next harvest time, we can pay it all. I think it would be attended with evil results. While I would want to protect it, and thought favorably of it when it was first read, I see that it will operate very badly against the farming interest.

MR. WEST. You do not consent that the amount should be limited?

MR. BIGGS. I am perfectly willing to leave that to the Legislature in the future, as we have in the past. Here is why I am opposed to the amendment offered by the gentleman from San Francisco, Mr. Miller. For instance, here is a gentleman farming a thousand acres of land that is not worth more than five thousand dollars. The crop entirely fails. Now, how are they going to put in their next year's crop without some resources to borrow money.

MR. MCCALLUM. Are you not aware of the fact that the same idea as is here presented has been tried in this State and abandoned. That was formerly the law—that you could not mortgage. That was tried and abandoned.

MR. BIGGS. If you adopt General Miller's amendment you cannot mortgage. That is why I am opposed to the amendment.

MR. WINANS. That abandonment was not from the inharmony of the system, but from the temper of the people. It was abandoned by the exactions of the time.

MR. BIGGS. How is the man on a homestead to go on and put in another crop?

MR. WEST. In many of the Western States they have confined the amount of land to forty acres.

MR. BIGGS. I am aware of that. We are speaking now for California. We are subject here to periodical droughts, more than any other country, perhaps, on the face of the globe. We have been ruined by droughts some years, and how would you or I or any man on a homestead go on and put in another crop without the privilege of mortgaging. If you adopt the amendment offered by the gentleman from San Francisco you tie our hands and force us either to sell or abandon, and it will work a hardship upon those who have homesteads.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: That system was tried. The Legislature changed that rule because of its inconvenience. It simply requires two instruments to be made instead of one, and that would be the effect of the amendment. If it should be adopted the first thing that the husband and wife would do would be to abandon. Then it would cease to be a homestead, and could be mortgaged. But I am opposed to it, although I know the evil intended to be remedied, is one that ought to be remedied if it could be. The result of this would be that many a homestead would be abandoned and all lost, when perhaps the parties did not desire to raise upon the homestead one fifth of the value of it. The parties may desire to raise only one thousand dollars. It may be important to the husband and wife. It may be a necessity, perhaps, on the part of both of them, when living on a five thousand dollar homestead. But under this they cannot raise the money, because they cannot secure any one. They cannot do anything except to abandon the whole five thousand dollar homestead, in order to raise one thousand dollars on the homestead. Now, sir, I would regard this as very unfortunate legislation in our Constitution, and it seems to me to illustrate the evil of all attempts of this kind under our ten minute rule. We cannot give the attention to the details of these arguments which their importance require in a Constitutional Convention. And here it is proposed to make it an inflexible rule. It has been the rule once, and has been abandoned. If our people shall desire to return to it let the Legislature do so. Mr. Chairman, that will be the effect of it practically; parties would abandon in order to make mortgages, and the result of it would be in many cases they would lose their whole homestead in trying to secure a portion of it. Our Constitution guarantees the right to acquire, possess, and enjoy private property. In many cases the whole of the private property is a homestead. Carry out this rule and say that once a homestead is acquired it shall never be mortgaged, or shall never be sold, if you please, and you have tendered to the people a good thing; but coupled with such hard conditions that not one single person in a thousand would avail himself of the benefit of the good thing.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I wish to speak to General Miller's amendment. I was a member of this committee that made this report. I could not agree with the report. It was unshapely; it was defective; and therefore I did not sign the report with the majority, and I am sorry to see that those who did sign it have not defended it. Yet I ask that there shall be some security for the wife and children. As Mr. Winans has very aptly explained, it should be a protection both for the wife and children. I hope the amendment of General Miller will be adopted, and then I will vote for the amendment of Mr. Rolfe.

MR. STEDMAN. Wouldn't it be better to make the husband give it to them? It can never be attached then.

MR. WEST. The wife would mortgage her own right and title in order to keep peace in the family.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. I have but one word to say in reference to the amendment introduced by the gentleman from San Francisco, Mr. Miller. I think that amendment would institute a very bad policy indeed, and it should be voted down. Much as I esteem the author of the amendment, I think this would be a grand mistake. In the first place it is not the office of this Convention to force anything upon anybody. It is to give the right of homestead, not to compel it; and if we secure a homestead to persons, what they shall do with that homestead by way of sale, by way of abandonment, by way of mortgage, or incumbrance, should be left to the owners of the homestead. We should not say: You shall have this against your own judgment. Here is a man and wife sitting as the head of the whole government at home. They are the best judges of their own interest. They ought to determine what they wish to do, and for this Convention to intrude itself upon them and say: You shall not exercise your own judgment over that piece of property, is unwise.

MR. HOWARD. I would ask the gentleman if it was not the reasoning in Athens and Rome——

MR. WILSON. I was not there and cannot tell.

MR. HOWARD. Where a man was allowed to mortgage, not only his property, but his wife and children, and have them sold into slavery for debt.

MR. WILSON. There are a great many things that were done in Athens and Rome, that we do not believe in. No doubt they committed an error. But I have seen merchants rescued from bankruptcy by the power to mortgage their homestead. No one knows so well the crisis which may exist in the affairs of a family, as the family does itself. Sometimes a merchant is in good standing with the community, and yet he is on the verge of bankruptcy. It is necessary to tide over the crisis. He and his wife are possessed of the secret. He and his family alone know it. By exercising their own judgment, and mortgaging the homestead, he is saved from bankruptcy and ruin. You undertake to say that these people shall not exercise their own judgment; that you will give them the piece of property, and say that they shall not use it. You tie up the piece of property and say, that they shall not do as they please; there are cases in which persons are reckless in the manner of doing their business, but for that reason we should not say that they should not exercise a right over any of their property.

MR. MILLER. What is the object of the homestead system?

MR. WILSON. It is to protect people against misfortune, though it may be the result of bad management. The object of the law has never been to prevent people from doing what they pleased with their own property. There are evils of a greater magnitude, which would result from tying up their hands. I am in favor of homestead. I am in favor of protecting it from forced sale. The spirit of the homestead law always has been to protect it from forced sale, and not to protect it from the people themselves. They ought to have a right to dispose of their own property, to mortgage it, hypothecate it, and deal with it in any way that their judgment shall dictate, and for that reason I am opposed to this amendment offered by the gentleman from San Francisco.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I want to punish this committee for two or three minutes. I hope, Mr. Chairman, that the section reported by the committee, and all the amendments save one, will be voted down, and that one is a mere recital of section fifteen of the old Constitution upon that subject. The reasons were given a short time ago by the gentleman from San Francisco when he said that if we adopted this section we are sure to get into an unending litigation. If we propose to make the section cover all the litigation necessary, there is not enough of it; if we do not propose to do that there is too much. "Hereafter the homestead, consisting of the family dwelling-house, outbuildings, improvements, and lands appurtenant thereto, of each head of a family resident in this State, of the value not exceeding five thousand dollars, shall not be alienated or incumbered, except by the consent, in manner to be prescribed by law, of both husband and wife, where that relation exists, and such homestead shall be exempt from seizure or sale for the payment of any debt or liability, except for the purchase-money and the payment of taxes, laborers' and mechanics' liens, and obligations contracted for the improvement of such homestead, and for debts incurred before the adoption of this Constitution." There is no provision in that for recording, or for any other method of enforcing the benefits of this homestead. Suppose the question is raised that there has been no record here, and you fall back upon this provision of the Constitution. You do not go far enough. It is only necessary, and the only thing we ought to do, is to declare that there should be a homestead set apart. It is one of the things we can trust the Legislature with, because there is not much danger of a lobby influence. There is no job in it. Shall we trust the Legislature with anything, Mr. Chairman?

MR. SMITH, of San Francisco. No. [Laughter.]

MR. SCHELL. I would ask the gentleman if he is willing to trust the Legislature for our scrip?

MR. REYNOLDS. I did not intend to punish this Convention but two or three minutes—I do not know but what I shall consume my whole time. The reasons given by the gentleman from San Francisco, why we should not adopt this section, and why we should only make the simple declaration, that the homestead should be exempt, are unanswerable. I think we had better expend some of this time, not upon how we shall entangle the homestead, but how we shall provide for cutting up these large landed estates, that are capable of sustaining five or six thousand families, and that ought to be cut up into five or six thousand homesteads; and provide how the children shall some day get a portion of them for a homestead. There are a dozen or two families on from one hundred thousand to four hundred thousand acres of land. Let us expend some of this solicitude in providing ways by which some of the children shall be able to get a patch of this land for a homestead, and not how we shall entangle those which now exist. This is one of the things that can be left to the Legislature, hence it is not necessary for us to try to provide every detail.

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

Seconded by Messrs. Hunter, Holmes, Larkin, and Dunlap.

The main question was ordered.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from Santa Clara to the original section.

MR. HERRINGTON. Mr. Chairman: I withdraw my amendment. I am in favor of the section in the old Constitution.

THE CHAIRMAN. The next question is on the amendment to the amendment of Mr. Rolfe, offered by the gentleman from San Francisco, Mr. Miller.

The amendment to the amendment was rejected.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the gentleman from San Bernardino, Mr. Rolfe.

The amendment was adopted.

SALE FOR TAXES.

MR. AYERS. Mr. Chairman: I send up an independent section.

THE SECRETARY read:

"The real and personal property of all homesteads assessed at the value of five hundred dollars, or less, in each case shall not be sold at forced sale for the recovery of taxes levied thereon; but property, personal or real, other than that embraced in the homestead, and not otherwise exempt by law from seizure, shall be subject to forced sale for such homestead taxes."

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I offer that section for the purpose of relieving a large class of poor people in this State who have a little bit of property, which is their homestead, and amounts in the aggregate to only about five hundred dollars. I cannot conceive of anything more unjust or tyrannical than for the State to constitute itself a preferred creditor, as regards this class of poor people, and that notwithstanding it generously provides that their little homesteads shall be exempt from seizure and sale by individuals, yet the State may step in, and for its taxes may take the little homestead and sell it from under their feet. I believe that the larger homestead—the homestead to the extent of the limit of the exemption—in nearly every case belongs to persons who are able to pay their taxes; but where the homestead is so small, where the owner of it and his wife have a mere cabin and a few acres of land, a cow, and a pig, I believe that they should not be subject to forced sale and be driven out from their little home. The section that I have offered provides, also, that any other property belonging to these people may be seized and sold for the taxes upon the homestead, so that really this clause would be beneficent only to this class of people, and there are a great many of them in this State who are extremely poor. I think that the section will commend itself to the gentlemen of this Convention, if they will consider the class to whom alone it will apply.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: This would be a very dangerous section. In the first place, I say it would nearly bankrupt the mining counties of this State. More than half of the revenues of these counties results from the taxation of homes of miners, which, as a general rule, would come within the provisions of that section, and would be exempt from taxation. It would reduce the value of our property to such a great extent that we could not maintain our county governments. I am opposed to exempting any property from taxation. I believe that property that receives protection from the government should pay its portion of the expenses of that government.

MR. AYERS. Do you consider it fair that the State should be a preferred creditor?

MR. TINNIN. That is the rule in all governments.

MR. AYERS. There is no logic in it.

MR. TINNIN. It is certainly good sense.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I am opposed to the section proposed by the gentleman from Los Angeles, for more reasons than I can enumerate just now, but I will enumerate some of them. The first, and, perhaps the greatest and most serious objection that I have, is that it contravenes a principle as broad as human understanding, the principle of justice and legality. Another reason, Mr. Chairman, why I am opposed to it, is that it is offering a bonus to unthrift, idleness, and vagabondism. I think, Mr. Chairman, that it would be a very bad policy, a ruinous policy, a policy that would fly in the face of reason, of justice, and of all sound policy, to offer a bonus for unthrift. I take it for granted that the good sense of this people, and of this committee, would hold that the very reverse of that theory should be the rule. That is, that we should encourage by all possible means thrift, industry, and enterprise; and not be saying to men that if they do not acquire more than five hundred dollars worth of property they shall be exempt from the burdens of government. Why, is it not plainly and clearly a bid for worthlessness? a bid for idleness? I propose now reason and justice and common sense, and some policy against such lunacy. [Laughter.]

MR. PROUTY. I move to amend by adding: "Any person not owning five hundred dollars in value, of property, shall be furnished the same from the county treasury of their respective counties."

THE CHAIRMAN. It is not in order. The question is on the adoption of the section offered by the gentleman from Los Angeles, Mr. Ayers.

The section was rejected.

MR. HUESTIS. Mr. Chairman: I move that the committee now rise, report the article back, and recommend its adoption as amended.

MR. O'SULLIVAN. Mr. Chairman: I desire to call up——

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

The motion prevailed, on a division, by a vote of 59 ayes to 56 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report, that they have had under consideration the article on land and homestead exemption, report the same back, and recommended its adoption as amended.

MR. VAN DYKE. I move that we consider the general file.

MR. ESTEE. Mr. President: I move that the usual number of copies of the article on land and homestead exemption be ordered printed.

THE PRESIDENT. If there be no objection it is so ordered.

MR. GRACE. I object.

THE CHAIRMAN. The question is on the motion of the gentleman from San Francisco, Mr. Estee.

The motion prevailed.

SCHEDULE.

MR. HOWARD. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Schedule. We can get through with these reports this week, and take up the general file on Monday.

The motion prevailed.

Following is the article reported by the Committee on Schedule:

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

SECTION 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as

valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them, shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature.

SEC. 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any such subdivision or municipality, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

SEC. 3. The Legislature, at its first session after the adoption of this Constitution, shall provide for the transfer of all records, books, papers, and proceedings from such Courts as are abolished by this Constitution to the Courts provided herein; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in first instance commenced, filed, or lodged therein. No officer elected at the first election after the adoption of this Constitution shall be entitled to draw any salary until he shall have been duly installed as such either by provisions herein or by Act of the Legislature.

SEC. 4. The Secretary of State shall cause this Constitution to be published once a week for at least four consecutive weeks next before the first Wednesday in May, eighteen hundred and seventy-nine, in not more than six newspapers published in this State, one of which newspapers shall be published in the City and County of San Francisco, one in the County of Sacramento, one in the County of Los Angeles, one in the County of Nevada, one in the County of Santa Clara, and one in the County of Sonoma. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least one month before the said first Wednesday in May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

SEC. 5. The Superintendent of Printing of the State of California shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "For the new Constitution." He shall likewise cause to be so printed and delivered to said Clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "Against the new Constitution."

SEC. 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section.

SEC. 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

SEC. 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as the City and County of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns are received, or until six postponements have been had, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

SEC. 9. The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the day hereinafter specified.

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

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

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section one.

LAWS IN FORCE.

THE SECRETARY read:

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

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

THE CHAIRMAN. If there be no amendment to section one the Secretary will read section two.

EFFECT ON INSTRUMENTS.

THE SECRETARY read:

SEC. 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeits due or owing to this State, or any such subdivision or municipality, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

MR. HERRINGTON. Mr. Chairman: I move to strike out the word "such" in the fourth line.

MR. MORELAND. I see no objection to that. The word is unnecessary there.

The motion prevailed.

MR. SCHELL. Mr. Chairman: I move to strike out this phrase from line eight, "or may hereafter be found." The phrase is entirely unnecessary and ambiguous. With that struck out the whole case is covered.

MR. VAN DYKE. Mr. Chairman: I hope that amendment will not be adopted. There may be indictments found between the adoption of the Constitution and its taking effect in July. I think it is right as it stands.

MR. SCHELL. I withdraw the amendment. I think I misapprehended the meaning of it.

THE CHAIRMAN. If there be no further amendment to section two, the Secretary will read section three.

TRANSFER OF RECORDS.

THE SECRETARY read:

SEC. 3. The Legislature, at its first session after the adoption of this Constitution, shall provide for the transfer of all records, books, papers, and proceedings from such Courts as are abolished by this Constitution to the Courts provided therein; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein. No officer elected at the first election after the adoption of this Constitution shall be entitled to draw any salary until he shall have been duly installed as such either by provisions herein or by Act of the Legislature.

THE CHAIRMAN. If there be no amendment to section three, the Secretary will read section four.

PUBLICATION OF CONSTITUTION.

THE SECRETARY read:

SEC. 4. The Secretary of State shall cause this Constitution to be published once a week for at least four consecutive weeks next before the first Wednesday in May, eighteen hundred and seventy-nine, in not more than six newspapers published in this State, one of which newspapers shall be published in the City and County of San Francisco, one in the County of Sacramento, one in the County of Los Angeles, one in the County of Nevada, one in the County of Santa Clara, and one in the County of Sonoma. The Governor shall issue his proclamation giving notice of the election for the adoption or rejection of this Constitution at least one month before the said first Wednesday in May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

MR. MORELAND. Mr. Chairman: I have a substitute for that section, which has been agreed upon by a majority of this committee. I think it is better than the section.

THE SECRETARY read:

"SEC. 4. The Superintendent of Printing of the State of California, shall, at least thirty days before the first Wednesday in May, eighteen hundred and seventy-nine, on such terms as may be reasonable, select and contract with one newspaper proprietor in each county in this State in which a newspaper is published, for the publication and issuance, once a week for two successive weeks before said election, in their respective papers, as a supplement thereto, the printed copies of this Constitution, as hereinafter provided. The circulation of such paper shall be taken into consideration in making such contract and selection; and the paper so selected shall issue a number of such supplements equal to the circulation of such papers in their respective counties. In counties containing property of an assessable value of ten millions of dollars, or over, not more than three papers may be so selected. The Superintendent of Printing shall cause to be printed and delivered to the newspapers so selected, in due time for the publication thereof, a number of such supplements equal to twice the State circulation of such papers. The Governor shall issue his proclamation giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the first Wednesday in May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election."

REMARKS OF MR. MORELAND.

MR. MORELAND. Mr. Chairman: The law under which this Convention was called, gives the Convention the power to prescribe the manner of publication of this Constitution. The committee, in their report, recommended a section which requires it to be published in six of the most populous counties of the State. Under this section, as it is reported, it would be necessary for each paper required to publish the Constitution, to set up the type in their respective offices, and publish it. This would cost a considerable amount, not less than five hundred dollars for each paper, probably more, and it would not subserve the purpose of distributing the Constitution to the voters of the State altogether. Not more than one quarter, or one half, of the electors would have an opportunity of reading it. The plan which is embodied in the substitute is, to have the Constitution printed in the form of a supplement, here, in the State Printing Office; this will require the type to be set up but once. The Superintendent of Printing, under that section, is authorized to select and contract with one newspaper proprietor in each county of the State, to have this supplement folded and issued with their papers. It is estimated that it will not cost more than twenty-five dollars—not exceeding fifty dollars—to have this Constitution issued in this way—fifty dollars to each paper—and it will not, on the whole, cost as much as the plan as embodied in section four, as reported, and will effect the same purpose, of distributing the Constitution to the electors of the State. In counties where the assessable valuation of property is more than ten millions of dollars, we give the Superintendent of Printing the authority to select not more than three papers, so that it will be fully distributed over the county. I think that plan is much better much and cheaper than the one embodied in section four, as reported.

MR. SHAFTER. Mr. Chairman: There may be counties where there is only one paper published. In that case, according to this amendment, you have got to pay that paper just what it asks. It has got to be published, and the paper will be likely to ask a large price.

MR. MORELAND. The plan is to print it at the State Printing Office.

MR. SHAFTER. Suppose there is but one paper in the county, and that paper happens to be opposing the Constitution. They would charge what they pleased for circulating it with their paper. I think three papers in San Francisco, that circulate generally, would extend it more than this plan. I do not believe that fifty dollars a paper will pay them, if they charged the public as they do private persons.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I believe that the instrument we are framing here has merit, and only requires to be thoroughly understood by the people generally, to insure its adoption; and, sir, I regard it as a very important matter, that this convention should provide for bringing this document thoroughly before the people. The Committee on Schedule counted the probable cost of publishing this instrument in one paper in each county of the State. If the instrument is as long as they estimate, a very reasonable estimate would place it at five hundred dollars to each paper, which would amount to something over twenty-five thousand dollars for the publication of the instrument. That is an enormous sum, and yet it would accomplish a very desirable result. It was suggested that the same object might be attained much more reasonably, saving the price of composition fifty-one times. If this document was sent to me to publish, I would have it set up, and the great length of it would require that I should publish a supplement; my little paper would not contain the Constitution that we will adopt here. I would have to cut my paper according to the amount of the material, and would necessarily have to publish a supplement, and add three or four hundred dollars to the expense of the issue. It was conceived, and reasonably, that one composition might accomplish the whole purpose. Let these one hundred and twenty-five thousand or one hundred and fifty thousand copies be provided here at the State Printing Office, in convenient newspaper form. Then let the State Printer have these sent out to the different papers, and at a very small cost it will be well circulated.

From a selfish standpoint, I would like to have the job of publishing it myself, and I suppose other newspapers would, but I think, under this plan, from ten dollars to twenty-five dollars apiece, or fifty dollars, at the outside, would pay for the extra trouble of folding in these supplements. I apprehend that no newspaper man will want to make any great speculation out of it; and we are guaranteed against that, because there is hardly a county in the State but what has more than one newspaper. They would be requested to state the lowest price they will perform the work for, and of course they would be anxious to bid as low as possible, in order to secure the opportunity of thus cheaply placing the Constitution in the hands of their readers. I would rather now have the work or the duty of distributing them through my paper than not. It would give tone and character to the paper. The readers of the paper would want to see it. All these country papers need a little more tone. I say that the distribution of this instrument would be sought for. In that way it would be brought before all the people who feel a disposition to read it and study it for themselves. It has been suggested to publish it in pamphlet form. Suppose we did that, how are you going to distribute it? The distribution would be very imperfect; but by the medium of the newspapers, that almost every one looks for, I believe that it might be brought before every person in the State, and by being brought before them they will have the means of examining it, and I think, for one, that there is not the least doubt of its adoption by a large majority. I ask that the Secretary again read the substitute.

THE SECRETARY again read the substitute, as above.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I think this a very excellent, economical scheme provided by the Committee on Schedule, but there is one question arises here, and I am not willing to take any chances. I find that some gentlemen, who are said to be very eminent, are already raising the question of the constitutionality of this Constitutional Convention. While I apprehend nothing as to the past, I do not feel disposed to leave it in the power of any one, by any act or opinion, to imperil the work of this Convention. Suppose what we command the Superintendent of Public Printing to do should not be done. The law calling this Convention, section nine, on page seven hundred and sixty-four of the statutes of the last session, provides how this Constitution shall be published. It says: "It shall be the duty of the Secretary of State to cause this Act to be published once a month, after its passage, until the election of delegates herein provided, in not more than five of the public newspapers published in this State." That seems to refer to causing this Act to be published. I thought there was a provision requiring the Constitution to be published.

MR. VAN DYKE. I would call the gentleman's attention to section seven. It leaves it entirely with the Convention to publish the Constitution. That in section nine is in reference to the Act calling the Convention. Section seven says: "The Convention shall prescribe the publication of said Constitution and the notice to be given of the election."

MR. MCCALLUM. I think I was wrong as to the application of section nine. I believe, then, that the substitute offered by the Committee on Schedule would work well, and will give a very extensive publication. I shall vote for it.

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

The substitute was adopted.

THE CHAIRMAN. The Secretary will read section five.

THE BALLOTS.

THE SECRETARY read:

SEC. 5. The Superintendent of Printing of the State of California shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "For the new Constitution." He shall likewise cause to be so printed and delivered to said Clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "Against the new Constitution."

THE CHAIRMAN. If there be no amendment to section five the Secretary will read section six.

CONDUCT OF THE ELECTION.

THE SECRETARY read:

SEC. 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of elections, at each election precinct or polling place in their respective counties, suitable poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in said election precincts or polling places. The returns of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section.

MR. REYNOLDS. Mr. Chairman: I send up an amendment to that section.

THE SECRETARY read:

"Amend by adding: 'Provided, that the duties in this and the preceding section imposed upon the Clerks of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of Voters for said city and county.'"

MR. REYNOLDS. Mr. Chairman: The reason for that amendment is, that by an Act of the last Legislature all the duties imposed upon the County Clerk in the several counties in respect to elections are made applicable and devolved upon the Registrar of Voters in that county. Therefore it would be proper for us to make this exception.

The amendment was adopted.

THE CHAIRMAN. The Secretary will read section seven.

QUALIFICATION OF VOTERS.

THE SECRETARY read:

SEC. 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

THE CHAIRMAN. If there be no amendment to section seven, the Secretary will read section eight.

CANVASS OF RETURNS.

THE SECRETARY read:

SEC. 8. The officers of the several counties of this State whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as the City and County of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns are received, or until six postponements have been had, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

MR. REYNOLDS. Mr. Chairman: I would like to inquire of the Chairman of the committee what is meant in the third line by the words "as well as the City and County of San Francisco?" There may be some provision that I do not understand that requires it.

MR. MORELAND. I do not know, Mr. Chairman; I find that language in the law calling this Convention, the law under which the delegates were elected, and I have used the same language.

MR. SHAFTER. Mr. Chairman: I move to insert after the word "as" the word "of," so that it will read: "as well as of the City and County of San Francisco," etc.

MR. LARUE. I would like to ask if this will not make the day for the canvass on Sunday. If it does, I move to strike out "six" and insert "seven."

MR. MORELAND. Sunday is a non-judicial day, and I do not suppose that would make any difference. I am not particular as to that.

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

The amendment was adopted.

MR. BEERSTECHER. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Lost.

THE CHAIRMAN. The Secretary will read section nine.

PROCLAMATION.

THE SECRETARY read:

SEC. 9. The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If by such examination and computation it is ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the day hereinafter specified.

THE CHAIRMAN. If there be no amendment to section nine, the Secretary will read section ten.

TERM OF OFFICERS.

THE SECRETARY read:

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

MR. MORELAND. Mr. Chairman: I have an amendment to section ten.

THE SECRETARY read:

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

MR. SWENSON. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend section ten by inserting the word 'first' between the word 'the' and the word 'term,' in line two; also, insert the word 'first' before the word 'term,' as it occurs the last time in line four."

MR. MORELAND. Mr. Chairman: So far as this section is concerned, the minority of the committee does not favor it, and reserve the right to present a section in place of it.

MR. VAN DYKE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Schedule, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called and quorum present.

LAND AND HOMESTEAD EXEMPTION.

MR. HERRINGTON. Mr. President: I move that the report of the Committee on Land and Homestead Exemption be taken from the table and rereferred to the Committee of the Whole for further consideration.

THE PRESIDENT. The report has been sent to the printer; it is not before the Convention now.

MR. HERRINGTON. I ask that it be returned to the Convention and rereferred to the Committee of the Whole.

THE PRESIDENT. The gentleman cannot make that motion until it is taken up in its order on the general file.

MR. JOHNSON. Is there anything pending before the Convention? I desire to present a petition.

Following is the petition:

To the Honorable J. P. Hoge, President, and to Members of the Constitutional Convention:

GENTLEMEN—Your petitioners, citizens of the State of California, and residents of Sonoma County, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

THE PRESIDENT. It will lie on the table to be considered with the article on revenue and taxation.

AN APPEAL.

MR. HERRINGTON. Mr. President: I desire to take an appeal from the decision of the Chair.

The appeal was seconded by Messrs. Barton and Beerstecher.

THE PRESIDENT. Gentlemen of the Convention: The gentleman from Santa Clara has moved that the report of the Committee on Land and Homestead Exemption be recommitted to the Committee of the Whole. The Committee of the Whole have gone through the report, have adopted amendments thereto, and sent it back to the Convention with the recommendation that it be adopted. The report has gone to the Committee on Printing, under the order of the Convention, and will take its place upon the general file. The Chair decides that the motion is not in order, and cannot be made until it is brought up in its regular order. From that decision the gentleman from Santa Clara appeals. The question is: Shall the decision of the Chair stand as the judgment of the Convention?

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: As I understand the order of business of this Convention, there is no order of business, unless it is a special order, but what is at the disposal of this Convention when it is before it. The Chair has otherwise decided with reference to this particular reference that has been made of the report of the Committee of the Whole. That report, when it came into the Convention, was simply a recommendation that it be adopted. The reference that was made of it was for printing. That is the only reference that was made. The statement is that it is upon the general file. If it is upon the general file it may be taken from the general file by order of this Convention. There is no rule of this body, so far as I know, which prohibits its being taken from the file at any time. As I understand it, any of the reports of these standing committees that are before the house, are taken up out of order upon mere motion, and referred to the Committee of the Whole, and they are not taken in the order in which these reports have been made. Neither will the reports that have been made to the Convention, when they are to be taken up in Convention, be taken up in the order in which they are made. When a mistake is made, as I understand it, there is no other way of correcting it except by reference. If a mistake has been made by the Committee of the Whole, it is within the power of this Convention to send it back and let the mistake be corrected. If anything has been left out of a report which should have been reported upon, it is for the committee to determine that question, and it is for the Convention to say whether they shall have an opportunity, and not upon the mere ruling of the Chair. According to the ruling here made, the Convention itself is cut off from the power of correcting an error that has been made by the Committee of the Whole, even though it be discovered after reference, and after printing. I submit that the ruling is not in accordance with the rules as established by this body. It ought to be recommitted to the Committee of the Whole. There should have been some opportunity given to complete the article. One whole branch of the subject is left untouched by the Committee of the Whole, and no reference has been made to the subject, and when it was attempted to be done a motion was sprung upon the Committee of the Whole, for the purpose of referring this back without action upon that branch of the subject. It is apparent upon the face of it that no action has been taken upon one of the most important branches of the subject. While there was an effort made upon the part of some members of the Convention to engraft some amendment upon the article with reference to lands, a motion was sprung and carried which defeated that object. It was unfair to make such a reference without first giving the other side a hearing.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. I believe that some of the reports from the Committee of the Whole, sent to the file, have been taken back by the Convention.

THE PRESIDENT. There is no such instance on record.

MR. O'SULLIVAN. Was not that of city and county government?

THE PRESIDENT. No, sir; there never has been one sent back after having been finally acted upon.

MR. O'SULLIVAN. I am very sorry and regret to see any attempt in this Convention to stifle free discussion upon the subject of lands. That was the subject referred to the Committee on Homesteads and Lands. It was part of the subject before the committee. The majority of the committee ignored the subject of lands. A minority report was made and presented to this Convention, and it looks to me very much like an attempt to stifle all discussion upon the subject of land monopoly, the greatest question before the people of California to-day—by all odds a greater question than any other question.

THE PRESIDENT. The gentleman will confine himself to the question.

MR. O'SULLIVAN. I shall support the appeal, with due deference to the Chair. I think it is nothing but fair that the matter should be referred back to the Committee of the Whole.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: Under the peculiar circumstances of this case, I am obliged, with due deference to the Chair, to vote against the ruling of the Chair. When the matter of lands and homestead limitation came before the committee, the majority report was discussed and acted upon. One amendment was made to the report, and then a motion was made that the committee rise and recommend the adoption of the article, and that the report be printed. At that time a large proportion of the members of this Convention, as I understand it, voted under a misapprehension, not knowing or understanding that there was to be a minority report presented upon the subject of land tenures and land limitation, a vital subject to the people of this State. Under a misapprehension of the facts, the vote was carried. And that is the condition of things at present. Now, the object of the motion of Mr. Herrington is, that the report be taken from the table, where it was placed for the State Printer, and rereferred to the Committee of the Whole, that it may be added to in such manner as the Committee of the Whole may desire. Mr. President, I believe, in the absence of all rules to the contrary, that the Convention has absolute power over all reports that are before it; that where a report has been ordered to print, that report may be brought back from the printer; it may be changed and altered by the Convention. I believe the Convention has full power in the premises, and this is simply an exercise of that power. It is simply to give those men who make the minority report an opportunity of presenting their views upon the subject of land tenures and land limitation. I believe this Convention can at any time reconsider any matter that they have passed upon, and it is in that view of the case that I respectfully vote against the decision of the Chair.

MR. VAN DYKE. Mr. President: Is there anything in the rules that will prevent the Convention from resolving to consider a minority report, if it chooses to do so?

THE PRESIDENT. The minority report is never before the body unless it is moved as an amendment.

MR. HOWARD, of Los Angeles. That would be doing, indirectly, what cannot be done directly.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. President: I am here to represent the people of the City and County of San Francisco, as well as the people of the whole State, and I was elected upon a platform pledged to a fair and equitable system of land limitation, and that is what I want to do, but I am of the opinion that a majority of this Convention are against it; but I don't see why they should stifle debate when they have absolutely wasted three week's time in discussing the Chinese question, and this is one that interests the people more than the Chinese question—it is a greater curse to-day than Chinese immigration. The land thieves have done more injury than the Chinese, and the evil will be entailed upon posterity unless we prevent it. I tell you that the people understand this question, and they intend, if possible, to stop this land grabbing. I cannot see that any harm can be done by allowing the matter to be discussed. I am in favor of investigation. This is a deliberative body, and the representatives are sent here for the purpose of discussion and deliberation. In every part of this country I have conversed with men, and I have found them invariably in favor of land limitation.

THE PRESIDENT. Confine yourself to the question of the appeal.

MR. GRACE. Then, I am in favor of this appeal.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. President: I am sorry that I have to raise a voice against the decision of the Chair. It is very seldom that I have been found sustaining an appeal from the rulings of the Chair, but, upon this occasion I am obliged to do it. Some of the delegates have given a great deal of care to this subject, and they should have an opportunity to be heard. The only way to give that opportunity is to refer the matter back to the Committee of the Whole. I hope the Convention is not afraid to listen to argument. What have they to fear that they should try to gag the Convention? I cannot see why they should be afraid to open up the discussion. I think it is nothing but right and fair that the question should be reopened. We are sorry to have to appeal. I, perhaps, have sustained the Chair as often as any delegate upon this floor, but on this occasion, I must vote for the appeal.

MR. JOYCE. I can't say I have any excuse why I shall vote against sustaining the decision of the Chair. It seems to me that the correspondent of the San Francisco Chronicle might have gone farther. Now I shall vote against the Chair, and I haven't got no apology to offer.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: When the committee rose and reported progress, I was under the impression that it was competent for the Convention to go into Committee of the Whole upon the minority report, and I think other members understood it so. I understand that the Chair decides that the committee, having passed the article, it carries with it the minority report also. Therefore I must, in order to get this matter before the Committee of the Whole, where it can be discussed, vote to sustain the appeal. The question before the Convention is this: Is it competent for the Convention to recommit an article which has been before the Committee of the Whole. I think Rule Twenty-seven covers that ground.

"Motions and reports may be committed or recommitted at the pleasure of the Convention, and with or without instructions from the Convention."

If that rule be true, it follows that the decision of the Chair is erroneous, and the appeal ought to be sustained. It looks like a deliberate design to stifle discussion upon one of the greatest questions of this or any other age, and particularly is it important to the people of the State of California. Gentlemen will remember that for weeks they have had upon their tables the minority report, covering the proposition contained in the article which we have been considering, and the committee has now risen and reported progress upon the article headed, "Land and Homestead Exemption," without one single word of discussion upon the subject of land limitation. Now, sir, I will not say that it was the deliberate design to stifle discussion. But I will warn gentlemen, that if such be the design, your work will be consigned to oblivion, as it will deserve to be, and the Constitution which you are framing will be buried under a load of indignant votes. Meet us on the issue fairly: answer our arguments, refute them if you can, that is all right and proper, but the Convention should be willing to hear argument. We do not propose to consume any more time than is necessary, but we certainly do object, and the people of the State will object, to slighting a question of such importance as this. Therefore I hope this opportunity will be given to recommit this whole subject, and allow debate upon it.

MR. KLEINE. I am rather surprised, upon a subject so important, why it should be cut off from debate. I think, sir, the land question is the most important besides the Chinese. Why should we, in the name of common sense, be deprived from debating this question, which is a curse to the State of California? It is no more than right that we should have our say here. Land monopolists and Mongolian slaves are a curse. I appeal from the decision of the Chair. [Laughter.]

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: Before discussing the immense interests involved in this question, I beg to call the attention of this Convention to the fact that the whole proceeding, in relation to the report of this committee, has been irregular, not strictly in order. I find in the printed Journal of December fourteenth, that the majority report was received, the proposed amendments read, and ordered to lie upon the table until the minority report shall be presented. There is no farther motion until December seventeenth, when the following proceedings were had: "Mr. O'Sullivan presented a minority report from the Committee on Land and Homestead Exemption." That is all there is about it, and that is the last motion that was made in connection with the matter, so far as I am able to see. It does not appear that these reports were ever taken from the table, and referred to the Committee of the Whole, or that the majority report was ever taken from the table. Now, I do not see why, the whole proceeding having been irregular, we cannot be allowed to consider the minority report. I do not care how it is brought about. I do not wish to question the decisions of the Chair. I have discovered that the Chair is always right, but I do not apprehend that the Chair or any member of this Convention desires to cut off discussion on a question of so much importance as this.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I do not agree with the gentleman that the Chair is always right, but I think the Chair is right this time. As far as relates to the simple question of the order of business, I always adhere to the rules. We have to go by the rules. As I understand this proposition, we had the report of the committee up this morning and went through with it. I have never seen the minority report, owing to my absence on account of sickness in my family. The only way to get at the minority report, is to move to incorporate it in the majority report when it is under consideration. There is no question about that. That was the time to do it. You had a right to add to the report and take from it. You had a right to add the minority report or anything else. The Committee of the Whole was in session upon this matter, and any member had a right to offer an amendment. They went through the report and sent it back to the Convention, and the Convention disposed of it. That was a final action upon the report of the committee, and now the only way to reverse that action is to move a reconsideration. Now amendments are not cut off. Rule Fifty-five settles that matter. When the report comes up again these amendments can be made if the Convention desires.

MR. CROSS. Why not stay in Convention? Why not consider the Chinese question in Convention?

MR. HAGER. We will do it. We have got to do it. You are not cut off from amendment when it comes up. This work is not final at all. Every proposition has to be voted on in Convention, and the whole subject-matter is open to review.

MR. HERRINGTON. You don't wish this Convention to understand you as saying that the report of the committee was adopted, do you?

MR. HAGER. I don't mean that the substance of the report was adopted, but the fact that it was made a report to the Convention. Now look at the file, and you will find that every report that has been acted upon is on that file, and open to amendment.

MR. BARBOUR. I refer you to Rule Twenty-seven.

MR. HAGER. Rule Twenty-seven says, a report may be committed

or recommitted, with or without instructions, by the committee. Now, that is easily understood. When a matter is pending before the Convention, the rule is that no motion shall be received but to adjourn, to lay upon the table, to commit, or amend. Now, whenever we get this matter up before the Convention, you can move to recommit it to the Committee of the Whole. When it comes up in Convention you can then move to refer it back to the Committee of the Whole, with instructions, if you see fit. But at this time, I say the motion is out of order. The matter is not pending. When the matter was up you might have moved that the committee rise, with instructions to refer it back to the original committee. If we had the matter up now it would be proper to move to recommit it to the committee. When we have it before us in Convention, such a motion will be in order. But the report of the Committee of the Whole has been accepted, and the matter is not before us at this time.

MR. ANDREWS. Mr. President: In addition to what has just been said by the gentleman from San Francisco, I wish to say that Rule Fifty-three applies here, when it says that these reports shall be taken from the file and acted upon in the order in which they are placed there. It has been placed on the file, and it would be a violation of the rules to take it up out of its regular order. It has gone upon the file, with the recommendation that it be adopted, and it cannot be taken up out of its order without a suspension of the rules. I shall sustain the decision of the Chair.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I disagree with the gentleman from San Francisco, Judge Hager. I believe the Chair is almost always right, but in this case clearly wrong. Now, at first blush, I thought the Chair was right, and I arrived at that conclusion from my general recollection of parliamentary law. But this Twenty-seventh Rule changes the law entirely in this regard. I believe that if the minority of any committee of this Convention chooses to introduce an amendment to the effect that the moon is made of green cheese, they are entitled under this rule to have it fairly considered. We might just as well meet this thing now as ever. I do not suppose I shall vote for a single proposition in the minority report, but I wish to have a chance to show my objections to such propositions openly. I do not wish to smother them by any parliamentary movement. Let us have a fair and full discussion upon it.

MR. BLACKMER. Mr. President: I am sorry to bring this matter up, when we are in such a hurry to get through with our business. But it is clearly the duty of this Convention to sustain the ruling of the Chair. If members will turn to page eight hundred and fifty-seven, paragraph two thousand two hundred and six, of Cushing's Manual, they will see that the Chair is right. That expresses concisely what I have to say upon this matter.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: I wish to say this: that I was very much disappointed at the action of the Committee of the Whole, in referring the report back in what seemed to me an imperfect shape. That report referred to the subject of land and homestead exemption. If there is any one head under which we are supposed to discuss a great and crying evil—land monopoly—I had supposed this was the place to do it; and yet we are willing to drop the whole subject. Now, there seems to be a tenderness, whenever the subject of land monopoly is touched. I regret it, but I shall have to oppose the ruling of the Chair, and I wish to give my reasons for so doing. I not only desire to get at this land monopoly question, but I am very anxious that some stringent measures shall be passed. I have referred to the paragraph cited by the gentleman from San Diego, and I accept that as good law. But it is not the paramount law here, for our rules say that Cushing shall govern whenever applicable, and where not inconsistent with the rules of this Convention. Now, when that law is in contravention of our standing rules it does not apply. Rule Twenty-seven provides that motions and reports (and this is a report) may be committed, or recommitted, at the pleasure of the Convention, and with or without instructions. Now, sir, we are in Convention, and I say, under Rule Twenty-seven, we have a perfect right to recommit this matter to the Committee of the Whole; and, sir, as this is a vital subject, and one that demands careful consideration, I shall take this opportunity to try to secure it. This advocacy comes from the delegates from San Francisco representing the Workingmen's party, and I will say that I am willing to meet them half way, to remedy this evil. It is an evil to the whole State in common, and we should be willing to meet them half way, in order to obtain some remedy. For these reasons I shall vote against sustaining the decision of the Chair.

REMARKS OF MR. STEDMAN.

MR. STEDMAN. Mr. President: This is a question which is of the most vital importance to the people of this State, and I believe, sir, that as delegates, representing the people, we should look it square in the face and meet the issue squarely and fairly as to whether or not there shall be any limitation to landholding in this State. Let us know how each gentleman stands. But, sir, I am sorry this appeal has been taken. I shall have to vote against the decision of the Chair; but if the gentleman would withdraw the appeal I would like to make this motion, and I think it would settle the whole matter. I desire to make a motion that the minority report be made the special order for to-morrow at ten o'clock. Now, sir, that will obviate the difficulty which presents itself. I hope the gentleman will withdraw the appeal. I think it would be the best way to get at it. I think the Chair would entertain such a motion. Then we can make the matter the special order.

MR. HERRINGTON. No, sir; I withdraw nothing.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I am very much surprised at the gentleman from Placer, who urges that this point of order should be decided in a certain way because the question is one of some importance. Is it proposed to decide a point of order upon the importance or non-importance of the subject-matter? Now, sir, this whole matter has been disposed of, and is no longer before the Convention. It has passed beyond the control of the Convention at this time. The body must have possession of the subject-matter before any motion can be made to dispose of it. Now this report has been ordered to print, and sent out of the possession of this body, and is in the possession of the printer. Now section one hundred and seventy-eight of Cushing's Law and Practice——

MR. FILCHER. Which supersedes, Cushing or the rules?

MR. SHAFTER. The rules and the gentleman from Placer [laughter]. The gentleman seems to want that rule to cover every subject, whether in the Convention or out of it. Now this report has got to be before the Convention in order to be acted upon. It has been sent to another officer of the government. It is not before the Convention until it is returned by him. You must bring it forward in due form.

MR. BARBOUR. The gentleman says it must be brought before the Convention. Rule Fifty-eight says every proposition shall be debated in Committee of the Whole before it is acted upon in Convention.

MR. SHAFTER. We have been considering it in Committee of the Whole for a couple of days.

MR. BARBOUR. After you have stifled discussion in the Committee, how are you going to get it discussed in Convention?

MR. SHAFTER. It has been considered in Committee, reported back to the Convention, and sent out to the printer. The majority of the Committee have ordered it sent to the printer, and the officers of the Convention have carried out that order.

MR. REYNOLDS. I wish to ask a question. On December fourteenth, the report of the committee was presented. December seventeenth, the report of the minority was presented. Under the rule, both reports went to the printer. Of course, the minority report is no part of the report. Hence, it is still in the hands of the Convention, and is the property of the Convention, being now upon the table. It has only to be taken from the table.

MR. SHAFTER. That is not a question at all. I understand that the action of the Convention was upon the majority report, and not upon that of the minority. It was decided long ago that the minority report does not come before the Convention at all. You have got to move to take it up, and substitute it as an amendment.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: As I understand it, a motion has been made to refer the report of this committee back to the Committee of the Whole, and the Chair decides that motion to be out of order.

THE PRESIDENT. At present, no.

MR. McCALLUM. If I understand the fact, it is, that after we came out of the Committee of the Whole, by a vote of this Convention, the report of the committee was ordered printed and placed on the file. Then, sir, I submit, if this is the question of order we are to decide, that the only way to avoid the effect which some gentlemen desire to avoid, would be for some person to give notice of a motion to reconsider, to-morrow. All this discussion as to the importance of this matter is out of order. It has nothing to do with the merits of the question as to whether the Chair has decided the question of order correctly or not. It has nothing to do with the question of order before the Convention. I am satisfied that the minority of this committee have a right—and a perfect right—under our rules, to have their propositions considered, whether a minority of this Convention, or a majority of this Convention, shall agree with them or not. I call attention to Rule Fifty-five, under which I say they not only have a right, but it is our duty to consider this proposition in Committee of the Whole. Rule Fifty-five says: "Propositions or resolutions relating to the Constitution, shall be committed to a Committee of the Whole Convention, and shall be read in Committee of the Whole by sections. All amendments shall be noted," etc. Now, this minority report was referred to the Committee of the Whole, in connection with the majority report. In point of fact, it never has been considered in Committee of the Whole, and, under Rule Fifty-five, it is entitled to be so considered.

MR. SHAFTER. I make the point of order that the fate of the minority report has no relation whatever to this appeal.

THE CHAIR. It is not before the Convention. The question is upon sustaining the decision of the Chair.

MR. McCALLUM. I am perfectly aware of that fact, sir. But justice can be done here without violating the rules. If the gentleman will withdraw his motion, which is clearly out of order, and let a motion be made, under Rule Fifty-five, to go into Committee of the Whole to consider the minority report, that will settle the whole difficulty. That is another and a separate proposition. This is exclusively upon the subject of land monopoly, which has never been considered in Committee of the Whole. Therefore I submit if the gentleman wants to see justice done, and at the same time avoid violating the rules, he will withdraw his appeal, and let the motion be made under Rule Fifty-five, and it can then be decided by a majority of the Convention whether we shall consider this matter in Committee of the Whole. There are propositions in this report which have never been considered.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Webster, Howard, Burt, and Hitchcock.

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

Carried.

MR. HERRINGTON. I ask for the ayes and noes.

Ayes and noes, by Mr. White, Mr. Wyatt, Mr. Stedman, and Mr. Larkin.

THE PRESIDENT. The Chair will state the question. By Rule Fifty-three, these reports, after being considered, are placed on the general file. By the Fifty-fifth Rule, after these propositions have been considered and reported back to the Convention, they are again subject to amendment, to any extent whatever, before final action is taken thereon. By Rule Sixty, these two Rules, Fifty-three and Fifty-five, cannot be suspended. The report of a minority of a committee is never before any legislative body as such at all. It is received only by courtesy. If the minority of a committee desire to take any action upon any proposition of their report, they must move it in the ordinary way before the Committee of the Whole, or before the Convention. When the report of the committee comes back, it stands precisely as it did in Committee of the Whole. Any amendment may be made. It may be amended to an unlimited extent. No amendment is cut off, no debate is cut off—the whole proposition is before the Convention again, and by the Fifty-third Rule it comes up for action. It is not now before the Convention for action. When it does come up again in its regular order, the gentleman can move, and the Convention can take any action it thinks proper. It may recommit to any committee, or to the Committee of the Whole, or to a standing or select committee. It will have entire control over the whole subject. But no motion can be made in relation to it until the question itself comes up regularly in its order. If it were otherwise, every report made by the Committee of the Whole for the past three months might, upon motions of this sort, be sent back to the Committee of the Whole, and the entire business of the Convention would be clogged and choked up. It is only the object of the Chair to enforce the rules of parliamentary bodies, and the orders of this body. Order is the very first law of every legislative body. We can make no progress without it, and will soon find ourselves involved in confusion inextricable, if these motions are entertained out of order. The Chair therefore decides that the motion is out of order, at the present time. It can be made when the question is taken up, and not before. From that decision of the Chair the gentleman from Santa Clara takes an appeal. The question is: Shall the decision of the Chair stand as the judgment of the Convention. The ayes and noes have been demanded, and the Secretary will call the roll.

The roll was called, and the decision of the Chair sustained, by the following vote:

AYES.

Andrews,	Kelley,	Rolfe,
Ayers,	Keyes,	Schell,
Biggs,	Laine,	Schomp,
Blackmer,	Lampson,	Shafter,
Boggs,	Larkin,	Shoemaker,
Boucher,	Larue,	Shurtleff,
Brown,	Lavigne,	Smith, of Santa Clara,
Burt,	Lindow,	Steele,
Caples,	Mansfield,	Stevenson,
Casserly,	Martin, of Alameda,	Stuart,
Chapman,	Martin, of Santa Cruz,	Swing,
Charles,	McCallum,	Thompson,
Dean,	McComas,	Tinnin,
Dowling,	McConnell,	Townsend,
Dudley, of Solano,	McFarland,	Tully,
Dunlap,	McNutt,	Turner,
Garvey,	Miller,	Tuttle,
Glascock,	Mills,	Vacquerel,
Hager,	Murphy,	Van Dyke,
Harvey,	Nason,	Van Voorhies,
Heiskell,	Ohleyer,	Walker, of Tuolumne,
Hitchcock,	Prouty,	Waters,
Holmes,	Pulliam,	Webster,
Howard, of Mariposa,	Reddy,	Weller,
Huestis,	Reed,	Wilson, of Tehama,
Hunter,	Rhodes,	Wilson, of 1st District,
Inman,	Ringgold,	Winans—82.
Jones,		

NOES.

Barbour,	Harrison,	Reynolds,
Barry,	Herold,	Smith, of San Francisco,
Barton,	Herrington,	Soule,
Beerstecher,	Howard, of Los Angeles,	Stedman,
Bell,	Hughey,	Swenson,
Condon,	Joyce,	Walker, of Marin,
Davis,	Kenny,	Wellin,
Farrell,	Kleine,	West,
Filcher,	McCoy,	Wickes,
Freud,	Nelson,	White,
Gorman,	Neunaber,	Wyatt—35.
Grace,	O'Sullivan,	

MR. RINGGOLD (when his name was called). Mr. President: I was under the impression this morning that the minority was intentionally barred out. I am convinced now that it was not intentional. I think the Chair is right, and I vote aye.

LAND LIMITATION.

MR. BARBOUR. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, to consider the minority report of the Committee on Land and Homestead Exemption.

MR. WATERS. I understand that to be the very motion declared out of order.

THE PRESIDENT. The Convention can resolve itself into Committee of the Whole upon any subject it thinks proper.

MR. MCFARLAND. Mr. President: It seems to me a very awkward proceeding to go into Committee of the Whole upon a minority report. I have never heard of any such thing. It does seem to me the gentlemen had better wait until the report comes up in its regular order. They can present their arguments there as well as here. I am opposed to the motion to go into the Committee of the Whole. I think it is very awkward to go into Committee of the Whole to consider a minority report. There may be twenty or thirty minority reports here. It is a waste of time to take up a minority report. I shall vote against the proposition. But when the majority report comes up again I shall certainly vote to refer it to the Committee of the Whole in order that amendments may be offered and discussed.

MR. BARBOUR. I make the motion at the present time, because, as I understand the decision of the Chair, the subject-matter is entirely within the control of the Convention. No gentleman has raised a point of order. It is the property of the Convention, and as the subject is unfinished, it seems to me that the Convention should go ahead and finish it. I hope the motion will prevail.

MR. TULLY. Mr. President: I hope that the Convention will not refuse to go into the Committee of the Whole. Fair play is a jewel, and if there are some gentlemen here who want to discuss that question, I hope they will be permitted to do so, now, at the present time. I am opposed to shutting off debate, or anything of that kind. I am not in favor of the minority report, but I think they have a perfect right to discuss it, and they have a right to do it now, and I trust the Convention will give the gentlemen who are in favor of the report, ample time to present their views to this Convention.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Nelson, Gorman, Inman, and Dowling.

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

Carried.

THE PRESIDENT. The question is upon the motion that the Convention resolve itself into Committee of the Whole, for the purpose of taking up the report made by the minority of the Committee on Land and Homestead Exemption.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the report.

THE SECRETARY read:

"SECTION 1. Perpetuities and monopolies are contrary to the genius of a free Government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State.

"SEC. 2. All lands within the State are declared to be allodial, and feudal tenures are prohibited. Leases and grants of land for a longer term than ten years, in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land hereafter made, are declared to be void. No lessee shall sublet any portion of the land held in his name.

"SEC. 3. No persons other than citizens, or those who have declared their intentions to become such, shall ever acquire or own, either by purchase or otherwise, real property in this State; and in case any alien dies possessed of real property in this State, contrary to this provision, such property shall escheat to the State. Nor shall any lands in this State be held in trust for any alien; but the creation of any trust in lands for the benefit of an alien shall at once escheat the land to the State.

"SEC. 4. No person shall forever hereafter be permitted to acquire, in any manner, more than six hundred and forty (640) acres of land in this State. Copartnerships, joint, or other ownership of lands, shall not be allowed contrary to this provision. No person who dies possessed of landed property in this State shall have the right to will or devise more than six hundred and forty (640) acres of land to any one heir; otherwise the said will shall be void: provided, however, that all lands over and above six hundred and forty (640) acres so devised to each lawful heir, of which such deceased person died lawfully possessed, shall be sold to the highest bidders for cash, in quantities not exceeding six hundred and forty (640) acres each, and the proceeds divided equally among the lawful heirs.

"SEC. 5. Actual occupation and continuous use for agricultural purposes during a period of one year, shall constitute a title to the ownership of land in this State. Tracts of land of over six hundred and forty acres in extent, which shall remain unoccupied and unused for agricultural purposes for a period of one year, shall be open to the occupation and use of citizens of the United States, in quantities not exceeding one hundred and sixty acres; provided, if it shall appear that any other person has previous title to such tract of land, the party occupying and using the same shall pay to said person the assessed value of the property.

"SEC. 6. No more than one hundred and sixty acres of land shall hereafter be granted or patented by the State, in any manner, to any one person. No grant or patent of lands by the State shall hereafter be made otherwise than upon the basis of actual settlement and use. No land scrip or land location certificates shall ever be issued in this State."

SPEECH OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. Chairman: It is with much diffidence that I arise to speak on the subject of this proposition—which aims at land reform and limitation of future ownership of land—a diffidence on my part which is occasioned by the magnitude and importance of the question, and my inability to treat it as it deserves, and present my views with that force which I would wish and which the occasion demands. Nevertheless, sir, since I have devoted examination and thought to this question, deeply feeling its great importance, not only to the people of California but of the whole Union; aye, and to millions of our race

who are to succeed us as citizens of this republic, I am constrained to make an effort in advocacy of a principle which I believe to be right, however poorly I may perform my part.

I speak on this question, sir, not for myself alone, nor as a partisan, but as an humble representative of the millions of toilers, the wealth-producers of these United States, who are landless—disinherited through land monopoly. I am also urged to action because I sincerely believe that the future welfare and happiness of my country are involved in the decision of this question. I hold that there are two questions which overshadow all others, and which are of vital importance to the people of California. One is that of Chinese immigration, the other is land monopoly. To my mind, these twin curses are equally evil, are equally detrimental to the prosperity of the State, menacing to the perpetuity of free institutions, and destructive of the interests and happiness of our people. I also hold, sir, that a great majority of the people of California desire to do away with these evils, and that one of the main causes of their calling this Constitutional Convention together was the wish to see them abated, and that the Convention will miserably fail in its duty if it adjourns without striking an effectual blow to uproot and destroy them.

The curse of land monopoly is as old as the history of our race. It would be superfluous to more than briefly allude to its history, and its baneful results in Europe, where, through infernal craft and force, princes and lords have appropriated nearly all the soil, disinheriting the vast multitude of the people, millions of whom have been driven to seek a refuge in America and elsewhere in consequence of unequal, unjust laws, which confirm possession of the land in the hands of a few, whose forefathers were simply land robbers and whose titles are founded in the doctrine that "might makes right."

I will confine myself to a brief glance and statement of this cursed system of land monopoly, as it has grown up in California, and will endeavor to show that it has assumed a worse form here than in any civilized country of the world. I will show that, by its means, a few men have not only robbed the people of that which rightfully belongs to all—which is their inheritance from the Creator—but have seriously retarded the growth and prosperity of the State. The worst features of land monopoly, as it exists in this State, have grown up almost unawares. It is true, that its foundation was laid before our American settlement of California, in the Mexican grant system, which may have been good for a pastoral people, such as the Mexican settlers were, but for us, it has proved to be extremely vicious, being diametrically opposed to the prevailing system of limited land-holdings, which has grown up under our institutions, is best suited to the principles and customs of our people, and which, in the homestead and preëmption Acts, has been adopted as part of the supreme law of the land.

Of the one hundred and fifty-nine thousand square miles of land comprised within the boundaries of the State of California, an examination of the records will show that but a small fraction was taken up by Mexican grants. Most of those grants were confined to the narrow strip of coast counties, from Sonoma to San Diego, and did not, I venture to assert, include one quarter even of the area of those counties. It is difficult to obtain statistics on this point, but from a thirty-two years' residence in the State, I am enabled to speak with some knowledge of the facts. The great interior of California, including the Sacramento and San Joaquin Valleys, and the entire western slope of the Sierra Nevada—a vast territory in itself—was almost entirely untouched by Mexican grants, and unknown to settlement at the time American occupation of the country commenced. That interior of California was an almost unexplored region, quite as much so as the interior of Africa. The Mexican inhabitants of the coast never ventured into it, except on occasional raids, with a company of soldiers, to punish hostile and predatory Indians.

The gold discovery and the era of forty-nine came. But the crime of land robbery cannot be laid at the doors of the Argonauts. In their eager search for gold, these hardy pioneers, passed through the valleys, heedless of the agricultural value of their broad acres, and pitched their tents along the mountain slopes, where untold treasures had lain buried for ages, to at last reward American toil. Land grabbing was unknown as yet. The miners of forty-nine gave no thought to agriculture. The laws of the mining camps, regarding the size of and possessory rights to claims, showed a spirit of fairness, and a love of justice, which were honorable to the American name, but which the greedy horde of land-grabbers who came to California, subsequently—like an unclean lot of camp followers—failed to imitate.

As I have said, the foundation of this system of large land holdings was laid here through the policy of the Mexican Government previous to the American conquest. Experience has proved that system, to be a bad, unwise one—a transplanted relic of feudalism, entirely unsuited to our era and our people. But we had to accept it as a part of our bargain in the acquisition of the country, and to recognize the lawful titles which grew up under the system. It was indeed an unfortunate land system for California, because its existence set a vicious, tempting example before the eyes of the land pirates of our own race, who are as greedy for booty of this character as were their prototypes, the Danish pirates of the ninth, tenth, and eleventh centuries, or those other free-booters, the Norman lords, who subsequently appropriated all the lands of England and Ireland.

The pioneers of forty-nine did not come here after land, but gold. So they stayed by their mining claims, added immense sums to the general wealth of the country, and created prosperous communities in the mining counties. But while they were doing so the land-grabbers came—men who have a lordly disdain for work, and prefer scheming with the head as a more profitable occupation. This class of our population commenced and have continued up to the present time a general system of land-grabbing, which has no parallel in any other country. Some of them, by usury, legal fees, and other cunning devices, have managed to strip many of the native California families of their last acre. Others bought Mexican grant titles, genuine and bogus, and floated them over coveted valleys, oftentimes claiming twice, and even three and four times the number of leagues named in the original papers. This has been done in many counties, but notably in Santa Barbara, Ventura, and Los Angeles, through the connivance of corrupt deputies from the United States Surveyor-General's office.

This wholesale land piracy has been going on unchecked for the past twenty-five years—I call it land piracy, sir, because that is its proper name, and I believe in using the most expressive plain words to convey my thoughts—and we find as a result of these infamous practices that comparatively a few men now hold possession of a large amount of the best arable land within the boundaries of California. Some of these claim estates as great in extent as the largest holdings of the richest lords of Great Britain. Indeed, a comparison shows that California is to-day actually worse off, as regards the monopoly of the soil in a few hands, than the kingdom of Great Britain, which is worse afflicted in that respect than any other country in Europe.

Let me enumerate a few of our lordly landholders, with the number of acres set down to them in the records, as given in the Assessors' reports for eighteen hundred and seventy-two and eighteen hundred and seventy-seven: Miller & Lux are assessed for three hundred and forty-three thousand acres in three counties, namely: Merced, Fresno, and Monterey; Bixby, Flint & Co., three hundred and thirty-four thousand acres in Monterey County, and about one hundred thousand acres in Los Angeles County; W. S. Chapman, two hundred and fifty thousand acres in various parts of the State; the railroad company, two hundred and ninety-one thousand acres in different counties; Charles McLaughlin, two hundred and forty-nine thousand acres in seven different counties; J. B. Haggin, two hundred thousand acres in Kern County; Mrs. Beale, one hundred and seventy-three thousand acres in Kern County; the Philadelphia and California Petroleum Company, one hundred and thirty-one thousand acres in Ventura County; H. W. Pierce, one hundred and six thousand acres in Santa Barbara County; Dibble & Hollister, one hundred thousand acres in the same county; and the Los Angeles and San Bernardino Land Association, ninety-nine thousand three hundred and sixty acres in Los Angeles County.

I may here remark that it is said all of these figures are not reliable, in that they do not represent half the amount of land claimed by some of the parties named. We know for a fact that the donations of the General Government to the Central Pacific Railroad Company, and its branches, aggregate from fifteen to twenty millions of acres; but it appears that corporation does not choose to pay taxes on all the lands it pretends to own. It is stated that Miller & Lux's lands throughout the State aggregate somewhere about a million of acres, and that all of Chapman's grabs together reach the enormous figure of one million and a quarter of acres.

These great land-holdings in this State have been acquired by various methods and means. The titles to estates whose present possessors have derived, by purchase or otherwise, from the original grantees, who had genuine grants from the Mexican Government, I do not question. But there is evidence that many fraudulent Mexican grants were manufactured, and that some of these have been confirmed either by the Land Commission or the United States Courts. The forgery of titles was but one of the many fraudulent means devised to acquire large landed estates in California. Another method adopted to steal public land was to buy a Mexican grant for a few leagues, then change the figures and float it over double, and sometimes even four times the number of leagues called for in the original document. This was notably done by T. W. More, in Ventura County, a man who lost his life, two years ago, as a direct consequence of his rapaciousness as a land-grabber. It is also asserted that Tom Scott, of railroad notoriety, has perpetrated a similar fraud in Ventura County. The charge was made in a review of such cases in southern California, published in the San Francisco Evening Post nearly three years ago, and I have never seen it contradicted. These, and similar frauds, were perpetrated through the connivance of deputies from the United States Surveyor-General's office. There are several of these worthies now at large, who ought rightfully be in San Quentin for their crimes against the people.

Another way of acquiring large estates is by the practice of what is known as the "dummy" system. The modus operandi of this species of land swindling is as follows: I quote from the "Report of the State Land Commission to the Legislature of the State of California, eighteen hundred and seventy-seven," page twenty-seven. Speaking of the sixteenth and thirty-sixth sections "in place," or what are commonly known as school lands, the report says: "The individual copartnership, or ring, engaged in speculating in lands, has usually employed an agent or attorney, whose business it is to keep himself informed with reference to the extension of township surveys by the United States, and when a number of sixteenth and thirty-sixth sections are thus designated and found 'in place,' and inuring to the State, a list of the descriptions of such lands are secured; the agent finds out a number of persons who have never purchased any portion of a sixteenth or thirty-sixth section, and who take no interest in land matters, who, for a small consideration, or none at all, will sign and swear to an application for the purchase of three hundred and twenty acres of land, and having procured a sufficient number of such persons to exhaust the list of land, and their signature and verification to the applications, and having taken a deed or assignment from each of these 'dummies,' the transaction is ended, so far as these nominal purchasers are concerned. The agent then takes upon himself the assumed character of attorney for all and singular these 'dummies;' takes their applications to the office of the State Surveyor-General and places them on file. The records of the office, extending over the past eight years, are full of transactions of this kind, and show that as many as three hundred applications for the purchase of sixteenth and thirty-sixth sections have been filed by the

same attorney on one day, bearing the same date, and making one continued and uninterrupted list of entries on the record, and embracing several thousand acres of land. * * * * * * * * * * * *

"It is needless to observe that this of itself is a most palpable and outrageous abuse and fraud, and defeats the policy of the State in the disposal of these lands to bona fide settlers, and prostitutes the land system to the avarice and rapacity of the speculators. And yet these officers of the State, charged with the trust of managing and disposing of these lands, and having full knowledge of these practices, have never opened their mouths to expose these abuses and frauds, or taken any measures to check the iniquitous practices which were being perpetrated upon the State and the people daily in their presence; but, on the other hand, have permitted themselves to be the pliant instruments of these same speculators in State lands."

The evidence is clear that J. B. Haggin has, under what is known as the "Desert Land Act," done a "land office business" in getting possession of land through means of "dummies," as described in the extract just mentioned. He must have done a rushing business, indeed, to have acquired two hundred thousand acres of land in Kern County alone, within the last two years. W. S. Chapman is another of this sort of land grabbers. He has land all over the State, taken up in the names of "dummy" men, some of whom were dead years before the land was entered in their names—dead men who never even saw California. There is abundant evidence of Chapman's nefarious transactions in a document entitled "Reports of the Joint Committees on Swamp and Overflowed Lands and Land Monopoly," presented at the twentieth session of the Legislature of California. Chapman has not hesitated even to commit perjury in swearing to his entries of land in other men's names.

As the evidence touching Chapman's transactions contained in that report are too voluminous, I have selected the main points and give a brief summary of the facts presented. First, Daniel Allee testifies that he was at one time employed as a bookkeeper by Chapman; that he knew Chapman to have brought a lot of Sioux scrip to this State, and to have located about thirty thousand acres under it; that this scrip was acknowledged in Minnesota before it came here, and the names of the Indians to whom it purported to have been issued were filled in or signed by Chapman, at the time he was about to locate the scrip; that the powers of attorney from the Indians were fraudulently obtained; and that several of the Indians had been dead several years previous to the time Chapman had their names filled in, assigning the scrip to him—notably, one Henry Miller, who was hanged at Mendota, Minnesota, on the twenty-sixth of December, eighteen hundred and sixty-two, for participation in the massacre of the settlers there. All Chapman's locations in this State, up to eighteen hundred and seventy, amounted to about one million and a quarter of acres.

Walter F. Rand testified that he had conversations with Chapman regarding certain papers of great importance, said to have been taken from his office by Daniel Allee, his former clerk; some of these documents were powers of attorney, which he believed Chapman had forged, and other papers which showed the fraudulent manner in which Chapman had taken up lands in this State. Knows that Chapman floated Sioux scrip over McPherson's land in Mendocino County; afterwards McPherson obtained possession of the papers referred to, and Chapman compromised by releasing all his right, title, and interest in the land, and paid McPherson eighteen thousand dollars, his attorney, Hall McAllister, six thousand dollars, and Allee six thousand dollars, making a total of thirty thousand dollars which Chapman paid for securing those papers. He understood that the powers of attorney by which the scrip was located, were forgeries, committed by Chapman; Chapman said to him: "These things will never do to get out; it has cost me thirty thousand dollars already, if you can save me do it any way in the world." He wanted to employ Mr. Rand to recover the papers for him.

J. R. Hardenburgh testifies that when he was United States Surveyor-General, Chapman tried to bribe him by offering him a roll of twenty dollar pieces, which Mr. Hardenburgh declined to accept, informing him that he could not be bribed.

Jesse D. Carr, another land grabber, also tried to bribe Mr. Hardenburg, offering him certain shares in thirty or forty thousand acres, if he would appoint a particular man to survey the land. It could be proved that Chapman forged any quantity of powers of attorney here for the Sioux scrip. He induced the Register of the land office at Stockton to obtain leave of absence and go east: and it can be proved that, while he was gone, Chapman procured the appointment of a substitute in his office, and that he put "W. S. C.," in pencil, on large quantities of the unoccupied lands, on the map of the San Joaquin Valley. When a settler applied for land, he would be told, "Mr. Chapman has filed on that," and Chapman would turn round and make this man pay from three to ten dollars an acre for the land. He used the United States Land Office as his office. One settler came to the Stockton Land Office, and wanted to enter some land. He said there was a stream of water on it which made it particularly valuable; and while he was gone, for the purpose of getting some greenbacks, Chapman said, "I will take that land," and he laid the money down on the table, and when the settler came back, the acting Register said, "Since you have been gone, Mr. Chapman has entered that land, and paid for it." The result of Mr. Hardenburg's refusal to be bribed and used by Chapman, Carr, and others, was that he was turned out of office through their influence at Washington.

There is no telling how much of this business has been done in California. The cases of Messrs. Haggin, Chapman, and Carr are only notable examples of the methods pursued by a certain class of men in wholesale land stealing. Others, doubtless, have been and are engaged in the same business; but it would give an active committee years of labor to unearth all the particulars of these fraudulent transactions in this State. I have no direct evidence as to how Miller & Lux have acquired the vast territory listed in their names on the Assessors' rolls. I venture the assertion that the two hundred and ninety-seven thousand acres which they claim in Fresno and Merced Counties have been obtained in precisely the same manner as that pursued by Haggin, Chapman, and Carr. And this is why I make the assertion: no genuine Mexican claim for land existed in that part of the San Joaquin Valley, for the very good reason that no Mexican ever settled or built a home there prior to eighteen hundred and forty-nine. Mexicans of the coast counties had a mortal dread of the wild Indians of that region, and therefore never formed a single settlement there. I know that that valley was an uninhabited wilderness, save by wild Indians and beasts, prior to eighteen hundred and forty-nine. And one of the conditions of all Mexican grants was, that a house should be built and a settlement made on the land within a certain specified time.

Now, to prove that there is substantial ground for my assertions regarding land monopoly in California, let me quote some figures on the subject. A table from the records of the State Board of Equalization for eighteen hundred and seventy-two, showing the number and classes of farms in California, informs us that there were twenty-seven thousand nine hundred and ninety-six farms, of one hundred acres and upwards, assessed at that time, containing a total acreage of twenty-three million three hundred and forty thousand. These farms are divided into nine classes. The first class consists of twenty-three thousand three hundred and fifteen farms, containing from one hundred to five hundred acres, and averaging two hundred acres; total acreage, four million six hundred and sixty-three thousand. Second class, two thousand three hundred and eighty-three farms, containing from five hundred to one thousand acres and averaging seven hundred and fifty acres; total acreage, one million seven hundred and eighty-seven thousand two hundred and fifty. Third class, one thousand one hundred and twenty-six farms, containing from one thousand to two thousand acres, and averaging one thousand five hundred acres; total acreage, one million six hundred and eighty-nine thousand. Fourth class, three hundred and sixty-three farms, containing from two thousand to three thousand acres, and averaging two thousand three hundred acres; total acreage, eight hundred and thirty-four thousand nine hundred. Fifth class, one hundred and eighty-nine farms, containing from three thousand to four thousand acres, and averaging three thousand two hundred and fifty acres; total acreage, six hundred and four thousand two hundred and fifty. Sixth class, one hundred and four farms, containing from four thousand to five thousand acres, and averaging four thousand five hundred acres; total acreage, four hundred and fifty-eight thousand. Seventh class, two hundred and thirty-six farms, containing from five thousand to ten thousand acres, and averaging seven thousand acres; total acreage, one million eight hundred and fifty-two thousand. Eighth class, one hundred and fifty-eight farms, containing from ten thousand to twenty thousand acres, and averaging fifteen thousand acres; total acreage, two million six hundred and seventy thousand. Ninth class, one hundred and twenty-two farms, containing twenty thousand acres and upwards; total acreage, eight million seven hundred and eighty-two thousand.

The statistics of sixty-seven farms of the ninth class represent an aggregate of four million nine hundred and thirty-two thousand three hundred acres, which is an average of seventy-three thousand acres each. If the remaining fifty-five farms be estimated at seventy thousand acres each, which is a reduction of three thousand acres each from the estimate of the large moiety, the result will be three million eight hundred and fifty thousand acres; which, added to the known figure of the sixty-seven farms, gives us a total of eight million seven hundred and eighty-two thousand. Here, then, is a well ascertained fact, namely: that one hundred and twenty-two large farms embrace double the quantity of land comprised in the twenty-three thousand three hundred and fifteen small farms. This is itself a startling exhibit, but it is not the most startling derivable from the figures of the Board of Equalization. Further analysis demonstrates that the holdings of one thousand acres and upwards, number two thousand two hundred and ninety-eight, aggregating to that number of persons the enormous area of sixteen million eight hundred and ninety thousand six hundred and fifty acres, or an average of seven thousand three hundred and fifty acres to each person. Pursuing the same line of investigation, we find that one thousand one hundred and seventy-two persons own all the farms of two thousand acres and upwards, and that these one thousand one hundred and seventy-two persons, therefore, hold fifteen million two hundred and one thousand six hundred and fifty acres, or an average of twelve thousand nine hundred and seventy-seven acres to each person. The area under consideration, twenty-three million three hundred and forty thousand nine hundred acres, is larger than the whole cultivated area of the State of Ohio. That State, with twenty-one million acres of land under cultivation, has one hundred and ninety-five thousand farms, the majority of which are below one hundred acres each. We, with twenty-eight thousand farms, have already disposed of two million acres of land more than is under tillage in Ohio. In the latter State there are but sixty-nine farms exceeding a thousand acres. Here there are two thousand two hundred and ninety-eight of that class, and they embrace nearly seventeen million acres of land.

I present another suggestive calculation: The twenty-three million three hundred and forty thousand acres of land in this State, now occupied by only twenty-seven thousand nine hundred and ninety-six farms, if subdivided into holdings of one hundred and sixty acres each, would make exactly one hundred and forty-five thousand eight hundred and sixty-five farms; and reckoning that each family owning a farm would consist of at least four persons, the calculation would give us a total agricultural population of five hundred and eighty-three thousand four hundred and sixty persons, or very nearly as much as the present total population of California. These figures plainly show what the State loses by land monopoly—by the infernal greed of a few men, who, hog-like, grab the soil, keep out population, and will not even consent to pay their just proportion of taxes.

The extent and character of land monopoly, its constant growth, its danger and injury to this commonwealth, can neither be exaggerated nor denied. All attempts at denial will be futile, because the people of California know the facts, and see that this bastard feudalism overshadows and curses the land. To get rid of it peaceably and lawfully, I propose as a remedy, a practicable, fair system. My proposition is this: that no person shall hereafter be permitted to acquire, by purchase, will, or otherwise, more than six hundred and forty acres of land. This system, if adopted, would put an end to land monopoly in one generation. It is a proposition that fully respects present "vested" rights, even though some of what are called so are notoriously "vested frauds;" being a gradual reform, there would be no hardship in its operation; it proposes no confiscation of property, not even the restitution of the millions of acres stolen from the people's common domain. Every one now owning more than the amount specified in the limitation would have full notice and time to enable him to dispose of his surplus acres, pocket the proceeds, or invest them in some other business.

Limitation would simply bring about a just system of equalization in the ownership of land, which is the true remedy for monopoly, and the only system suited to the genius of a republic; it would tend immediately to give us a larger population of that very best class of people for any State, small land owners, who, having an interest in the soil, are most attached to their country, and are acknowledged on all hands to be the most conservative, and at the same time the most patriotic of citizens. Persons who oppose this proposition for limitation assert that the evil of land monopoly will cure itself in time, through operation of the descent of property, etc.; that when the man possessed of a large estate dies, it will be divided among his heirs, and that though he was careful in accumulating the chances are that his children will turn out to be spendthrifts, and thus cause division of large landed properties. This supposition, though plausible, is altogether theoretical and uncertain, and does not afford even the semblance of a substantial remedy for the evil complained of. We who seek a reform in the land system of this State are fighting against land monopoly as a false, pernicious system, destructive of equality, of the rights and happiness of the human family in general; we oppose it on the broad ground of correct principle and justice, and propose an honest straightforward remedy, which will strike at the root of the evil and destroy it within a reasonable time. Our opponents, while acknowledging land monopoly to be an evil, propose to postpone all remedy and let the evil cure itself, which reminds me of the proverb that "an ounce of prevention is worth a pound of cure." In what condition would society be if we agreed to abide by that theory in all the affairs of life—if we said, "Oh, let us not try to prevent or punish crime, it will cure itself;" or if we said regarding bodily ills, "There is no use trying to avoid or prevent them, they will cure themselves." This is exactly what that argument amounts to, if argument it can be called. It is evasive, unworthy of sensible men, and is simply an attempt to postpone and shift responsibility. I hold that this question must be met directly and at once. Land monopoly, if not checked now, instead of curing itself, will go on increasing, until it becomes such an unbearable curse that it will lead to revolution.

One of the arguments used by those gentlemen who oppose the proposition for land limitation is, that we have no more right to restrict a man in the quantity of land he can acquire, than in the amount of money he can accumulate. The clear, absolute distinction between the two kinds of property, money and land—their extreme opposite nature and character—expose the fallacy of this assumption. Man's title to that which he can produce, or create by his own efforts is indisputable—and all articles created by labor are of this character. Land is not so, but the very opposite. It has existed since primeval time. *No man has, or ever can create a single rood of it.* It is unchangeable. On the other hand money is the most unstable of property, for we may possess thousands of dollars to-day and be without a cent to-morrow. Man acquires money, or personal property of any other character through his labor, but he cannot add one grain of sand to the soil of the earth. Hence the distinction between the two species of property is so clear as to be within the comprehension of a child.

Again, the assertion is made by some persons that a man has a right to acquire as much land as he pleases. No man has such a right. Whence comes this monstrous claim? for *right* it is not. Can any man show a title-deed by primogeniture from God the Father, excluding his brother men? I trow not. This claim is as reasonable and well founded as "the divine right of kings." It is the plea of land robbers the world over. No man is entitled to have and to hold more than a fair, equal share of God's earth. I affirm the following to be indisputable truths: First, that the elements of nature—land, water, and air—are provided freely for the sustenance of all human beings without distinction; second, that land is the rightful heritage of all men, and not intended to be a monopoly; third, that every human being has an equal right to the use of the land for the purposes of sustenance; fourth, that the right of property in land arises solely from the subjection of that land to individual purposes or ends involving its continuing use for the sustenance of life. Therefore monopoly by one person of more land than he needs or uses to supply his wants, is a violation of natural rights, and is a gross injustice to all men who have no land, who are disinherited and may be crowded out of existence by this "dog in the manger" policy.

In an excellent book entitled "The Science of Rights," the writer, J. G. Fichte, presents the following propositions, which I quote as fair definitions of the nature of property in land:

"All property is of a double nature; it is either absolute, and hence not under the jurisdiction of the State, as money and valuables, etc.; or relative, and immediately under the jurisdiction of the State, as real estate, houses, licenses, etc."

"The legal end of the State in all the property conveyed to the citizens is, that this property shall be properly used for the necessities of the State. Hence, the purchaser must agree to use it, and must be in a position to be able to use it; for instance, if he purchases lands, he must be able to farm."

And society has a perfect right, nay, it is its duty, to fix a limit to the amount which each man shall occupy. It should exercise this authority in the interest of all its members. We are now living in an era when equality of rights is generally acknowledged. Born and baptized in bloody revolutions, the recognition of those rights is deeply fixed in modern thought; and as thought and principles are progressive, there is no fear that we of the nineteenth century will go backwards and accept any of the exploded heresies of the past. Land monopoly is clearly a violation of the doctrine of equality; it is destructive of human rights and "the pursuit of happiness," as set forth in the immortal Declaration of Independence. This equality of rights, which I claim to be God-given, is ignored, trampled upon, when one man is allowed to hold ten thousand, fifty thousand, or one hundred thousand acres, which he does not, cannot use, but takes possession of for speculation, while thousands of other men possess not one foot of soil from which to supply their natural wants by cultivation.

It is said this will have a tendency to injure a great interest of this State, that of sheep raising.

My reply to that objection is this: The sheep raisers' interests are not the only interests to be consulted in this matter. They are but a fraction of the people, either in this State or in the Union, and therefore I see no reason why we should abandon all ideas of necessary reform in land affairs to please that class alone. And here let me say that sheep raising has been and is a great industry in the Australian Colonies of England. Yet, in the interests of the mass of the people seeking homes in these colonies, that interest has had to be curbed in its disposition to appropriate all the land for its purposes alone. Under the early policy of the British Government in Australia, the sheep men, or "squatters," as they were called, occupied large areas of land for grazing pastures. As the agricultural interest increased, and small farmers began to look for room to make homes on the land, the monopoly of the soil by the "squatters" was found to be detrimental to the general welfare; therefore, the Colonial governments, which, I am glad to say, possess free government in a large degree, have wisely adopted some measure of land limitation, to correct the avariciousness of these landlords. But the end is not yet. The people of Australia have made a commencement in the right direction; agitation of the question of land tenures is still going on, and will not cease until the right principle is adopted; namely, general limitations to small holdings.

Land limitation, as we shall see if we examine the subject, is not a new thing. It has been partially adopted in Australia, and it has become the general law in Prince Edward's Island, under the Government of the Dominion of Canada. An Act was passed by the Government of that province on the twenty-seventh of April, eighteen hundred and seventy-five, by the terms of which it was agreed to purchase all the large landed estates in the island exceeding five hundred acres in the aggregate, for the purpose, as the preamble of the Act sets forth, of converting "the leasehold tenures into freehold estates, upon terms just and equitable to the tenants as well as to the proprietors." Shall we be less liberal, less favorable to reform, than colonies of the British Empire? I hope not. If we decide against reform we shall certainly be taking a step backward, for our general and State governments have plainly indicated that land limitation is the settled policy of both. The General Government, in its homestead and preëmption Acts, limits each actual settler to one hundred and sixty acres of land. Are not the meaning, intent, and policy here indicated plain enough for the commonest understanding? This is land limitation, as plain as it can be formulated in words, and however much it may have been evaded by the trickery and perjury of land-grabbers, the fact cannot be denied that it is the law of our Government. The State government, also, has adopted the spirit of land limitation, when it restricts, as it plainly does, certain corporations chartered under its sanction to the possession of a limited amount of real estate. Thus we have the spirit—the principle—of land limitation blended in the policy of our Government, State and National; and all that is now wanted and demanded by the people, is a distinct affirmation in the fundamental law of this State that the policy shall be general in its application for all future time.

I hold that land monopoly is regarded as unjust by all men of fair minds, who are not biased in its favor by selfish interest; it is condemned by the verdict of mankind; it is the practice of selfishness in its most odious aspect; it is narrow in all its aims, and it admits of no defense aside from sophistry and infernal legal quibbles; it is destructive of general prosperity and injurious to the State; it is un-American, anti-republican, and can only maintain its existence under the iron hand of despotism. Justice and common sense demand that all bad laws which protect and encourage it, shall be repealed. Wherever it prevails the interests of society require its extirpation, and the adoption of remedies which shall put an end to it forever. And I now predict that the time is at hand when it will finally receive its death-blow in every civilized nation of the earth. Of all the States of this Union, California is the most afflicted by this curse; it is keeping out population, retarding our prosperity. In all the older States small farms is the rule, and large ones a rare exception. There we see general prosperity prevailing, at least among the rural population; there we see an independent yeomanry planted, who are the pride and the mainstay of the Republic—its wealth-producers in peace, its defenders in war. If we desire to transmit the liberty which we enjoy, unimpaired, to future generations; if we desire that our posterity shall be a free, contented, happy people, we must rid ourselves of this imported feudalism, and provide means for a general ownership of land in small farms. There can be no prosperity, no contentment, no happiness, otherwise in this land. As the poet has aptly said of another country where this blighting curse still exists:

Ill fares the land, to hast'ning ills a prey,
Where wealth accumulates, and men decay;
Princes and lords may flourish, or may fade;
A breath can make them, as a breath has made;
But a bold yeomanry, their country's pride,
When once destroy'd, can never be supplied.

This reform of land limitation is demanded in the interest of the nation, in the interest of the State, in the interest of good government, in the interest of justice to all. It is demanded by the people—not by any single class or section, but by a general popular expression which cannot be ignored. The great political parties have recognized its necessity, and favored it in their platforms, and they never would have done this if the force of public opinion had not compelled them to do so, for the politicians who generally manipulate party Conventions are time-servers, who pretend to bow to popular demands, though they do so only to deceive and betray the people. In the State platform of the Democratic party for eighteen hundred and seventy-five the following resolution was adopted:

Resolved, That we condemn, as subversive of the rights of the people and ruinous to the best interests of the State, the policy of permitting the lands of the State to become a monopoly in the hands of a few at the expense of the many, and we hereby pledge the Democratic party to the correction of this giant evil.

Pledged the Democratic party to correct the evil, indeed; but it was a false pledge—a mockery of truth—intended to deceive the public, as the corrupt leaders of that party and members of the Convention which adopted the resolution have since declared.

To us of California, land reform is one of the most important questions of the day. It is a question that will not down, however powerful temporary opposition may be to the need of the times. It is a question that must be finally settled so as to meet the wishes and wants of the whole people. I am aware that there is disposition in this Convention to ignore the importance and the necessity of this reform, but I caution them to beware of the responsibility which they take by assuming here a lordly disdain of popular opinion. This Convention may refuse to adopt limitation, or any other proper remedy for land monopoly; but if it does so, rest assured it will only be postponing action. I say the people of California demand this reform—they have proclaimed their wishes in no uncertain tones—and gentlemen, who array themselves in opposition to the popular demand, will have to place their names squarely on the record for future accountability. The people who have the power to make and unmake Legislatures and Constitutional Conventions, will have something to say on this question; their wishes will become commands, and their commands action, in the near future, and that action will be the destruction of land monopoly.

In conclusion, I repeat the common saying, that "reforms never go backward;" and to this let me add that the triumph of a principle which has truth and justice for its foundation cannot be prevented while honest free thought holds sway among men. The name abolitionist was once potent as a term of reproach, yet have we not seen the powerful institution of slavery destroyed in one half the States of this Union in our own days? At present, in a narrow spirit of prejudice, we hear the cry that land reformers are agrarians, communists, confiscators, etc. But these false cries will avail nothing. The destruction of land monopoly is decreed by the people. This reform is the vital question of the day; backed by numbers; its onward course will be irresistible, and its agitation will never cease until victory shall have been achieved.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I do not expect to occupy the time of this committee for more than ten minutes in the discussion of this question. I think the committee ought at least to be willing to recommend that we insert in the Constitution section one, as reported by the minority of the Committee upon Lands and Homestead Exemption—that "perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be enforced in this State." I think there is no man in the State of California, who is imbued with the spirit of a free-born American citizen, who will not subscribe to that declaration, and I hope that it will be engrafted in the permanent law of our land, and that it will stand as one of the great line stones from which we never will depart. And another proposition which I think this Convention ought by all means to recommend in the Constitution, is the proposition with reference to the disposition of public lands belonging to the State of California. Of course I have not time to enter into a discussion of the abuses which have entered into the system of the management and disposition of these lands, which are well known to every member of this Convention. But not talking about what is passed; not talking about the wrongs which have been committed; not talking about the steals that have been accomplished; not talking about the frauds and perjuries that have been committed and permitted by the decisions of the Courts, and rulings of the Land Office; passing all that by, what is left for us is, that we certainly must act for the future, even if we have but a thousand acres of land belonging to the State of California. There is some left. Some of it is swamp land, some sixteenth and thirty-sixth sections, school land, and some fragments of other donations. We can at least lay the foundation for a land law for future generations. We ought to say here in the Constitution, that no more than three hundred and twenty acres of land shall ever be granted or patented by the State to any one person, and no patent shall ever be made otherwise than upon the basis of actual settlement and occupation, after three years time. That no land scrip or land location certificates shall ever be issued in this State. The true policy of land holding in any country is, that he who holds it shall occupy it, and utilize it, and make it bring forth sustenance for the people of the earth. The true policy is for the sovereignty to hold all the land that is not in actual occupation and use. That is theoretically the law of the United States, but it is not practically so. But we can now make it practically so by inserting in our Constitution: That whatever land is left to us now shall be occupied, shall be obtained from us by actual occupation and settlement, and not otherwise. What a burlesque it is upon law, upon government, upon decency, and upon propriety, to say that Mr. Montgomery, or Mr. A, B, or C, under the Swamp Land Act of eighteen hundred and sixty-seven, shall have a patent from the State of California to eighty-seven thousand acres of swamp land, the very garden land of the State of California, of the earth—that which makes us one of the greatest States, that which makes us the very empire of the world, and if dealt out aright, would be capable of sustaining an immense population. But it is dealt out in this way, and the very money that is paid into the treasury goes back again into a reclamation fund, and the State receives not a dollar for the land.

That is the way lands in this State have been dealt out under the administration of the Democratic and Republican parties, which have said so much about land reform. They have become the most servile tools of capitalists and land monopolists. The Democratic and Republican parties are as completely in the hands of the land monopolists as it is possible for them to be. Not only the swamp lands have been thus monopolized, but five or six millions of acres of other land, the finest upon the face of the earth, capable of sustaining a population of from ten to twenty millions of people, is now lying waste and barren under this vile system which has been such a curse to this State. There is eighty-seven thousand acres of swamp land under one patent—eighty-seven thousand acres belonging to one land firm; fifty thousand acres to another; forty thousand, to another; and no limitation to prevent any man from owning every foot of land in California. No limitation whatever. Not only that, but one man could have filed upon it, paid only the filing fees, and by collusion with the land officers, could keep it from others until he could find settlers willing to pay the extortionate royalty he placed upon it, when he could release it, without having spent a dollar save the insignificant filing fees. What is true of the land system in this State, has been true of the land systems of other States. That is the system which we complain of here, and against which we protest.

[At this point of the speaker's remarks the gavel fell.]

MR. TUTTLE. I give the gentleman my time.

THE CHAIRMAN. The gentleman from Monterey will proceed.

MR. WYATT. I was saying that this is the system that I am standing here and calling upon this Convention to reverse. I would have the members of this Convention take a broad and statesmanlike view of this great question, which is of such vital importance to the people of this commonwealth. The people of this State have repeatedly called upon both the old parties to inaugurate this reform, but they have violated their pledges and failed to do it, and that is one of the very purposes for which this Convention was called. And while I do not propose to touch these frauds, these perjuries, these rascalities, which have been crystallized into the form of law—while I do not propose to touch them, I do propose that no more land belonging to the State of California shall be disposed of in that way; but that if there is any struggling boy, or any young man, just married, having high hopes for the future, with nothing but his hands to make a living and build up a home for wife and children, if they can find a vacant piece of land in this broad State of California, they shall have a right to purchase it from the State of California, without having to pay a royalty to Haggin, Carr, Tevis, or some other land shark. I am here to protest against these abuses, and to say that such a damnable system shall no longer be tolerated in the State of California.

I have another proposition, on which I am in hopes the Convention will agree, and that is the declaration I read here against monopolies and perpetuities. Also, that the State of California shall forbid, in her Constitution, the disposition of her lands to any but actual settlers, and then in no larger quantities than three hundred and twenty acres. To these propositions I hope to have the hearty support of this Convention. It is a country largely controlled by land monopolists, and this is all the more reason why these provisions ought to be inserted. The men who come here from a country where the land is the heritage of a favored few realize the importance of this question, and are willing to obey the behests of the people. I believe if there is any one question that the people are interested in, it is this question. In eighteen hundred and seventy-two, when this report was made, codifying these vast land grants, and arranging them, by the State Board, and average assessment made thereon, I happened to be in the Capitol for a short time after that was done. I wanted to get a copy of that report, and went to the Sergeant-at-Arms, but could find none. I found one on the desk of one member, but could get none elsewhere.

[At this point in the speaker's remarks the gavel fell.]

MR. JOYCE. Being as I do not wish to speak on this arrangement I grant him my time.

MR. WYATT. If I do not finish in another ten minutes I will not ask for any further time. From that day to this I have been looking for one, but have not been able to find it. Where it went to, or what became of it I do not know. Then, gentlemen, up to this time, the railroad was somewhat of a new thing in this State, and as it went through the big ranches the farmers thought their freight would be greatly reduced, but the contrary being the result, what was the result of it? Then commenced the clamor against the railroad, and these land owners brought their forces here, in connection with the people at large, to bring the railroad down. But, sir, the railroad company gave them to understand that if they did they could not hold these big grants. The railroad company never told me this; the land men never told me this, for I have never had the confidence of either one in this State, and I only speak what my judgment tells me is so. The railroad company gave the land men to understand that if the railroads were to be put in a straightjacket the land monopolists would have a touch of it, as it was asserted by the Record, then the railroad organ in this State, as the

Record-Union is to-day. As soon as this understanding was had they struck hands, and the Record closed its mouth upon the subject of land monopoly, and has kept its mouth shut from that day to this. And whenever an effort has been made to reduce freights and fares, the railroads and the land monopolists have stood shoulder to shoulder to defeat it—and the same when any movement was made against the land monopolists. Sir, land monopoly is an evil that must be cured. It menaces the welfare of this State. We propose to make them let go their grasp upon the lands of this State.

Gentlemen of the Convention, this is a subject so full of thought, it is so full of matter to be talked about, that a man does not know where to strike first. For instance, it was stated yesterday that the University lands were sold for six dollars and fifty cents an acre—that is, that the actual settlers had to pay that much in addition to the regular government price, and all of which is of no benefit to the public. This scrip is preferred scrip, which can be located in advance of where the settler can otherwise go. All this is a curse. It would be better if there was never any college scrip, and if there is to be college scrip it ought not to be located in advance, or until the land is surveyed. It would be far better if the people of California would raise the same amount of money by direct taxation, instead of forcing poor settlers to pay it into the pockets of land monopolists. In other words, it is putting a tax upon the poor, struggling settlers of the State of California to support this University. All this land scrip is in the interest of land grabbers and land monopolists and speculators, and at the expense of poor men. I now, while I have this one chance, eagerly embrace it, to enter my solemn protest against this thing. I am talking under very great difficulties, for I have recently had my mouth iron-clad and vulcanized, and, as a natural consequence, my articulation is difficult. I was speaking about this land scrip, which has been abolished by the Government of the United States, which now grants land only to actual settlers.

[At this point the gavel fell.]

Mr. WELLIN. I will give the gentleman my time.

Mr. WYATT. I don't know whether the Committee is tired of my remarks or not. I have no wish to bore you, but if I can give you any information that will lead you to a right conclusion on this great subject, I am willing to occupy another ten minuts. More frauds have been perpetrated by means of scrip than in any other way. Take the Sioux scrip, which had no foundation. It had its commencement in fraud, was carried on by perjury, and its location in the State of California was by means of fraud and perjury. Take these scrips, and these school land frauds, and these swamp land frauds, and they constitute a mass of villainy that is astounding. Take the robbery, and perjury, and villainy, and collusion, by which these lands have been wrested from their rightful possessors, and does it not surpass the English system, which is so much condemned? I do ask you now, to put a clause in the Constitution which will at least relieve the rising generation from the evils with which we have been afflicted, so that it will be possible, some time in the future, for those who make this State, who constitute this State, to carry the State forward on the road of progress, and in all that goes to constitute a civilized community. I am here to ask that the future generation shall not be handicapped, as the present one has been, in the great race of life. Am I asking too much? I am asking that the children who are now growing up to take our places, shall not be robbed of their birthrights. Am I asking too much? Do we ask anything of you but what you realize, in your heart of hearts, ought to be granted? Do we ask anything of you but what is justified by the experience of the most enlightened nations on earth? Do we ask anything but that which all the wisest and best men of the present age say should be granted? And in asking these things, we are only seconding and voicing the demand which comes up from the people, and they will not be denied.

REMARKS OF MR. GRACE.

Mr. GRACE. Mr. Chairman: I do not propose to make a speech upon this matter, because there is not time enough allowed. I only wish I had the ability and the time to lay bare the abuses and evils of the landed system of this State. I stand here representing a people to whom I am pledged to use every endeavor to limit land holding and land monopoly. And when I stand here upon this floor and say I am in favor of land limitation, I am only, as an honest man, representing the views and the wishes of the constituency which sent me to this Convention. And I intend, as far as I am able, to comply with their wishes in the future as I have endeavored to do in the past. Our land system is now little better than that of old England. England has been progressing slowly. It has taken them a thousand years to arrive at their present state, and yet we find that about fifteen thousand persons own the land of England. Yet, sir, here in this fair young State, we find that sixty landowners and corporations own more land than there is in all England. They form a landed aristocracy which threatens as much danger to this State as it ever did to England. If we permit this thing to go on a few years we will see the great nobilities of Kern—Haggin, Tevis, and Carr—forming themselves into an aristocracy which will be worse than was ever seen in England. By means of Chinese labor they will soon crowd the laboring man and the farmer to the wall. This is the thing we propose to guard against. We propose to say that there shall be a limit beyond which they shall not go. It is the will of the people, and I am in hopes this Convention will respect their wishes and come squarely up to the line of duty.

Mr. SCHELL. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

The PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the minority of the Committee on Land and Homestead Exemption, have made progress, and ask leave to sit again.

ADJOURNMENT.

Mr. HUESTIS. I move the Convention do now adjourn.

Carried.

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

ONE HUNDRED AND NINETEENTH DAY.

SACRAMENTO, Friday, January 24th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

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

PRESENT.

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

ABSENT.

Barnes,	Edgerton,	Hale,
Berry,	Estee,	Hall.
Campbell,	Estey,	Hilborn,
Cowden,	Fawcett,	Noel,
Cross,	Finney,	O'Donnell,
Crouch,	Freeman,	Overton,
Dudley, of San Joaquin,	Graves,	Porter,
Eagon,	Gregg,	Terry.

THE JOURNAL.

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

So ordered.

PETITIONS.

Messrs. Mills and Nason presented petitions, requesting the exemption of certain property, used for charitable, educational, and church purposes, from taxation.

Laid on the table, to be considered with the article on revenue and taxation.

NEW PROPOSITION.

Mr. KEYES presented the following proposed article:

ARTICLE XII.

BOUNDARY OF THE STATE DEFINED.

SECTION 1. The boundary of the State of California shall be as follows: Commencing at the point of intersection of forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line in a southeasterly direction to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one

thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning; also, all the islands, harbors, and bays along and adjacent to the coast.

Referred to the Committee of the Whole.

ASSISTANT JOURNAL CLERK.

MR. TOWNSEND offered the following resolution:

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

Referred to the Committee on Mileage and Contingent Expenses.

LIMIT OF SPEECHES.

MR. INMAN offered the following resolution:

Resolved, That the practice of one member giving time to another results only in prolonging debate and delaying the proceedings of this Convention, and is an evasion of Rule Forty-three; and

Resolved, That the practice be from this time discontinued.

MR. INMAN. Mr. President: I simply offer that to expedite business. I hope the Convention will adopt it.

MR. DOWLING. Mr. President: I hope, sir, that that resolution will be promptly voted down, and more especially now that we are in the consideration of the gravest question that afflicts the people of California.

MR. TINNIN. Mr. President: I was intending to offer exactly the same resolution myself, and I hope it will be adopted. It has been evident that through courtesy to some gentlemen they have been permitted to override Rule Forty-three.

MR. INMAN. It don't apply to-day, but after to-day.

MR. McFARLAND. Mr. President: I was opposed to the adoption of the ten-minute rule, and did what I could to prevent its adoption. I have more than once refrained from speaking because I did not care to ask the indulgence of this Convention, or ask gentlemen to give me their time. I am willing to rescind Rule Forty-three, but it is certainly an evasion of it for one gentlemen to give his time to another. By that means several gentlemen are allowed to make hour-speeches. If we are going to stand up to the rule, let us do it. This habit of a half dozen gentlemen giving their time to another is an entire nullification of the rule. I am not in favor of the ten-minute rule, and would be perfectly willing to rescind it, but at the same time we ought to enforce the rule or abolish it.

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

Seconded by Messrs. Schell, Hitchcock, Prouty, and Kelly.

The main question was ordered.

The resolution was adopted on a division, by a vote of 69 ayes to 30 noes.

NOTICE.

MR. McCALLUM. Mr. President: I send up a notice.

THE SECRETARY read:

"I give notice that, on to-morrow, I will move to amend Rule Twenty-four, by striking out the last proviso: '*Provided further*, that on all resolutions and propositions relating to the Constitution the final vote shall be taken by ayes and noes.'"

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

The motion was lost.

LAND MONOPOLY.

MR. O'SULLIVAN. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the subject of land and homestead exemption.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

MR. ROLFE. Mr. Chairman: I would like to inquire what section is before the committee?

THE CHAIRMAN. The section presented by Mr. O'Sullivan as a substitute for section two.

MR. ROLFE. I would like to inquire what has become of section one of this minority report? Is not that before the House?

THE CHAIRMAN. The report is not before the body. It can only be brought up by motion to amend.

MR. VAN DYKE. Mr. Chairman: I have an amendment to offer to the substitute.

THE SECRETARY read:

"Substitute for section two, 'The holding of large tracts of land, uncultivated and unimproved, by individuals and corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.'"

MR. BLACKMER. I second the amendment.

SPEECH OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: We may agree with all that has been said by the gentleman who occupied so much of the time of the committee yesterday, in reference to the abuses that have grown up in this State by way of acquiring large tracts of land, but we are, nevertheless, met with this obstacle, that they have their lands. That, according to our notion of right, and the duties of Government, we cannot divest them of their property. It can only be taken from them for public uses, upon just compensation being given. We cannot take their property from them for private uses, or distribute them at all. Now, sir, we all, I think, recognize the great evil of holding large tracts of land uncultivated and unimproved; but, sir, we can only apply the remedy in a lawful and proper mode, and consistent with the constitutional provisions which I have before referred to. Mr. Chairman, I think we have applied one remedy, and a very effectual remedy, in reference to the modes of taxation. Heretofore, as is well known, these large tracts of land have not contributed their just proportion towards defraying the expenses of the State Government. The holders of these large tracts of land are protected in their possessions by the whole power and machinery of the State Government. I say it is but just and right and proper that they should contribute equally with the holders of other property in the State, towards defraying the expenses of the State Government. We have therefore improved upon the old system of the assessment and collection of revenue by providing, first, for a revision of the assessments of property by the State Board of Equalization. This will place it within the power of the State Board of Equalization to raise assessments upon these tracts of land to a proper valuation. Then we have provided, further, that it shall be assessed in small tracts instead of by leagues and thousands of acres. Then we have provided, further, that uncultivated lands of the same class or grade shall be assessed and taxed the same as cultivated lands. Now, sir, I think these provisions are right, just, and proper. I think, Mr. Chairman, that it is as far as we can go. I say every owner of property should pay in proportion to its value towards the expenses of the State Government. It has not been done heretofore, and that is the reason why these large tracts of land are held by private parties or corporations. Now, sir, hereafter they will be obliged to pay for the luxury of holding these large tracts of land, and I tell you that when it comes to paying their just and reasonable proportion of the taxes of the State they will be glad to dispose of that property. I think we can do nothing more, unless it is to discourage it by the section I have sent up; that the holding of large tracts of land should be discouraged by all means not inconsistent with the rights of private property. That, I think, is as far as we can go. I say, Mr. Chairman, that you cannot, in justice, say that a man shall not buy acres of land if he wishes to. You cannot, in justice, say that a man shall not hold only a certain number of acres of land. That is his privilege under our form of government, and you may as well say that a man should not hold only a certain number of horses, or cows, or have a certain amount of other species of property. All civilized governments recognize ownership in land. We can make this declaration in the substitute without infringing upon the rights of private property. I hope that the substitute will be adopted in place of the section read.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: I was on the Committee on Land and Homestead Exemption. So far I have said nothing upon the subject, and I had not intended to do so. We have heard gentlemen on this floor advancing their views with regard to what they represent as reform in land matters, and stating, furthermore, that these were the doctrines that they advocated before they came to participate in the deliberations of this body. Now, if some few of them advocated a certain class of doctrines, as presented in the minority report of this committee, it has been only local. I am convinced that such principles have not been enunciated and advocated before the great mass of the people of this State. Nothing of the kind has been, unless it has been in certain small localities. For instance, a great deal was said with regard to the evils of large landholding, and that something must be done with regard to the matter.

MR. O'SULLIVAN. I would like to ask the gentleman a question.

MR. BROWN. I do not wish to be troubled.

MR. O'SULLIVAN. Are you not aware that there is a fight between the settlers in Tulare and the railroad company now?

MR. BROWN. Every one who reads is acquainted with that. It has no bearing here, and I do not wish to be interrupted. These questions were all gone over in committee between the gentleman and myself. We find that different parties enunciated their doctrines—and I might as well come immediately to the subject—we find that the Workingmen's party set forth their views, and they never set forth these doctrines, that one man shall go upon another man's land, and if he can stay there for twelve months, and retain that land and cultivate it, that he may have that land. Such doctrine was not advocated. We find in section six of the Platform of the Workingmen's Party of the State of California: "Land grabbing must be stopped." Is this the manner of stopping it—allow one man to go upon another man's land and take it? "Land grabbing must be stopped!" [Laughter.] Section seven says that farming lands of equal capacity shall be equally taxed, regardless of improvements. We were all in favor of that. We wish that the large landholdings should be equally taxed. We advocated this doctrine among the people. We were in favor of men that have large tracts of land paying equally, in proportion to what it is worth, and we were convinced, furthermore, that this doctrine enforced would cause large landholders to be discouraged, and be ready at once to sell these lands. That is the kind of doctrine that was advocated before the people. That is the kind of doctrine advocated by the Workingmen before the people, and that kind of doctrine is what the people of the State expect to see carried out in the Constitution of this State by this Convention. But as to allowing a man to go upon another man's land and stay there, and the doctrine that no man shall hold only so much land, they do not expect it. Now, let us study upon the policy of this thing. Suppose some one comes here from the States and wishes to purchase lands? They do not wish to purchase lands where they can only get enough for themselves, when they have five or six children. Six hundred and forty acres might do the man for the present, but when the children grow up, the other lands around him would be taken up, and he would have to be separated from his children in his old age. It will work against the

settlement of the State. But having only ten minutes, I have no time to dwell upon all these points as I could wish. There are portions of this State where no man can live on six hundred and forty acres. Men want stock, and they are bound to farm extensively, if they make a living at it. This would be a death blow against the agricultural interest of a large portion of this State. But for fear my time might end suddenly, I will read a few principles of positive law upon this subject. You will excuse me for taking up the Constitution of a different State; but this, Mr. Chairman, is from the Constitution of Kentucky:

"That absolute, arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority."

This power does not exist even in the largest majority. This is a great principle, which should be recognized. Furthermore, in section three of the bill of rights of that State, it is said:

"The right of property is before and higher than any constitutional sanction."

It exists without law even. The constitutional sanction only confirms the same; and we must understand that this is one of the things that existed before laws were written. These rights are positive in themselves. Again, section four says:

"That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, happiness, security, and the protection of their property."

There are certain things for which free governments are instituted: "peace, safety, happiness, security, and protection of their property." Not for the purpose of disorganizing and taking away property, but that when one man buys it legally, the laws are for the protection of the property. This should be understood. It should be thoroughly comprehended, because whenever we take the opposite view, that we have a right because a man is wealthy——

MR. BARBOUR. Who proposes to take any property away from him?

MR. BROWN. Any one that favors this minority report, and any one that does I am against him. I am opposed to taking a man's property away from him when he is living or after he is dead. I stand in direct opposition to all such as favor it, and I think the good sense of this Convention will be the same and will concur in that sentiment. Now I do not propose to say much on this subject, but we must recollect that the right to possess and enjoy property is one of the inalienable rights, and any clause, or class of clauses, which infringes upon any inalienable rights is contrary to the great American doctrine. A man has a right to enjoy and control his property, and whenever we commence to infringe upon private property we at once introduce confusion. What kind of anarchy would result? Do we not see that it is contrary to all law and contrary to all justice?

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

THE SECRETARY read:

"Amend by adding at the end of section four: 'The Legislature is hereby directed and ordered to build a house upon said land, and furnish seed and provision for the first year, for a man and wife with a small family, and stock the same with thoroughbred cattle, horses, sheep, and jackasses; and, furthermore, that Judge Shafter be required to furnish at least twenty good milk cows, in order to keep said family from perishing.'"

THE CHAIRMAN. Out of order.

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: There seems to be one class clearly opposed to these propositions, and call them extremely radical and wild, and another class who think they are not. Now, the amendments that have been proposed here so far do not seem to me to be any more radical or wild than many that we have passed in this Convention in regard to the railroads and other corporations. I for one did not come here to fight the railroad, and then go home to my constituents and declare that I had done all my duty. There were three great propositions, it seems to me, that the people had in view in calling this Convention. One was the railroad, another the land, and the other the water question. In these three questions there were monopolies that the people had to struggle against, and wished to overcome. This Convention has exhausted one third of its time opposing the railroad company, and put in extraordinary propositions here never before thought of, and it seems to me that after all their discussions have not settled upon anything that is universally satisfactory.

MR. MCFARLAND. The gentleman is not discussing the question before the house. He is discussing the corporations and the railroad.

MR. SMITH. The main question, it seems to me, the most important question, is attempted to be regulated here. All over this State there are large tracts of land that are being farmed on a scale that is not profitable to the State. These large landed estates, if cut up as they should be and occupied by industrious communities, would be very profitable to the country, and to those who farmed them. The fact is, that these large landholdings would not be held if it was not for the money made in the speculation in land. The operations of capital in buying lands and holding them for speculation are the means by which money is made in large landholdings. Farming these large tracts is not profitable. It is universally conceded on this coast that large landholding is a great evil. Large farming is not as profitable as small farming. It is conceded that this is an evil, and it is attempted to overcome this evil. The gentleman from Alameda has said that we have met that question by taxation. I say that it is very questionable whether we have met that question. The rich men have always succeeded in shifting taxation, and after all this question is left to the discretion of Assessors, and always must be. And although I believe there will be some improvement under these amendments that have been adopted in regard to taxation, I do not believe that we have met this question fully. It seems to me that the way to remedy this evil is to go at it directly.

Now, in what respect do we violate private rights? You may as well say that we violate the rights of the railroad company, when we say that they shall not charge over a certain rate of freight and fares, as to say that we cannot prevent the ownership of more than six hundred and forty acres of land. It is not proposed in this amendment, so far as I understand it, to take any right from any individual. It only limits the holding by one man to six hundred and forty acres. It does not say that if he has more than six hundred and forty acres of land that it shall be taken away from him. It provides that a man shall not inherit more than six hundred and forty acres, and keep that in property such as land; that it shall be divided up and sold, where it exceeds six hundred and forty acres, and the proceeds divided among the heirs. There is no taking away of private property from individuals in that respect. It is simply limiting the ownership of that which is conceded to be wrong. Now, why is it a wrong, and why should the public have a right to limit the holding of land? Because there is a limited quantity of land in the State. It is not like a great many other things in which speculation may go on to an unlimited extent without a great public injury. There is a limited amount of land, and land is the basis of all industry. Without the land the country could not improve. Well, if they are going to have the whole country fenced in as a great sheep range, of course the industries of the country must languish. The man who produces that which we eat and wear and supplies the commerce of the State, is the one who builds up and improves the State. The great landed domain of the State should be thrown open to the people who wish to come here and engage in production. Is it not plain to every one that the capitalist can go and fence in thousands and thousands of acres of land and use it for a great range for sheep and cattle, and make enough to satisfy him, without any benefit to the State, while if that land was open to settlers who would cut it up into farms and improve them, it would be very profitable to the State?

THE CHAIRMAN. The gentleman's ten minutes have expired.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman and Gentlemen of the Committee: I am exceedingly gratified at the prospect which the looming intelligence that presented the last amendment has opened before this Convention. I am equally glad that he found himself in his proper position—out of order. So far as his proposition itself is concerned it needs no argument, and was clearly foreign to the point at issue. The propositions that are here presented and advocated must commend themselves to every thinking man. Whether exactly in accordance with the opinions that each and all of us entertain in regard to the future prospects of this country, they must commend themselves to every thinking man as sound in principle. None of you will maintain for a single moment that you have a right to bring into this world posterity, and turn out upon the world hoodlums to find their way as best they can, without making any provision for their support. What one of you will contend that you ought to be allowed to have the right to disinherit any one of that posterity, be it ever so humble, or degraded. What system has been engrafted upon your law that authorizes you to disinherit any one of that posterity? Grant you the right and your authority is unlimited, and you may disinherit one while you add to the fortune of those who are less deserving. It is a caprice that is given to you, and guaranteed to you, which is neither a right, nor has it a foundation in justice. It had its origin in the divine right of kings, which is still maintained in Europe, and which you are to-day, by the system which you attempt to perpetuate, endeavoring to fasten upon the people of the State of California, by leaving, or engrafting upon the fundamental law, a principle which would be carried at least to that extent. Empires have been founded upon the right which you here seek to maintain, and it is the right by which this nation will be overwhelmed in the end. It is that very claim of right to perpetuate all the land in the hands of the few against which all rebel. It is not against your right in property, but it is against your right to perpetuate that power. You hold it in your hands to the detriment of the nation, and of this State. I say you have no right to claim it. Your better judgment revolts against it. I do not know whether the gentleman from Tulare was engaged in the two hundred and eleven thousand dollars' swindle of Montgomery or not.

MR. BROWN. I was not.

MR. HERRINGTON. I care not whether he was or not. It is that very power to maintain these large landed estates, upon which the people may not enter for the purpose of settlement——

MR. TOWNSEND. How do you know that was a swindle?

MR. HERRINGTON. It was in the Legislature of eighteen hundred and sixty-three that that land was voted away.

MR. TOWNSEND. Didn't he obtain his land under the law?

MR. HERRINGTON. He obtained it by a swindle in the Legislature, against which I voted with all my might. Men voted for it that owned six sections of land in it. Take Watson of Los Angeles. It was upon that basis that it was carried—men voting for it that owned it.

MR. WILSON, of Tehama. Prior to eighteen hundred and sixty-two, did you ever know land legislated away to a corporation, or any one else? Under the Republican rule that thing come in, and you are a Republican, I believe.

MR. HERRINGTON. I do not argue that we should take the land from these men because they got it dishonestly. I care not how you obtained the property, whether honestly or dishonestly. It makes no difference. If you have got the property keep the property until you die; but what right have you to say that a portion of your posterity shall be beggars and the remainder fed in luxury and pomp. It is against that principle which I inveigh, and against which I rebel, and against which your conscience tells you that you ought to rebel. That is one proposition that is embraced in the proposition presented by the minority report. I myself am not satisfied with all the terms of that

report, and perhaps I am not willing to subscribe to the proposition, that the amount should be limited to six hundred and forty acres. But I am opposed, and this Convention should be opposed, to allowing the public lands to be sold in grants of more than three hundred acres. Your vast territory that is now covered with your timber is being swept away and placed into the hands of those who are your money aristocracy. You are building up the power of those who have neither the intention of building up the State or helping Republican institutions, but act merely for the purpose of mere selfish gain. They become independent of governmental control and power. They do not ask you for your assistance at all. They enforce their will by their power against law. Now, I say that this proposition ought to be engrafted upon this Constitution, so that when a man comes to die, if he is possessed of this large landed power, he should not be allowed to perpetuate his vast power in the hands of one individual, and particularly if he is the father of posterity, whether numerous or otherwise. That is the principle that we are driving at, and we ought to take some steps that will leave it unmistakable ——

THE CHAIRMAN. Time!

SPEECH OF MR. WILSON.

MR. WILSON, of Tehama. Mr. Chairman: Prior to the coming in of this Republican party, who ever heard tell of a subsidy being granted? It was by the coming in of that party that all the lands were given away, and all of these wrongs have been done. The old Mexican soldiers that fought for the country, and handed it down, without a subsidy or corporation on it, for every poor man a home. We all came here, and some went to mining, and some went to farming. Some at one thing and some at another, just as men ought to do. We settled, some of us, way in at the foot of these mountains, with our stock, and with our wives and children, and when we got some money we bought more land. The first thing we knew, here came in some people from the east that were educated in subsidy schools—and what do we find them? The first thing we knew, they got an Act through Congress granting away one half of the public domain of this State, that the Mexican soldiers had handed down free and untrammeled, without a corporation or subsidy on it. They legislated all this money—enough to stock that road, and more too. Now, before this, the countless thousands of teamsters were hauling our freight to the foot of the Rocky Mountains. They bought our hay, barley, horses, and mules, and they gave employment to every man, woman, and child. You could not go into the streets of Sacramento for the teams. And these men, by one sweep, took the land, took the money, and took the business of the country. Now, one extreme follows another. These are the thieving land swindlers, you know; and they went to robbing and stealing, and now their papers are doing all they can to divert attention from the true wrong to us old settlers that came here in 'forty-nine and fought back the Indians, and made the homes safe for them, and built up the resources of the country. Now, I say that these men—these Workingmen here—they were bringing up that rear guard. I didn't see one of these men on the battlefields of Mexico. I did not see one of these men when it took brave and honorable men 'way into the mountains, making roads and developing the resources of this country. And now they come forward and propose to tell us what we shall do with our property that we have accumulated through all this work, when these men would not take it as a gift. It is not us old settlers that done the wrong; it is these very men that are grumbling about this wrong that sided right in, and have been voting with these men, and lots of them for a glass of whisky. It was not us old settlers. I tell you we have done them no wrong. [Applause.]

SPEECH OF MR. BARTON.

MR. BARTON. Mr. Chairman: Inasmuch as I will be called upon to cast my vote upon this question, I desire to occupy a portion of my ten minutes in discussing this subject. I am very sorry indeed to see the condition of the sentiment expressed upon this floor. To-day, if you please, we find the farmers playing banker. To-morrow we find them with all their might fighting the railroad. Again, to-morrow we find the same class of men playing banker, and then, just by way of change, we see them now again playing land-grabbers. Now, sir, we have been accused of stating something here that was not in accordance with justice, in regard to our declarations of principles. First, "the public lands are the heritage of the people, and ought to be donated to actual settlers in small quantities." That is one of our declarations. The second declaration upon that subject is that "land-grabbing must be stopped." Now, Mr. Chairman and gentleman, I wish to say to you in all candor, that before the nation, and before the people of this State, the leaders of the two so-called political parties—Democratic and Republican—stand to-day indicted. They stand indicted before the world of civilization in their course. They have promised reform from one end of the nation to the other, and the result has been that they have broken faith with the people. Now, upon the subject of land matters, I am pledged to no agrarian measure. There was nothing ever expected of me when I was at home during the campaign last June to which I subscribed except this in this declaration that I have just read, that land grabbing must be stopped. Now, sir, the way to interpret that is this, that all the lands belonging to the State and nation, so far as our power is concerned, shall be held in trust for the people. And to go farther than that we have not been asked; and had I been asked to pledge myself on such a proposition I would not have done it. I am not here to disturb the rights of property. It is a dangerous precedent. I will not uphold it. I denounce it as unjust and unnatural. And I want to say to the gentlemen of this Convention, as my vote will be recorded, I want it distinctly understood that if the provisions that we have engrafted into the revenue law, or that we propose to send out as the fundamental law of this State, will not curtail this land-grabbing matter, then, sir, I do not know in what other manner or plan it can be curtailed. We have declared for equal taxation, and I believe that if equal taxation will not produce this result that any other plan would be revolutionary, and one which I would stand up to denounce. Believing this to be the highest duty of citizenship, I claim my right to put myself properly upon the record. I am a poor man. I was here almost thirty years ago. This vast country, from one end to the other, was at my disposal. I could have taken the richest parts of the San José—that was not then covered by grant. I could have taken the very flower and garden of the State. But no, I was simply here as a school boy—leaving my school and coming here to delve for gold in the mountains. Then I returned to my home and my people, there to make my home. Others remained, who saw in the soil a future fortune. They seized upon it- some of them honestly and honorably—and by virtue of their industry and frugality secured to themselves and their children homesteads which I will never raise my voice or cast my voté to disturb. But all lands that have been fraudulently secured, I want to know if there is no power in the people to ascertain and investigate, and go down to the bottom of these frauds and investige the title whereby they have secured these lands. I want the people to have the power to go into an investigation, and determine whether there is any frand; and if so, I want that property to revert to the State and to the people of the nation. The Republican party, with the connivance of the leaders of the Democratic party, have given away the better portion of the nation. They have belied their professions and their trust. I stand up as a Workingman and make that assertion. I make it boldly, and I have the documents and the documentary evidence to prove it. But that is nothing. The question is, has this title so crystallized that the nation and the State cannot get at the bottom of this fraud? If so, then it must remain so. But if there is any power in the people of the State or the nation whereby they can prove a legitimate acquisition of this property, I am in favor of its coming back to the people. Therefore, Mr. Chairman, without wishing to detain this committee, I desire to leave it to the wisdom and the justice of this Convention to determine whether we are false to our professions, or whether we have pledged ourselves to the people of this State upon any principle that is not within the bounds of decency and justice. I defy any man upon this floor to say that we, the Workingmen's party, have ever pledged ourselves, publicly or otherwise, to any measure that is not consistent with harmony and good government. Mr. Chairman, in conclusion, let me say, as my time is not run out, that this is a very important fight. This is a very important matter. It is one of seriousness; it is one that should agitate every honest man's mind in the land. The question is, shall we establish in this State a system of landlordism? Shall we perpetuate a system of landlordism? I now repeat, in conclusion, that it is the highest duty of American citizenship, by all means, so far as in our power, to prevent history repeating itself.

SPEECH OF MR. BIGGS.

MR. BIGGS. Mr. Chairman: In this discussion I propose to deal fairly and squarely with all parties, and I hope I won't be misunderstood. The Convention in Butte County, when they nominated delegates to this Convention, adopted a plank in their platform discouraging the acquisition of large landed estates, and I indorse every sentiment expressed in that platform. We know that these large landed estates are an evil; but the question is, Mr. Chairman, and gentlemen of the Convention, how are we to remedy that evil? Are we to do it by confiscation? I took a solemn oath that I would support the Constitution of the United States and the Constitution of the State of California, and so help me God, to the best of my ability, I am going to support them. I believe in doing so. I will do what my constituents demand. I wear the collar of no corporation and no individual. I hold myself personally responsible to my constituents and to the people of the State for every declaration and statement I make in this Convention. Like Thomas H. Benton, I take my stand by the great maxim that it is never right to inquire into the expediency of doing wrong. Yes; I take my stand, as Benton took his stand, upon that question. I want to state in the beginning of this discussion—I am sorry that I cannot have more time than I will have, but I ask gentlemen to bear with me as patiently as they can. I cannot uphold this confiscation of property as proposed in the minority report offered by the gentleman from San Francisco. Section ten, article one, of the Constitution of the United States says:

"No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, or ex post facto law, or law impairing the obligations of contracts; or grant any title of nobility."

Now, sir, I appeal to every gentleman within the sound of my voice if you can pass this section and confiscate a man's property? If a man has over six hundred and forty acres that is not cultivated for twelve months, any man can go upon it and cultivate it for one year, and at the end of that time he can tender the owner of the land, who has a bona fide title to it, the assessed value of it and take it. Is not that confiscation in the full acceptance of the term? If there has been any corruption, as my friend from Humboldt suggests, I want to probe it to the bottom; but, sir, there is no proposition of that kind.

Now, I propose to read another section or two from the Constitution of the United States to bear me out in my assertions, and I am in hopes that gentlemen will bear with me. I am not much of a declaimer, but I will give you a few facts, and I ask you to ponder it well. Do they propose for this State to go further than the United States can go? Do they propose to override the Constitution of the United States?

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or a confession in open Court.

"The Congress shall have power to declare the punishment of treason,

but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

Now, sir, the gentleman gets up here—when the father, like the gentleman from Tehama, has fought the Indians and accummulated two sections of land—and proposes that if he has but one child, when he is called to take his exit from this world, he shall have no power of willing or devising that land to his heir. Why, sir, you step beyond the Constitution of the Federal Government, even for the henious crime of treason. Here is the Constitution, read it for yourself. I propose to go a little farther on this point. Article V of the amendments to the Constitution of the United States, says:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

And yet, gentlemen get up on this floor and attempt to deprive men of property that they have accummulated. I see a gentleman here, that brings something to my mind. I will give you an illustration. Here is Mr. Reed, whom I have known perhaps for twenty years. Twenty or twenty-five years ago he settled on the lands he now lives on. Yes, he commenced by purchasing a grant, and he found, sir, that the grant was rejected. Then he was compelled to locate under the government. Then he found that he had to purchase under the Swamp Land Act. Then he found that it was a town site, and had to buy again, making four times that he had to purchase that land. He has been working there some twenty-six years, and accummulated about twenty-four thousand acres of land, and has spent one hundred thousand dollars in the improvement of that property; and yet this Convention proposes, by the amendment offered by the gentleman from San Francisco, to say that he shall not devise that to his children. The whole energy of his life has been devoted to promoting the agricultural interest of the State, and helping to build it up; and now, gentlemen say, that Mr. Reed shall not have the privilege of willing his land in quantities of over six hundred and forty acres. I consider it confiscation of the darkest dye and deepest hue. What does the Constitution of your own State say? You gentlemen that have come here and taken a solemn oath to support it, listen. It says:

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

Gentlemen of the Convention, that is true as Holy Writ. I say, that a man who does not provide for his own household in the future is worse than an infidel, and my construction of the Scripture is, that an infidel is worse than the devil. [Laughter.] If I had a little more time I would like to read from the sayings of the distinguished statesman, Thomas H. Bention. If I had time to read what Benton says, I am satisfied that the gentlemnn would be willing to withdraw their amendments and put them in the waste basket, where they belong. If you have this right, why haven't you the right to divide the money and town lots as well as the land? Why don't you propose to divide up the property in San Francisco? I have accumulated and own eight hundred acres of land, and I work all that land. I propose to cultivate all that land. If these gentlemen who are so clamorous for land will come to my section of the country, I will go with them and show them where they can preëmpt one hundred and sixty acres. They can homestead eighty acres. But they do not want to work. The disposition is not to go to work in the harvest field. They can't stand one hundred and fifteen degrees in the harvest field. If they want land, I will go with them. We can go to Butte, Yuba, Lassen, Trinity, Shasta, or Modoc, and can preëmpt one hundred and sixty acres. But, gentlemen, you love the city too well. You love the cool breezes in the Summer time. Then, why send up this howl against the men who have labored for years and accumulated some means, and invested those means in real estate? Why do you propose to confiscate his property? I had proposed to answer the argument of the gentleman who said that the Democratic party and the Republican party had been so corrupt; that they had given away all the land; that they had promised certain things in their platform and failed. I have only time to ask how long since the gentleman was a member in full fellowship with one of these parties and bolstering up its platforms?

SPEECH OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I would like to know whose ox is being gored now? [Laughter.] Now, sir, our Grangers have instituted a political organization against the balance of the world. Suppose all the balance of the world should unite against them, where would they be? Nowhere! the response is. Now, sir, I do not understand how a majority of this committee can, with any consistency whatever, refuse to adopt this report of the minority of the Committee on Land and Homestead Exemption. Now, sir, we have been going, from the commencement, upon this theory, that if lawfully or otherwise a man has acquired more property than his neighbors, it ought to be taken away from him either by forcing him to use it in such a way as that he can make nothing out of it, or by confiscating a part of the profits or proceeds of it. Now, is not that so? When in eighteen hundred and forty-nine immigration set in from the East, those who came here found a sort of virgin world. They had this Pacific world before them. There was a variety of enterprises. Men could go to mining; they could go into construction of ditches; they could go to practicing law; they could go to acquiring land; they could go into merchandising; could erect buildings; build railroads, or do anything they chose. Each man had the whole world open before him. Now, the theory of this Convention is this: that nothing shall be counted to the credit of pioneer enterprise; that if I happen to come here, leaving the comforts of an Eastern home, and making up my mind to go into the business of mining, and find a mine before you come, which pays me well, when you come you say, give me a portion of your mine; or, you will say, let us confiscate a portion of the proceeds to the public, so that we will be getting a portion of it. Another man will say, I will put my money and energy into building ditches, and supplying miners and others with water. It is a hazardous enterprise, but it turns out to be a good thing. This Convention has said that he must not have the proceeds of this water. You will regulate that, and say how much he shall charge for it. If a man puts his energy and money into building gas works and lighting a city, with the consent of everybody, and it turns out that these gas works are paying pretty well, this Convention says take away the profits, or confiscate them. The same way with a railroad. Now, when we come to the land—the biggest monopoly in the world—a monopoly which takes the the very service of the earth, and does not give you a place to be born on, then they say this is outrageous confiscation; that it is a violation of the Constitution of the United States. Suppose it is—we can secede from the infernal government. A good many members here have been in favor of that before, and why not do it now? Why not say, secede from the General Government if it is in the way at all. I do not know that this report is against the Constitution of the United States, but if it is, that is a very small matter. These great monopolies are of more importance than any national consideration. Here are men owning twenty thousand, thirty thousand, and fifty thousand acres of land. What right have they to so much land? The gentleman from Tehama says he bought it. What difference does that make? What business has he to get that many acres of land? What does it matter how a man got it? Now, sir, upon his own statement he got that land because he came here in eighteen hundred and forty-six, or eighteen hundred and forty-seven. Now, he stands here with twenty thousand or thirty thousand acres of land, and there are hundreds of men roaming over the State without a place to lay their heads. Is that right? I would like to have some of this land myself. [Laughter.] I see that other men have been smarter than I have, and they have got more than I have; there are lots of men worse off than I am. I would like to know what business a man has to have more than six hundred and forty acres of land? If a man cannot live on that, he ought to die. [Laughter.] We don't want a man to have a right to buy this land. It don't matter about buying it. That don't make any difference. If they had a legal right, what difference does it make? We are strong, and we have a right to say what they shall do with it. We want to say that we have a right to go and take it. All this section says is, that we must pay the assessed value. I do not understand that any farmer has ever given in his land to any Assessor for less than it is worth. [Laughter.] Of course not. What harm is there in that? Suppose the gentleman from Tehama is cultivating perhaps a thousand acres, and is holding the rest for speculation? He wants to make money on it in the next ten years. Now, he has given in that land at its fair valuation, and all this report says is that I may go and settle upon the land and pay him a fair valuation, which is the valuation given to the Assessor. There is nothing wrong about that, as I see. I do not understand, at all, sir, how we can be consistent, when we are striking at these other monopolies, as we call them, when we are taking away their property, when we are regulating the use of it, unless we do it to this greatest of all monopolies—the monopoly of the earth itself, which God Almighty gave to us as a home for all men.

MR. TOWNSEND. I am willing to give the gentleman all the land he is willing to cultivate himself.

MR. McFARLAND. I am not one of the kind that wants to cultivate. If he will give me a portion of his land I would want to sell it, I am not in that business; but I am talking of the great number of men that want land and will cultivate it.

MR. WILSON, of Tehama. I am not at all surprised that after legislating one half of our domains away you want our land.

MR. McFARLAND. I am willing to confiscate all of them; take it all, sir. I think that this Convention cannot be consistent without having these amendments. You have done it with every other kind of property, and why not with land? To speak seriously there is more reason for it. There is undoubtedly a great deal of reason in saying that a man should not acquire a large tract of land and turn it into a deer park, when there are plenty of other men in the State that want land.

THE CHAIRMAN. Time.

SPEECH OF MR. MURPHY.

MR. MURPHY. Mr. Chairman: I deem it a duty which I owe to myself to make a few remarks upon this all-important question; not that I think that I can throw any new light upon the subject, but because, as a member of the Legislature of eighteen hundred and seventy-three-four, of which the distinguished gentleman from San Francisco, Mr. Estee, was the Speaker, I was appointed as Chairman of the Committee on Land Monopoly, and, as such Chairman, took considerable testimony upon that subject, and made a somewhat lengthy report upon that subject, which can be found in the appendix to the Journal of the twentieth session of the Legislature. My views have undergone considerable change since that time. Notwithstanding that change I still believe that land monopoly in the State of California is a great and blighting curse, and that the people of this State who have felt it so severely have been calling upon us for redress. Land is as much the support of animal and vegetable matter as water and air, and one of the primal necessities of human existence. The acquisition of large land estates in foreign countries, and particularly in the United Kingdom of Great Britain and Ireland, has been the cause of the great impoverishment of the people

and the general discontent that everywhere prevails. Not so across the channel in the sunny land of France, where this system of land monopoly has been broken up. Content and prosperity is evident on every hand. But this state of affairs is not confined to European countries alone. Here in our own golden State, scarcely thirty years in existence, young as is our civilization, we have here a landed aristocracy—men who lord it over as many acres as do the British landlords. California contains one hundred and fifty-nine thousand square miles. We have upon her surface, according to the report of the State Board of Equalization in the year eighteen hundred and seventy-three, one hundred and twenty-two landholders each of whom own twenty thousand acres and upwards; sixty-seven of whom own an average of seventy-three thousand acres, or one hundred and fourteen square miles each; one hundred and fifty-eight who own ten thousand acres each, and so on in proportion. The average holding is four times the amount of the British landholders. This being taken as a fact, the question for us to determine is: What can we do about it? Would it be wise, would it be politic, would it be in accordance with the principles of justice, to disturb the possession of these men who have acquired their lands honestly, and paid the General Government or the State of California? As my friend, Mr. Wilson, has stated, men come here in the early days and acquired property under all sorts of difficulties. Would it be just to take their lands from them, or in any way to disturb them in their possession? I think not. I think it would come in conflict with one of the cardinal principles of the American Government, the right to acquire and possess property. It is true that a great portion of the public soil of this State has been acquired by fraud and by treachery of the deepest dye. That is not for us to determine. It is a question for the Courts. This Convention, in my opinion, sits twenty years too late to remedy this evil, this monopoly of the fairest portion of God's footstool, the soil of California, from being monopolized by the few to the detriment of the many. The question only remains: What shall we do with the future? We cannot disturb these men in their possessions, and my opinion is that by a system of taxation, graded or otherwise, this evil can be reached, and can be reached in no other manner. I have read the conclusions in the report of the minority of the Committee on Land and Homestead Exemption, and while I agree with their general principles, I cannot and will not indorse the conclusions at which they arrive, because, as I said before, I consider them in conflict with the spirit of our laws and the provisions of our Constitution.

While I am on the floor at the present time I wish to make allusion to a remark that was made yesterday, in regard to a certain bill which has been introduced in Congress at the present session by the Honorable J. K. Luttrell, representing the Third Congressional District, and which has been favorably reported, whereby scrip that was issued some time ago to Oregonians for wagon-road purposes, is sought to be placed upon the Klamath Indian Reservation. If that is the fact, I say it is an outrage upon the settlers, and that in the name of my constituents I protest against it. Two years ago last Winter I introduced and passed a memorial through both houses of the Legislature, which was forwarded by the Governor to Congress, requesting them to throw open this old abandoned reservation to the settlers that were upon it, and who have been upon it since eighteen hundred and fifty. We petitioned them last Winter to do this, and this Committee on Lands in Washington, instead of obeying that, has reported a bill which tears this land from their grasp and sends them forth upon the cold charity of the world. I say it is an outrage and it is an infamy, and I desire to call the attention of the press of this State to that fact. If it is a job of land speculators I think it is time that the people were rising to the fact. [Applause.]

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I have a single word to say as regards the overcoming of this evil by taxation. To take this property open and above board is confiscation; to take it by taxation is like sneaking in at the back-door and stealing your hat and coat while you are at dinner. That is the only difference. When the gentlemen who bring forth this proposition were voting a million of dollars of the public money to the Central Pacific Railroad Company, I was voting against it, and was talking against it. They see their error now. This fourth section was passed at the Irish American Hall in San Francisco in substance. I took occasion, in the address that I delivered before the State Agricultural Society last Fall, to expose its fallacies, and I call attention to that address for my views upon that subject. No man ever heard me utter a declaration in favor of the aggregation of large tracts of land in the hands of one man. It is opposed to public policy; it is against the public good. There is no doubt about it. A man must be insane who will hold any different proposition. But this state of things exists at the present time, and the only question is as to the future, and I can conceive no remedy, except by preventing it in the future. Now, it seems to me that the gentlemen who drew up this section have got something to learn about the use of language. "No person shall forever hereafter be permitted to acquire," etc. What is the use of the word "forever," I can not see, unless it is to prohibit him from owning more than six hundred and forty acres when he gets into the other world. It is clear that it is a violation of the principle that regulates human industry. The right to labor and acquire property is all that makes man worth anything at all in this world. How shall he invest it? If there is any great public reason why he should not invest it in land, declare it, and prohibit it. But it is a violation of individual right. A man sometimes wants more than six hundred and forty acres, but you say he shall not buy it at all. It may be absolutely necessary for a man who has six hundred and forty acres to buy one hundred acres more, in order to make what he has valuable to him; but you say, arbitrarily, that he shall not acquire it. I have got more than six hundred and forty acres, and I would like to know how my children are to divide it if I should die without a will. You have not provided for that. I have it under a United States Patent. It says that I shall have and hold it, my heirs and assigns, forever. I have got heirs, and the law says who they are. The Constitution of the United States protects that contract. The contract says that my heirs shall have and hold it, and your Constitution says they shall not have and hold it. Which is going to prove the better, the United States Government or these damnable secession notions that have been running through this Convention up to this moment? I hope you will have a chance to try it. I think perhaps the United States patent will prevail in spite of this Constitution. The school master is abroad. This section is bunglingly drawn, and some portions of it I can see no sense in at all.

MR. O'SULLIVAN. As you agree in the main with the principle that land monopoly is wrong and you object to the sections as drawn up, why not on your part introduce an amendment that will carry out that purpose of prohibiting this monopoly of large estates?

MR. SHAFTER. Because I think this section is directed to the present holding of land over which this Convention has no power. As to what may be done in the future, I will join with the most ultra to prevent the accumulation of the public domain, which is now public in the hands of anybody.

MR. O'SULLIVAN. There is no person in this Convention that respects the rights of gentlemen who have got their property honestly, more than I do.

MR. SHAFTER. Such was the assertion of Mr. O'Sullivan to me and I have no doubt it is true; but this section is different. It provides that all lands over and above six hundred and forty acres of which a persons dies lawfully possessed, shall be sold to the highest bidder for cash.

SPEECH OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: If I understand the drift of the remarks of the gentleman from Sacramento, he is pretty much in the condition of the Irishman who was declaiming in favor of a division of property, and some one said to him, "Why, Dennis, if you divide now it will soon get back into the same hands, and what will you do?" Says he, "Be jabbers, I will divide again!" That seems to be the moral of his discourse. But I think the trouble with the gentleman is, when he speaks of the Central Pacific, that the ox of the Central Pacific has been gored, and now he wishes to gore every other monopoly. That seems to be his trouble.

MR. McFARLAND. I did not mention the Central Pacific Railroad one time, but that seems to be in the gentleman's mind all the time.

MR. HOWARD. I appeal to the Convention that he asserted it by saying, that in reference to the corporations and railroads, we had done precisely the same thing that the minority report includes. That was his position. Now, sir, I am willing to go as far as any one in the correction of the abuses of land monopoly. I am willing to go as far as we have power, and as far as justice will admit. But the trouble is we cannot go far. If we look at the history of this country we shall see that the former population were not agricultural; they were a population of herders, and therefore, lands were granted in large tracts; and at that time, that was the policy of the past Government. Now, when the United States Government acquired the territory, they guaranteed, under the treaty, these titles; and the treaty expressly declares that the present owners shall have the right to hold or to sell them, as they see proper; and therefore it is that these titles are guaranteed. Again, sir, they are not only guaranteed by the treaty, but they are guaranteed by the laws, as the Supreme Court held, in a very luminous opinion by Chief Justice Marshal, in the case of Porchman to the Florida treaty, that without treaty, under the law of nations, they would be protected, and the acquiring government could not confiscate them. Then it is a well established principle of constitutional law in this country, that a grant is a contract, and it is not in the power of the Legislature of a State to impair the obligation of a contract. That was held as far back as eighteen hundred and eight, in the case of Fletcher vs. Peck, and it has been reaffirmed since by repeated decisions. We can not touch any of these grants; we cannot divide them out; we cannot say that the holders shall not sell them; we cannot say that they shall retain them. They have the absolute property in them which they have the right to dispose of as they see fit. Take, for instance, a United States grant—suppose a man has a patent from the United States Government. The Supreme Court of the United States says that is a contract that cannot be impaired; and wherever State legislation has attempted to impair it, the Supreme Court of the United States has pronounced the Act void. Now, sir, it is perfectly true that this thing has gone beyond us. The objection to this minority report of the committee is, that it is an attempt to lock the door after the steed has been stolen. You cannot reach it in this way. If there have been frauds in the confirmation of the grants, or frauds in locating them, it can be reached by a bill of equity in the Federal Courts, upon an order and direction of the Attorney General of the United States. That is the place to reach it, unless you choose to ask for a special tribunal by Congress. Now then, sir, there is no doubt of the vast evil of the engrossment of land by the few, and if I had more than ten minutes, I would read from a late English writer, in which he demonstrates that the poverty and misery of the people of England have kept pace with the enormous engrossment of land by a few individuals in that country.

Burke says, "A wise man observes some proportion between his means and his end." We must, therefore, look at what we can do. You cannot say that a man who owns a thousand acres of land, under a United States patent, shall divide it out with his neighbors; you cannot say that a man shall not acquire land so granted, because the grant carries with it the obligation of a contract, that the owner may sell, and that the purchaser may buy and hold. Therefore it is that you cannot reach this great evil in the way indicated by this report. Here is a section that provides that no patent shall be issued for a State grant for

more than one hundred and sixty acres. Now, there are a great many land certificates issued for three hundred and twenty acres, and it carries with it a contract on a patent, and it is a contract that it is not in the power of a State Convention or a State Legislature to impair or alter, and any attempt to do so would be declared void by the United States Supreme Court, where that class of cases would be ultimately arbitrated, or else they would have to overturn all their former decisions. I am inclined to think, sir, that the evils of land monopoly in this State, are very much exaggerated. It is true, that by unwise legislation, Congress has permitted the issue of scrip which has been located, if not in a fraudulent, at least in a very injurious and improper manner. But that is the fault mainly of Federal legislation, and the manner in which that legislation has been carried out. Now, sir, I hold in my hand a statement of the farms in this State and elsewhere, which I find collected from the Federal documents, in a paper published at Dixon. For the purpose of showing the precise extent of land monopoly, and the tendency here and elsewhere, I ask the Secretary to read it.

THE SECRETARY read:

"The average size of farms in the United States in eighteen hundred and fifty was two hundred and three acres; in eighteen hundred and sixty, one hundred and ninety-nine; in eighteen hundred and seventy, one hundred and fifty-three. Between eighteen hundred and sixty and eighteen hundred and seventy there were but three States in which the average size of farms was not diminished, viz.: California, Massachusetts, and Wisconsin. In the latter the average remained the same—one hundred and fourteen acres; in Massachusetts, it increased from ninety-four acres to one hundred and three; and in California, from four hundred and sixty-six to four hundred and eighty-two. The most rapid decrease has been in the former slave States, where up to eighteen hundred and sixty the farms were generally growing in size. The following table shows the average of farms in different States:

	1850.	1860.	1870.
Alabama	289	346	222
Louisiana	372	536	247
Missouri	179	215	146
Connecticut	106	99	93
Illinois	158	146	128
Nevada		617	315
Oregon	372	355	315
New York	112	106	103

"The following shows the number of farms of different sizes in California in eighteen hundred and sixty and eighteen hundred and seventy, respectively:

	1860.	1870.
Three acres and under ten	829	2,187
Ten acres and under twenty	1,102	1,086
Twenty acres and under fifty	2,344	3,064
Fifty acres and under one hundred	2,428	3,228
One hundred acres and under five hundred	6,541	12,248
Five hundred acres and under one thousand	538	1,202
One thousand acres and over	262	713

"The proportion of unimproved land in California farms—forty-five and six tenths per cent.—is not so large as might be supposed. In other States and Territories it is: New York, twenty-nine per cent.; Illinois, forty-four; Massachusetts, thirty-six; Utah, twenty. The latter is the lowest of any."

MR. HOWARD. I wish to make a single observation with regard to another feature of the report, as I have not time to discuss it all. It restricts the amount of land that may be acquired by will or inheritance. It must be perfectly obvious that if you adopt that you inaugurate the system that they have in England, where estates are tied up by deeds of trust and long leases, and you make a monopoly ten times worse than it is now. Better to leave this free as the laws of the country have left it. I agree with Mr. Murphy, of Del Norte, that the only way to reach this evil is by taxation; and I think we have gone far in that direction. We have provided that land shall be assessed without reference to improvements, and that all lands of equal value shall be equally assessed; that the large owners shall fare the same as the small, and that the lands shall be assessed in tracts of six hundred and forty acres. If we have honest Assessors, the lands will be so assessed that every large proprietor will elect to sell, because it is true that no man can afford to own land for grazing and pay more than two dollars and fifty cents per acre. Therefore, unless the land of the large owner is put into active production he cannot afford to own it. He will of necessity sell the land and put the money into some other business. Aside from a few instances of engrossing large tracts, the tendency is to the decrease of farms. Congress has limited the amount of land which one individual can acquire to three hundred and twenty acres, and that only for the purpose of settlement and occupation. The system of taxation which we have adopted will soon extinguish land monopoly in this State.

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

Seconded by Messrs. Van Voorhies, Wilson of Tehama, Moreland, and Hitchcock.

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. Van Dyke.

The amendment was adopted, on a division, by a vote of 59 ayes to 46 noes.

MR. WYATT. I move to amend section six, or the last section of the report of the minority of the committee, so that it shall read——

THE CHAIRMAN. There is no such section before the committee.

MR. WYATT. I move that the committee proceed to the consideration of section six.

THE CHAIRMAN. The section is not before the committee. The gentleman can offer his section. The Secretary will read the section which the gentleman from Monterey moves.

THE SECRETARY read:

"No more than three hundred and twenty acres of land shall hereafter be granted or patented by this State to any one person, and no grant or patent of lands by this State shall be made otherwise than upon a basis of actual settlement and occupation for a term of at least three years prior to the issue of the patent. No land scrip or land location certificates shall ever be issued in this State."

MR. WYATT. Mr. Chairman: I think the proposition contained in section six is the true principle of the disposition of the public lands of the State of California, and of the United States; and if we cannot remedy what has gone before us, it is competent now for us to remedy that which is to come hereafter; and in pursuance of that idea and of that policy, and believing that policy to be the right policy, I move this amendment to section six: that the policy of this State hereafter shall be that its public lands be granted only to actual settlers in small quantities, and that no scrip be issued by which lands can be taken away from actual settlers, as they have heretofore, or the scrip purchased and held in the hands of speculators, and actual settlers prevented from obtaining homes.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: The amendment presented by the gentleman from Monterey, in my judment is the only amendment, or a near approach to the only practical solution of this much discussed question of land monopoly, and so far as it goes is aiming in the right direction. I have for some years been somewhat familiar with the public land system of this State, and although in my practice as a lawyer I have been almost universally connected with the settlers, I trust I have not taken, by reason of this association, any prejudice with reference to the other class, who generally are in litigation with them in connection with the public lands. But, sir, I have become perfectly aware of the fact, with reference to the matter in which title has been obtained to large bodies of the public domain, that although in many cases obtained honestly, in many other cases it has been obtained in such manner, that no other name but public robbery, or legalized robbery, could be given to it. Under such circumstances that there is a great feeling, is not at all surprising. While I deprecate the manner in which this agitation has been carried on, I hope that it may continue until some intelligent solution may be found of the difficulty. I am perfectly well aware that the gentleman from Sacramento did not mention the Central Pacific Railroad Company once, although his argument had reference to great monopolies. So far as the great corporations in this State are concerned, by the recent order of the Secretary of the Interior it seems that they are about to come to a defeat on that land monopoly at least, because in the Act making the grant there was a provision that all lands not disposed of within three years should be subject to preëmption at one dollar and seventy-five cents an acre; so that throughout these land districts these lands are being preëmpted. The railroad company claim, however, that these lands have been disposed of within the three years, because they have given certain trust deeds with reference to them. If Secretary Schurz' order in the matter should be sustained there will be no further reason to complain, so far as the great land monopoly connected with the Central Pacific Railroad Company is concerned, because many millions of acres of that great grant is now under his order, to be subject to preëmption. But, sir, I am aware also of this fact, it may not be politic for me to mention it, but I do mention it, because I became officially aware of it—that it was not only the grant made by Congress which they received, but by the administration of the law, by a strange and mysterious line of decisions in the Interior Department, in the early days—they not only received what was granted, but in many cases, in plain disregard to the Act of Congress, which was not even referred to by the Secretary of the Interior, the lands of the preëmption claimants, where they had settled upon them before the grant, were taken from them on the pretense that they had not filed their claims in time in the Land Office, when the Act of Congress provided that they did not need to file at all; and that all such lands, where the preëmption claimants failed to mature them, instead of reverting to the Government, as any lawyer would suppose, reverted to the railroad company. But these lands have been granted. It has been referred to by the gentleman from Los Angeles, as conclusive. We cannot go behind it. It would be to impair the obligation of contract, and the Constitution of the United States forbids that power to any State. The titles could not be reached except through the Courts. There is but one remedy for us as to the past, but as to the future, we may, at least, so far as the State is concerned, do that which the General Government has done since eighteen hundred and forty, as to all lands not subject to private entry; and that is the idea aimed at in the amendment pending. With all that has been said in this State, during the sessions of which the gentleman from Del Norte was a member, it is somewhat surprising that a system of land monopoly in California has been going on worse than that under the laws of the United States. Why did not some of our legislators introduce a section like this before? Why should school lands be monopolized as they have been by persons who are not settlers upon them, and in unlimited quantities. By a system under which persons were employed to take up three hundred and twenty acres, and then signed away their rights, individuals became the owners of hundreds, and thousands of the school sections of this State, and the indemnity lands taken in lieu of these sections. Now, sir, this amendment strikes right at the root of the difficulty. There is some objection to it, it is true; but it seems there are in the State of

California yet unreserved, with all the talk of scarcity of land, twelve hundred millions of acres of land—no, I will have it right in quantity. In the United States there are nineteen hundred millions, of which twelve hundred millions are unsurveyed. In California one hundred and twenty millions, of which eighty millions are unsurveyed. Of this eighty millions, perhaps it may be said, that forty millions are worthless, but there may be forty millions yet of unsurveyed lands in the State of California. The State has the sixteenth and thirty-sixth sections—will have when surveyed—and in all cases when these sections are taken up by preëmption settlers before the survey the State gets indemnity. Now, by a provision like this, the State hereafter will limit the amount to be taken up, or held by one person. As the law now stands there is no limit. My impression is that the amendment is not exactly correct.

THE CHAIRMAN. The gentleman's ten minutes have expired.

MR. TINNIN. Mr. Chairman: I send up an amendment, to be added to the section.

THE SECRETARY read:

"Add to the section: 'provided, that this section shall not compel a residence upon salt marsh, tide, or swamp and overflowed land.'"

MR. TINNIN. Mr. Chairman: I presume the author of that amendment is not desirous of destroying human life. His amendment requires a residence upon the line. Now, it is evident that there belongs to the State salt marsh, tide, and salt lands upon which it is impossible for human beings to reside: or, in other words, if they do reside there they will have to build boats and be in constant danger of losing their life. If the section is to be adopted I desire this proviso in it.

SPEECH OF MR. DOWLING.

MR. DOWLING. Mr. Chairman: The gentleman from Trinity seems to be very solicitous about the swamp lands of the State. If he goes into the Surveyor-General's office and investigates the contents of the documents there he will find out that a great deal of our swamp land is situated on the mountains and the high lands. But, Mr. Chairman, the land question is one that agitates all honest men in the State of California. We have a system of land monopoly in California that, sir, under a civilized form of government would not be tolerated. If we commence at the northern boundary of the State, and go into the valleys of Shasta and into the valleys of Siskiyou, we will find that landowners there own grants as large and larger than European proprietors. I heard a gentleman say that he went up in that country in early days and preëmpted tracts that were bounded on one side by Goose Lake, on the other by a belt of mountains, and on another by some parallel of latitude that I cannot remember.

Now, Mr. Chairman, if this system of land monopoly is not stopped in California, if we do not cure the evil now, it will assume proportions at no very distant day, that probably would, and will not only confiscate other property, but bankrupt the State. There are two sides to this question of land monopoly, and we should carefully investigate it. California is Asiatic in climate, it is Asiatic in soil, and it is too much Asiatic in the character of its people. But, sir, we cannot very well subject this system of land monopoly, or eradicate it, in a day. This thing will take years, because there are portions of the State where a man cannot hardly make a good living for his family, unless he has got a large tract of land. Take, for instance, lands in the valley of the San Joaquin, and down on the plains of Hollister and the Salinas, and farmers do not raise more than enough to resow the crop the next spring. But, sir, we have to cure this evil, no matter what it costs; and by coolly and calmly deliberating on the subject now, we can arrive at a conclusion that will solve this problem. If this jobbery, that has been practiced, is permitted to continue for twenty years more, why it will be impossible for a poor man to get any land at all here. Now, if we take a bird's-eye view of California in the last twenty-five years—let us look at the valley of the Sacramento. Go on the plains below here, and we will see that the land that is owned by a few individuals in this district, if properly utilized, would support three times the population of the State of California. One county alone in the State, would support the whole population of the State to-day. While on the contrary, instead of prosperity and peace here, the farmers are almost bankrupt. The land has been impoverished by one continual course of crop for twenty-five years, and it is as much for the benefit of the farmer to try to remove the cancer, as it is to the man who cannot acquire property under any consideration. Now, I have heard it said here, on several occasions, that men are lazy, that men are drunkards, that men will not work if they get it. Mr. Chairman, there are two sides to the proposition. We have to-day, in California, only two periods of the year, and short ones at that, in which men can obtain employment. Three fourths of the year they are idle, and of course when a man is idle he will get discontented. He will conspire, and will try to overthrow the best government in the world, because he cannot help it. He cannot well do anything when he is hungry. Now, if we investigate this case thoroughly, and compare California with other countries similary situated on the map of the globe, we will find that Spain is situated exactly on the same parallel of latitude that California is. That France is similarly situated; so is Italy; so is British India; and so is China.

Now, Mr. President, the greatness of this coast depends on a good system of irrigation. If we had a State system of irrigation the same as France, Spain, Lombardy, and all over Italy, we would be placed on a different plane. Then, sir, you could control land monopoly. Then, sir, you can build your irrigating canals, and for the cost of construction these barren plains could be converted into a pleasure garden, and give a death blow upon land monopoly. But we have not arrived at the time in the history of our country when the people are willing to undertake such a gigantic enterprise. But we have arrived at the period in the history of our country when we can inaugurate a system of graduated taxation. It is the only way. It is the only course left open for us to pursue if we want to break up land monopoly and carry joy to every honest heart.

Now, Mr. Chairman, you talk about property, and property in land, and property in water. What is property? Property is that which the law recognizes. If the law says it is property so it is.

MR. WILSON. Would you discriminate between a man who has a good deal of property and the man who has a little?

MR. DOWLING. I would, sir. I would raise it on a graduated plan.

MR. WILSON. That is virtually confiscation.

MR. DOWLING. I would not discriminate between one of these old pioneers; between those men who have driven their oxen across the plains and settled in California twenty-five years ago, if they were satisfied to come down to what the law distinctly says belongs to them.

THE CHAIRMAN. Time!

MR. LARUE. Mr. Chairman: I move that the committee rise, report to the Convention the minority report of the Committee on Land and Homestead Exemption, and recommend its indefinite postponement.

MR. WEST. I hope before the committee rises the vote will be taken.

THE CHAIRMAN. The motion is not debatable. The question is on the motion of the gentleman from Sacramento, Mr. Larue.

The motion was lost.

SPEECH OF MR. JONES.

MR. JONES. Mr. Chairman: I wish to make a few remarks on this report of the minority of the Committee on Land and Homestead Exemption, and it ought not to be stated, but taken for granted without explanation, that gentlemen who rise here to express their views in any way, already coincide with the reasonable arguments which have been produced here in regard to the evils of land monopoly. We should not be required to spend a few minutes, or to spend a portion of a few minutes, in first convincing this Convention that we are not, ourselves, robbers and thieves. Assuming, then, that that will be understood, I am anxious to say this, that it appears to me very manifest that many gentlemen upon this floor are speaking, not from actual observation or experience of the agricultural, grazing, and grain raising facilities of this State as compared with other States of the Union. They are speaking from some theoretical knowledge, or from their experience of the fertility and productiveness of the cultivated lands of the State of Ohio, the State of New York, of Illinois, or Indiana; that there is some analogy between the cases. I undertake to say there is none. I say it from observation and experience. I am not a farmer, but I was a farmer's boy, and have worked on a farm long enough to retain a memory of the circumstances and facts, and be able to say as between the condition of things from which some gentlemen have addressed the Convention, and the condition of things in this State, there is no analogy and no comparison whatever. Now, sir, I will admit that a hundred acres, or one hundred and sixty acres, or eighty acres, make a good farm in Indiana, if it is good land, in Illinois, in New York—anywhere almost where they have good soil. That is farming land; that is agricultural land. I have always understood that both in France and Italy, and in every one of the countries that the gentleman spoke of, there is land upon which you can raise anything adapted to the latitude and altitude of the place. The consequence is, upon eighty acres, or even forty acres, of such land, a family with an industrious man at its head settles down and they can grow as much grass as they please upon a certain portion of the soil; they can grow wheat, oats, or rye upon another portion: they can grow potatoes upon another portion; and all the vegetables, and all the fruits that the latitude is adapted to, without a drop of irrigation, except that which falls from the heavens and which very seldom fails them.

Compare that with this State. Here we have to deal with another state of things. Here we occupy a State in which a great area of country will not grow anything but wheat. It will not grow Indian corn. You cannot raise a turnip for hundreds and hundreds of miles in these great valleys here unless you irrigate it, and there is nothing to irrigate it with, unless you pump water up. Periodical droughts occur so often, that the saying is getting to be, that you may get a good crop one year, a half crop the next year, and no crop at all for two years succeeding. A more industrious and braver set of men never inhabited the country, for it takes as much courage to undertake to feed a family upon these plains as it does to face a cannon's mouth. Then, you can grow nothing but small grain upon it, and all the agricultural experience of the world shows that land so tilled will produce even small grains but for a limited number of years. The idea of limiting the tenure of land where a man has got to raise his family and educate his children upon a few acres of such land as that is preposterous. You can interview the farmers of that country, from Sacramento clear down to Los Angeles, and they will tell you the same story. It is not their fault that they are embarrassed. It is not their fault that mortgages upon the land are the rule, and not the exception. They have done and are doing all that can be done, and if they were limited to these little insufficient tracts of land contemplated here, it would amount to confiscation of what they have got, and would turn them off to some other country. Gentlemen upon this floor know what I say by experience. You can find many tracts of two thousand acres that will not support a family. The land will not generally average three inches, and a crop is the exception. It is grazing land, and can only be used a limited portion of the year. Grazing land with not support a man in such tracts as are mentioned here.

Another objection to the amendment and to the amendment to the amendment: It is proposed to allow the State lands to be occupied in tracts of three hundred and twenty acres three years before purchase. The lands which the State has left, besides swamp lands, will prove to be timber lands not fit for agricultural purposes, and school lands not yet taken. These lands may be largely in the mountains, and they are insusceptible of occupation for any honest purpose. A man cannot live on them. The best of them have already been taken. If any man

takes three hundred and twenty acres of that land, it will be because in the three years he can strip the land of its timber and turn it back to the State. They are lying idle upon the hands of the State now, right in our villages. As long as they are not bought the cattle of everybody will have the grazing of them, without pay. No man can buy them, and buy subject to a residence upon them. An attempt has been made in the Legislature to limit the purchase of these school lands to forty acres. The result has been to rob the State of its timber, because the terms of payment were easy and a settlement was not required. Now, you propose to render the lands of the State valueless. Men will move right on them, and they will strip the valuable timber off in three years. There is no penalty against it. You authorize them to take possession and avail themselves of what they can, and all they can avail themselves of is the timber, which is the substantial value of the whole premises. It is idle to tell us what has been done in other countries by way of irrigation. It was not done in a day. It was not done by a Convention. That irrigation which they have, and which is the salvation and the making of any country, was the production of thousands of years. So here something may be done in the far future. It will have to come, as the result of general wealth, and general necessity. It will not come within the time which has elapsed since this Government was first organized, up to this time. Another generation will not see the complete and sufficient application of all the waste waters of this State to the dry lands.

MR. O'SULLIVAN. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration certain sections relative to lands and homestead exemptions, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

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

Roll called, and quorum present.

ASSISTANT SECRETARY.

MR. HOWARD, of Los Angeles. Mr. President: I wish to send up a resolution.

THE SECRETARY read:

Resolved, That the Convention do now proceed to elect an Assistant Secretary, to fill the vacancy caused by the election of Ed. F. Smith as Secretary of this Convention.

MR. HOWARD. Mr. President: We need an Assistant Secretary. We will be out of Committee of the Whole next Monday, and there is considerable transcribing ready to be done.

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

Adopted.

THE PRESIDENT pro tem. Nominations for Assistant Secretary are in order.

MR. WATERS. Mr. President: I place in nomination for the position of Assistant Secretary of this Convention the name of J. M. Wright, of San Bernardino. Mr. Wright is a young gentleman whom I can recommend as fully qualified to perform the duties. He is a good reader, and is well acquainted with the run of business before the Convention. I can state, that if he is elected, he is fully qualified to perform the duties of the position.

MR. HOWARD, of Los Angeles. I second the nomination.

MR. REED. Mr. President: I rise to place in nomination Charles N. Post, a young man whom I have known for many years; one who has occupied clerical positions for many years, and who is thoroughly competent to fill this position. I am satisfied that if the Convention shall decide to select him, he will serve with a great deal of ability, and fill the position with credit to himself and to us.

MR. McCALLUM. I second the nomination of Mr. Post, and from my personal knowledge of the young man, I know he is fully competent to perform the duties of the office.

MR. LARKIN. Mr. President: I indorse the nomination of Mr. Charles N. Post. He is a young man of ability. He has not sought the position; his friends have asked for it for him.

MR. WHITE. I second the nomination of Mr. Wright; and I think it is but fair that the southern part of the State should have something.

THE PRESIDENT pro tem. The Secretary will call the roll.

The roll was called, with the following result:

FOR WRIGHT.

Ayers,	Harrison,	Nason,
Barbour,	Harvey,	Nelson,
Beerstecher,	Herrington,	Ohleyer,
Bell,	Howard, of Los Angeles,	O'Sullivan,
Boggs,	Howard, of Mariposa,	Reddy,
Boucher,	Hughey,	Ringgold,
Brown,	Inman,	Rolfe,
Condon,	Joyce,	Smith, of Santa Clara,
Davis,	Keyes,	Smith, of San Francisco,
Dowling,	Lindow,	Soule,
Evey,	Mansfield,	Stevenson,
Farrell,	Martin, of Santa Cruz,	Swenson,
Freud,	McComas,	Swing,
Garvey,	Mills,	Tinnin,
Gorman,	Moreland,	Turner,
Hale,	Morse,	Walker, of Marin,
Waters,	Wellin,	White,
Webster,	West,	Wyatt—56.
Weller,	Wickes,	

FOR POST.

Andrews,	Hitchcock,	Prouty,
Barry,	Holmes,	Pulliam,
Barton,	Huestis,	Reed,
Belcher,	Hunter,	Rhodes,
Biggs,	Jones,	Schomp,
Burt,	Kleine,	Shafter,
Casserly,	Larkin,	Shurtleff,
Chapman,	Larue,	Smith, of 4th District,
Charles,	Lavigne,	Stedman,
Dean,	Lewis,	Steele,
Dudley, of Solano,	McCallum,	Stuart,
Dunlap,	McConnell,	Thompson,
Filcher,	McCoy,	Vacquerel,
Glascock,	McFarland,	Wilson, of Tehama,
Hager,	McNutt,	Wilson, of 1st District,
Heiskell,	Miller,	Winans,
Herold,	Neunaber,	Mr. President—51.

Whole number of votes cast	106
Necessary to a choice	54
J. W. Wright received	56
C. N. Post received	51

Mr. Blackmer, for Post, was paired with Mr. Laine, for Wright.

Mr. Wright, having received a majority of all the votes, was declared duly elected Assistant Secretary.

LAND LIMITATION.

MR. BEERSTECHER. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President pro tem. in the chair, to further consider the minority report of the Committee on Land and Homestead Exemption.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section four and amendments are before the committee.

REMARKS OF MR. MILLER.

MR. MILLER. Mr. Chairman: This morning, when the gentleman from Marin was making his antimonopoly speech, a question was asked him, which I did not hear at the time; the gentleman referred the questioner to me to answer. Not hearing it, I was not able to say what it was. I called upon the gentleman from Monterey, and found that he had asked the gentleman from Marin whether, in his opinion, it was right for the Government to purchase a territory like Alaska, and then lease it out to a company? If the gentleman from Monterey intended, by that question, to cause it to be understood that the Government had purchased that territory, and leased it to a company, I suppose he meant the company I have the honor to be connected with; and I wish to say to him, and to the members of this Convention, that it seems to be the impression upon this subject—which is not true in point of fact—that the Government has purchased the territory of Alaska, and leased it out to a company. I wish to say to him that the territory of Alaska is free to settlement. He desires to create the impression that there has been some land grabbing there, and I desire to say to him that he is perfectly free to go there and settle, where he can live under his own vine and fig tree, provided he can make them grow. The lease does not include the main land, nor the Aleutian Islands, it includes simply two small islands, which are merely rocks in the ocean, upon which nothing grows. This company has a lease of these two islands, and has paid into the United States treasury, during the eight years it has had them, over two millions of dollars. If the gentleman desires to make any political capital out of that, he is welcome to all he can make. I merely rise, because several members have spoken to me about it, and thought it incumbent upon me to make a reply. The purchase of Alaska was made for seven millions of dollars.

MR. WYATT. I ask General Miller if the islands of St. Paul and St. George are free for citizens of the United States to hunt on.

MR. MILLER. No, sir, they are leased to this company, which pays for them about three hundred and fifteen thousand dollars a year. I suppose the Government of the United States has power to dispose of public property. The wisdom of the proceeding has never been questioned by anybody that knows anything about it.

MR. SHAFTER. You have answered the question asked of me this morning, and I will ask you if you don't think it would be a good idea for the gentleman from Monterey to go there to live?

MR. MILLER. I don't think so, unless it would be to make a Constitution for Alaska. When the time comes I will ask the gentleman to go up there and help us make a Constitution. [Laughter.]

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I lost the point of that last remark, and cannot reply to it unless the gentleman will repeat it. I can only say that this morning I asked the question simply as pointing in the direction of the General Government, with reference to the public lands, and that the recent policy of the Government is very different from the ancient policy. Now, as an individual question with General Miller, as a matter of course, if he drives a good trade with the Government, I have no objections, as far as he is personally concerned, but I might very seriously object to it on the part of the Government as to the policy. That is the nature of my objection. I move that we now proceed to the consideration of these amendments.

MR. McCALLUM. Mr. Chairman: I wish to offer a substitute.

THE SECRETARY read:

"Hereafter, lands belonging to this State which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law."

MR. WYATT. As there seems to be some opposition to the form of my amendment, I will accept the substitute of the gentleman from Alameda.

THE CHAIRMAN. If there are no objections, the gentleman will have leave.

SPEECH OF MR. WHITE.

MR. WHITE. Mr. Chairman: I desire to say a few words on this question, sir. I would appeal to this Convention to do something that looks towards the limiting of this land business in the future—something that will cause a reform, and enable the State to settle up. There is certainly something very wrong at present, which prevents the State from improving as it ought to. I will mention a circumstance which occurred in St. Louis, in the year eighteen hundred and seventy. I was in that city, and had occasion to go to Booneville. At the depot is about an acre of land, with a high fence around it. You are let in when you have a ticket bought. I went in, and the whole place was filled with men, women, and children, going out upon the same route. I looked around in astonishment. They were a fine class of people. They had from one to eight children, all going west. I had taken my ticket for a first-class car, as was natural, but I went out into the emigrant car to converse with these people. I asked them where they were going, and they told me different places. I found they were getting very good land for one dollar and twenty-five cents to two dollars and fifty cents per acre. They found I came from California, and they were anxious to know about land here. I could not say to these people that they could get land here under ten dollars an acre of any kind that was worth going on to. I could not strain my conscience to tell them that they could get land for less than ten dollars an acre. They said they could not go there. There was the passage money, and then the high price of land. Now, sir, in my section there is no land under fifteen dollars for third-rate land. It ranges from that to one hundred dollars an acre. That is right, because it is worth it. I cannot imagine where I ever saw land as free as it is in those Western States.

Now, I had a letter from a friend in Kern County, and he described to me there that a number of persons had united together and taken up land, and were going to provide for irrigating it. They had to pay five dollars an acre for the land, because a man in San Francisco had taken it up. Now, that land, when it was there some years ago, of course it belonged to the Government, and could have been taken up by anybody. There are beautiful valleys there, but they require irrigation. He stated to me that after paying for the land they had to irrigate it, and the farmers had taken one hundred and forty acres apiece. Now, this is the objection I am going to draw your attention to, that these men had to pay five dollars an acre for the land. I don't know how these men got the land. First they had what they call desert land, just where the river breaks through the mountains. It is not swamp land. There is not one bit of swamp land, though they might have got it in that way. This is the thing the Convention should pay attention to. I will ask the farmers here to think of this. It is not a drive against the farmers. I say there is not a single reform in this Convention that could have been carried if the Workingmen were not here to-day. Not one single reform could have been passed in this Convention without their votes. Not one. Not a single one. They came here to you to-day, asking you to look into this thing. One gentleman gets up and ridicules the whole thing. Another gentleman ridicules it by a resolution he sends up, even the consideration of the subject.

They say these men will not work. There is not one that is not a worker. There is not one of them that is not hunting for a place to call home, and they are the very people who are calling for homes all over the State. They say, come and I will give you land, but you are too lazy to do it. But when you go to them they say you can have it so and so, at so much an acre. Now, gentlemen, this subject ought to be considered fairly. There have been two efforts here to drive it out and prevent us even talking about it, and there is an idea here that this is an effort to make the landholders divide. There is no such thought here. We want something here so that future settlers in this State may get homes—to open up the country and settle it up. What is the result? Why, gentlemen, the State is going backwards, in the rural districts. The land is lying unsettled. It is not like it is in other States, where one acre is as good as another. You can go into the Western States and one acre is about as good as another. But here the land monopolists have got this scrip, and have gone round and picked out the good land along the great plains of the San Joaquin and other valleys, leaving the poor land untouched, because they don't want them, because no man can touch them. But all the good places along the foothills, in Tulare County, and Kern County, and all around, are covered with this scrip. Now all I ask is, that you will give this a fair consideration, and I trust that the legal gentlemen on this floor will do something towards bringing forward some measure that will tend to bring this subject properly before the Legislature, to do something about it in answer to the wants of the whole people. Now what is the consequence? It is driving people in upon the cities, and the gentlemen know it very well. They come in and tell them they cannot stay in the country. They cannot get any land except such land as they cannot make a living on. Now I ask the farmers and Grangers here, to do justice to the Workingmen, who have stood in with them in their reforms, to take this subject in hand and help us to bring about a reform. People say that the Workingmen won't work—that you are too lazy to work. Now there are some men too lazy to work. There are men who won't take up land. But why is it that the Workingmen's representatives are here to-day asking you to do something to relieve the crowded towns? It is just because every day they have men coming to them and begging for some way to get homes. We want some general system which will settle the country—the general system which they have in Missouri and some other States, which is a great success. I was perfectly astonished when I saw the stream of immigration. The conductor says this is the case every day of the week, Sundays and all, thousands after thousands of people going west. I came back to my home, and I don't think twenty men of those who came settled here. This is a subject of mighty importance. I want some of the legal gentlemen here to propose something that will be effectual and satisfy the people on this matter. I think the gentleman from Kern County will tell you the same thing in regard to these nooks and corners. These men have no real title to their land. The other gentlemen from San Francisco ought to be the first ones to do something about this thing. They ought to be foremost because their city suffers most from it.

SPEECH OF MR. CONDON.

MR. CONDON. Mr. Chairman: This problem is closely connected with the solution of the problem of labor and capital. Because of the labor-saving machinery there ought to be a limited ownership of land. It is held, sir, by many, that the higher law will furnish a remedy, and that these interests will adjust themselves without government interference. Some hold that the only functions of government are to preserve life, punish crime, and protect the individual in the acquirement of all the land he may obtain. And that the right is higher than the government; and, therefore, that Lux & Miller have a right to own all the land in the State. Others believe that the true mission of the government is to gauge all this, and to limit men in their right to the acquirement and ownership of land. I believe that the interests of the many are higher than those of individuals or associations, and that the exercise of this right by the government would result in the many owning the land instead of the few, as is now the case. Another reason for this departure on the land question is, that by the use of labor-saving machinery there is greater inducement now than in the past for capital to monopolize the land, and there is also great danger that labor-saving machinery and capital combined may result in such monopoly. This same machinery, Mr. Chairman and gentlemen, to which I want to draw your particular attention, is driving from the workshops the men of to-day. In fact it has invaded every branch of industry. The State of California contains over five hundred thousand tracts of land of one hundred and sixty acres each, susceptible of cultivation, which, with the principle of limited ownerships, would sustain a population of five hundred thousand farmers with their families, making an aggregate of three million people to be sustained therefrom. Can there be any doubt as to the question that this state of affairs would be more conducive to the interests of the State, and of society in general, than the existing system under which it is possible for five hundred men to own all the land in the State. Then the introduction of labor-saving machinery shows the necessity of compelling these large landholders to subdivide their estates into small tracts. They could be let out on shares, thus supporting a large population. Labor-saving machinery mostly does the work, and if you preserve these large tracts intact the consequence is but few men are required. These, sir, are grave questions, and I regret exceedingly that there has been a disposition manifested in this Convention to pass over and slight this important subject. But the delegates of reform and the free press have sounded the key-note upon the subject. They are questions which can no longer be set aside—they must be met. The people as a general thing have expressed their sentiments, and the question entered largely into the contest for seats in this Convention, at least, speaking for that portion of the State which I have the honor to represent. I know whereof I speak. It has become a question of such vast importance that this Convention cannot do otherwise than to treat it in that fair and calm, and deliberate manner which the importance of the question demands.

SPEECH OF MR. VACQUEREL.

MR. VACQUEREL. Mr. Chairman: There is no division in the minds of delegates as to land monopoly being a curse. But still, in all this discussion I have not been able to see one single point made towards abolishing land monopoly. Why, sir, it has been said here that the French nation was one of the best regulated in the country. I don't want to give any advice to anybody, but I will tell you the way it is, and you gentlemen can think over it, and if you think the idea is a good one, adopt it. There has been a wrong assertion here, that land holding was limited in France. It is false. If you have money enough you can buy the whole country. There is no law to stop you from it if the people want to sell it to you, which they do not. The land was divided there, it is true, but it was done by revolution, and I don't want any revolution here. We have a constitutional remedy here if we want to apply it. There has been a proposition presented to this Convention by my colleague, Mr. Lavigne, which will solve the whole proposition. And still that proposition has been referred to a committee, where it was put out of the way, because it would do some good. This proposition prevents a man from disinheriting his children. No matter if you have ten thousand acres of land which you want to give to your friend, you cannot do it under this provision. When you die this ten thousand acres is divided among your children. That is the way the land can be divided without doing injustice to any one. In France every bit of land has to pay taxes according to its value. But here a man owns a big ranch of fine land, and it escapes taxation. Why not make every inch of land pay taxes? I introduced a resolution here to that very purpose, but that resolution like this other one has been done away with. And still we have not done anything to stop this land grabbing. It makes no difference, if the land can be made to produce so much, and other land by the side of it is producing, they ought to be

taxed alike, for one is as good as the other. If the land will produce so much the owner should be compelled to pay taxes on it. When you have done that then you can abolish land monopoly. It will fall down of its own weight. If the owners are compelled to pay taxes as other men do, they will sell the land, or put it to some use. If you will do that there will be an end to land monopoly, and that very soon. Pass such a resolution, and in ten years from now there will be a different state of affairs in this country.

REMARKS OF MR. HARRISON.

MR. HARRISON. Mr. Chairman: I want to make a few short remarks. In my opinion, sir, the land question is the most important question before the Convention to-day. In ten years Congress gave away one hundred and sixty million acres of land of the United States. This land has been given away between eighteen hundred and sixty-six and eighteen hundred and seventy-two. Of this, ten million belonged to the State of California. Now, we find one hundred and sixty million acres is two hundred and fifty square miles, in other words, a bigger State than England or France ever were. Now, sir, these two nations are more prosperous than any on the face of the earth to-day, principally on account of their land system and small farms. England not so much her farms as her commerce and mines. But here, in California to-day, sir, we have not room half enough. This is a nice state of affairs. Now, in a new country like this, I hold that the land ought to be held in trust for the people, not given away to corporations—to thieving corporations—because they don't pay their taxes upon it. Now for the figures: One million acres, divided into farms would give homes to six thousand two hundred and fifty families, and these families would average five, which would be more than thirty-five thousand two hundred and fifty people. To-day Illinois has three times as many farms as the State of California. The reason is because the land has been gobbled up by land monopolists, and there is no more land to be had. The gentleman, Mr. Brown, says there has been no land agitation. He has just waked up from a long Rip Van Winkle sleep—risen up from somewhere. Is he not aware that the settlers in that very county are now banded together in organized warfare against the railroad company, which is trying to dispossess them from their homesteads, and they will have to pay fifteen dollars to twenty dollars an acre for it. If this is not a test toward monopoly limitation—if Mr. Brown don't understand it so, he will find out when he returns to his people.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: Before a vote is taken on this amendment, I wish to say a word. Prior to eighteen hundred and forty-one, the system existing in the United States was about the same as that which exists in California to-day. Prior to that date there was no preëmption, no homestead provision. The fact is, though, in this respect they differed somewhat from our State laws; prior that time settlers went on public land as trespassers. I hope I may be pardoned for saying in the presence of the gentleman from San Francisco, Mr. Wilson, and the gentleman from Los Angeles, that the first preëemption law was passed by Congress, under the leadership of Henry Clay, in eighteen hundred and forty-one.

MR. HOWARD. You are mistaken about Mr. Clay. He always denounced it.

MR. MCCALLUM. My reading of history is different from yours. In eighteen hundred and sixty we had passed through Congress the first United States homestead law. Perhaps some gentleman will rise to a question of history when I state that that law was vetoed by James Buchanan. In eighteen hundred and sixty-two, when it passed through Congress again, it was then approved by the first Republican President of the United States, Abraham Lincoln. The United States laws, sir, are a vast improvement on what they were in eighteen hundred and forty. They are a vast improvement upon any State law we have ever had in California, as to State lands. Now, sir, the system prevails in California that did prevail in the United States, under what was called the private entry system. Lands which were proclaimed to be sold by the President of the United States, not being sold upon the day of sale, were thereafter open to private entry in the Land Office where they were offered. Any person could go into the Land Office and purchase these lands without settlement. It was under that system that the great land grants in the San Joaquin Valley were obtained. This scrip, about which so much has been said, was used only to purchase such lands as were subject to private entry. These lands could be taken merely upon application. There has been very little scrip issued that could be located upon land not subject to private entry. Of this land there has never been an acre entered, I believe, but land that was subject to private entry.

As far as my official term was concerned, not a single acre of land was ever sold to any person except an actual settler. After eighteen hundred and sixty, the old system of having land subject to private entry, was abolished, and since that time there has been comparatively very little monopoly of the public lands of the United States; the monopoly has been in State lands. Some gentleman stated that ten millions of acres were disposed of. Certainly the greater part has been disposed of, but, sir, there never has been any law in this State to prevent the monopoly of State lands. At one time there was a limit to three hundred and twenty acres, but even that was abolished for some time. This limit amounted to nothing, because it was only necessary to get different persons to make the applications, while the real purchaser takes the land. It is not so under the United States law. There is a regular scheme which ought to be in our Constitution, only it would take up too much room, but what I suggest here is the gist of it, namely, that land should be sold only to actual settlers. I use the words "lands fit for cultivation," because there is some land that is only fit for pasturage. It might be a good idea to add the provision of the United States law, which says, that land cannot be preëmpted by a person who owns three hundred and twenty acres now. These lands are kept for the landless. There are other valuable features in the United States laws. It would be an easy matter for me to impress the members with the wisdom of the various provisions, but it would be too much like legislation to put them in the Constitution. This may work some inconvenience, but it has got to be a practical thing. If it is a proper thing for us to get up here and cry down land monopoly as a great evil, it is proper that we do something to remedy that evil. I will support anything in the Constitution that does not violate my oath to support the Constitution of the United States. I think the report of the committee entirely impracticable.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. I wish to correct the gentleman's history. He has made a mistake about Mr. Clay. I happened to be at Washington on a visit and heard Mr. Clay denounce the whole system in open Senate. My memory is good on that point, because he had a passage at arms with L. J. Walker, for whom I had voted for the Senate of the United States. The preëmption is the result of Democratic policy. Now as to the question before the committee. My recollection is not so vivid upon the homestead law. It may be so—I cannot deny it. But I think the gentleman is mistaken there also. I don't think a Democratic President ever vetoed it.

MR. MCCALLUM. Yes, sir, he did, and it was passed, as you know, again in eighteen hundred and sixty-two.

MR. HOWARD. Yes, sir, I know it was during Lincoln's term. To that extent the Republicans are entitled to the credit. I don't deny the fact.

MR. CROSS. Mr. Johnson was President part of the time, and he was a Democratic President.

MR. MCCALLUM. Andrew Johnson was a Republican in eighteen hundred and sixty-two.

MR. GRACE. He was a Workingman in eighteen hundred and sixty-two also.

MR. HOWARD. He was said to be a tailor who made clothes to fit. He was a Workingman. He never claimed to be a Republican. He claimed to act with the Republican party for the benefit of the Union, and the first chance he got he went back upon the Republicans most decidedly. Now as to this proposition limiting the amount of land to three hundred and twenty acres, I shall vote for it, because it is in conformity with the Federal policy, and the action of the Congress of the United States. I consider it just and wise to limit the amount of land to be acquired through the Federal Government, by actual settlers, to three hundred and twenty acres. As this amendment is in conformity with that policy I shall vote for it.

MR. TULLY. How many Democrats were there in eighteen hundred and sixty-two?

MR. HOWARD. I think they had gone South at that time.

[Laughter.]

MR. DOWLING. I wish to offer a substitute.

THE SECRETARY read:

"No more than three hundred and twenty acres of the lands of this State shall be granted or patented by the State to any one person, corporation, or association of persons. No person can transmit by will or otherwise to his heirs more than six hundred and forty acres of land. The only property that any person, corporation, or association can acquire in any lands exceeding six hundred and forty acres is a use, and such use is subject to legislative control. The Legislature shall provide for a general survey of all the agricultural lands of this State, and all lands not acquired in strict conformity with the homestead exemption and the land laws of the United States, shall escheat to the State. The practice of subletting lands is hereby declared illegal."

SPEECH OF MR. DOWLING.

MR. DOWLING. Mr. Chairman: The first point is I think, that we want a limited acquisition of the public domain. We therefore say that three hundred and twenty acres, and no more, can be acquired by any party in this State, by any individual or any corporation. In the past it will be remembered that this State has granted patents to people for hundreds and thousands of acres of land. Now, sir, this is a thing we should guard against in the future, so that the people may enjoy what little land remains. It is all gobbled up. But the people want something. They want the few acres that remain, to be distributed in the spirit and according to right and justice. I believe it is contrary to the genius of our Republican institutions to prohibit a man from purchasing as much land as he has got money to pay for. This proposition don't interfere with the purchasing of land. You can purchase as much land as you have money to pay for, but you can't buy from the State any more than three hundred and twenty acres.

Again, it will be remembered that land, air, and water are three natural elements, without which it is impossible to live. Man would sink in silent doom, and wholly disappear. I do not want to perpetuate land the same as they do in England, the same as they have it in all those countries that are under the yoke of monopoly institutions; they transmit from posterity to posterity since time immemorial. That has been tried in this country, too. But it will never succeed. Now, sir, the only property that any man can possess in land, over six hundred and forty acres, is the use of it. A man could not eat the land; it is no good to him. He has simply the use of it, the same as the use of water, or any other element. He has got the use of as much as he can purchase, and so long as he leaves it when he dies, he will, according to the proposition introduced here, which is in harmony with a provision in the State of Virginia, he will retain six hundred and forty acres of his land, and the balance will be sold, and the proceeds go to the support of the children. In the mean time the children can buy it from the State at the original price, and still retain it during their natural lives.

Again, sir, the third point I wish to cover. It has been customary in this State, it has been the practice ever since the State was admitted into the Union, and that is that a person could file a homestead on one hundred and sixty acres of land. This is the proceeding under which Lux & Miller, the great land monopolists of California, have succeeded in owning, or controlling, or holding the great valley of the San Joaquin, from San Francisco to Los Angeles. They can drive their cattle from one end to the other upon their own ground. The public cannot do that. If we don't solve this question, it is useless to deny that we will have a bloody revolution in this country. We are coming to it. Unless we adopt some means to solve this great question we will have a bloody revolution.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: The substitute introduced by the gentleman from Alameda, Mr. McCallum, meets with my approval. It seems to me that if we can do anything at all for the purpose of limiting land monopoly of the public lands of this State, we should do it in this Constitution. It is manifest to every observing man, that the great necessity of this State now is population—a population of the right kind. Our whole State is suffering for want of immigration of the right kind, and so long as the lands of this State are owned by a few men, so long as the lands belonging to this State are allowed to be monopolized by a few scheming men, so long will the right kind of emigration refuse to come here. Now it seems to me that the gentlemen who represent the large cities would find it to their interest to aid the people from the country in trying to solve this question in a proper manner. There is no lack of good land in this State, but there is a lack of the means of acquiring it. And if we can control the lands yet belonging to the State—if we can secure their distribution in the proper manner—it will tend to depreciate the price of new lands in this State. In doing so we shall invite immigration, and aid the prosperity of the State. The State is now stagnant for want of population. This land question, as has been said here, is one of the most serious that we have to deal with, and I hope it will receive the attention which it deserves. I think the amendment of the gentleman from Alameda will tend largely to produce a different state of affairs from what we have had in the past, and I hope the Convention will adopt it.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: It appears to me, sir, that it is often the case, when we attempt to remedy one evil, another evil is created by what we intended as a remedy. Now, here we make a compromise on three hundred and twenty acres as the amount that can be granted by the State. This looks more liberal than one hundred and sixty acres, but, in the midst of everything, let any one be acquainted with farming and stock raising, which is the principal thing followed in the foothills, and he will know at once that three hundred and twenty acres is not sufficient. It will not amount to anything in the way of an inducement to settlers to settle in these places to engage in the business of stock raising and adding to the wealth of the country; and such a constitutional provision as this will prevent the settlement of these foothills. Three hundred and twenty acres is not sufficient.

MR. DOWLING. Is not three hundred and twenty acres of agricultural land sufficient to support a family?

MR. BROWN. No sir, it is not. Any man who has ever lived in the foothills knows that when he takes to raising sheep, that even six hundred acres will not produce grass enough to make him a living. It is simply an impossibility, and men who understand this matter practically, are fully aware of it. Now, these are matters of consequence, and should be taken into consideration.

MR. DOWLING. How much land have you?

MR. BROWN. About one hundred acres in cultivation. I have about two hundred and forty acres altogether. Now, these are matters of fact. It is not land enough. No man can get along on twice that amount, and succeed in the growing industries of stock raising. I have no doubt these gentlemen are earnest and sincere in their desire to do something for the welfare and advancement of the State, but they are laboring under a misapprehension, and will not subserve the purpose they have in view.

MR. AYERS. Does not the amendment read, suitable for cultivation?

MR. BROWN. That does not matter. You could not find three hundred and twenty acres in these mountains, suitable for cultivation. It is only in small patches, and, it appears to me, that this matter is not comprehended—it is not understood.

MR. AYERS. It is left to the Legislature to manage.

MR. BROWN. I am opposed to the amendment. I am trying to present my argument. If this amendment is adopted, it will, in many places, destroy the business which we are attempting to promote. I am under the impression that it will work a great hardship, and I am convinced that the gentlemen who advocate this do not understand what they are doing. Such a provision as this inserted in the fundamental law of the State would prove utterly antagonistic to the best interests of the State. How few of these gentlemen who argue upon this matter have ever seen the foothills. They are not conversant with them. How few ever attempted to cultivate them. This amendment does not cover the case properly. I would call upon the members to investigate and study this matter before they attempt to pass upon it. I am convinced that there is a principle in it that is not seen, that will strike where it is not intended, and which will destroy the great industrial interests of this State, both farming and stock raising. Now, in regard to the amendment, which prevents a man from giving to his children, when he dies, more than six hundred and forty acres. Now, I thought that matter was passed, but it comes up again. It has been held in all ages to be in accordance with the higher law, that a man has a right to do as he pleases with his own. I am therefore opposed to that amendment on principle. It would be the same as some of the amendments which have been voted down. It is out of order. I am under the impression that it will not meet the approval of this body. When a man dies, his property is his to do what he pleases with. It does not belong to the State, and the State has no right to say what he shall do with it.

SPEECH OF MR. TULLY.

MR. TULLY. Mr. Chairman: I did not intend to say anything with reference to this matter, but I thought it was right to put myself on the record upon this land question. As far as the State is concerned, limiting the amount of land which a man may buy, I denounce the whole thing as a miserable humbug. The idea of gentlemen getting up here and seriously discussing that matter! That a man may be limited in the amount of land he may buy, is a startling proposition. I notice this morning that the distinguished gentleman from Monterey, whom I admire so much, made a speech to this Convention, and he found it necessary to apologize to this Convention, by saying that he was in favor of a man buying all the land he wanted, and he said you could not limit a man for what he now owned, but hereafter he will have to be limited. Now, I have always liked him very much. I always listen to him with pleasure. Then my venerable friend from Los Angeles—the man I learned my democracy from, whom I have followed for thirty years—he gets up and apologizes to the Convention, and says the reason he does not favor limiting land holding is, because the Supreme Court of the United States will not allow him to do so. You will find the man who wants to be Governor, and the man who wants to go to Congress, and the man who wants to be President of the Senate—they all get up here and say they are in favor of doing this thing provided they can do it. They want to limit these men. Now I would not limit anybody. I regard this whole thing as a burlesque upon the civilization of the age. The idea of a lot of men advocating a proposition in this Convention to limit you in the acquisition of property.

MR. O'SULLIVAN. I understand you are the attorney of Lux & Miller, the biggest land grabbers in the State of California.

MR. TULLY. Yes, sir; and they have paid me very well, sir. But the idea of these gentlemen getting up here and seriously advocating a proposition that a man shall not acquire all the land he wants. It is simply a miserable humbug. There are forty millions of acres in this State now which can be located by these gentlemen who are humbugging around in this Convention about land monopoly; but the truth is, they do not want to go back where the land is. They want to move in town, and take up vacant land there. They want improved property, without the labor of improving it. They don't want to go out in the country away from town, like others have done. You cannot get one of these men to go out in the country. They want to stay here within sight of the Capitol. I can see what they want to do, and I desire to enter my protest against it. I think it is all a miserable humbug, and an outrage, to talk about these things, and I am only astonished that this Convention has indulged these gentlemen so long. I am astonished that my venerable friend from Los Angeles, and other intelligent gentlemen here, will get up here and dignify such a thing by seriously considering it. I am going to now move the previous question.

MR. HOWARD, of Los Angeles. What cheek!

MR. AYERS. What assurance!

MR. TULLY. Now, sir, in conclusion, I want it distinctly understood I would not have any office I cannot get. I don't want, like the boy from Marin, to be Governor, or anything of that kind. In conclusion, I say, I move the previous question.

Seconded by Messrs. Larue, Cross, Huestis, and Hitchcock.

MR. WELLIN. Will the Chair entertain such a motion, after the gentleman has spoken for ten minutes, and then moves the previous question?

THE CHAIRMAN. It is a proper motion. The question is: Shall the main question be now put?

Lost—ayes, 45; noes, 47.

SPEECH OF MR. GRACE.

MR. GRACE. Mr. Chairman: I just want to speak in reference to some things said by my friend, the Major, from Butte, in speaking about the disposition of the workingmen in not being willing to go to Butte County to settle. Now, I am a workingman, and well acquainted with the workingmen of California; and I know the majority of the workingmen, or a large portion of them, are men with families to support, and they are men who are willing and anxious to work. Whenever they can get work, they are willing to take it. They go around hunting for work, but they cannot always find it.

MR. PROUTY. I would like to know if you know any of them who want land?

MR. GRACE. Yes, sir. In eighteen hundred and seventy-two, when the Central Pacific Railroad Company put their bridge across the Sacramento River, I went up there on the twenty-eighth day of June, and stayed until October—eighteen weeks, in the hottest weather a man ever endured, when, in putting the frame work across the river, I would absolutely be so heated as to almost sink in my tracks. We worked twelve hours a day in the blazing heat of the sun. All those men voted the Workingmen's ticket. Well, I was there, and I looked around to see what the prospect was for getting some land. It is a fine valley, with beautiful land. Though it is hot there it is never dry, and if I had been well fixed I would have liked to have got some of it. But I soon saw that I could not get hold of land without going way off. It is so hedged about that a working man would only take his family there to starve. I was not like my friend Wilson of Tehama, with his pocket full of land scrip. He came there in eighteen hundred and forty-nine. I am in favor of giving forty-niners all a chance. He has been here longer than I have. He is an older man than I am. I left home before I was twenty years old, and turned my face towards the West. I arrived in the mines without means. We had a mining law that a man could