1

In Convention
Assembly Chamber
State Capitol

Sacramento
Thursday Oct. 24th 1878

Convention met pursuant to adjournment

President Hoge in the Chair

Roll called and the following members were present.

2

Roll-Call of Delegates to the Constitutional Convention, 1878.

Names.	Ayes.	Noes.	Names.	Ayes.	Noes.	Names.	Ayes.	Noes.	Names.	Ayes.	Noes.
ANDREWS	1		FAWCETT	4		LAVIGNE	1		SHOEMAKER	140	
AYERS	2		FILCHER	5		LEWIS	2		SHURTLEFF	4	
BARBOUR	3		FINNEY	6		LINDOW	3		SMITH of Santa Clara.	5	
BARNES	4		FREEMAN	7		MANSFIELD	4		SMITH of Fourth District.	6	
BARRY	5		FREUD	8		MARTIN of Alameda.	5		SMITH of San Francisco.	7	
BARTON	6		GARVEY	9		MARTIN of Santa Cruz.	6		SOULE	8	
BEERSTECHER	7		GLASSCOCK	40		McCALLUM	7		STEDMAN	9	
BELCHER	8		GORMAN	1		McCOMAS	8		STEELE	110	
BELL	9		GRACE	2		McCONNELL	9		STEVENSON		
BERRY			GRAVES	3		McCOY			STRONG		
BIGGS	10		GREGG	4		McFARLAND	80		STUART	1	
BLACKMER	1		HAGER	5		McNUTT	1		SWEASEY	2	
BOGGS	2		HALE	6		MILLER	2		SWENSON	3	
BOUCHER	3		HALL			MILLS	3		SWING	4	
BROWN	4		HARRISON	7		MOFFAT	4		TERRY	5	
BURT	5		HARVEY	8		MORELAND	5		THOMPSON	6	
CAMPBELL	6		HEISKELL	9		MORSE	6		TINNIN	7	
CAPLES	7		HEROLD	50		MURPHY	138		TOWNSEND	8	
CASSERLY	8		HERRINGTON	1		NASON	7		TULLY	9	
CHAPMAN	9		HILBORN	2		NELSON	8		TURNER	120	
CHARLES	20		HITCHCOCK	3		NEUNABER	9		TUTTLE	1	
CONDON	1		HOLMES	4		NOEL	90		VACQUEREL	2	
COWDEN	2		HOWARD	5		O'DONNELL	1		VAN DYKE	3	
CROSS			HUESTIS	6		OHLEYER	2		VAN VOORHIES	4	
CROUCH			HUGHEY	7		O'SULLIVAN	3		WALKER of Marin.	5	
DAVIS	3		HUNTER	8		OVERTON	4		WALKER of Tuolumne.	6	
DEAN	4		INMAN	9		PORTER	5		WATERS		
DOWLING	5		JOHNSON	60		PROUTY	6		WEBSTER	7	
DOYLE	6		JONES	1		PULLIAM	7		WELLER	8	
DUDLEY of San Joaquin and Amador.	7		JOYCE	2		REDDY	8		WELLIN	9	
DUDLEY of Solano.	8		KELLY	3		REED	9		WEST	130	
DUNLAP			KENNY	4		REYNOLDS	100		WICKES	1	
EAGON			KEYS	5		RHODES	1		WHITE	2	
EDGERTON	9		KLEINE	6		RINGGOLD	2		WILSON of Tehama.	3	
ESTEY of Contra Costa and Marin.	30		LAINE	7		ROLFE			WILSON of First District.	4	
ESTEE of First District.	1		LAMPSON	8		SCHELL	139		WINANS	5	
EVEY	2		LARKIN	9		SCHOMP	3		WYATT	6	
FARRELL	3		LARUE	70		SHAFTER	0		MR. PRESIDENT	137	

AYES _____

NOES _____

Leave of absence

Messrs. Waites and Hall were each granted two days leave of absence

and Messrs Lanlaw and Eugon one day each

On motion of Mr. Larkin the reading of the journal was dispensed with and the same approved.

Report by leave

By Mr. Van Dyke: from the Committee on Preamble and Bill of Rights presented a report, accompanied by a draft of a Preamble and bill of Rights, which were ordered printed and referred to the committee of the whole.

By Mr. Van Dyke

4)

Mr President.

The Committee on Preamble and Bill of Rights return herewith a Proposed Amendment No 258 which by mistake was sent to our Committee but properly belongs to the ~~Legislation~~ Committee on the Legislative Department

Ken Dyke
Chr

Report adopted and the reference made

Report from
Committee on
Preamble & Bill of Rights

(2)

Mr. Cassedy by leave offered the following Proposed Amendment No 402

Concerning the creation of debts or liability by towns & cities or counties

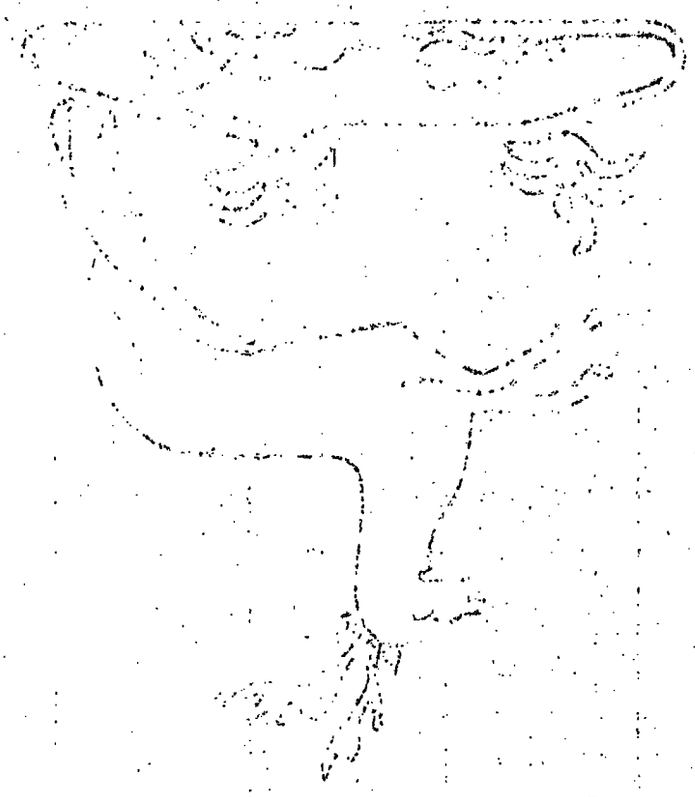
Referred to the committee on City, County and Township organizations

Mr Freed presented a minority report from the committee on Preamble and Bill of Rights. which was ordered printed with the majority report

Special Order.

The Convention proceeded to the consideration of the special order, being the

6 Consideration of the following reports of the committee on Judiciary and Judicial Department.



REPORT.

To the President of the Constitutional Convention:

The majority of the Committee on Judiciary and Judicial Department, to which was referred the resolution introduced by the Hon. Clitus Barbour, of San Francisco, instructing the committee to inquire into the eligibility of the member from Santa Barbara—the Hon. Eugene Fawcett—and his right to a seat in this Convention, beg leave to report that the subject has been carefully considered by the committee, and that we are of opinion that the Hon. Eugene Fawcett was eligible and is entitled to a seat in this Convention.

As all the members of the committee do not concur in this view, we may be excused for stating some of the reasons which led the majority to this conclusion.

Before the introduction of the resolution of Mr. Barbour, Judge Fawcett had occupied his seat as a member of this Convention for nearly three weeks. No person had, or has yet, appeared claiming his seat. His own county and judicial district have raised no question, made no protest, and presented no memorial on the subject; but, on the contrary, were desirous of his election, and are well satisfied with him as a member of this Convention, as we are informed and believe. He is a gentleman of high character, of learning, and ability, of judicial experience, and in every way well qualified to make a useful member. The objection to him comes from a point remote from his constituency, and, without a suggestion of unfitness in any respect, is based upon a narrow, literal, and technical construction of section sixteen, of article six, of the State Constitution. This declares Judges of the District Courts to be "ineligible to any other office than a judicial office during the term for which they shall have been elected."

As Mr. Fawcett is the Judge of the District Court of the First Judicial District of the State, and was such at the time of his election as a member of this Convention, it is claimed that he was ineligible and not entitled to retain his seat.

It is manifest to the undersigned that this is not a correct view of the subject. We are satisfied that a membership of this Convention is not an office in the sense in which that term is used in the Constitution; that a broader and more extended view must be taken; and that to hang upon the letter here is emphatically to hang upon the bark; that to be literal is to be wrong. The Constitution, as it is, creates a form of State Government complete in itself. Under it the State was to be organized, officered, and launched into operation. It did not anticipate what should be done under a succeeding Constitution, but provided for its own practical working. Its great funda-

8

mental principle was the distribution of the powers of government into three separate departments—the executive, legislative, and judicial—confining each to its own sphere. There were to be a large number of offices, each of which at once took place in its separate department. As long as that Constitution should last those offices would last, and it was in view of that fact that section sixteen, of article six, was adopted, rendering Judges ineligible during their terms to any office in the executive or legislative department. This covered the usual, ordinary, and necessary workings and instrumentalities of the government under that Constitution. It kept the Judge from using his high judicial functions so as to advance him in the executive or legislative departments, leaving him, however, free to seek advancement from a lower to a higher judicial position. But when we come to the question of a new Constitution we have something effecting the most radical change possible. The old things are to pass away and new ones to take their place. A Constitutional Convention is, therefore, an unusual, rare, and merely occasional instrumentality of the government, and of brief existence. It is not one of the three great departments of government which are created for every-day operations, and is not to be thrust into the ranks and limits of one of these three divisions, and take its place either as executive, legislative, or judicial.

The Constitutional Convention outranks them all; it is their creator, and fixes limits to their spheres of action and boundaries to their powers. It is occasional, exceptional, brief, and peculiar. It represents the people in their primary capacity, and forms the organic, fundamental, and paramount law of the State. Its members are mere agents or delegates of the people, and they have no power to adopt or create, but at most can only propose and present to the people a draft of a Constitution for their adoption or rejection. To confound, therefore, the functions and duties of a member of this rare and exceptional body, for the formation of a new organic law, with those of an officer under the every-day working of an existing system, is, in our minds, to commit a manifest error. It is to confound the architects and builders of a grand edifice with the people who subsequently occupy it; or the foundryman and machinist who build the engine with the engineers and firemen who subsequently manage it.

When we examine the framework of the Constitution itself, we find it divided into articles, under which are systematically arranged the offices pertaining to each division and their qualifications. Article four covers the legislative department; article five, the executive, and article six, the judicial.

In none of these do we find any reference to members of a Constitutional Convention. Such Conventions are only referred to in article ten, a distinct and separate part of the Constitution—thus isolating this subject from those portions appertaining to the ordinary and every-day operations of the government. This article ten is as broad as can be: no test of eligibility is given; no qualifications are prescribed. The only limit is, that "such Convention shall consist of a number of members not less than that of both branches of the Legislature." From this it would seem that the people were left free to select whom they pleased. The statute under which the Convention was called is likewise free from any limitation or restriction in this regard.

The common practice of the people of the United States is in accordance with the views here presented. Mr. John Howard Hinton, in the second volume of his History and Topography of the United States (pp. 324 to 327), treats of Constitutional Conventions, and, among other things, says: "The constituency who choose the delegates for a Convention is almost always the same constituency who choose the members of the State Legislature; but it seems to be open to discretion to make this occasional constituency even more extensive. A great peculiarity, however, of the character of Conventions is, that the delegates may be individuals from any class, including the ministers of religion, the Governor, and other public functionaries, and the Judges. In this point the reader will be struck with the resemblance it bears to the English County Meetings, where peers and commoners, and clergy, and all other men, assemble to deliberate on any public concerns. Both institutions, indeed, are traceable to a common Saxon stock."

In Virginia, the Governor of the State sat side by side with John Marshall, both delegates in the Constitutional Convention of that State, whilst the latter was holding the exalted position of Chief Justice of the Supreme Court of the United States. Other distinguished officers were likewise delegates to the same Convention.

In the Illinois Convention of eighteen hundred and sixty-two, Judge O'Melveny was a delegate, and had been Judge of one of the Circuit Courts within one year prior to his election as delegate. The Constitution of that State provided that the Judges of the Supreme and Circuit Courts should not be eligible "to any other office or public trust of profit" in that State or the United States during the term for which they were elected, nor for one year thereafter, and that all votes for them for such "other office or public trust of profit" should be void. Mr. O'Melveny's competitor contested his seat on that ground; but the Convention, acting upon the principle that a delegate to the Convention was not an officer within the sense and meaning of the Constitution, retained Judge O'Melveny in his seat. That Convention consisted of the prominent men of Illinois, and numbered among its members jurists of national renown. That case affords an exact parallel to this, and is a precedent directly in point, whilst we have been unable to discover a single instance to the contrary.

Beside all this, we cannot assume for a moment that the Convention which framed the present Constitution intended to trammel the succeeding generation, in any such manner, in the formation of a new or revised organic law. It would have been contrary to the accepted theories of our government that they should claim a right to define who should constitute the representatives of the people in their great work of defining the fundamental law of the future. Such action would have been contrary to principle, and to the common practice of the people in like cases.

We are, therefore, happy to vindicate the able and distinguished men who framed the present Constitution from any such aspersion on their fame, and are entirely satisfied that their intention and meaning was merely to prohibit the Judges from discharging the duties of an office belonging to either of the other departments under that Constitution. Clearly, the inhibition was intended to apply only to the government and the departments thereof, created by that Constitution, and not to the rare and exceptional occasion of a Con-

10

vention, in which the people, resuming their original sovereignty, undertake to change the whole government and select its own agents for that purpose.

So far we have attempted to maintain our conclusion upon reason and the common usages and practice of Constitutional Conventions; but we are not without the authority of some of the highest Courts of the country in our favor. The Supreme Court of this State directly maintains the principles on which we rely. That Court has construed the various sections of the Constitution referred to, and held that the Chief Justice of this State may lawfully hold the office of Trustee of the State Library, and that the Police Judge of San Francisco may act as Police Commissioner. (See People vs. Provines, 34 Cal. R. 532, *et seq.;* and People vs. Bush, 40 Cal R. 340.)

In the Provines case the Supreme Court held that the legislative department, referred to in article three of the Constitution, means the Senate and Assembly, and nothing else. It is very clear, then, that a Constitutional Convention is not a legislative body in the sense of the Constitution.

Article three of our Constitution is borrowed from the Constitution of Iowa, and the Supreme Court of that State has held that under that article one man may exercise the duties of Mayor of a city and Justice of the Peace, as the office of Mayor is not a State office. (Santo vs. The State of Iowa, 2 Iowa R. 220.)

The Constitution of Indiana provided that "no person holding a lucrative office or appointment, under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution permitted," etc. The Director of the State Prison, which was a lucrative office, was also a Councilman of the City of Madison. The Supreme Court of Indiana held that the office of Councilman was a lucrative office, and though literally it fell within the clause of the Constitution referred to, it was not a State office, and that the Constitution only referred to offices provided for under the State Government. (See the State ex rel. Platt vs. Kirk, 44 Ind. Rep., 405.)

We, therefore, respectfully submit, that the Hon. Eugene Fawcett was eligible at the time of his election, and is entitled to retain his seat in this Convention.

October 21st, 1878.

S. M. WILSON, Chairman.
W. J. GRAVES,
D. S. TERRY,
ALEX. CAMPBELL,
T. H. LAINE,
S. G. HILBORN,
GEO. VENABLE SMITH,
I. S. BELCHER,
V. E. HOWARD,
HENRY EDGERTON,
JOHN A. EAGON,
W. L. DUDLEY,
P. DUNLAP,
P. B. TULLY,
GEO. STEELE.

REPORT.

MR. PRESIDENT: The undersigned, a minority of the Committee of the Judiciary, to whom was referred the subject of the eligibility of the Hon. Eugene Fawcett to a seat in this Convention, finding themselves unable to agree with the majority of such committee, make this minority report.

It is admitted that the sitting member whose seat is contested was, at the time of his election, and is now, Judge of the District Court of the First Judicial District of California. We think this fact renders him ineligible to a seat in this Convention, and we further think that this result is distinctly required by the present Constitution, and the reasons which underlie it. The right of the sitting member has been put: First, upon the general ground that Conventions are revolutionary bodies, and that in their creation the people are emancipated from existing laws by which they are controlled in all other affairs, and that the Convention itself is possessed of power to disregard all rules but its own will; second, that the Constitution now existing, allowing it to furnish the rule of judgment, sustains his claim.

As to the first ground, the language of the claimant himself, although somewhat guarded, may be accepted as a fair statement of it. Judge Fawcett claimed that this was in no sense an office within the meaning of the Constitution. That even if it was, the people had a right to say who should represent them in the Convention to frame an organic law. That if the people of one generation had a right to dictate to the people of the next, they had a right to say how and what they should do, and we would virtually have no power to alter or amend the organic law.

In the cursory examination of the majority report, the same proposition appears in equivalent terms.

To a doctrine so unfounded, and so dangerous, the undersigned express their unqualified dissent. The people of this Republic, with all their jural relations, constitute the State. The government is that agency, both of power and officers, by which the business of the State is effectuated. That the people can assemble in any place, or in any manner, which caprice or convenience may direct, for consultation and to concert action for petition or other methods of procedure for change of their legal relation to the State or to each other, disturbing in no manner the public peace, may be safely conceded. That they may follow this up by Conventions to the same end is equally true. These Conventions, like hundreds of others of purely private character, are intended to collect and give expression to public opinion.

Unlike other Conventions, they propose to operate upon the law through the law-making power. Directly of themselves they claim no power over the law but that of petition and remonstrance.

12

There is another class of Conventions which, sweeping aside Constitutions, laws, institutions, and officers, at once resolves society into its individual elements, and taking a new departure from present chaos, endeavors therefrom to create order and institutions. This is simple revolution. While it is not asserted that this Convention is exactly one of this character, yet it is intimated that if the people have, in Judge Fawcett's case, elected a gentleman ineligible under the present Constitution, they have the right to do so, and this Convention is bound to effectuate their choice; that is to say, every provision of the present Constitution regulating the calling and purpose of this Convention, may be ignored at its will, because it has been so ignored by a detached portion of the people. This doctrine is dangerous to all alike. When this Convention is disposed to treat the Constitutional inhibition as of no value, it is not perceived why it may not expel, as well as admit, members, in execution of its mere personal preference. That this Convention is not a revolutionary body, and that it sits here only under the sanction of law, it requires but a glance to perceive. The people operating in accepted modes, induced the Legislature to exercise a specific power given them by the Constitution, by passing a law submitting the question of general revision of the existing Constitution to the people. Upon the returns of such election, it was ascertained by the officers of the law that a revision had been ordered by the people; another Legislature directed, by statute, the election of delegates to this body. It was held, and the persons elected presenting themselves here, at the hour set by the Legislature, were organized by the designated authority, and took an oath to support the Constitution of the State, and to discharge the duties of the office of Delegate. After all this, in presence of elements of disorder which threaten destruction of all conservatism, the undersigned cannot permit themselves to be styled revolutionists, nor this body as one ignoring Constitutions, and all legal forms, limitations, and restraints, without entering their solemn protest and dissent.

This doctrine of the sovereignty of the Convention was expressly denied by the founders of the National Constitution. Mr. Wilson of Pennsylvania, of whom it is said, he was one of the profoundest jurists our country has ever produced, said in regard to the power of the Convention: "I conceive myself authorized to conclude nothing, but to be at liberty to propose anything." This doctrine received the concurrence of Governor Randolph of Virginia, James Madison, Mr. Paterson of New Jersey, and of the Convention. The independence of the Convention, and its sovereignty, was asserted by Mr. Dallas of Pennsylvania, in eighteen hundred and thirty-six. This was followed up in an Illinois Convention in eighteen hundred and forty-seven, and still later in Kentucky and Massachusetts in eighteen hundred and fifty-three. To those who desire the restatement and adoption of this theory, the tracing of these attempts to foist this doctrine upon Constitutional Conventions, down to their adoption in effecting the actual withdrawal of eleven States of this Union from their allegiance to it, it will be, if not a pleasant, still a most instructive employment. The undersigned have no wish for such restatement, nor for any further experience founded upon it. We persuade ourselves, however, that this Convention will reject all such vagaries, and will not accept the office, nor undertake to proceed upon the theories, nor to any extent discharge the functions, of a revolutionary

Convention, and that it will leave the claim of the sitting member to stand or fall upon the Constitution alone.

Every one must be aware that Constitutions owe their maxims and existence to the abuses resulting from the too great concentration of power in few or single hands. This idea was so fully conceded in the act of creating the Federal Constitution that the only question largely debated was from which of the departments into which government was resolved was it that most danger was to be apprehended.

In the country from which the first colonists came, for many centuries the Judges had been the personal advisers of the Crown. The duties they discharged were often of a political character. In the contest with the colonies they were, many of them at least, the enemies of the colonists. America was smarting under indignities advised by the Judges and Chancellors of England. It was in view of this historical fact that American statesmen, in distributing the powers of government, undertook at least to separate them by insurmountable barriers; especially was the intention manifested of cutting off the judicial from all junction, overlapping, or intermingling with any other department of government. In short, we believe that a Judge is forbidden to perform or in any way to represent any function of a public character, during the term for which he was elected, other than those judicial in character; and we believe further, that it is a conclusion justified by reason and authority.

It must be borne in mind that constitutional questions are not to be passed upon like those presented in a plea in abatement or special demurrer. As to these it may be right to stand upon precise terms. Treaties and constitutions require a larger and more comprehensive view, by which the true intention of their terms may be sought, as to such instruments "*hæret in litera, hæret in cortice.*" The whole scope and purpose must be ascertained from all that is in and around the fact of the creation of the instrument to be interpreted.

The Committee of the Judiciary seem to put their resolution upon the ground that the word "office" does not properly indicate the function or place of a Delegate in this Convention. The language of article six, section sixteen, is as follows: "The Justices of the Supreme Court, and the District Court, and the County Judges, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected."

The committee make the whole question turn upon the interpretation of this word "office," and hold that it is not applicable to membership in this body. The undersigned do not concur in this opinion, and if we did we do not see how it would strengthen the claimant's position.

Article three of the Constitution declares: "The powers of the government of the State of California shall be divided into three separate departments, the legislative, the executive, and the judicial; and no person charged with the exercise of *powers properly* belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted." The People vs. Sanderson, reported in 30 Cal., 160, we think is an authority which, accepted and fairly construed, is decisive of this controversy.

The case was quo warranto to settle the title of the Chief Justice of the Supreme Court to hold a seat in the Board of Trustees of the

14

State Library. In the information or complaint, in the defendant's demurrer, in the judgment below, in the statutes, and in the briefs of counsel, the right in dispute is called an office.

The Court no where call it such, nor do they allude to the designation as affecting their decision. This went the whole length of asserting that the Legislature could not impose upon a Judge, "any other duties than those of a judicial nature." After reciting the third article above recited, the Court quote Burgoyne vs. The Board of Supervisors of San Francisco, 5 Cal., 9. That case, after reference to article six, says: "From which it follows *no duties*, except of a judicial character, can be conferred on the Court of Sessions, inasmuch as the officers composing those Courts are persons charged by the Constitution expressly with the performance of judicial duties." To further emphasize their views, the Court in the main case proceed to assign as a reason why a judicial officer could execute no other duties, that "no provision is to be found in the Constitution expressly directing or permitting a Justice of the Court to exercise any function appertaining to either of the above departments of government." In pursuance to this larger and more comprehensive interpretation to which we have referred, this Court say: "This position of the Constitution, so far as it relates to the judicial department of the State, is, in our judgment, eminently wise. One of its objects seems to have been to confine Judges to the performance of judicial duties, and another to secure them from entangling alliances with matters concerning which they may be called upon to sit in judgment; and another still, to save them from the temptation to use their vantage ground of position and influence to gain for themselves position and places from which judicial propriety should of itself induce them to refrain." The Court then decide: "That as the duties of a trustee do not appertain to the judicial department of the government the Chief Justice could not execute them."

The impropriety of the action contemplated in the resolution reported by the committee, and the justice and necessity of the above opinion, is decisively enforced by the results of its adoption. If anything is certain to be done by this Convention, it is a remodeling of the judicial department. One of the propositions already passed upon by the Judiciary Committee, and to be reported to this Convention, is the utter abolition of the District Courts—their name even is to be erased from the Constitution; and yet the majority resolution would retain a gentleman here who will be required to pass upon the further existence of his office and its emoluments, and perhaps to determine the result by his single vote. "No one ought to be judge in his own cause" is a legal maxim hitherto held to be of universal application.

We think, further, that a delegate to this Convention is the holder of an office in the sense that word is used in the Constitution. Jameson's Book upon the Constitutional Convention, sec. 324, thus states his view: "In my judgment, there can be but little doubt that a member of a Convention is, in the enlarged and proper acceptation of the term, an 'officer' of the State. A Convention is a part of the apparatus by which a sovereign society does its work as a political organism. It is the sovereign, as organized for the purpose of renewing or repairing the governmental machinery. That same sovereign, as organized for the purpose of making laws, is the Legislature; as

15

organized for the purpose of applying or carrying into effect the laws, it is the Judiciary or the Executive. These successive forms into which the sovereign resolves itself are but systems of organization having relation more or less directly to the government of the society. Together they constitute the government."

Mr. Webster, in his great argument in the Rhode Island case, adopts, upon this point, equivalent terms.

The only case we have found which seems to deny the foregoing is that of The People vs. Provines, 34 Cal., 520. It is a noticeable fact that this decision, as it is called, asserts itself as an act of judicial legislation. After reciting all the California and other cases, the Court say: "From them we deduce the following general rule as embodying the law of the present case as it now stands. The third article of the Constitution prohibits all persons charged with the exercise of functions which are in their nature of either a legislative, executive, or judicial character, from exercising the functions of either of the other two classes." Having thus stated the actual condition of the law the Court, with an admission that it was entirely unnecessary to disturb that condition, proceed to controvert the soundness of a long and unbroken stream of California decisions, by which that law had been declared, and to overthrow, if possible, the authority of a case in which the Judge delivering the opinion had been an unsuccessful defendant.

As to the precise case, three Judges undertook to overthrow the opinions of four Judges, but of so far as the cases show of all the preceding Judges, who had passed upon the question, one or two, perhaps, excepted. Such a decision, we submit, is not entitled to very favorable consideration. Nor within its own terms is it obligatory upon this body, which is sole judge of the eligibility of its members. The assertion, in this case, that the word "office," used in article three, above cited, is to be confined to those offices which the Constitution created or designated. We do not admit this, but if it is a correct assumption still it remains that the office of Delegate to this Convention is precisely within this category.

In the discharge of the duty, which our convictions create, we have not thought it proper to canvas or judge of the merits of the sitting member, nor the fact that there is no technical contestant. We agree that if the wish of the voters whose suffrages sent Judge Fawcett here can be gratified, under a proper construction of the existing state of the Constitution, it should be done. Having failed to reconcile ourselves to this conclusion, we dissent from the report of the majority, and recommend the adoption of the accompanying resolutions.

J. McM. SHAFTER,
EDMUND BARRY,
C. J. BEERSTECHER.

o

16) Mr. Shaffer presented the following Resolutions from the Minority of the Committee

Resolved that in passing upon any question submitted to this Convention, the qualifications of its members needed, this Convention disclaims all powers, except such as are given them by the existing Constitution, and the laws enacted agreeing therewith.

Resolved: That the Hon Eugene Farwell is not entitled to a seat in this Convention

Mr. Edgerton presented

17)

the following:

Resolved: that the Hon Eugene Jarvett is entitled to a seat in this Convention.

and moved its adoption.

Pending the debate, the hour of twelve o'clock M. having arrived the Convention took a recess for two hours.

Afternoon Session

Convention reassembled at two o'clock P. M.

President Hoge in the chair.

Quorum present.

Convention resumed the consideration of the special order, pending at time of recess

on motion of Mr. Van Dyke the subject under consideration was made the special order for to-morrow immediately after the reading of the journal.

Report by ~~Mr. Shaftes~~

Mr. Shaftes by leave made the following report

Mr President.

The Committee upon the Pardoning Power having had under consideration the proposal No 250 introduced by Mr London — report adversely to section No 32 thereof, and on the proposal relative to legislation, recommend its reference to the committee on Legislative Department.

Lewis Shafter
for Committee

adopted and its reference made

Report of the
Committee on the
Parliamentary Power
Shafto
Chr

at four o'clock and
twenty-six minutes P. M.
on motion of Mrs Shoemaker
the convention adjourned

10/24/78

Oct. 24