Ch. Convention

Assembly Chamber, State Capitol

Sacramento

Tuesday Nov. 26th 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			LAVIGNE	4		SHOEMAKER		
AYERS	2		FILCHER	30		LEWIS	5		SHURTLEFF	4	
BARBOUR	1		FINNEY	1		LINDOW	6		SMITH of Santa Clara.	5	
BARNES	6		FREEMAN	121		MANSFIELD	7		SMITH of Fourth District.	6	
BARRY	119		FREUD	2		MARTIN of Alameda.	8		SMITH of San Francisco.	7	
BARTON	4		GARVEY	3		MARTIN of Santa Cruz.	9		SOULE	8	
BEERSTECHER	5		GLASSCOCK	8		McCALLUM	60		STEDMAN	9	
BELCHER	6		GORMAN	4		McCOMAS	1		STEELE	90	
BELL			GRACE	1		McCONNELL	2		STEVENSON	1	
BERRY			GRAVES			McCOY	3		~~STRONG~~		
BIGGS			GREGG	5		McFARLAND	4		STUART	2	
BLACKMER	7		HAGER	1		McNUTT	5		SWEASEY	3	
BOGGS	8		HALE	6		MILLER	6		SWENSON	4	
BOUCHER	9		HALL	6		MILLS			SWING	1	
BROWN	10		HARRISON	7		MOFFAT	7		TERRY	5	
BURT	1		HARVEY	1		MORELAND	8		THOMPSON	6	
CAMPBELL	2		HEISKELL	8		MORSE	9		TINNIN	7	
CAPLES	120		HEROLD	9		MURPHY			TOWNSEND	8	
CASSERLY	3		HERRINGTON	40		NASON	70		TULLY	9	
CHAPMAN	4		HILBORN	1		NELSON	1		TURNER	100	
CHARLES	5		HITCHCOCK	2		NEUNABER			TUTTLE		
CONDON	6		HOLMES	3		NOEL			VACQUEREL	1	
COWDEN			HOWARD	118		O'DONNELL	2		VAN DYKE	2	
CROSS	7		HUESTIS	4		OHLEYER	3		VAN VOORHIES	3	
CROUCH	8		HUGHEY	5		O'SULLIVAN	1		WALKER of Marin.	4	
DAVIS	9		HUNTER	6		OVERTON	4		WALKER of Tuolumne.	5	
DEAN	20		INMAN			PORTER	5		WATERS	6	
DOWLING	1		JOHNSON	7		PROUTY	6		WEBSTER	7	
DOYLE	2		JONES			PULLIAM	7		WELLER	8	
DUDLEY of San Joaquin and Amador.	3		JOYCE	8		REDDY			WELLIN	9	
DUDLEY of Solano.	4		KELLY	9		REED	8		WEST	110	
DUNLAP	1		~~KENNY~~			REYNOLDS	9		WICKES	1	
EAGON	1		KEYS	50		RHODES	80		WHITE	2	
EDGERTON	5		KLEINE			RINGGOLD			WILSON of Tehama.	3	
ESTEY of Contra Costa and Marin.	6		LAINE	1		ROLFE	1		WILSON of First District.	4	
ESTEE of First District.	7		LAMPSON			SCHELL	2		WINANS	5	
EVEY	8		LARKIN	2		SCHOMP	2		WYATT	6	
FARRELL	9		LARUE	3		SHAFTER	3		Mr. PRESIDENT	117	

Ayes

Noes

Leave of absence.

Mssrs Bell, Glassscock and Edgerton were granted one days leave of absence, Messrs Brunnabel and Shoemaker two days leave.

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

Reports.

By Mr. Smith of San Francisco.

Minority report of Committee on Mattes and Watts rights.

To the Hon President of the Convention,

A Minority of your Committee on Watts and Watts rights, by leave to report the following sections to be inserted in the new constitution recognizing that the right of avatts does not depend on the ownership of land and as a

4) natural element for the use of man. I question the right of the Legislature or of Congress, if such has been the case to grant ~~away~~ away that which belongs to the people.

Sec. 1 All lakes except artificial reservoirs shall be declared public property, all running waters shall be declared public property, subject only to the control of the State.

Sec. 2. The Water Commissioners shall be elected by the qualified voters of this State, at the Gubernatorial elections and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors

5)

of this state and shall not be interested in any water Company or stockholder, creditor, agent, attorney or employee, and the act of a majority of said Commissioners shall be deemed the act of said Commissioners, said Commissioners shall have the sole power, and it shall be their duty to establish rates of charges for water, from what sources water shall be taken by such companies, report to the Legislature when in Session their proceedings any such other facts as may be deemed important

H. W. Smith

6)

~~Laid~~ Report laid ~~upon~~ on the table and ordered printed together with the report of the majority of the ~~company~~ committee.

By Mr. Pulliam.

Mr. President

Your Committee on Mining respectfully Reports that it has carefully considered propositions nos. 91 - 345 - and 450 and herewith Return the same and recommend that no further action be taken on them

M. R. C. Pulliam
For the committee

Report laid on the table

7) Mr. Estee moved to reconsider the vote by which the resolution of adjournment was adopted on yesterday.

Mr. Gregg moved to lay the motion on the table, upon which motion the ayes and noes were demanded by messrs Larkin, White, Grey, Herrington and Grace.

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

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

Names.	Ayes.	Noes.	Names.	Ayes.	Noes.	Names.	Ayes.	Noes.	Names.	Ayes.	Noes.
ANDREWS		1	FAWCETT	20		LAVIGNE		24	SHOEMAKER		
AYERS	1		FILCHER	21		LEWIS		25	SHURTLEFF	46	
BARBOUR			FINNEY		11	LINDOW	34		SMITH of Santa Clara.	47	
BARNES	2		FREEMAN		12	MANSFIELD		26	SMITH of Fourth District.		40
BARRY	3		FREUD	22		MARTIN of Alameda.	35		SMITH of San Francisco.		
BARTON	4		GARVEY	23		MARTIN of Santa Cruz.	36		SOULE		41
BEERSTECHER		2	GLASSCOCK			McCALLUM		27	STEDMAN	48	
BELCHER	5		GORMAN			McCOMAS	37		STEELE	49	
BELL			GRACE	24		McCONNELL	38		STEVENSON		42
BERRY			GRAVES			McCOY		28	STRONG		
BIGGS			GREGG	25		McFARLAND		29	STUART	50	
BLACKMER		3	HAGER	26		McNUTT		30	SWEASEY	51	
BOGGS	6		HALE			MILLER	39		SWENSON		43
BOUCHER	7		HALL	27		MILLS			SWING		44
BROWN	8	53	HARRISON			MOFFAT			TERRY		45
BURT	9		HARVEY	28		MORELAND	40		THOMPSON	52	
CAMPBELL	10		HEISKELL	29		MORSE	41		TINNIN		46
CAPLES		4	HEROLD	30		MURPHY			TOWNSEND		47
CASSERLY	11		HERRINGTON		13	NASON		31	TULLY		48
CHAPMAN	12		HILBORN		14	NELSON			TURNER		49
CHARLES	13		HITCHCOCK		15	NEUNABER			TUTTLE		
CONDON		5	HOLMES		16	NOEL			VACQUEREL		50
COWDEN		6	HOWARD		17	O'DONNELL			VAN DYKE	53	
CROSS	14		HUESTIS		18	OHLEYER		32	VAN VOORHIES	54	
CROUCH	15		HUGHEY	31		O'SULLIVAN		33	WALKER of Marin.	55	
DAVIS		7	HUNTER		19	OVERTON	42		WALKER of Tuolumne.	56	
DEAN		8	INMAN			PORTER		34	WATERS	57	
DOWLING			JOHNSON	32		PROUTY		35	WEBSTER		57
DOYLE		9	JONES			PULLIAM	43		WELLER	58	
DUDLEY of San Joaquin and Amador.	16		JOYCE			REDDY			WELLIN	59	
DUDLEY of Solano.	17		KELLY		20	REED		36	WEST		52
DUNLAP			KENNY			REYNOLDS		37	WICKES		53
EAGON			KEYS	33		RHODES		38	WHITE		54
EDGERTON			KLEINE			RINGGOLD		39	WILSON of Tehama.		55
ESTEY of Contra Costa and Marin.	18		LAINE		21	ROLFE			WILSON of First District.	60	
ESTEE of First District.	19		LAMPSON			SCHELL			WINANS	61	
EVEY		10	LARKIN		22	SCHOMP	44		WYATT		56
FARRELL			LARUE		23	SHAFTER	45		MR. PRESIDENT	62	

Ayes 61

Noes 57

61 / 57

9/

On motion of Mr. Estee the Convention resolved itself into Committee of the whole — President Hoge in the Chair — to further consider the article on Corporations.

At Twelve o'Clock and Twenty Nine Minutes P.M. the Committee arose, reported progress and asked ~~further~~ leave to sit again.

Recess.

At twelve o'Clock and thirty Minutes P.M. the Convention took a recess until two o'Clock P.M.

Afternoon Session

Convention re-assembled at two o'Clock P.M.

President Hoge in the Chair.

Quorum present

10)

Mr. Zimin moved to take from the table the motion to reconsider the vote on adoption of resolution for adjournment

Mr Barnes moved to indefinitely postpone the motion, upon which the ayes and nays were demanded by Messrs Larkin, Hnestiss, Every, Condon and Wyatt.

The roll was called and the motion to indefinitely postpone prevailed by the following vote:

11)

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

Names.	Ayes	Noes	Names.	Ayes	Noes	Names.	Ayes	Noes	Names.	Ayes	Noes
ANDREWS		1	FAWCETT	60		LAVIGNE		28	SHOEMAKER		
AYERS	59		FILCHER	19		LEWIS		29	SHURTLEFF	43	
BARBOUR		2	FINNEY		13	LINDOW	30		SMITH of Santa Clara.	44	
BARNES	1		FREEMAN		14	MANSFIELD		30	SMITH of Fourth District.		42
BARRY		3	FREUD		15	MARTIN of Alameda.	31		SMITH of San Francisco.		43
BARTON	2		GARVEY	20		MARTIN of Santa Cruz.	32		SOULE		44
BEERSTECHER			GLASSCOCK		16	McCALLUM		31	STEDMAN	45	
BELCHER			GORMAN		17	McCOMAS	33		STEELE	46	
BELL			GRACE			McCONNELL	34		STEVENSON		45
BERRY			GRAVES			McCOY		32	~~STRONG~~		
BIGGS			GREGG	21		McFARLAND		33	STUART	47	
BLACKMER	3		HAGER			McNUTT		34	SWEASEY		
BOGGS	4		HALE			MILLER	35		SWENSON		46
BOUCHER	5		HALL	22		MILLS			SWING		
BROWN		4	HARRISON	23		MOFFAT		35	TERRY		47
BURT	6		HARVEY	24		MORELAND	36		THOMPSON	48	
CAMPBELL	7		HEISKELL	25		MORSE	37		TINNIN		48
CAPLES		5	HEROLD	26		MURPHY			TOWNSEND		
CASSERLY	8		HERRINGTON		18	NASON			TULLY		49
CHAPMAN	58		HILBORN		19	NELSON			TURNER		50
CHARLES	9		HITCHCOCK		20	NEUNABER			TUTTLE		
CONDON		6	HOLMES		21	NOEL	61		VACQUEREL		51
COWDEN		7	HOWARD		58	O'DONNELL		36	VAN DYKE	49	
CROSS	10		HUESTIS		22	OHLEYER	38		VAN VOORHIES	50	
CROUCH	11		HUGHEY			O'SULLIVAN			WALKER of Marin.		
DAVIS		8	HUNTER		23	OVERTON	39		WALKER of Tuolumne.	51	
DEAN		9	INMAN			PORTER		37	WATERS	52	
DOWLING	12		JOHNSON	27		PROUTY			WEBSTER		52
DOYLE		10	JONES			PULLIAM	40		WELLER	53	
DUDLEY of San Joaquin and Amador.	13		JOYCE	28		REDDY			WELLIN	54	
DUDLEY of Solano.	14		KELLY		24	REED		38	WEST		53
DUNLAP	15		~~KENNY~~			REYNOLDS		39	WICKES		54
EAGON		11	KEYS	29		RHODES		40	WHITE		55
EDGERTON			KLEINE			RINGGOLD		41	WILSON of Tehama.		56
ESTEY of Contra Costa and Marin.	16		LAINE		25	ROLFE			WILSON of First District.	55	
ESTEE of First District.	17		LAMPSON			SCHELL			WINANS	55	
EVEY		12	LARKIN		26	SCHOMP	41		WYATT		57
FARRELL	18		LARUE		27	SHAFTER	42		MR. PRESIDENT	59	

Ayes ~~[illegible]~~ 61

Noes ~~58~~ 58

4

69

(12)

Report

Mr Holmes from the special committee ~~on the~~ appointed under resolution of Nov 17th made the following report:

Sacramento Nov. 26th 1878

Mr. President:

Your committee appointed on the 17th inst to make arrangement for the obsequies of Hon. J. M. Strong late a member of this convention, beg leave to report that in the discharge of their duties ~~have~~ incurred expenses to the amount of $290.50 for which vouchers are herewith presented

13)

presented.

The committee recommend the adoption of the following resolutions:

Resolved: That the Controller be and he is hereby authorized to draw his warrant in favor of the Sergeant-at-arms for the amount of $290.50 to pay the expenses of the obsequies of the late Elon J. M. Strong a member of this convention.

and that the State Treasurer be and he is hereby authorized to pay said warrant out of the funds appropriated to this convention

Resolved: That the per diem for the remainder of the ~~Ses~~ session of this convention

14)

which the late Hon. J. M. Shaw would have been entitled to as a member of this convention be paid to the family of the deceased.

S. A. Holmes
Chairman

The report was received and the resolutions adopted.

Committee of the Whole.

On motion of Mr. Estee the Convention resolved itself into Committee of the Whole - President Hoge in the Chair - to further consider the article on Corporations

at four o'clock and fifty minutes P. M. the Committee arose

reported progress and asked leave to sit again

Recess

At four o'clock and fifty two minutes P.M. the Convention took a recess until Seven o'Clock P.M.

Evening Session

Convention re-assembled at seven o'Clock P.M.

President Hoge in the Chair

Quorum present

Committee of the Whole

16)

on motion of Mr. Van Dyke the Convention resolved itself into committee of the whole — President Hoge in the Chair — to further consider the article on Corporations

At nine o'clock and four minutes P.M. the committee arose, reported progress, and asked leave to sit again.

[Mr. Waters in the Chair.]

a ~~adjournment~~

~~At nine o'clock and five minutes P.M. the on motion of Mr. the convention adjourned~~

17)

Mr. Cross gave notice that on tomorrow he would move to reconsider the vote indefinitely postponing the motion to take from the tables the motion to re-consider the vote on adopting the resolution of adjournment until Monday Dec 12th.

Mr. Hager presented the following, which he proposed to offer in Committee of the Whole as a substitute for section twenty of the act on corporations when the pending amendments shall be disposed of.

SUBSTITUTE FOR SECTION TWENTY.

[SECTION 20.] There shall be elected at the next general election, and every four years thereafter, by the qualified electors of this State, a Board of three Railroad Commissioners, whose term of office shall be four years, with such salary as may be fixed by law, not to exceed —— thousand dollars a year. Such Commissioners shall be qualified electors and for five years citizens of this State, and shall not be interested, pecuniarily or by employment, or in any other capacity, in any railroad or transportation company, or in the business of common carrier of passengers or freight. They shall each take the constitutional oath of office, and before entering upon, and for the faithful performance of, the duties of their office, they shall each give a bond, with two sureties, in the sum of twenty thousand dollars, to be approved by the Governor. The Commissioners, or a majority of them, shall have power, and it shall be their duty, to establish reasonable and just tariffs and rates of charges for the transportation of passengers and freights by all railroad corporations, and for this purpose they shall have power to administer oaths; to examine the books and papers of such corporations; to summon and examine the officers and stockholders thereof and other witnesses; to hear complaints; inquire into and correct abuses; prevent partial and unjust discriminations and extortion in the rates of charges and the tariffs for the transportation of freights and passengers. They shall publish, semi-annually, full statements of the tariffs and rates of charges established and authorized by them and of all abuses, discriminations, and extortion, and report the same to the Governor. Whenever such tariffs and rates shall be established and published, they shall be binding upon and must be observed by all such corporations doing business in this State, and may be enforced by the Commissioners, or by any party in interest, through the Courts; but nothing herein shall prevent any person from maintaining an action for injury or damage against such corporations. The Legislature shall confer on the Commissioners such further powers as shall be necessary to enable them more fully to perform their duties, and it shall pass laws, with adequate penalties, to the extent, if necessary, of forfeiture of the franchises of such corporations, to enforce the action of the Commissioners. The Commissioners, and each of them, may be removed from office by the Legislature, by a majority vote of all the members elected to each House, and shall also be liable personally and on their official bonds to any party aggrieved, for neglect of duty or any malfeasance or corruption in office.

19

~~Must be disposed of~~

Adjournment

at nine o'clock and six minutes P.M., on motion of Mr. Hastie, the convention adjourned.

11/26/78