

On Convention.  
Assembly Chamber State Capitol

Sacramento

Sunday June 6<sup>th</sup> 1879

Convention met  
pursuant to adjournment

President Hoze in the Chair

Roll called and

The following members

were absent:

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

| NAMES.       | Ayes - | Noes - | NAMES.     | Ayes - | Noes - | NAMES.     | Ayes - | Noes - | NAMES.       | Ayes - | Noes - |
|--------------|--------|--------|------------|--------|--------|------------|--------|--------|--------------|--------|--------|
| ANDREWS      | 1      |        | FAWCETT    |        |        | LARUE      | 44     |        | SHAFTER      | 1      |        |
| AYERS        | 2      |        | FILCHER    | 1      |        | LAVIGNE    | 45     |        | SHOEMAKER    | 1      |        |
| BARBOUR      | 3      |        | FINNEY     | 22     |        | LEWIS      | 46     |        | SHURTLEFF    | 68     |        |
| BARNES       |        |        | FREEMAN    | 1      |        | LINDOW     |        |        | SMITH        | 69     |        |
| BARRY        | 4      |        | FREUD      | 23     |        | MANSFIELD  | 47     |        | SMITH        | 70     |        |
| BARTON       | 5      |        | GARVEY     | 24     |        | MARTIN     |        |        | SMITH        | 71     |        |
| BEERSTECHEER | 6      |        | GLASSCOCK  |        |        | MARTIN     | 48     |        | SMITH        | 72     |        |
| BELCHER      |        |        | GORMAN     | 25     |        | MARTIN     | 49     |        | SOULE        | 73     |        |
| BELL         | 7      |        | GRACE      | 26     |        | McCALLUM   | 50     |        | STEDMAN      | 74     |        |
| BERRY        |        |        | GRAVES     | 27     |        | McCOMAS    | 51     |        | STEELE       | 75     |        |
| BIGGS        | 1      |        | GREGG      | 28     |        | McCONNELL  | 52     |        | STEVENSON    | 76     |        |
| BLACKMER     | 8      |        | HAGER      |        |        | McCOY      | 53     |        | STUART       | 77     |        |
| BOGGS        | 9      |        | HALE       | 1      |        | McFARLAND  | 99     |        | SWEASEY      | 78     |        |
| BOUCHER      |        |        | HALL       |        |        | McNUTT     | 53     |        | SWENSON      | 79     |        |
| BROWN        | 10     |        | HALL       |        |        | MILLER     |        |        | SWING        | 80     |        |
| BURT         | 11     |        | HARRISON   | 29     |        | MILLS      |        |        | TERRY        | 81     |        |
| CAMPBELL     | 12     |        | HARVEY     |        |        | MOFFAT     | 84     |        | THOMPSON     | 82     |        |
| CAPLES       | 13     |        | HEISKELL   | 30     |        | MORELAND   | 55     |        | TINNIN       | 83     |        |
| CASSERLY     |        |        | HEROLD     | 31     |        | MORSE      | 56     |        | TOWNSEND     | 1      |        |
| CHAPMAN      | 14     |        | HERRINGTON |        |        | MURPHY     |        |        | TULLY        | 84     |        |
| CHARLES      |        |        | HILBORN    |        |        | NASON      | 57     |        | TURNER       | 85     |        |
| CONDON       | 15     |        | HITCHCOCK  |        |        | NELSON     | 58     |        | TUTTLE       | 86     |        |
| COWDEN       |        |        | HOLMES     | 32     |        | NEUNABER   |        |        | VACQUEREL    | 87     |        |
| CROSS        |        |        | HOWARD     | 100    |        | NOEL       | 59     |        | VAN DYKE     |        |        |
| CROUCH       | 16     |        | HOWARD     | 33     |        | O'DONNELL  |        |        | VAN VOORHIES | 88     |        |
| DAVIS        | 17     |        | HOWARD     | 34     |        | OHLEYER    | 101    |        | WALKER       | 89     |        |
| DEAN         |        |        | HUESTIS    | 35     |        | O'SULLIVAN |        |        | WALKER       | 90     |        |
| DOWLING      | 18     |        | HUGHEY     | 36     |        | OVERTON    | 60     |        | WALKER       | 91     |        |
| DOYLE        |        |        | HUNTER     | 1      |        | PORTER     |        |        | WALKER       | 92     |        |
| DUDLEY       | 1      |        | INMAN      |        |        | PROUTY     | 61     |        | WALKER       | 93     |        |
| DUDLEY       | 1      |        | JOHNSON    | 37     |        | PULLIAM    | 62     |        | WALKER       | 94     |        |
| DUNLAP       | 1      |        | JONES      | 38     |        | REDDY      | 63     |        | WALKER       | 95     |        |
| EAGON        | 1      |        | JOYCE      | 39     |        | REED       |        |        | WALKER       | 96     |        |
| EDGERTON     | 19     |        | KELLY      | 40     |        | REYNOLDS   | 64     |        | WALKER       | 97     |        |
| ESTEY        | 20     |        | KENNY      | 41     |        | RHODES     | 65     |        | WALKER       | 98     |        |
| ESTEE        | 1      |        | KEYS       |        |        | RINGGOLD   | 66     |        | WALKER       | 99     |        |
| EVEY         | 21     |        | KLEINE     | 112    |        | ROLFE      | 67     |        | WALKER       | 100    |        |
| FARRÉLL      |        |        | LAINE      |        |        | SHELL      |        |        | WALKER       | 101    |        |
|              |        |        | LAMPSON    | 43     |        | SCHOMP     |        |        | WALKER       | 102    |        |
|              |        |        | LARKIN     | 1      |        |            |        |        | WALKER       | 103    |        |

AYES

NOES

3/ Leave of absence.

Leave of absence was granted for one day to Mrs. Wilson of Ichama, for three days to Messrs. Schomp, Boncher, Chellis, <sup>and</sup> Cross ~~and Falat~~, and for one week to Mrs. Harvey on account of sickness. and for two days to Mrs. Harrington.

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

Mr. Tulley rose to a question of Privilege, in that he had been incorrectly reported as having on Saturday voted for the resolutions of Mr. Finney.

4)

Mrs. Noel called up the  
amendment to rule 43  
offered by him on Saturday

Mrs. McCullum moved to  
strike out the words  
"unanimous consent" and  
insert the words "two thirds"

Mrs. Grace moved to lay  
the whole subject on the  
table.

Carried

Notice

By Mrs. McCullum.

5)  
Mr President

I hereby give notice that on tomorrow I shall move to change Rule 2 so that the Convention shall hereafter hold evening sessions commencing at 7 o'clock P. M.

Melamed

## Committee of the Whole.

on motion of Mr Edgerton the convention resolved itself into Committee of the Whole - President Hoyle in the Chair - to further consider the articles on Revenue and Taxation

9  
At 12 O'Clock and  
30 minutes P.M. the  
Committee arose, repor-  
ted progress and asked  
leave to sit again

Recess.

The hour of recess during  
arrived the Convention  
took a recess till two  
o'clock P.M.

Afternoon Session

The Convention re-as-  
sembled at two o'clock  
P.M.

President Hoze in the Chair

7) Quorum present.

Mr. Schell was granted  
leave of absence for two  
days.

Report.

By Mr. Barbons.

8 to 15

To J. P. Hoge, Esq., President Constitutional Convention:

Your committee, to whom was referred the case of a member of this Convention, Charles C. O'Donnell, charged with grave crimes, have considered the same, and submit the following report:

The history of the events leading up to the appointment of this committee is matter of public notoriety. In the discussion, in this Convention, of what is known as the Fawcett amendment to the provision concerning libel, the member, O'Donnell, made remarks derogatory to the San Francisco Chronicle, a newspaper published in the City of San Francisco. The next issue of that paper assailed O'Donnell as a quack, impostor, abortionist, etc. Some time afterward O'Donnell entered criminal prosecutions for libel, in San Francisco and Sacramento, against the publishers of the Chronicle. A trial has been had of the case in San Francisco, in which the defendants admitted the publication and based their defense on the truth of the alleged libel, and that it was published from good motives and for justifiable ends. The result of that trial was disastrous to the member, O'Donnell. In order to establish their innocence of the alleged libel, it became necessary for the defendants to prove the guilt of the complainant, O'Donnell. At the close of the trial they were promptly discharged by the Court, and we have seen no reason, after an examination of the reported testimony, to question the correctness of the decision of the Court.

The case entered in Sacramento, which is for the same cause, has not yet been tried.

Pursuant to the resolution creating it, your committee entered at once upon the examination of the subject-matter of the above-described proceedings. They procured a copy of the reported testimony of the case in San Francisco, verified as correct by the affidavits of three witnesses. They notified the member, O'Donnell, of a time and place at which they would hear him. He appeared before us according to the notice, and was duly informed of the nature of the investigation and the testimony already in the hands of the committee, i. e. the report of the trial contained in the San Francisco Chronicle of December twenty-second and twenty-fourth, eighteen hundred and seventy-eight, with the affidavits of the witnesses referred to thereto attached, all of which is hereby referred to and hereto annexed, marked exhibit "A," and made a part of this report.

He furnished us with no additional legal proof to rebut the showing made against him on the trial, but claimed that if time and opportunity were given him to procure counsel and produce witnesses before us, he could satisfy us and the Convention of his innocence of the charges made against him. He stated to us that the testimony given against him upon the trial was suborned and perjured testimony; that he was taken by surprise; that he was unprepared, either with counsel or witnesses, to meet the case made against him, and asked for delay to allow him to procure counsel and produce witnesses before us. Your committee did not feel authorized to constitute itself a Court of appeal from the decision of the Courts. The state of the funds at the disposal of this Convention did not warrant us in launching into any wild expenditure for persons and papers. We were not satisfied with the excuses made by the accused member, and we were not convinced of the relevancy of the testimony he claimed to be able to produce. In a country teeming with lawyers, it would seem that one month was time enough in which to procure counsel, especially by one having the financial ability to remunerate them, as appears to be the case with the member O'Donnell. It would also seem to be time enough for a party complainant in a criminal prosecution to prepare therefor. But inasmuch as the accused member had publicly declared that he would vindicate his character, by prosecuting the witnesses who appeared against him for perjury, and inasmuch as a complaint had been filed and was pending in Sacramento involving the identical issue with the one tried in San Francisco, your committee offered to delay action, provided he would assure them of his determination to go ahead before the legal tribunals of the country. He stated that he would consult counsel and give us an answer. We agreed to await three days for such answer. At the expiration of the time he appeared before us and stated that he had not consulted counsel, and asked for more time.

Your committee have come to the conclusion that the accused member has been attempting to delude them with frivolous pretenses and shallow excuses. They observe that the Grand

Jury of San Francisco has adjourned, and nothing appears to have been done there by the accused member. They have also ascertained that the case pending in Sacramento has been abandoned.

We are driven to the conclusion that the accused member never made the complaints in good faith; that he never really intended to put his character in issue in law; that he was unable to postpone the trials beyond the session of this Convention, and that is the only surprise by which he has been taken.

For the purposes of this inquiry, the testimony, herewith appended, sufficiently attests the guilt of the accused member of the crimes charged against him to warrant this committee in submitting to the Convention whether such a man is worthy to retain his seat in this honorable body.

Of the power of this Convention to deal with this subject your committee entertains no doubt. An examination of the authorities and precedents has satisfied us of the correctness of this position. Wherefore, your committee report the following resolution, and recommend its adoption.

All of which is respectfully submitted.

CLITUS BARBOUR,  
BENJ. SHURTLIFF,  
J. A. FILCHER,  
Committee.

Resolved, That Charles C. O'Donnell, a member of this Convention, be and he is hereby expelled therefrom.

State of California, City and County of San Francisco—ss. On the twenty-sixth day of December, A. D. one thousand eight hundred and seventy-eight, personally appeared before me, L. D. Craig, a Notary Public in and for the city and county aforesaid, duly commissioned and sworn, Chester H. Hull, Fred. H. Hackett, and H. B. Standerwick, who, having been by me duly sworn, deposes and says, each for himself, that they heard the testimony in the case of C. C. O'Donnell against Charles de Young and M. H. de Young for alleged libel, as is set forth in the printed matter or slips hereto attached and annexed, marked respectively Exhibits "A" and "B," and that the testimony and evidence as set forth and appears in said printed matter or slips hereto annexed and attached, and marked Exhibits "A" and "B" as aforesaid, is true and correct, and justly and correctly reported.

(Signed.)

CHESTER H. HULL,  
FRED. H. HACKETT,  
H. B. STANDERWICK.

Subscribed and sworn to the day and year first above written.

[Seal.]

L. D. CRAIG, Notary Public.

Mrs. Parsons moved to make  
 the report a special order for  
 to-morrow at two o'clock P.M.

Mrs. Edgerton moved to amend  
 by making it the special  
 order for Thursday, Jan<sup>y</sup> 7<sup>th</sup>  
 1879 at two o'clock P.M.

The amendment accepted  
 and the report was made  
 the special order for Thurs-  
 day to Jan<sup>y</sup> 7<sup>th</sup> at 2 o'clock  
 P.M.

Committee of the Whole

on motion of Mrs. Edgerton  
 the convention re-

17) Moved itself into Committee  
of the whole - President Hoze  
in the Chair - to further  
consider the article on  
Revenue and Taxation.

at 4 o'clock and 48  
minutes P.M. the  
Committee arose,  
reported.

at 5 o'clock P.M.  
on motion of Mrs.  
Shoemaker the  
Convention adjourned

1/6/79

Quarta