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SACRAMENTO, TUESDAY MORNING, JANUARY 25, 1881.

DAILY RECORD-UNION SERIES, VOLUME XII—NUMBER 134.

CALIFORNIA LEGISLATURE.

TWENTY-FOURTH SESSION — TWENTY-SECOND DAY.

SENATE.

SACRAMENTO, January 24, 1881.

The Senate met in regular session, President Mansfield in the chair. No quorum being present, on motion of Mr. JOHNSON, the Senate adjourned till 2 P. M.

Afternoon Session.

The Senate reassembled at 2 P. M. Roll called. Quorum present.

On motion of [illegible], Mr. Glascock was granted a leave of [illegible] for one day.

The journal of [illegible] meeting was read and approved.

Bills coming up for a third reading:

S. B. 44, to provide for the permanent improvement of the State Capitol Park (by Mr. Johnson) was passed by a vote of 21 to 5.

S. B. 61, to amend Section 634 of the Penal Code, relating to the violations of the law for the preservation of fish (by Mr. Wendell) was passed on file.

S. B. 64, to amend Sections 3732, 3734, 3736, 3[illegible], 3758, 3759, 3797, 3799, 3812 and 3881 of the Political Code, and to add a new section to said Code, to be known as Section 3817, and to repeal Sections 37[illegible]3, 3738, 3893 and 3896 of said Code, providing for a duplicate assessment book (by Mr. Wendell) was passed on file.

S. B. 62, to amend Section 3644 of the Political Code, relating to the assessment of vessels (by Mr. Wendell) was passed on file.

The Committee on Engrossment reported as correctly engrossed, S. C. Rs. 5 and 10 and S. Bs. 117, 137, 77, 78, 95, 97, 98, 99, 100, 109, 116, 138, 150, 133, 38 and 81.

On motion of Mr. SATTERWHITE, the Senate resumed the regular order of business.

The Judiciary Committee recommended the passage of S. B. 185.

Assembly bills were read for the first time as follows:

A. B. 24 was referred to the Committee on Judiciary.

A. B. 106 was referred to the Committee on Judiciary.

A. B. 7 was referred to the Committee on Judiciary.

The Committee on Commerce and Navigation recommended the adoption of S. C. R. 2.

The following bills were introduced:

By Mr. PARDEE—To amend Section 3895 of the Political Code, relating to revenue. Finance.

Also, to appropriate money to reimburse the University of California for moneys heretofore appropriated to the endowment fund thereof, which moneys have, by mistake, been withheld and appropriated to other State purposes. Finance.

Also, for the government of cities of the fourth class. Town and Township Governments.

By Mr. ZUCK—To amend Section 1465 of the Code of Civil Procedure, relating to the setting apart for the use of the family all property exempt from execution, including the homstead. Judiciary.

By Mr. JOHNSTON—To provide a system of drainage for agricultural and swamp and overflowed lands. Swamp Lands.

By Mr. RYAN—Senate concurrent resolution—Whereas increased complication is growing out of the present system of electing the President and Vice-President of the United States, as evidenced by the result of recent elections, giving ample proof that the present system is not the best that could be devised; and, whereas, the abuses possible under our present system have tended to weaken the confidence of many citizens in the stability and perpetuity of our form of government; and, whereas, the experience of the past has satisfied many citizens that the President and Vice-President of the United States ought to be elected by the direct votes of the people, therefore be it

Resolved by the Senate, the Assembly concurring, that our Senators in Congress are hereby instructed and our Representatives requested to prepare and propose such a set of amendments to the Constitution of the United States as may be necessary, so as to have the law that the Chief Magistrate be chosen by a direct vote of the people.

Resolved, That his Excellency, the Governor, be requested to forward a copy of this preamble and resolutions to each of our Senators and Representatives in Congress. Federal Relations.

Mr. SEARS gave notice that he would on to-morrow move to amend Rule 21 by adding the following: "After the final passage of the bill it shall require a majority of the Senators elected to reconsider, but in all other cases it shall only require a majority of those present."

By Mr. SEARS—To amend Sections 11 and 17 of an Act to define, regulate and govern the State Prison of California, approved April 15, 1880. State Prisons.

Mr. KELLY introduced two concurrent resolutions, the first calling on California's Representatives and Senators in Congress to use their influence to secure the establishment of a national savings bank in all cities of 5,000 inhabitants or over, in every State and Territory of the Union; and the second directing California's Representatives and Senators to use their efforts to secure an appropriation for the erection of a building in San Francisco devoted exclusively to postal purposes. Both resolutions were referred to the Committee on Federal Relations.

Mr. GEORGE gave notice that he would move to instruct the Judiciary Committee to draft a bill reducing the costs of litigation in accordance with the suggestion of the Governor.

Bills coming up for a second reading:

S. B. 13, to amend Sections 633 and 634 of an Act entitled an Act to establish a Code of Civil Procedure, approved March 11, 1872, relating to decisions and findings by Courts (by Mr. Davis), was passed on file.

S. B. 67, to amend Section 974 of the Code of Civil Procedure, relating to appeals in civil actions (by Mr. Davis), was passed on file.

S. B. 4, to repeal an Act entitled an Act to provide for the organization, incorporation and government of merged and consolidated cities and counties of more than 100,000 population, pursuant to the provisions of Section 7, Article XI. of the Constitution of the State, approved April 24, 1880 (by Mr. Enos), was ordered engrossed.

S. B. 143, to prevent Trustees, Councils, Boards of Supervisors and other local legislative bodies from holding secret meetings (by Mr. Enos), was taken up.

Mr. HITTELL moved to indefinitely postpone.

Mr. DICKINSON argued against the bill, on the ground that it was inaffective, and also for the reason that the case was fully covered by the present law.

Mr. ENOS explained that the bill was the result of occurrences of recent date in San Francisco, which made it necessary that local councils and Boards of Supervisors should be prevented from meeting in secret caucuses, from which the general public and the representatives of the press were excluded. He claimed that his bill would accomplish the desired result.

Mr. RYAN was in favor of the bill, and thought that it was applicable to local councils and boards all over the State.

Mr. JOHNSON also advocated the bill, and offered the following amendment, which was adopted: Amend by inserting the words "or other county," after the word "town" in line 3, Section 1, of the printed bill.

Mr. DICKINSON moved to amend by striking out "on any standing or special committee thereof." Lost.

The motion to indefinitely postpone was lost, and the bill was ordered engrossed and read for a third time.

S. B. 34, to amend Section 726 of an Act to establish a Code of Civil Procedure, relating to the foreclosure of mortgages (by Mr. Chase), came up as the special order for 3 o'clock.

After considerable discussion, Mr. SEARS moved that the bill be made the special order for to-morrow afternoon at 3 o'clock.

Mr. ENOS favored the passage of the bill, and said that Mr. Guirey had been a cripple by a wound received in the service of his country, and was drawing a pension on that account

Mr. ZUCK said that he could bring documentary evidence to prove that Guirey was not entitled to the payment of the claim; that it had been formerly allowed and certificates issued.

Mr. DICKINSON moved that the bill be referred back to the Committee on Claims for further investigation.

Mr. ENOS seconded the motion.

Mr. KANE thought the claim should be referred to the Committee on Roads and Highways.

Mr. DICKINSON'S motion prevailed.

Mr. CHENEY—I rise to a question of privilege. Mr. President, I am not one of those who ordinarily deem that an apology is necessary when newspaper criticisms are made upon the motives that induce a Senator or Senators to vote on any proposition that may be before this Senate, and I am not one of those who have any fear at all of newspaper criticisms, and were any criticisms to appear in the newspapers upon my own personal course, or upon the motives which induced me to vote upon any measure, I should pass it by with silent indifference; but when a wholesale criticism is made upon a majority of this Senate, and unworthy political bias is alleged to have been the reasons which induced the vote cast by a majority of this Senate, I am prepared, for one, to answer and to defend the motives which induced us to cast a vote. The Constitution of this State says that in the nomination of officers for the positions of Regents of the State University, that no political influences shall be brought to bear. A few days ago the Governor of the State of California presented for nomination the name of N. Greene Curtis as the nominee. The Senate of California refused to confirm that nomination. It passed by for a few days, and by a special message from the Governor, N. Greene Curtis was again nominated in this Senate for the position of Regent of the University of California. He had already occupied that position, as I understand, for some months previous to the meeting of this Senate. The Senate again refused to confirm his nomination, by a vote which might seem to the outsider to be a party vote. But the reasons why it would thus seem I am ready to explain. Now, sir, upon the very same day upon which we refused to confirm the nomination of N. Greene Curtis, the Republican members of this Senate, who constitute a majority of this body, did confirm the nomination of Mr. Stanly, as one of the officers of the State Institution for the education of the deaf and dumb at Oakland. He is a well-known Democrat. I can say, further, that he is a Democrat of the ultra school, and there was no opposition to his confirmation. Not a word was passed against him; not a vote, if I remember, was cast against him. It may be possible that one or two were, but they were scattered. But when the name of N. Greene Curtis came before the majority of this Senate in a meeting in caucus, no political motives at all actuated their decision in that matter. The RECORD-UNION of the city of Sacramento put in almost a column article last week, and alleged that twenty members of the Senate of California were overriding the Constitution—plotting against the Governor, and overriding the spirit of the provisions of the Constitution of California; that they were allowing political influences to influence them in their vote against Mr. N. Greene Curtis for the position of Regent of the State University at Berkeley. But, sir, the reasons which actuated us were not political. They had no tendency in that direction. There was not a particle of political influence brought to bear upon the question, and that did not for one moment agitate our minds in our decision. It was purely a question of qualification. I do not wish in this public body and in this public manner to criticise the qualifications of N. Greene Curtis for that position. What they are morally, or mentally, I leave it for those who are well acquainted with that gentleman to infer. But, in self-defense, and as President of that caucus, I say that the motives which induced us to vote against him were those which touched upon his qualifications as a man, as a scholar and otherwise, and not upon political grounds; and I trust that those who have deemed it necessary to criticise the twenty members of this honorable body, and who have said that they have overriden the Constitution, will take my word in that respect. If they don't choose to, I can say nothing further. I would not have arisen upon this occasion, as I have said, had not a Republican journal in a public and ostentatious manner made an assault upon the Republican members of this body; and I deem it no more than just to the Republican members of the caucus to state that there was no political incentive, but it touched simply upon the qualifications of the gentleman for the position.

Mr. RYAN arose to ask a question, but was ruled out of order by the President.

S. B. 156, to add eight new sections to the Political Code, to be known as 1880, 1881, 1882, 1883, 1884, 1885, 1886 and 1887, relating to the issuance of bonds by the Trustees of school districts to raise money for building purposes, and to provide for the payment of the same (by Mr. Carlock), was passed on file.

S. B. 153, to amend an Act entitled an Act to appropriate money for the support of orphans, half orphans and abandoned children, approved March 25, 1880 (by Mr. Rowell), was passed on file.

S. B. 145, to ascertain and express the will of the people of the State of California upon the manner of electing President and Vice-President of the United States (by Mr. Gorman), was passed on file.

S. B 57, to amend the Political Code of the State of California by adding a new section thereto (by Mr. Enos), was indefinitely postponed.

S. B. 168, to amend Section 3381 of the Political Code, relating to retail liquor licenses (by Mr. Hill), was recommitted.

S. B. 171, prohibiting judicial officers from accepting other employment (by Mr. Enos), was withdrawn.

S. B. 187, to establish a Branch Normal School (by Mr. West), was ordered engrossed.

S. B. 92, to provide for buildings and improvements for the institution of the deaf, dumb and blind (by Mr. Nye), was ordered engrossed.

On motion of Mr. JOHNSON, the Senate adjourned at 4:50 P. M.

ASSEMBLY.

SACRAMENTO, January 24, 1881.

The Assembly met at 2 P. M., pursuant to adjournment, Speaker Parks presiding. Roll call. Prayer by the Chaplain. Reading and approval of the journal of Friday.

Mr. Leach was granted one day's leave of absence, and Mr. Mein was granted two days' leave of absence.

The following petitions were presented and referred:

By Mr. BIRNEY—From the residents of Tuolumne county, praying for the repeal of the drainage Act. Water Rights and Drainage.

By Mr. JONES—From the citizens of Contra Costa county, asking for an amendment to the Constitution, so as to give to the State Board of Equalization increased powers. Judiciary.

Also, a petition from the citizens of Contra Costa county, asking for the passage of laws fixing the salaries of county officers according to Article XI., Section 5, of the Constitution. County Governments.

By Mr. STREETER—From the citizens of San Bernardino county, for the enactment of a law whereby the voters of any voting precinct, town, city or county, by a majority vote may determine whether the sale of intoxicating liquors shall be prohibited within the respective limits. Public Morals.

By Mr BAKER of Sacramento—From the citizens of California and fishermen engaged in salmon fishing on the Sacramento and San Joaquin rivers and adjacent waters, asking that the present law from the close season be abolished, and for the passage of a law instead making the punishment for a violation of its provisions a felony instead of a misdemeanor. Fish and Game.

The Judiciary Committee reported back:

A. B. 210, to amend Sections 626 and 631 of the Penal Code relating to the laws for the preservation of fish and game, recommending that it be withdrawn by its author.

A. B. 241, to amend Section 665 of the Code of Civil Procedure, relative to cases reserved for argument, recommending that it do pass.

A. B. 203, prohibiting judicial officers from accepting other employment, recommending that it be withdrawn by its author.

A. B. 66, to repeal Sections 633 and 634 of the Code of Civil Procedure, recommending that it do pass.

A. B. 215, to amend Sections 394 and 398 of the Code of Civil Procedure, relative to places of trial of civil actions, recommending that it do not pass.

A. B. 194, to provide for the publication of notices, recommending that it do pass.

A. B. 88, to amend Section 1085 of the Code of Civil Procedure and to add a new section (1098), relating to the writ of mandate, recommending that it do pass.

S. B. 76, to provide for the appointment of a Deputy Supreme Court Reporter, etc., recommending that it do pass.

S. B. 88, to amend Section 2217 of the Political Code, relating to the committal of insane persons, recommending that it do pass.

S. B 80, to amend Section 243 of the Penal Code, relative to the punishment of the crime of barratry, recommending that it do pass.

A. B. 218, to amend Section 243 of the Penal Code, relative to the punishment of battery and battery on a wife, recommending that it be withdrawn by its author.

S. B. 59, to amend Section 146 of the Code of Civil Procedure, relative to property set apart to the use of a family, recommending that it do pass.

S. B. 66, to amend Section 329 of the Political Code, relative to the operation of statutes, recommending that it do pass.

S. B. 41, to amend Section 1171 of the Penal Code, relative to preparation, etc., of bills of exceptions in criminal cases, recommending that it do pass.

A. B. 263, to amend Section 1466 and to repeal Section 1468 of the Penal Code, relative to appeals to Superior Courts, with amendments, recommending that it do pass as amended.

S. B. 23, to amend Sections 1811 and 1812 of the Code of Civil Procedure, relative to sole traders, recommending that it do pass.

A. B. 156, to amend Sections 849, 850, 868, 974 and 980 of the Code of Civil Procedure, with amendments, recommending that it do pass, as amended.

A. B. 162, to authorize a more strict supervision of the business of pawnbrokers, recommending that it do not pass.

A. B. 211, an Act relative to apprentices, minors and masters, with a substitute, recommending that the substitute do pass.

A. B. 249, to amend Section 416 of the Political Code, relative to fees for services in the Secretary of State's office, with amendments, recommending that it do pass as amended.

A. B. 233, to amend Section 205 of the Code of Civil Procedure, relative to selecting and returning jurors for Courts of record, recommending that it do not pass.

A. B. 223, to amend Section 354 of the Civil Code, relative to corporations, recommending that it do not pass.

A. B. 212, to amend the Code of Civil Procedure by adding a new section relative to actions against the State, with amendments, recommending that it do pass as amended.

A. B. 217, to amend Section 532 of the Penal Code, relative to obtaining money by false pretenses and by false reports of wealth, etc., with amendments, recommending that it do pass as amended.

A. B. 219, to amend Section 245 of the Penal Code, relative to the punishment of an assault with a deadly weapon, recommending that it do not pass.

A. B. 225, to protect the public health, to prevent the introduction and spread of disease, and for the protection of the health of criminals under sentence, etc., recommending that it do not pass.

A. B. 150, to amend Section 636 of the Penal Code, with amendments, recommending that it do pass as amended.

A. B. 226, to amend Section 3051 of the Civil Code, relating to liens, etc., recommending that it do pass.

A. B. 227, to amend Section 870 of the Code of Civil Procedure, relative to judgments in Justices' Courts, with amendments recommending, that it do pass as amended.

A. B. 267, to amend Section 1303 of the Code of Civil Procedure, relative to the probate of wills, recommending that it do pass.

A. B. 269, to amend Section 739 of the Penal Code, relative to officers of the Supreme Court, with amendments, recommending that it do pass as amended.

A. B. 266, to add a new section (1408) to the Code of Civil Procedure, relative to reducing the bonds of executors and administrators, etc., recommending that it do pass.

S. B. 79, to amend Section 1249 of the Penal Code, relative to appeals in criminal cases, recommending that it do pass.

S. B 63, to amend the Penal Code by adding two new sections (969 and 1025), relative to proceedings in cases where previous conviction is charged, recommending that it do pass.

S. B. 17, to add a new section (No. 1723) to the Code of Civil Procedure, relative to property in which deceased persons held a life estate which terminated upon the death of such persons, recommending that it do pass.

S B 9, to prevent the sale of adulterated milk, recommending that it do pass.

S. B. 58, to amend Sections 392, 393, 394, 395, 396, 397 and 398 of the Code of Civil Procedure, relative to the venue in civil actions, recommending that it do pass.

S. B. 87, to add a new section (328) to the Civil Code to enforce the provisions of Section 3 of Article XII. of the Constitution, relative to corporations, with amendments, recommending that it do pass as amended.

S. B. 31, to provide for the removal of civil officers for a violation of official duties, recommending that it do pass.

S. B. 237, concerning the appointment of interpreters for the criminal Courts, recommending that it do not pass.

A. B. 277, to repeal Section 1861 of the Civil Code, relative to liens on hotel-keepers, etc., recommending that it do not pass.

A. B. 275, to amend Sections 537 and 538 of the Code of Civil Procedure, relative to attachments, recommending that it do not pass.

A. B. 228, to provide for the care of indigent sick persons in certain cases, recommending that it be referred to the Committee on State Hospitals.

A. B. 262, to amend Section 1206 of the Code of Civil Procedure, with amendments, recommending that it do pass as amended.

A. B. 230, to add a new section (309) to the Civil Code, recommending that it be referred to the Committee on Corporations.

A. B. 231, to amend Section 309 of the Civil Code, recommending that it be referred to the Committee on Corporations.

A. B. 246, to add a new section (12[illegible]0) to the Code of Civil Procedure, for liens upon monuments, headstones, etc., recommending that it do not pass.

S. B. 18, to repeal Section 1370 of the Code of Civil Procedure, concerning a married woman as administratrix, recommending that it do not pass.

S. B. 71, to amend Section 1379 of the Code of Civil Procedure, relative to the granting of letters of administration, recommending that it do not pass.

A. B. 128, to amend Sections 1365 and 1369 of the Code of Civil Procedure, recommending that it be withdrawn by its author.

A. B. 133, to amend Sections 3804 and 3871 of the Political Code, recommending that it be referred to the Committee on Ways and Means.

A. B. 258, to amend Section 958 of the Code of Civil Procedure, concerning remittiturs from the Supreme Court, with amendments, recommending that it do pass as amended.

A. B. 205, to amend Section 1881 of the Code of Civil Procedure, relating to witnesses, with amendments, recommending that it do pass as amended.

A minority report of the Judiciary Committee recommended the passage of A. B. 225, with amendments.

The Committee on Swamp and Overflowed Lands reported on A. B. 174 and A. B. 209, recommending that they do pass.

The following bills were introduced and referred:

By Mr. BURNS—To amend Section 501 of the Civil Code, concerning street railroad corporations. Corporations.

By Mr. MCCLURE—To amend Section 325 of the Code of Civil Procedure, relative to the time of commencing actions for the recovery of real property. Judiciary.

By Mr LANE—To amend Section 243 of the Penal Code, relative to the punishment of battery. Judiciary.

By Mr. LEAKE—To provide for the government of municipal corporations of the eighth class. Municipal Corporations.

By Mr. MASON—To amend Section 577 of the Civil Code, relative to reserve funds of savings and loan corporations. Corporations.

By Mr. HOWARD—To regulate the practice of medicine and surgery. Hospitals.

By Mr. GILMORE—To amend Section 1142 of Chapter V. of the Political Code, concerning Boards of Election; and to repeal Section 1162 of the same, and to amend Section 19 of an Act to regulate the registration of voters and to secure the purity of elections in the city and county of San Francisco. The design of this bill is to change the present election laws, so as to have the ballots counted every hour. Elections.

By Mr. KELLOGG—To amend an Act authorizing the Board of Supervisors of the counties in which water is sold for purposes of irrigation to fix the rates at which water shall be sold. Irrigation.

By Mr. O'CONNOR—To add five new sections to the Penal Code, Chapter II., Title 9, Part 1, to prevent opium smoking. Public Morals.

By Mr. BAKER of Sacramento—To discourage the monopoly of land in this State by taxation. Homestead and Land Monopoly.

By Mr. PAULK—To amend Section 1360 of the Civil Code relating to and specifying property which must be resorted to for the payment of legacies. Judiciary.

Also, to amend Section 3382 of the Political Code relating to the licenses of merchants and livery-stable keepers. Ways and Means.

Also, to amend Section 1712 of the Political Code, relative to the manner of expenditure of the school library fund. Education.

Also, to amend Section 1713 of the Political Code, relative to the same subject. Ways and Means.

Bills on the third reading file were next considered:

A. B. 114, to amend Section 1322 of the Penal Code of this State, to determine when husband and wife may testify against each other in criminal cases, was passed unanimously.

A. B. 161, to compel persons, companies, associations or corporations, whose business it is to supply water or gas for public or domestic use, to furnish meters at their own expense, was referred to a committee with special instructions.

A. B. 73, to amend Section 2 of an Act numbered 15,616, approved April 3, 1876, relating to an Act concerning lodging houses and sleeping apartments within the limits of incorporated cities, was passed—ayes 55, noes 2.

A. B. 79, to prohibit the naturalization of Chinese or Mongolians in the State of California, was briefly debated by Messrs. MCCLURE, MCCALLION, JACKSON, HALE, LONG, PLATT and SARGENT, the opponents of the bill claiming that it was unconstitutional and inoperative, and passed—ayes 46, noes 17.

A. B. 28, to compel banks, savings and loan societies, and all and every kind of person or persons, or corporations, receiving moneys or other valuable property on deposit, or for safe keeping, to publish a sworn statement in certain cases, was read and passed as amended by the Committee on Corporations—ayes 56, noes 4.

A. B. 99, to amend Section 413 of the Political Code, was also passed, by a vote of 51 ayes to 4 noes. Title amended and adopted.

A. B. 48, to provide for the classification of municipal corporations, was read.

Mr. EDWARDS, Chairman of Municipal Corporations, said: Inasmuch as there are a number of matters before the Committee on Municipal Corporations, and as this will refer to them and affects the constitutionality of those bills, I should ask that they be passed for the present until we are enabled to hear from the Judiciary Committee on the subject.

Objection being made to the suggestion, Mr. EDWARDS continued: The classification of that bill as it now stands provides, I believe, that the sixth class shall be composed of cities and towns of 2,500 inhabitants, and up to 5,000. Now there are three towns in this State that range between 2,000 and 2,500. Two of those three towns want to come up into the sixth class, and the other does not. And as this country is one in which the majority should rule, I believe it would be more than right to make the sixth class from 2,000 to 5,000. I move you that this bill be referred back to the Committee on Municipal Corporations, with instructions to insert 2,000 and 5,000 in the sixth class instead of 2,500 and 5,000.

Mr. BAKER of Yolo spoke adversely to any such reference, and in favor of its immediate action.

The motion was lost.

Mr. FELTON moved that the bill be passed on the file until next Friday. Carried.

A. B. 123, to encourage the destruction of coyotes in the different counties of the State, and authorizing the Board of Supervisors of each of said counties to fix and determine the bounty for the destruction of the same, was read and passed—ayes 56, noes 1.

A. B. 75, to authorize the several counties, cities and counties, cities and towns of this State, and the officers and Boards of officers thereof, to receive property by gift, bequest and devise, and to hold, manage and dispose of such property, and the income and increase thereof, was passed—ayes 51, noes 4.

A. B. 31, to amend Section 415 of the Civil Code, in relation to the purchase and sale of real estate by insurance corporations, passed without debate—ayes 54, noes 3.

A. B. 186, amending an Act entitled an Act providing for appeals from orders forming reclamation or swamp land districts, setting off lands from such districts, or consolidating districts, approved April 16, 1880, was referred to a special committee, with instructions to amend.

The Assembly then passed to bills on the second reading file.

A. B 197, to compel individuals, companies or corporations owning or controlling water for purposes of irrigation to distribute the water pro rata among purchasers in times of scarcity, was temporarily passed on the file.

A. B. 189, to amend the third subdivision of Section 487 of the Penal Code, relating to the definition of grand larceny, was ordered engrossed and to third reading.

Mr. KELLOGG introduced the following Assembly concurrent resolution:

Whereas, the Supreme Court of the United States has rendered a judgment to the effect that the grant of the lands of the sixteenth and thirty-sixth sections, made to the State of California by an Act of Congress of the date of March 3, 1853, did not include any mineral lands; and, whereas, the State has offered such lands for sale and has issued certificates of purchase for the same, and citizens in many instances have placed valuable improvements and expended large sums of money thereon, therefore

Resolved by the Assembly, the Senate concurring, That the Senators and Representatives in Congress from the State of California be and they are hereby requested to use their efforts to secure the passage of a law that will as far as possible protect the rights of those persons having certificates of purchase thereof from the State of California, and to indemnify them against loss, and also to allow the State of California to make other selections of land in lieu of such mineral lands, in such manner as is set forth in H. R. bill 4385 of the Forty-sixth Congress, second session. Federal Relations.

Also, a resolution relative to the compilation and publication of the weekly history of Assembly bills, so as to make it correspond with the weekly history of Senate bills.

A motion for its adoption was made and lost.

At 4:30 P. M. the Assembly adjourned.

History of Bills.

George E. McStay, the Chief Clerk, assisted by F. J. Higgins, John G. Howell, J. M. Wright and F. N. Pauley, on every Monday has prepared a complete history of all the bills introduced in the Assembly during the week previous, which is entitled "History of Bills." A single glance at this neat and condensed compilation is sufficient to show the position of any bill and all the different stages of its passage through the House. This work is well and accurately done and is a great convenience to members.

GRAND LODGE, I. O. B. B.—The eighteenth annual session of the District Grand Lodge, No. 4, I. O. B'nai B'rith, was held at San Francisco Sunday, with a full representation from all parts of the State and coast. After reading the reports of the various officers nominated, said election of officers for the ensuing year was in order, with the following result: G. P., Julius Cerf; First V. P., S. Hirshberg; Second V. P., I. J. Asheim; Secretary, Louis Blank; Treasurer, M. Kalmuk; Guard, L. Lipman; Messenger, Leo Mayer; Trustees, H. Lovenberg, William Saalburg, M. Adler. Standing Committees: Library—I. Bornstein of Unity, Frank Sperling of Nevada, I. N. Choynski of Ophir, I. Hirsh of Modin, S Baruch of Golden Gate, G. Goldsmith of Pacific, D. S. Hirshberg of Oakland, Herman Roman of California, H. M. Heyneman of Columbia. Committee on Distribution—Jacob Greenbaum of Columbia, A. Loeb of Unity, E. Ginsberg of Columbia, I. N. Choynski of Ophir, B. Kozminsky of Ethan. On Credentials—L. Leldner of Ophir, E. Ginsberg of Columbia, Jacob Levisohn of Ethan. On Laws—S. Zekind of Unity, W. Kiersky of Hope, A. L. Badt of Ophir. On Finance—Ed. Kalisher of Columbia, William Lewis of Golden Gate, M. Waterman of Modin. On Appeal—Jacob Greenbaum of Columbia, Joseph Bien of Ophir, H. Lovenberg of California, D. A. Dancona of Ophir, Henry Schwartz of Pacific.

Baron Von Humboldt.

In his travels and explorations in South America, he became deeply interested in the wonderful properties of the Coca plant. Consumption and asthma, he says, are unknown among the natives who use it, and it is further more conducive to longevity. The Coca forms one of the ingredients of the Liebig Co.'s celebrated Coca Beef Tonic.

Beware of cheap, worthless imitations under our and similar names. Ask for Coca Beef Tonic.

HAMMER'S GLYCEROLE OF TAR, for coughs and colds Try it

DEFERRED DEBATES.

CONSIDERATION OF THE JOHNSON MURDER BILL IN THE SENATE.

On Wednesday, January 19th, the Senate having under consideration Johnson's S. B. 45, "An Act in relation to the killing of human beings, commonly called murder, and the punishment thereof," recommended for indefinite postponement by the Judiciary Committee, Mr. Johnson spoke in favor of his bill as follows:

Mr. President: In discussing the bill now before the Senate I shall endeavor to show the condition of our State, the non-enforcement of law as it is now upon the statute books and the necessity of a change if human life is to retain any value in California. The difference between civilization and barbarism lies in the manner in which the respective systems deal with the actions of individuals. In barbaric days every man protects himself and family against every other man and family, and each one looks no further than himself and family for defense or revenge. The family tie is the oldest known to history, sacred or profane. When Abraham journeyed in the Old World it was his own immediate family and dependents that protected him from robbery and murder. He did not rely upon any law or Court of any of the tribes upon whose domains he camped. In barbarism the strong right arm of the man is Sheriff, Court and law, and usually proves a very swift and effective defender and avenger. In civilization society takes the place of the individual, and assumes certain of the inalienable rights of man, or rather the protection of them. To paraphrase the expression in Holy Writ, "Vengeance is mine" says society, and the individual must abandon all thought thereof. The individual surrenders his personal rights—his individual preferences—his self-protective ideas—his duty to protect his family—and society assumes those obligations heretofore incumbent upon the individual, and agrees to enforce them equally upon and for all, regardless of sex or condition. It is a contract more sacred than those between man and man alone, because it embraces the care of human limb and life, and the preservation of peace between all. It should be observed on both sides. Society has no more right to neglect the performance of its portion than an individual; nor as much, for the individual is powerless against society. The giant society should keep to the spirit and letter his contract with the dwarf individual, because the dwarf individual cannot compel the enforcement, and the giant can. By the contract it is agreed by the one—society—to furnish protection, and by the other—the individual—to return obedience. The United States Government is to the States forming the nation but the same idea on a grander scale. The States surrender their individual rights to the Federal Government, and receive in return that protection and care which compensates for the loss of State rights. The Declaration of Independence phrases it in those glorious words so dear and so well known.

The State, or Government, or nation, or society, exhibits a larger and greater illustration of the same rule; carrying out the same ideas; seeking to carry into effect the same contract and recognizing the same principle which underlies civilization at all times, in all countries; that is, that the individual surrenders his individual rights and society says we will protect you. Now this society, or State, or nation, has enacted laws to punish acts deemed detrimental to the welfare of the whole. It makes no difference to me; it does not interfere with my feelings, or my notions, or with my life, or with my family, if a man in San Francisco should kill a hundred men there who were equally as venerable and as bald as the Senator from the Thirteenth, because I am not affected by the act. But society says, and I, as a component part of society, indorse the principle, that if one man is killed the whole nation, the whole society, has been affected and therefore the crime is punished; therefore it has been declared a crime; therefore laws have been enacted to punish a man that kills another, not because of the injury inflicted on the man that is killed, but because of the injury inflicted on society, because society has said, "We have agreed to protect that man in his life." Some writers have claimed that it was better for a man to die even by violence, even at the risk of making his wife and family suffer, if he is taken away suddenly; that it would save all the pangs of sickness and the long and weary suffering and waiting for death. But society does not take that into consideration. Law, which is society, says: "You have injured society. You have violated a contract. Therefore we punish you." At least that is what the law, the written law, says. The practice of society, as I shall endeavor to show, is entirely different. Society has taken from the individual the legal or society right to redress injuries, and has assumed that duty itself, and having assumed the duty it must carry it into effect. Having assumed the duty of protecting the individual, society ought to fulfill this duty. You cannot make a State or a nation, you cannot compel a society to do certain acts by process of Courts. You can only do it by enforcing, or changing the law. What I seek in the bill now before the Senate is to change the law, having come to the conclusion that the law cannot be enforced in the State of California which punishes one man for killing another man. Society has ordained certain rules or laws defining what are crimes, and prescribing penalties therefor. This would not be a crime against society, but for the fact that society has said it is a crime. Society, or the nation, or the State has the right under this contract to say that murder is not a crime, or that murder is a crime, and having said that murder was a crime and having prescribed a penalty for that crime, society ought to enforce the penalty. As I understand criminal jurisdiction and criminal jurisprudence, and the theory upon which punishment, or upon which laws are enacted prescribing punishment for crimes, it is done first to reform or punish the criminal, second to prevent a repetition of the offense, and third to keep the peace and insure the happiness of the whole. Perhaps this third proposition might be included in the second. Now, wherever the law, whenever a certain proportion of this aggregation of individuals, or individuals called society, fails to recognize these three propositions; fails either to reform the criminal or to prevent the repetition of the offense, or to keep the peace of the people and insure the happiness, the common happiness, that law ought to be stricken from the statute books. The moment that a law falls into disrepute because it is not enforced, that moment the law should be stricken from the statute books as a disgrace to civilization, and it is my purpose and province to-day to appeal to the judgment of every Senator here if the law which says that it will punish a man for murder has not become a mockery in the State of California, if it has not become easier to convict a man of any crime than it is to convict him of this, supposed to be the highest crime known to the law. I desire to and I believe I can convince the reason of the Senators to-day, that red-handed murderers are walking abroad in our midst, ready at any time to kill other people, knowing that the law has become a dead letter upon the statute book, and that it cannot be enforced in the State of California. So believing, I am in favor of changing the law. So believing, I am in favor of having some law upon the statute book that will punish a man who willfully imbues his hand in the blood of his fellow-man. These laws of society, thus propagated, should be enforced, first, because of the contract that has been entered into between society and individuals; second, because of the injury that results to society and individuals unless the law is enforced. If these laws are not enforced, then protection is not given to the individual, while the power is taken from the individual to defend himself. The law which was passed some years ago to prevent the carrying of concealed weapons resulted simply in placing the peaceable citizen at the mercy of every gambler and desperado in the State, for every gambler and desperado would still carry his knife and pistol, while the peaceable citizen has had to obey the law—the law which says to the innocent man that he shall not revenge himself against the man that kills his father, or his wife, or his child. Society fails in the enforcement of this duty. Society fails to keep this contract, and unless it accords to the venerable Senator from the Thirteenth that same protection and that same vengeance, it would be his power, his privilege, his right and his duty to maintain and enforce it. Society says to me that I shall not kill the man that kills my son. Society says to me that society will punish the criminal, and society, having taken from me the power to revenge or redress my injury, fails to keep its promise, and allows the red-handed murderer to walk abroad in the land. The wife of Dr. Lefevre in Oakland cannot revenge herself; she cannot redress the injury given to her by that foul murderer Schroder, because society has said: "We will protect you, Mrs. Lefevre; we will protect you and your family against murderers," and society has not kept its contract with her, and has fallen in abject submission before the sentimental appeals that were made by the defendant's lawyers in the case. Society says: "We will protect the family circle." Society says to the wife: "We will protect your husband." Society says to the child: "We will protect your parent." Society says to the parent: "We will protect your child against murderers." And society fails to do it in the State of California; and there is now no law for the punishment of murder in the State of California except the "601" organization in Bodie. I congratulate the Senator from Fresno upon representing one county in California that punishes the murderer, even if it goes outside of the dead-letter law in the statute book of California. Whenever society or government becomes so lax in its enforcement of its obligation; whenever society or government fails to protect men in the enjoyment of their life, their liberty or their property, it then becomes the duty of the people to alter or abolish that government, or to alter or change the law. Outside of these fundamental principles, in which all men necessarily agree, what, again I ask, has been the action of California as to the punishment of the crime of murder? In ancient times, from biblical days down, man's life has been sacred. It is written in holy scripture that blood shall be given for blood, and the avenger of blood is granted certain time in which to avenge a crime. In the early days of California, as I read in the history of the State, not having been here myself—the Senator from Marin, who was here in those days, long gone by, when I was not, may perhaps enlighten me as to whether I am correct or not—in the early days of California, as I am informed by old residents, and as I gather from reading the history of California, man protected himself; and in those days, as I am informed and believe, a man's life was more sacred than it is now. Judge Lynch enforced the law against murder. Judge Lynch protected the lives of the early pioneers of California, that their ready pistol and strong arm could not protect, and as I am informed and believe a man's life was more sacred in those days than it is at the present time. Since then we have claimed to have advanced in civilization. Society has taken the place of individuals. The Courts of justice have taken the place of the court of Judge Lynch, and society says: "We will protect man." Does society keep its promise? Is a man's life sacred now? You know that the answer must come in the negative. Human life is now less sacred than property; and this is not confined to one portion of California, but exists throughout the whole of the State. If this was simply a spasmodic epidemic, confined to the northern, or the southern, or the middle part of the State, there would be no necessity for discussion upon the proposition. But it extends all over the State; from one end to the other we read the same sickening account of men committing murder and being discharged by juries. The law reads well upon the statute books. I never knew a law that read any better than that one does. It sounds wonderfully stout and strong when you read it, but it amounts to nothing. It is like the Chinese gongs beaten by the Mongolian armies upon entering into conflict one with the other. It is a weapon preventing the individual from revenging the murder, while, at the same time, it is a weapon to keep the murderer from being punished. It is powerless either to protect the individual, to protect society, or to punish murder. The fault is entirely with society and of society. The fault is entirely with the people of California, and not with either the murderess or murderer. The juries are composed of a portion of society, of a portion of the State, and they have permitted themselves to be duped and their sentiments to be warped under the specious plea of emotional insanity, or some other fool notion, which only exists in the prolific brain of able and eloquent counsel, until the juries' verdict in a murder case is now almost universally "not guilty." It is the Courts, I mean the Courts of law and of society, which have been warped and molded by designing men for bad purposes. Eloquent lawyers in rhetorical flights, assisted by eminent judges, have united, if I may use the expression, in molding and building public sentiment to its present false condition, and even that palladium of our liberties, as it has been called, even the bold representatives of the newspaper press of the land, have indorsed and joined in with this cry and with this defense of murderers. There is but one daily newspaper, to my knowledge, in California; there was but one daily newspaper in the State of California to my knowledge that had the courage and the manhood to denounce the action of the jury in the Schroder murder case in Oakland, and that was the RECORD-UNION, published in Sacramento. No other daily paper to my knowledge. I see the reporter of the *Bulletin* shakes his head. I take the *Bulletin*, and I saw no editorial in the *Bulletin* denouncing the result—the most wicked result, in my judgment, ever attained by a jury in any country in the world. If I have done any injustice in this particular, I have done it unintentionally. I take a great many of the newspapers, not because I like to read them, and examine editorials which they give on every subject, sometimes when they know less about them than the Senator from the Tenth would have us believe he knows about anything (Mr. Dickinson, I mean), but because I like their proprietors. Now, let us examine the list, and see whether I am correct or not. In the county of Fresno a jury acquitted a murderer, although, as I was informed by these newspapers and by people from the county, they ought to have punished the man. In the county of Sacramento—and I say it with metaphorical ashes on my head, and sitting upon sackcloth—the juries have followed the same line, and have acquitted a murderer and murderess upon the same flimsy plea of emotional insanity, the result of an insult offered to a female relative of the murderer. Why, a man's life is not safe in this State, unless he is a member of this Senate, when it is permitted for a defendant to justify himself by proving that somebody told him that his wife had said in the back room of the house that some other man that he had killed had said something improper to her. The Senators, of course, need no such protection as that which I advocate. In the county of Napa a jury has recently acquitted a man. In the county of Solano, where a man was shot down without one word of warning by a man he believed to be his friend, the jury acquitted the man finally, under the same specious plea that some insult had been offered at some time to some female relative of the murderer. In the county of Alameda to which I have already partly referred, the Judge, in my judgment, enunciated principles of law unknown before in criminal law, or civil jurisprudence, in order to permit the murderer to go unpunished. In the county of San Francisco they can convict a Chinaman, and further than that they are utterly powerless—when the murderer goes to the store of the murdered man, armed for the occasion, and there deliberately shoots him after having had plenty of time to think about the matter, and the jury acquits him, because he had been called a vile name twenty-four hours before. In the county of Napa—but I believe I have already alluded to that—and in other counties in this State, even in the county of Nevada, the jury could not find a man guilty of murder in the first degree, although he had shot one of the best men that ever walked the streets of Nevada City, without provocation or justification. The Senator from Nevada knows well to whom I allude, for I knew T. W. Sigourney and I never met a better man. And so it goes all over the State. Chinamen, and Chinamen alone, can be convicted. A white man needs but to come into Court and there judge and jury will listen to pathetic appeals of his lawyer, and the judge will admit testimony to be introduced that would disgrace a Justice's Court in the backwoods of Posey county, Indiana, and permit the defendant to prove that a female relative has been abused or insulted and the jury then retire to their jury-box, enter upon prayer, or poker, and return a verdict of not guilty because he was insane, like the celebrated verdict in the Hiscock-Cole case in Albany. The jury in that case brought in a verdict that the defendant was sane the moment before he fired and he was sane the moment after, and that he was insane at the moment he fired the shot. To such a pitch has public sentiment arisen and grown in this State, that your life is not safe; that the punishment for murder has become a mockery and a bye-word, and whenever a man is charged with murder, we all say, "Why, he will be acquitted, of course." "By their fruits shall ye judge them," is the language used in the olden time, and I call on you to apply it to society in California, in reference to the punishment of murder. Why, sir, California has become almost a city of refuge for murderers. In the olden time, as you know, six cities of Judea were set apart as cities of refuge to which the murderer could flee and be safe, and then the avenger of blood was obliged to stay his hand. California enjoys the unenviable distinction of being a new city of refuge. There is one man in this State, perhaps, that might be convicted of murder, not because he is any more guilty than anybody else, but because all the newspapers of the State are clamoring that he be punished, because he unfortunately killed a newspaper man, and I give the newspaper men of this State credit, for whenever you hit one of their number they are united in protecting themselves against the assassin, and Clarence Gray of Santa Barbara will probably be convicted of murder. I know nothing about the circumstances of the case. I allude to it only as illustrating how newspaper men combine to protect themselves, for every newspaper man in the land has denounced the act as a cowardly murder, and called upon the people of Santa Barbara to punish the murderer. They have done what society ought to do—sought to protect themselves, and have, so far as I am informed, employed counsel to assist in the prosecution. It is the duty of society to change this condition of things; so, also, the Courts. It is the duty of the Legislature to meet and change the course of the ship of State, or it will shortly find itself upon the breakers of anarchy. The "601" organization will be springing up all over the State, unless something is done in this matter to change the condition of affairs; unless society seeks to change its course, unless it makes an effective law, Judge Lynch will raise his Court once more in California. The old right of the individual has only been suspended temporarily for the good of society upon the promise of society to protect the individual against all other individuals, and if that protection is not given and that promise not kept to the individual, can any man blame the individual if he seeks to protect himself and to seek in his own conduct and secure by his actions that protection which society refuses to give him? There is need of reform in this matter. It may be that the bill that I have had the honor to introduce goes too far. I have sought however simply in that bill to restore the Biblical doctrine, and have sought to guard the rights and to protect the minor children of the deceased by providing that the same statute of limitations shall be to them in this as it is in other cases. I have endeavored to protect the weak and feeble by giving them the right to allow somebody else to do their work for them, and I think that is fair, because, of course, a woman cannot protect herself or avenge the death of her husband. I have simply provided that the widow may hire some able-bodied citizen, like the Senator from the Thirteenth, who can redress her wrong.

Mr Zuck—Which Senator do you mean from the Thirteenth?

Mr. Johnson—Mr. Enos, I said. This Senator is gigantic in intellect but small in size. The other is gigantic in intellect and in size also. People may not have reached, society may not be ready yet to stand upon the platform that I have presented. But the bill that I have introduced is very little in advance of the same. It may be that it needs amendments. Then I would ask the Senator who moved its indefinite postponement to amend the bill, not to repeal it entirely, but recognize the principle; recognize the fact that society has broken its contract, and that the individual ought in justice to be permitted to defend and protect himself. Our State is grand and it is noble. Our State contains within its borders elements of greatness, which if rightly used, will permit California to become one of the brightest stars in the galaxy of States that adorn this nation, but, in order that California shall prosper; wise laws are needed for the people. The duty of the Legislature is to heed the warning cries of the people and change bad laws. Change laws which rob the individual of his rights while not giving him any protection in return. When I had the honor to be a member of the Assembly, I called the attention of the Legislature then to the fact that in my humble judgment, unless the warning cries that came up from the laboring men of San Francisco were heard, that the time would come when the laboring people of San Francisco would arise in their majesty and their strength and sweep both political parties from power in San Francisco, and my warning was not heeded, and the result proved that I was correct, for the laboring people of San Francisco did arise, believing themselves to be injured and outraged, and carried the city of San Francisco, sending here a majority of Senators and Assemblymen, representing the laboring people of San Francisco. So now I believe that there comes a cry from all over California—from the hill and the valley and the city also—which says to the Legislature, "Protect us." There comes a cry from sorrowing widow and weeping orphan, "Give, oh, give me back my father and the husband that cared for and protected us! Give, oh, give me back the arm that once shielded us from danger and gave us our daily bread!" And there comes a cry from outraged homes all over the State. There comes a cry from weak humanity everywhere. Society must keeps its contract. Society must protect the weak against the strong. Society must protect the good against the bad, or the people will take the law into their own hands and administer swift, though sure, justice on the murderer, no matter what his station in society.

Speech of Senator Nye.

Mr. President: I think there is more in the bill of the Senator from the Eighteenth—the one under discussion—than at first sight might appear. I confess that I am in favor of his bill; but I look at it from a different standpoint. Now, no law is of any force or effect unless its penalties can be carried out, and it is all wild theory to say that a thing out to be so when you cannot make it so. We must take society as we find it. We must take sentiment as we find it, and do with it the best we can. The optimist might say that every man should be hanged who committed murder. But so long as the voice of the people don't say so, we must do the best we can with it, and make such laws as shall conform to the public sentiment. Now, sir, there is some reason in this sentiment that prevails which excuses murder, because it can be called by no other name, which evades the penalty of the law for the purpose of excusing the murderer. Now, if we look back to the earliest history of crime as laid down by the historians, I think we can arrive at some idea why this sentiment has arisen and exists as it does.

Mr. Hittell—As I understand this bill, the relatives of the person who commits the murder have a right to kill him. I suppose, then, the relatives of that man that is killed have the right to kill them, and that it might go on in that way indefinitely.

Mr. Nye—That is it exactly. Now, originally, before society had an existence, so far as history can tell us, that was the law. That is, the family ties supplanted all others. The family existed before society existed, and when one of the members of the family was killed, something of the same sort of feeling existed towards the murderer that exists where a man has struck your person—you want to strike back; and after society had become formed and taken upon itself the punishment of criminals, we find the old idea mixed up with the new. We find it, as the gentleman from the Eighteenth has developed it, in the Bible, where it declares: "He that sheddeth a man's blood, by man shall his blood be shed," declaring that society should take that thing into its hands and do the work. In other places, however, we find rules laid down for the avenger of blood. Now, that was the law, and the origin of it, and the growth of it.

Among the German tribes, as Pike in his history of crime relates, murder was considered no offense, but as something to be settled among themselves. But as the power of the military chiefs increased they conceived the idea of compensation; that is, for every man who was killed, the family of the murdered man were entitled to a consideration in money, or cattle. As civilization increased they took it in money. Before that it was in cattle and sheep. For this reason the doctrine of the survival of the fitist always made it so that the man who survived was the strongest man, and necessarily the best fighter, and therefore the most useful to the chief; but as the condition of society changed, and it became more civilized, and when human life became more sacred, and when it was deemed necessary that it should be better protected, why then they created the laws as we find them—like the common law of England. To prevent these vendettas and quarrels, which would result in generation after generation being engaged in the quarrel, and the loss of an unlimited number of lives, where it was considered that, for the purposes of society and civilization and the state, life was more useful, that human life was protected by the enforcing of such a law, and hence the doctrine of murder, as we find it laid down in our books. But it is plain that society has outgrown that idea. And here I want to say that reforms always come from society. They never come from the law-makers, and it is not the first time in the history of law that reform has started in the jury-box and in the Courts. It was once law of libel that the truth of a libelous publication could not be used to justify a libel; and it so existed up to the year 1800, even in America, and it remained for Alexander Hamilton, the greatest among the learned lawyers and learned counsel of our land, to first declare, in the celebrated case of the People vs Croswell, that the truth might be given as justification for libel, and although the Judge charged that that was not the law, the jury took it into their hands and refused to find a verdict of guilty. The reform started in the jury-box and with the lawyers. It ended by an Act of the Legislature to conform to what then became evident was public sentiment, which declared that the truth might be given in evidence. Nor is our own State free from examples of that kind. I mean judicial legislation. There have been Courts who have been bold enough to take the law into their own hands and so legislate, and our Supreme Court have done it in one notable instance, creditable to both the heart and head of the Judge. Now, sir, I simply advert to this to show that I am correct about it. The law prior to 1869 concerning guardianship read as follows: "The father of any child who is a minor may, by his last will and testament, appoint a guardian or guardians of such child, whether born before or after the time of making such will; and in case of the death of the father, the mother of such child may in like manner appoint a guardian or guardians, if such child shall not then have any legally appointed guardian. These and every testamentary guardian shall give bonds, and qualify, and shall have the same powers and perform the same duties with regard to the child as the guardian appointed by the Probate Court."

Now, sir, I would like to know where there is a lawyer or man or woman who reading that would say a man could not make a testamentary guardian who should have control of the ward regardless of the claims of the mother and everybody else. And still Judge Sanderson, in the case of Lord vs. Hough, took the bit in his teeth, and in an opinion, in its sterling good sense as well as by its length, containing something like thirteen pages, he reasoned out the proposition that although the law said a man might make a testamentary guardian that would take a child away from its mother, that he could not do it. It was judicial legislation, and the next winter the Legislature declared by Act that to be law which the Court by judicial legislation had so decided.

Sir, we are going through that transformation now, and although it may be mere theory, I think it results from an idea existing in the community that the population is getting too numerous; that there must be some means whereby it shall be decimated; that the Malthusian theory of too dense a population is correct, and juries have indicated that, although the law says that a man who commits murder shall be punished as declared by law, yet they have taken reform into their own hands and declared that it shall not be so. The refinements of the jury system tend to the same result. Forsyth in his history of the jury tells us that in early times men were selected for jurors who were best acquainted with all the facts concerning the commission of crime and who knew all about it, and who therefore were better qualified to decide. As the refinements of modern civilization grew up the present system has come into use, where practically no one who has ever heard of a case with sufficient common sense to form an opinion can sit as a juror. And it actually happened that on the Schroder jury was an accepted juryman living within ten miles of Oakland, surrounded with that blaze of intelligence for which my county is noted, who had never even heard of the Schroder murder. What a boon to a poor, hunted criminal that he be tried by a jury of such profound knowledge of current events as that. There have existed such things as fictions in law. Everybody knows that the action of trover is a mere fiction. The original action of trover in common law set out that John Doe, a party in the case, lost his watch on the highway, and Richard Roe came along and found it. I say this to illustrate that fictions in law have arisen in this matter of murder as well as in other cases. As I said, common law, in action of trover, supposes that the plaintiff has lost his article, and that another man came along and found it, and this form of law is still used, when in fact no such losing and finding takes place; for example, when a man came and absolutely took it out of another's possession. Now, then, this new doctrine of emotional insanity is one of those things that has arisen as a sort of fiction in the law. Emotional insanity is, that a man at the moment that he commits murder, was insane—perfectly sane the moment after. It has been invented for the purpose of excusing men for murder in cases where public sentiment desires them to escape punishment. I refer to all cases of that character, but particularly advert to the one known as the Sickles case, where Sickles shot the paramour of his wife in one of those moments of emotional insanity, although at the very time the dereliction was going on between Mrs. Sickles and her paramour, he himself, it is said, was with a woman in like dereliction at Baltimore That is the sort of emotional insanity that was. But that is a well-known case, followed by the celebrated Cole case, followed in our State by the notorious Laura D. Fair case, followed again by that cold-blooded murder known as the Muybridge case, followed still later, and last by what is known as the Schroder case. Now, sir, I wish to illustrate this emotional insanity business. It is told that a very worthy Jewish widow once had a son, and like him whom Abraham was about to offer up as a sacrifice in the land of Moriah, he was an only son, and his name was Isaac. He was one whose manly beauty and mental perfections, added to the education and training which his mother had given him, made him the apple of her eye, and of course she watched his conduct in every way. She finally discovered what she thought was an aberration of the mind, and she immediately repaired to her spiritual adviser, and said: "Rabbi, my dear son Isaac is insane." "So great an affliction, my daughter! How does he look, and how does he act?" "Rabbi, only yesterday I saw him eat a pork sausage like a Christian." "Oh! that may be a private appetite, but not insanity—certainly not insanity." "Ah!" said she, "but that is not all. I have a handmaid—a servant. Her name is Sarah, and she is a beautiful girl. I traced his steps to the kitchen, and I saw him kiss her and hug her." "Ah!" said he, "that is not insanity. It may have been affection; it may have been lust, but not insanity. If he had eaten the girl and hugged the sausage, then you might believe that there was an aberration of mind." Now, sir, you take that case before a modern jury, and with a modern Court, and in the method in which they have ruled it in the murder cases of which I have spoken, they would have declared that man Isaac was insane.

Mr. Enos—An Alameda jury.

Mr. Nye—Now, sir, I say that all this shows that the tendency of public sentiment is against a strict adherence to the rules for the punishment of murder as we find them laid down in our statutes. I say that in those and all other cases we must consult public sentiment, and when we find a statute which is a dead letter upon the statute book, wipe it out, and let it conform to the improved sentiment of society. Mr. President, on the 25th of last September there was a young man in this city by the name of William C. Brown. He was an engineer on the Central Pacific Railroad. On that day towards evening he drove his engine from this city to Oakland wharf. Behind him he drew a train of cars loaded with hundreds of human lives. It was dark when they reached the wharf, but the headlight revealed to him the fact of a misplaced switch. It gave him time to escape from danger, provided he sacrificed the lives of those whom he had placed in his charge. He did his duty; with his hand upon the lever reversing his engine, he went over the wharf and to the bottom of the bay. And every passenger was saved. Four days later they brought what remained of that young man to the city of Sacramento, and the people stood uncovered while he was carried through their ranks to his last resting-place. There never was a nobler act of heroism. There was never a nobler hero than this young man they called Billy Brown. Long after you and I have crumbled into dust, and the little good that we may have done has been forgotten, and the name that we have written in the sand has been washed away by the remorseless waves of time, future generations of young men and women will read from their books the honorable record of this hero of the overalls and blouse. And their hearts shall thrill with a nobler impulse to the discharge of the duties of life. If it were not for the damnable blasphemy, for the outrageous sacrilege, I would compare the discharge of duty by the jury in the Schroder case to the conduct of that young man. Neither satire nor comedy will permit it. What I mean to say is that juries don't act up to their oaths. I mean to go further, and say that even Judges don't do their duty, and when a Judge gets up before a jury on an occasion of this kind and says if you believe from the testimony before you that the man was insane at the time he committed this act, then you should acquit him—I say that he don't do his duty, because he knows that it is a fiction of law when he undertakes to declare any such thing, when he knows that there is no testimony to warrant any such charge.

THE TREATY WITH CHINA.

On Thursday, January 20th, the Senate having under consideration Mr. Davis' concurrent resolution, directing California Senators to oppose the ratification to the amendments of the treaty with China, in their present form, Mr. Davis addressed the Senate as follows: Mr. President: Having introduced one of these resolutions, I suppose it will be proper for me to say something in regard to it, and I am glad of the privilege of stating to this Senate the reasons why I am in favor of these resolutions; why I do not think they are too radical. But, in view of the feelings of a few Senators on this floor, I beg leave to offer the following amendments to the resolutions: Amend preamble by striking out from lines seven and eight, printed copy, the words: "Thus conferring upon them the rights of naturalization and citizenship." Also, amend first resolution by striking out the word "the," in line five, after the word "prohibit," and insert in lieu thereof the words "any claim to."

The resolutions will then read as follows: "Whereas, The treaty recently concluded between the United States Government and the Government of China is now before the United States Senate for its ratification; and, whereas, said treaty provides, among other things, that the Chinese now in this country, and all others that may be allowed to come here for any purpose, are and shall be entitled to all the privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of the most favored nations; and, whereas, the said treaty further provides that it shall not be competent for the Government of the United States to prohibit the immigration of the laboring classes of said Empire to this country; therefore,

"Resolved by the Senate of the State of California, the Assembly concurring, That we are unalterably opposed to the ratification of said provisions of said treaty, and that we respectfully urge and demand, as we are most to be affected by said provisions, such amendments to said treaty as shall positively prohibit any claim to naturalization in this country of any subject or native of the Chinese Empire, and shall empower this Government to prohibit entirely the immigration to this country of any of the coolie or laboring classes of China.

"Resolved, That our Senators in Congress are hereby instructed, and our Representatives are requested, to use all means within their power to carry out the wishes of the people of this State as herein expressed.

"Resolved, That the Governor of this State be and is hereby requested to transmit by telegraph these resolutions to our said Senators and Representatives."

Now, to my mind, those amendments do not materially change the effect of the resolutions; for that reason I am willing that the resolutions should be adopted. As I said yesterday, the resolutions as they now stand, meet my sentiments exactly Now, Mr. President, it has been claimed upon this floor that these resolutions are improper, because they favor the idea that a treaty may govern the naturalization laws. It is asserted here that only the Congress of the United States has the jurisdiction over that question as to who shall be naturalized. Of course no one will dispute the legal proposition that Congress is the authority for determining that. Now, so far as this treaty is concerned, it may not directly confer that right. But to my mind a treaty made

INDIRECTLY CONFERS THE RIGHT OF NATURALIZATION,

And it is because I so believe that I am opposed to it. Now, I do not propose to state here why I am opposed to the Chinese; why I think it should not be the policy of the United States Government to encourage these people to come here; why they are a bad element of society. I take the ground that there is a unanimity upon that question. I do not know of any Senator upon this floor, unless it be the Senator from San Francisco, Mr. Dickinson, who thinks it would be a wise policy to naturalize the Chinese, in order that they might become a portion of our population. With that exception, I think there is a unanimity of feeling on that subject.

Now, the question is, do these treaties—does the Burlingame treaty and the supplemental treaty confer upon the Chinese, directly or indirectly, the right to become citizens of the United States? That is one of the questions embraced in this set of resolutions. That this matter is as stated in the resolutions, there is no doubt, because the treaty does expressly say that it shall not be competent for the Government of the United States to entirely prohibit the coming to this country of the coolie laboring class of the Chinese population. Now, then, do these treaties confer the right of naturalization? I claim that they do. I stated the other day that there was a diversity of opinion upon this question, both in the East and in California. So far as my observation extends, it is the general opinion in the East that this supplemental treaty does confer upon these people the right to become citizens of the United States. Some of the newspapers claim that it does not, and others hold to the contrary doctrine. There was read yesterday an editorial article from one of the leading San Francisco papers, which takes the view that the friends of these resolutions take, and not only holds that it confers upon the Chinese now here, but also upon those who may come into the country hereafter, the right to become citizens and voters. That is the opinion of the San Francisco *Examiner*, as against the editorial opinions of the San Francisco *Post*, quoted by Senator Sears the other day.

Mr. Chase—Will the Senator from Yuba accept the *Examiner* as authority?

Mr. Davis—I accept anybody as authority who tells the truth. I do not care whether it be a Democrat, a Greenbacker or a Republican paper. Now I wish to call the attention of the Senators to some provisions of the Burlingame treaty; and the point which I wish to make is this, that under the Burlingame treaty Chinamen have been naturalized and have become citizens of the United States. It has been held by the Courts of the United States that the Chinese were entitled to naturalization. That is

A QUESTION YOU CANNOT GET AROUND.

Whether it is under and by virtue of the Burlingame treaty or not, I do not care. The fact exists that they do claim the right, and in some cases it has been conferred upon them. I say if, under the Burlingame treaty, these people could claim this right, then much easier, under this supplemental treaty, or under the amendments to it, can they claim this right. Much easier can they claim this right. Now, then, the portions of the Burlingame treaty which I wish to read will be found in Articles 5 and 6. Article 5 reads as follows:

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

Mr. Enos—Will the Senator allow me a question?

Mr. Davis—Yes, sir.

Mr. Enos—Can Congress, under the existing treaty which you now claim confers the right of naturalization upon Chinamen—can Congress, under the power they have, pass any law which shall be above and superior to the treaty?

Mr. Davis—No, sir. I say there is no higher law in this country than that expressed in this treaty.

Mr. Enos—One more question. Isn't the legislation by Congress subject to the treaty?

Mr. Davis—Undoubtedly; there is no question about it. Now, I wish Senators to weigh the language of this section. I say, to my mind, it was in the mind of these plenipotentiaries and in the mind of the Senate when it ratified the Burlingame treaty that these people coming from China to this country might not only change their residence, but

MIGHT ALSO CHANGE THEIR ALLEGIANCE,

And they cannot change their allegiance unless they change their citizenship.

Mr. Watson—I will ask the Senator in that connection if the Burlingame treaty does not say that nothing in the treaty shall be construed to confer this right?

Mr. Davis—I am coming to that now. Article 6 says: "Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by the citizens and subjects of the most favored nations; and, reciprocally, Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel and residence as may there be enjoyed by the citizens and subjects of the most favored nations. But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon subjects of China in the United States."

Mr. Conger—Do you not consider this clause a contradiction of the other section, where it says the two governments recognize the right of their subjects to change their allegiance?

Mr. Davis—It seems to me it is somewhat of a contradiction. Of course it merely says in the sixth article that "nothing herein contained shall be held to confer this right." It is not absolutely conferred, but there is nothing herein contained to prevent it.

Mr. Wendell—I understood the gentleman to say that the Burlingame treaty had been construed to confer the right of naturalization, and the Courts had naturalized Chinamen under it.

Mr. Davis—I did not say it had been held to confer it; but I say that it does not by express provision prohibit. I say it is not a prohibitory clause.

Mr. Wendell—Simply that it shall not confer the right.

Mr. Davis—That they have no right to claim it.

Mr. Wendell—Do you think, under the laws of the United States, as they now stand, that a Chinaman is legally entitled to it?

Mr. Davis—I think that under the laws of the United States and the treaty, they are entitled to naturalization; and under the new treaty that right will become more forcible and plain.

Mr. Wendell—Then your opinion is now that they are entitled to it?

Mr. Davis—That they are entitled to that right, and it has been accorded to them. Now, I wish to call attention to Articles II. and III. of the new treaty, which of course is only supplemental to the Burlingame treaty—in other words, to be considered as an amendment. I claim that Article II. of the new treaty is an amendment to the Burlingame treaty, and that it does amend Article VI. of the old treaty, because it deals with exactly the same questions, almost in the same language, as far as it goes, and it takes the place of that provision of the Burlingame treaty, and becomes the law as between the two countries.

THE AMENDED TREATY.

"Article I. Whenever, in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects, or threatens to affect, the interests of that country, or to endanger the good order of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable, and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitation. Legislation in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse."

"Article II.—Chinese subjects, whether proceeding to the United States as traders, students or merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nations."

Now this has left off the provision in the Burlingame treaty which says that nothing herein contained shall be held to confer naturalization. I say, when these amendments to the Burlingame treaty are adopted by the Senate of the United States, if they are adopted, that that provision of the Burlingame treaty becomes stricken out, and is no longer any part of the treaty; and that the very clause which was intended should take away any claims to naturalization—that very clause is abrogated by the ratification of this treaty.

Now, then, it seems to me, Mr. President—and that is the position I take—that the Chinese under this treaty have a right to come to this country the same as the people from any other foreign country, and that they have just the same rights to citizenship that the Englishman, who comes from Victoria or Australia or England, has; or the Frenchman who comes from France; or the Mexican who comes from Mexico; that they come here on just the same footing exactly. Now, it is said on the other side that Congress regulates this question: that Congress by its naturalization laws says who shall be naturalized and who shall not be. It is very true, the law does state that. But you have to go still further, and say that the United States shall not discriminate among the classes of people who come here, all of whom are accorded all the rights and privileges that belong to the citizens of the most favored nations. Now, I would like to have some Senator point out to me a people from any country with which the United States Government has relations, with whom it has treaties—I would like to have you point out to me any people from any country that would not be entitled to citizenship under the naturalization laws. My proposition is that under the provisions of the Burlingame treaty, and this supplemental treaty, the Government has no right—it has the power—it has no right to prohibit the naturalization of Chinamen.

Mr. Enos—Has not the General Government the power and the right, if there was no treaty in existence, to prohibit by Congressional legislation the naturalization of Chinamen?

Mr. Davis—Undoubtedly so, sir. But we have a treaty of comity and amity with the various nations, England, France, Germany and Mexico, and with all the powers of Europe, even going to the Sandwich Islands. Now, the people of these nations have the right to come here, forswear their allegiance to their native country, and become citizens of the United States, every one of them. How then will any one say that the citizens of the Empire of China, who come here under these treaties the same as other people come, have not the same right? I say they have, and that Congress has no right to deny it to them.

Mr. Chase—A question ——

Mr. Davis—I would like for Senators to wait till I get through. I don't mind being interrupted every two minutes, but when it comes to a question every minute I must object. Now, I say the Government of the United States has no right to deny them this privilege; and why? Just for the same reason that it

HAS NO RIGHT TO PROHIBIT THE ENGLISHMAN,

Who comes here from England, from becoming a citizen. I say the United States can do it, provided it prohibit every people from every nation, because then the Act is uniform. It would be treating the people of every nationality alike with respect to this matter. But this treaty says the people of China shall be accorded all the rights and all the privileges and all the immunities that are accorded to the people of England, or France, or any other nation. Doesn't it say so? Isn't it one of the rights accorded to the people of England, and to all the other foreign nations who leave their native country, foreswear allegiance to it, and became citizens of the United States. Is not this right accorded to them? Then if that be so, that these people are entitled to all the rights which the people of other foreign nations are entitled to, then, I say, the United States Government has no right to discriminate as against the Chinese. That they have just the same right to come here and become naturalized citizens as the people from any other country on the face of the globe. If the United States Government should undertake to pass laws prohibiting the naturalization of the Chinese, I say it would be passing a law in direct violation of the treaty provisions between this country and the Empire of China. That is the position which I take on this question. It is possible I may be wrong, but I cannot see it in any other light. If I am wrong in this view, then my resolutions are wrong I will admit that. But to my mind I think the practical working of our naturalization laws bears me out that under our treaty with the Chinese Empire that naturalization has been conferred upon some of these people; and I think it will be still easier under this supplemental treaty which we have before us. For this reason I am

OPPOSED TO THE RATIFICATION OF THE TREATY.

I am further opposed to it because it takes away from the Government the power to say to these people, You shall not come. I know it may seem an extreme view to say that a law should be passed prohibiting any one from coming here. But in respect to this I am free to say that in my opinion such a provision should be had. We know by experience here that the Chinese are a bad element; that they do no good in any way, unless it may be to some of the capitalists who can make use of them; but that is nothing. I say they are an undesirable element in this country, and that their coming here should not be encouraged, should not be tolerated, because it will lead to grave consequences by and by.

Now I read an editorial article in one of the morning papers this morning, speaking of the resolutions under consideration, and saying that they ought not to pass. It took up what I claim to be the only argument that has been advanced by the people of the Pacific coast, which is entitled to the consideration of the people of the East, or that has ever received the consideration of the people of the East, and that was that the Chinese are an undesirable element, for the reason that

THEY ARE NOT ASSIMILATIVE.

That they do not adopt the habits and customs of American life; that they do not come here as other foreigners come, for the purpose of mingling with us, but that they are an element that will not assimilate. Now, this editorial goes on to say that we are going back on our own theory. That while we have heretofore said we did not want them here because they would not assimilate, now we turn round and say we do not want them here because they may assimilate. Now, Mr. President, I do not care what view is taken of this thing. It is enough for me to know that in no instance, in my opinion, would they be a desirable element in this country. My opinion is, we have too much assimilation now. If there is anything that this people is cursed with, it is with too much assimilation. I believe that every people, from every country, who can come here with American thought, and American feelings, and American action, and American decency, ought to be encouraged to come here and become a portion of us. But any people who cannot do these things, who cannot feel and imbibe the spirit of our free institutions, are an undesirable element that we ought not to encourage in coming, and should not be granted the rights of American citizenship.

Speech of Senator Sears.

Mr. Sears—I had expected from the author of these resolutions, when he takes the position of sustaining them—when he takes the position that under the treaty with a foreign nation the subjects of that nation thereby become naturalized, that he would have produced some authorities on this subject. I know of but one reason why he has not produced authorities. Simply from the fact that he cannot find a single authority in all the reports of the States of this Union, together with the reports of the United States Courts—not a single authority can he find to substantiate his argument.

Now, Mr. President, I congratulate the Senate, that on the day before yesterday, these resolutions were referred before we placed ourselves in opposition to the Constitution of the United States, and the authorities of our highest Courts. The Senator has simply given the Senate his opinion against the admitted authorities of all the Courts. Is that the position proper for a Senator to take? I submit it to himself. Is that the way in which he has been educated in his profession?

Now, Mr. President, the question of naturalization, and the power from which springs the right to naturalize foreigners, is derived from the Constitution exclusively; and the great judicial minds of this country have so interpreted the Constitution, and have never interpreted in any other way. Chief Justice Marshall, who stands as the highest authority in this Union, has given this interpretation, as well as other Judges. Senator Davis said openly in answer to a question from Senator Wendell, that by a treaty, naturalization could be conferred. Why, sir, the doctrine—

Mr. Davis (interrupting)—I said it was conferred indirectly; I did not say it could be conferred positively.

Mr. Sears—I accept this explanation. Indirectly it amounts to the same thing. It cannot be conferred directly, indirectly, or in any other shape, under any treaty which may be made. That is the broad doctrine. It is absolutely impossible under our Constitution, and the only authority he has read upon that subject is the San Francisco *Examiner*. The *Examiner* may have some motive in that interpretation of this question. The *Examiner* is a partisan paper, and I am willing to grant it may make, by its articles, political capital by any interpretation of the treaty. That is its privilege. The article which I read from the *Post* was not an editorial by the proprietor of the *Post*, but it was a quotation from the Burlingame treaty—not an editorial. The Senator reads from the treaty, which declares that citizens may have the right to change their allegiance. Why, Mr. President, that is one of the inalienable rights belonging to man; that is one of the principles upon which this Government was founded; but as to who shall become citizens can only be regulated by Congress, through the naturalization laws passed by Congress. Senator Davis says that the treaty is a higher law than any in the land—that it is a higher law than the laws of Congress. Why, sir, that is a new doctrine. The Constitution itself says that "Congress shall have the power to establish a uniform rule of naturalization." It was the language placed in the fundamental law of our Government conferring that power on Congress alone, and no power can take it from Congress. The President of the United States, the members of Congress, and the Senators of this chamber, all have taken an oath to support that Constitution, and the President cannot, by appointing plenipotentiaries to foreign nations, take that right from Congress. It would be an usurpation of power. It is absurd to give any other construction, and there is not a single authority in the land to the contrary.

Mr. Enos—If there was a provision in this treaty, and it was ratified by the Government, that Chinamen might be naturalized, would Congress, then, have the power, under the Constitution, to pass a law saying they should not be citizens?

Mr. Sears—Mr. President, I will answer the question. Still the gentleman ought not to ask such a question as that. If there was provision in this treaty, which I deny emphatically, conferring naturalization upon Chinese, it would be null and void, and of no effect. It would confer naturalization no more by being in the treaty than it would if left out. But if the gentleman will examine the naturalization laws, he will there see who can become citizens of the United States. I will come to that presently, and perhaps will answer it sufficiently to satisfy the gentleman. Senator Davis said, also, that citizens of England had no more right to become citizens than those of China. Why, Mr. President, the citizens of England become naturalized citizens of the United States because the naturalization law passed by Congress, under the provision of the Constitution, says that white persons may become citizens. That is the reason, and it is stipulated in the naturalization laws just who may become citizens, and only those can become citizens. Thus Mongolians can never become citizens.

[CONTINUED ON LAST PAGE.]