NOT AN AMENDMENT.

Legality of the Capital Removal Resolution

TO BE CONTESTED IN COURT.

Who Carried the Resolution from the Senate to the Assembly?

CHANGES IN THE LOWER HOUSE.

H. P. Livermore of Alameda Attacks the Resolution—The Secretary of State Restrained from Promulgating It, Pending a Hearing.

The matter of the legality of the resolution adopted by the last Legislature, the purport of which was to so amend the Constitution as to remove the seat of government from this city to San Jose, is likely to be settled at an early day, as it should be, so that both communities interested may know "where they are at."

There has been a great deal of discussion relative to the point at issue, but as the question could not possibly be determined by newspapers, nor resolutions adopted by public meetings, a citizen of another county, who is a heavy taxpayer in several counties—Horatio P. Livermore of Alameda—has taken steps to have the matter tested in the courts at an early day.

Yesterday Mr. Livermore, through his attorney, L. T. Hatfield, commenced an action in the Superior Court of this county against Secretary of State Waite, to enjoin that official from publishing, or certifying to the various County Clerks or other officials, the alleged passage of the resolution referred to. In a few days the laws, proposed constitutional amendments, joint and concurrent resolutions of the last Legislature will be ready for publication. Mr. Livermore, being a heavy taxpayer in several counties where proposed amendments to the Constitution would have to be advertised at considerable expense, and desiring an early settlement of the issue, deemed it advisable to take prompt action in the premises.

There is a local committee who have been considering this same matter for several weeks, and now have their report about ready. Some of the members of this committee were seen yesterday afternoon, and they expressed surprise and regret at Mr. Livermore's action, fearing that it might interfere with the committee's plans.

Mr. Hatfield, counsel for Mr. Livermore, when spoken to on this subject, said there was no reason for members of the committee to object to what he had done. The time in which to act, he said, was growing short, and Mr. Livermore authorized him to take immediate steps to test the matter at issue.

Below is given the full text of the complaint, also of the temporary restraining order issued by Judge Prewett of Placer County. By the terms of the latter the Secretary of State is cited to appear in court on the 24th of the present month, and show cause why the injunction asked for should not be granted; and pending such hearing he is restrained from taking any action in the matter of promulgating the resolution passed—or attempted to be passed—by the Legislature.

THE COMPLAINT.

Full Text of the Complaint and Prayer of Mr. Livermore.

Horatio P. Livermore, plaintiff, vs. E. G. Waite, Secretary of State of the State of California, defendant.

Plaintiff states: That he is a citizen of the State of California, residing in the County of Alameda, in said State.

That he is a taxpayer in said county of Alameda, and in the counties of San Francisco and Napa; and that he is, and for more than two years last passed has been, the owner of stock in corporations owning property in the counties of Sacramento and El Dorado, in said State, and as the owner of such stock he is a taxpayer in said counties of Sacramento and El Dorado. That the property interests of plaintiff upon which taxes are paid, in the said counties of Alameda, San Francisco, Napa, Sacramento, and El Dorado, aggregate the value of more than $50,000.

That said defendant, E. G. Waite, resides at the City of Sacramento, County of Sacramento, State of California.

That said E. G. Waite, defendant herein, is now, and for more than two years last passed has been, the Secretary of State of the State of California, duly elected and qualified, and that, as such Secretary of State, he has his office at the said City of Sacramento, County of Sacramento, State of California.

That in addition to the duties prescribed by the Constitution of the State of California, it is the duty of the Secretary of State to receive from the officers of the Legislature all records, journals and original papers used by the Legislature, and all Acts or resolutions enacted or adopted by the Legislature at its sessions; and to deliver to the State Printer, at the earliest day practicable after the final adjournment of each session of the Legislature, an index of all laws, resolutions (with marginal notes) and journals kept, passed or adopted at such session; and also, whenever any constitutional amendment or other question is to be submitted to the electors of the State for the popular vote thereon, the Secretary of State shall duly, and not less than twenty-five days before the date of the election at which such question is to be voted upon, certify the same to the Clerk of each county of the State, and the Clerk of each county shall include the same in the publication provided for in Section 1194 of the Political Code of the State of California.

That the duties above specified to be performed by such Secretary of State involve and make necessary the expenditure of money. That all money for defraying the expense made by such acts of the Secretary of State is from funds in the hands of the Treasurer of the State of California, derived from taxation of the taxable property within said State, including property owned and assessed to plaintiff and of corporations for the payment of whose taxes he is obligated.

That the publication of such proposed amendments by the Clerks of the respective counties of the State, including the Clerks of the counties of Alameda, San Francisco, Napa, El Dorado and Sacramento, necessitates the expenditure of money derived from taxation of the taxable property in said counties, including the taxation of the property of plaintiff in said counties.

That the city of Sacramento is now, and for more than twenty years last passed has been, the seat of government of the State of California, and by reason of the terms of Section 1 of Article XX. of the Constitution of the State of California, title "Miscellaneous Subjects," in words and figures as follows:

"The city of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each house, may provide, submitting the question of change to the people."

The city of Sacramento is declared to be the seat of government until changed by law, and that no law changing the seat of government shall be valid or binding unless the same shall be approved and ratified by a majority of the qualified electors of the State, voting therefor at a general State election under such regulations and provisions as the Legislature, by a two-thirds vote of each house, shall provide, submitting such question of change to the people of said State.

That no law was ever at any time enacted by the people of the State of California, represented in Senate and Assembly, by which the people of said State were authorized and permitted to vote in any manner touching the question of removal or change of said seat of government from said city of Sacramento to any other place in the State of California.

That no resolution was ever at any time adopted by the Legislature of the State of California by which the people of said State were authorized or permitted to vote in any manner touching the question of removal or change of said seat of government from said city of Sacramento to any other place in said State of California.

That notwithstanding the provisions of the Constitution constituting the city of Sacramento the seat of government of the State of California, and that no law had ever at any time been enacted by which the question of changing the location of the seat of government from said city of Sacramento had been submitted to the voters of said State for the popular vote, and notwithstanding the fact that no resolution had ever been adopted by the Legislature of said State of California by which the question of changing the location of the seat of government from said city of Sacramento had been submitted to the voters of said State for the popular vote, and notwithstanding the fact that no law or resolution providing for the removal of the seat of government of the State from said city of Sacramento had ever been voted upon by the qualified electors of the said State of California, the Hon. E. C. Seymour, Senator from the Thirty-ninth Senatorial District, a member of the Thirtieth Session of the Legislature of the State of California, on the 11th day of March, 1893, at the evening session of said 11th day of March, and after the hour of 10 o'clock in the afternoon of said day, requested the Secretary of the Senate to read what he designated as "Senate Constitutional Amendment, No. 23," in words and figures following:

"Senate Constitutional Amendment No. 23, submitting to the people of the State of California an amendment to the Constitution, amending Section 1 of Article XX. of the Constitution of the State of California, relative to changing the seat of government from the city of Sacramento to the city of San Jose. The Legislature of the State of California, at its thirtieth session, commencing on the 2d day of January, A. D. 1893, two-thirds of all the members elected to each house of said Legislature voting in favor thereof, hereby proposes that Section 1 of Article XX. (miscellaneous subjects) of the Constitution of the State of California be amended so as to read as follows:

"Section 1. The city of San Jose is hereby declared to be the seat of government [of this State], and shall so remain until changed by law, but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each house, may provide, submitting the question of change to the people; provided, that the State shall receive a donation of a site of not less than ten acres and $1,000,000 before such removal shall be had. The Governor [the], Secretary of State and the Attorney-General are hereby authorized to approve said site, and upon the approval thereof and the payment of $1,000,000 into the State Treasury the Legislature shall provide for the erection of the necessary building and the removal of the seat of government."

[NOTE.—The words in brackets did not appear in the resolution as passed by the Senate, but were afterward inserted by some one in the Assembly.—EDS. RECORD-UNION.]

That said Seymour, Senator as aforesaid, moved the adoption thereof by the said Senate as and for an amendment to the Constitution of the State of California, which motion was seconded by a member of said Senate; and thereupon the roll of Senators was called to vote upon the adoption or rejection of said alleged Senate Constitutional Amendment No. 23. That the Secretary of said Senate, in charge of the roll-call, announced that the following Senators voted "aye" as each name was called, viz.: Messrs. Bailey, Berry, Broderick, Burke, Campbell, Denison, Dunn, Earl, Fay, Flint, Ford, Gesford, Harp, Hart, Hoyt, McAllister, McGowan, Mahoney, Mathews, Mitchell, Orr, Ragsdale, Seymour, Simpson, Streeter, Voorheis, Whitehurst and Williams; and that the following Senators voted "no," viz.: Arms, Carpenter, Langford, Maher, Martin, Shippee and Wilson.

That thereupon and immediately after the announcement of the votes, Hon. E. C. Voorheis, Senator from the Fourteenth Senatorial District, moved that the Senate then adjourn; and thereupon, upon such motion to adjourn, the roll was called, nineteen Senators voting in favor of adjournment and seven Senators voting against adjournment, whereupon the President of the Senate declared the Senate adjourned.

That in truth and in fact the Hon. E. C. Voorheis did not vote "aye" upon the question of the adoption or rejection of said alleged Constitutional Amendment No. 23, but that by reason of the announcement of the Secretary that all the Senators, other than Hon. E. C. Hart, Senator from the Thirteenth District, named as voting "aye" on said proposition, had so voted, the said Senator Hart, who had in fact voted "no," relying upon the announcement of the Secretary of the Senate in charge of the roll-call, changed his vote from "no" to "aye"; that he made such change for the sole and only purpose of giving notice of and making a motion for the reconsideration of the vote by which said resolution had been declared adopted. That by reason of the action of the Senate, and the taking of an immediate adjournment, the said Hon. E. C. Hart was deprived of an opportunity to give notice and move for a reconsideration of said vote. That in truth and in fact, the said resolution proposing said alleged Senate Constitutional Amendment No. 23 was never at any time adopted by the votes of two-thirds of the members of the Senate.

That immediately, and within thirty minutes after the announcement of the vote of the Senators upon said alleged Senate Constitutional Amendment No. 23, and without the enrollment or engrossment thereof, and without any direction of the Senate, and without any authority whatever, some person or persons to this plaintiff unknown, carried what purported to be a copy of said alleged Constitutional Amendment No. 23 to the Assembly chamber and represented the same to have been duly adopted by the Senate. That the paper carried to and delivered to the Assembly, purporting to be a copy of said resolution introduced in the Senate by Hon. E. C. Seymour, is in words and figures following:

"Senate Constitutional Amendment No 23. Submitting to the people of the State of California an amendment to the Constitution, amending Section 1 of Article XX. of the Constitution of the State of California, relative to changing the seat of government from the city of Sacramento the city of San Jose. The Legislature of the State of California, at its thirtieth session, commencing on the second day of January, A. D., one thousand eight hundred and ninety-three, two-thirds of all the members elected to each house of said Legislature voting in favor thereof, hereby proposes that Section 1 of Article XX. (miscellaneous subjects) of the Constitution of the State of California, be amended so as to read as follows:

"Section 1. The city of San Jose is hereby declared to be the seat of government, and shall so remain, until changed by laws, but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor, at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each house, may provide, submitting the question of change to the people; *provided*, that the State shall receive a donation of a site of not less than ten acres and one million of dollars, before such removal shall be had. The Governor, Secretary of State, and the Attorney-General are hereby authorized to approve said site, and upon the approval thereof, and the payment of one million dollars into the State Treasury, the Legislature shall provide for the erection of the necessary buildings and the removal of the seat of government."

That thereafter the Hon. John C. Lynch, Assemblyman from the Seventy-eighth Assembly District, moved that the rules of the Assembly be suspended, and that said alleged Senate Constitutional Amendment No. 23 be considered. That thereupon Hon. J. L. Sargent, Assemblyman from the Fifteenth Assembly District, moved the previous question; that said motion was seconded by Hon. J. J. McElroy, Assemblyman from the Seventeenth Assembly District, and E. E. Drees, Assemblyman from the Forty-eighth Assembly District; and thereupon the Speaker of said Assembly stated the question to be: Shall the main question be now put? That a call of the house was demanded and allowed, whereupon it was shown that nineteen Assemblymen were absent without leave, and the Sergeant-at-Arms was ordered to bring the absentees before the bar of the house. That thereafter and at said evening session of the Assembly, upon call of the roll of said Assembly, the Speaker thereof announced the vote, and declared the resolution proposing said alleged Senate Constitutional Amendment No. 23 to be adopted by a vote of 57 Assemblymen voting for said resolution and 7 Assemblymen voting against said resolution. That thereupon Hon. G. W. Mordecai, Assemblyman from the Sixty-seventh Assembly District, gave notice that on the next legislative day he would move for a reconsideration of the vote by which said resolution proposing said alleged Senate Constitutional Amendment No. 23 had been declared adopted by said Assembly. That thereupon, without further action, the Assembly adjourned.

That thereafter, and on the 13th day of March, 1893, at a regular session of the Assembly of the State of California, the Hon. John C. Lynch, Assemblyman from the Seventy-eighth Assembly District, moved that the vote by which Senate Constitutional Amendment No. 23 had been declared adopted by said Assembly be reconsidered, and immediately upon making such motion the said Hon. John C. Lynch moved to lay said motion to reconsider on the table. That during the same day, and after the hour of 2 o'clock in the afternoon of said day, during a regular session of said Assembly, the question being on a pending motion to lay on the table the motion to reconsider the vote by which the said resolution proposing said alleged Constitutional Amendment No. 23 had been declared adopted by said Assembly, the ayes and noes were demanded by Hons. Lynch, Pendleton and Johnson, and the roll was called, and the motion to lay on the table the motion to reconsider the vote by which the resolution proposing said alleged Senate Constitutional Amendment No. 23 was declared adopted by said Assembly was carried by the vote of 58 Assemblymen voting in favor of laying on the table and 16 Assemblymen voting against laying on the table.

That thereafter, and on the — day of March, 1893, the thirtieth session of the Legislature of the State of California adjourned sine die without having at any time made any other or different disposition of the motion to reconsider the vote whereby the resolution proposing said alleged Senate Constitutional Amendment No. 23 was declared to have been adopted, and that said resolution proposing said alleged Senate Constitutional Amendment No. 23 was never at any time legally adopted by the Assembly of the State of California.

That after the votes taken by the Senators and Assemblymen, as above set forth, and prior to the 11th day of April, 1893, the records of the proceedings of the Senate and Assembly respectively, with respect to said alleged "Senate Constitutional Amendment No. 23," and the original of such resolution as adopted in the Senate, and the alleged copy thereof as delivered to the Assembly, and the original journals of the Senate and Assembly, including the records of the matters hereinbefore set out, were transmitted to the defendant, as such Secretary of State, by the Secretary and Assistant Secretary of the Senate, and the Chief Clerk and Assistant Clerks of the Assembly; and such original records, journals and resolution ever since have been, and now are, in the custody and control of defendant, as such Secretary of State; and he is now about to prepare, or cause to be prepared, an index of all laws, resolutions (with marginal notes) and journals kept, passed or adopted at said thirtieth session of the Legislature of the State of California, including the record, journal and original of said resolution constituting said alleged "Senate Constitutional Amendment No. 23," and the alleged copy thereof delivered to the Assembly, for the purpose of certifying to the State Printer such index and marginal notes, for printing and publication.

That the defendant, as such Secretary of State, is about to proceed with the codification, classification and arrangement of all the journals, records, Acts passed and resolutions adopted by said thirtieth session of the Legislature of the State of California, including proposed amendments to the Constitution of the State, for the purpose of preparing for certifying to the Clerks of the respective counties of the State such matters as the Secretary of State is required to certify to such Clerks, by the provisions of Sections 1194 and 1195 of the Political Code.

That defendant is including in his arrangement for the certification of an index and marginal notes to the State Printer, an index and marginal notes to said alleged "Senate Constitutional Amendment No. 23." That defendant is arranging and preparing to certify to the clerks of each County in the State of California, as a proposed constitutional amendment to be submitted to the electors of the State for the popular vote, said alleged "Senate Constitutional Amendment No. 23."

That if the defendant, as such Secretary of State, does prepare or cause to be prepared an index and marginal notes to said alleged "Senate Constitutional Amendment No. 23," and does certify the said index and marginal notes to the State Printer, such work will involve the expenditure of money derived from the collection of taxes levied upon, or to be levied upon, the taxable property of the taxpayers of the State of California, including the property of plaintiff.

That if the defendant, as such Secretary of State, does certify to the Clerk of each County of said State, said alleged "Senate Constitutional Amendment No. 23" for publication and vote, as provided in Sections 1194 and 1195 of the Political Code, such certificate and publication will require the expenditure of money derived from the collection of taxes levied, or to be levied, upon the taxable property of the taxpayers of the State of California, including the counties of Alameda, San Francisco, Napa, El Dorado and Sacramento, and thereby including the property of plaintiff.

That no other officer of the State is charged with, or required to perform, the acts specified as devolving upon the Secretary of State.

The plaintiff avers and charges that said alleged "Senate Constitutional Amendment No. 23" is null and void, and of no legal or binding effect, and that there was not at any time any constitutional or legal action taken by the thirtieth or any other session of the Legislature of the State of California to legally and constitutionally adopt any resolution or enact any law embracing the subject of amending the Constitution of the State, for the purpose of providing for the removal of the seat of government from the city of Sacramento to the city of San Jose or any other place. That the alleged Senate Constitutional Amendment No. 23, as voted upon in the Senate, is another and different resolution from that delivered to and voted upon in the Assembly, which is not a copy of the original.

That said proposed amendment to the Constitution is void for the following reasons:

1. Because there is not now, nor ever was, enacted by the Legislature of the State of California any law whatever providing for changing the seat of government from the city of Sacramento to the city of San Jose or any other place.

2. Because there was never at any time submitted to the qualified electors of the State, voting at a general State election, or at any other election, for the approval and ratification of said electors, any law whatever making or providing for the changing of the seat of government of the State from the city of Sacramento to any other place.

3. Because said resolution purporting to be "Senate Constitutional Amendment No. 23" does not contain any provision for submitting it to the people of the State to be voted upon at any election at any time or in any manner, nor was any law enacted by said Legislature, or any Legislature, providing for the submission of said alleged amendment to the qualified electors of the State for their approval, at any time.

4. Because the resolution voted on by the Assembly is not a copy of the resolution voted upon by the Senate.

5. Because said purported proposed amendment to the Constitution is uncertain and indefinite, and does not embrace within its terms any provisions by which the qualified electors of the State may be informed as to the time, terms, conditions or cost of such proposed removal, or the means of paying therefor, nor does it make any provision for the providing and paying for any change in the location of the seat of government of the State.

6. Because said alleged proposed constitutional amendment was not engrossed and enrolled and entered upon the journal of the Senate at the time its adoption was moved, nor at any other time before an alleged copy thereof was by some person or persons unknown to plaintiff carried to the Assembly chamber and delivered to that body.

7. Because said alleged proposed amendment was never at any time legally or constitutionally transmitted to the Assembly from the Senate, and the Assembly never had any right or power to act upon it in any particular, and that no final vote was in fact taken thereon.

8. Because after said alleged proposed amendment was voted upon by the Assembly, and in due time a notice of motion to reconsider was given and entered upon the journal of the Assembly, which said motion to reconsider was never at any time voted upon by the Assembly, and the Legislature adjourned *sine die* without having disposed of said motion to reconsider; and the will of said Assembly was never expressed upon said motion to reconsider.

That by reason of the matters and things alleged and charged, such proposed Senate Constitutional Amendment No. 23 was never legally or properly adopted or transmitted to the defendant, as Secretary of State, and no record thereof, nor any original paper relating thereto, or containing the words and figures comprising said alleged amendment, were ever at any time legally and properly constituted a record, resolution, law, or journal entitled to a place in the custody of defendant, as such Secretary of State, nor was any original paper, resolution, journal, record or copy of said alleged amendment a proper or legal subject for an index or marginal note, or a legal or proper subject to be certified to the Clerks of the respective counties of the State for publication for the purpose of submitting the same to the electors of the State for the popular vote, at any time whatever.

That the expenditure of any money whatever by defendant as such Secretary of State, in the preparation of any index or marginal notes and the certifying thereof to the State Printer, and the printing thereof, will take from the funds of the State, derived from taxation of the property of the taxpayers of the State, including plaintiff, money, without any authority of law and for an unlawful purpose, and that the payment of such expense will thereby greatly and irreparably injure plaintiff, and deprive him of money without any remedy whatever for the recovery thereof.

That the expenditure of any money whatever by the defendant, as such Secretary of State, in certifying to the Clerk of each county of the State the said alleged constitutional amendment for publication as provided in Sections 1194 and 1195 of the Political Code, and the publication thereof by said Clerks, will take from the funds of the State and the respective counties thereof, derived from taxation of the property of the taxpayers of the State, including plaintiff, money, without any authority of law and for an unlawful purpose, and that the payment of such expense will deprive plaintiff of a portion of his property, without any remedy whatever, and thereby greatly and irreparably injure plaintiff.

That plaintiff heretofore, and prior to the making of any index or marginal notes to said alleged constitutional amendment, notified the defendant, as such Secretary of State, that said "Senate Constitutional Amendment No. 23" was null and void, and that the same had never been legally or constitutionally adopted, engrossed, enrolled or transmitted to the Assembly, and that said Assembly had never at any time been legally or constitutionally possessed of the same, or a true copy thereof, and had never disposed of it; and pointed out to and informed defendant, as such Secretary of State, as to the truth of the matters and things herein set out touching such proposed amendment; and thereupon plaintiff requested defendant, as such Secretary of State, to refrain from preparing and certifying to the State Printer any index and marginal notes of said alleged amendment, and requested defendant, as such Secretary of State, to refrain from certifying to the Clerk of each county the said alleged Senate Constitutional Amendment No. 23 for publication, as provided in Sections 1194 and 1195 of the Political Code; and notified defendant, as such official, that such officer was a taxpayer in said State, in the respective counties named, and that the performance of the acts specified touching the conduct of defendants would deprive plaintiff of a portion of his property without compensation, and thereby greatly and irreparably injure plaintiff. But that defendant, wholly disregarding the facts and wholly disregarding the rights of plaintiff and the laws of the State, as such Secretary of State, refused and now refuses to refrain from the preparation of an index and marginal notes to said alleged proposed amendment, and refused and still refuses to refrain from incurring the expense attending the same; and defendant refused to refrain from certifying to the Clerk of each county of the State the matters set out in said alleged proposed amendment, for publication by said Clerks, for the purpose of submitting the same to the electors of the State for the popular vote thereon, and refused to refrain from incurring the expense attending such acts.

That defendant informed plaintiff and asserted that, although he had not prepared such index and marginal notes, and had not yet certified to the Clerk of each county of the State the matters set out in said alleged constitutional amendment, he would do so, and that he would in all things act and treat said alleged Senate Constitutional Amendment No. 23 as if it had been in all respects constitutionally and lawfully adopted, engrossed, enrolled and transmitted to him as such Secretary of State, and that he would incur and cause to be incurred any and all expense incident to the performance of the acts specified, and that he will at once proceed to so act.

That thereupon, and by reason of the premises, plaintiff avers that unless defendant be restrained and enjoined from preparing an index and marginal notes to said alleged Senate Constitutional Amendment No. 23, and restrained and enjoined from certifying such index and marginal notes to the State Printer, defendant will prepare such index and marginal notes to said alleged amendment, and will incur the expense for such work, and will thereby cause to be expended a portion of the funds derived from taxation of the property of plaintiff in said State and in said counties of Alameda, San Francisco, Napa, El Dorado and Sacramento, and thereby greatly and irreparably injure plaintiff, and that unless defendant, as such Secretary of State, be restrained and enjoined from certifying to the Clerk of each county of the State the matters set forth in said alleged amendment for publication by the respective Clerks, as provided in Sections 1194 and 1195 of the Political Code, for submission to the popular vote of the electors of said State, the defendant will so act, and thereby cause the expenditure of money derived from taxation of the property of the plaintiff in said State and in said counties of Alameda, San Francisco, Napa, El Dorado and Sacramento, and thereby greatly and irreparably injure plaintiff.

That unless defendant, as such Secretary of State, be restrained and enjoined from such action of certification as specified, it will be necessary for the plaintiff to institute actions against the State Printer to prevent the printing, binding and publication of such alleged Senate Constitutional Amendment No. 23, and to institute actions against the Clerk of each county of the State to prevent the publication of the matters required to be published by the said Clerks under the provisions of Sections 1194 and 1195 of the Political Code, and thereby require plaintiff to maintain a multiplicity of suits, and thereby incur great expense without any remedy for the recovery thereof, and thereby greatly and irreparably injure plaintiff.

Wherefore plaintiff prays judgment against defendant, as Secretary of State of the State of California, that he be restained and enjoined from preparing or causing to be prepared any index or marginal notes to the alleged Senate Constitutional Amendment No. 23; that he be restrained and enjoined from incurring any expense whatever, for which the State of California, or any taxpayer of said State, as such, will in anywise be liable in connection with or in relation to said alleged Senate Constitutional Amendment No. 23.

That defendant E. G. Waite, as Secretary of State of the State of California, be restrained and enjoined from in anywise, or at any time, certifying to the Clerks of the respective counties of the State, any matters or information or any nature whatever, for publication by said Clerks, or any of them, with the view and intent to have said Clerks make publication touching said alleged amendment, or for the purpose of having said alleged Senate Constitutional Amendment No. 23 submitted to the electors of the said State for popular vote of said State, at any time whatever, and that he be restrained and enjoined from in anywise incurring any expense whatever, for which the State of California, or any taxpayer of said State, as such, will in anywise be liable, in connection with any act as such Secretary of State, touching said alleged Senate Constitutional Amendment No. 23; and for such other and further relief as may be proper in the premises, and for general relief.

L. T. HATFIELD,
Attorney for Plaintiff.

THE ORDER GRANTED.

Judge Prewett of Placer Issues a Restraining Order—The Hearing Set.

The complaint of Livermore and his petition for an order restraining the Secretary of State from acting in the premises were brought before Judge Prewett of Placer County—who is sitting temporarily in Department Two—who issued the following restraining order:

In the Superior Court of the County of Sacramento, State of California, before J. E. Prewett, Judge of Superior Court of Placer County, acting and sitting herein by request of the Judge of this court, Horatio P. Livermore, plaintiff, vs. E. G. Waite, Secretary of State of the State of California, defendant.

The above-named plaintiff having commenced an action in the said Superior Court of the County of Sacramento, State of California, against the above-named defendant, and having prayed for an injunction against said defendant, requiring him to refrain from certain acts in the complaint in said action, and hereinafter more particularly mentioned.

On reading the said complaint in said action, duly verified by the oath of Horatio P. Livermore, plaintiff in said action, and it satisfacorily appearing to me, that if the allegations of said complaint are true, it is a proper case for an injunction as prayed for, and that sufficient grounds exist therefore, and the necessary undertaking having been given; It is therefore ordered: That you, the said E. G. Waite, Secretary of State of the State of California, be and appear before the said Superior Court of the County of Sacramento, State of California, in the courtroom of Department No. Two of said court, in the Courthouse of said county, in the city of Sacramento, on the 24th day of April, 1893, at the hour of 10 o'clock A. M., of said day, then and there to show cause to said court, if any cause you have, why you, as such Secretary of State of the State of California, and each and all of your assistants, clerks, employes, agents, attorneys, and all others acting by or under your authority, as such Secretary of State, should not be perpetually restrained and enjoined from preparing or causing to be prepared any index or marginal notes to a certain resolution, alleged to have been adopted by the Legislature of the State of California, at the thirtieth session thereof, and known and designated as Senate Constitutional Amendment No. 23.

And further, to show cause to said court, if any cause you have, why you, as such Secretary of State, and each and all of your assistants, clerks, employes, agents, attorneys and all others acting by or under your authority, as such Secretary of State, should not be perpetually restrained and enjoined from in anywise or at any time certifying to the Clerk of each or any county of the State of California any matter or information, of any nature whatever, for publication by said Clerks, or any of them, with the view and intent to have such Clerks make publication touching said alleged Senate Constitutional Amendment No. 23, or for the purpose of having said alleged Senate Constitutional Amendment No. 23 submitted to the electors of the State of California for the popular vote thereon, at any time whatever.

And further, to show cause to said court, if any cause you have, why you, as such Secretary of State, and each and all of your assistants, clerks, employes, agents, attorneys and all others acting by or under your authority as such Secretary of State should not be perpetually restrained and enjoined from incurring any expense for which the State of California, or any taxpayer thereof, as such, will in anywise be liable, in connection with, or in relation to, said alleged Senate Constitutional Amendment No. 23.

And it is further ordered, that pending the hearing and determination of said action, or until further orders in the premises, you, the said E. G. Waite, Secretary of State of the State of California, and each and all of your assistants, clerks, employes, agents, and all others acting by or under your authority, as such Secretary of State, do absolutely desist and refrain from preparing or causing to be prepared any index or marginal notes to said Senate Constitutional Amendment No. 23.

That pending the hearing and determination of said action, or until further orders in the premises, you, the said E. G. Waite, Secretary of State of the State of California, and each and all of your assistants, clerks, employes, agents, attorneys, and all others acting by or under your authority, as such Secretary of State, do absolutely desist and refrain from incurring any expense for which the State of California, or any taxpayer thereof, as such, will in anywise be liable, in connection with, or in relation to, said alleged Senate Constitutional Amendment No. 23.

J. E. PREWETT,
Judge of said Court.

SENATE BILL NO. 693.

Secretary Higgins Says Its Passage Was Certified to.

A reporter of the Los Angeles *Express* called yesterday on Private Secretary Higgins in regard to the published statement that Senate Bill No. 693, which is now on the statute books, was not passed by the Assembly. Mr. Higgins stated that the statutes made it his duty to receipt for all bills brought to the Governor to consider, and that before any bill is receipted for and entered on the record of "bills passed" its passage must be certified to by the Clerk of the Assembly and Secretary of the Senate, and attested by the Speaker of the House and President of the Senate.

This was done in the case spoken of, all four of the officials above named having signed the requisite certificates.

The Governor has no means other than those above recited, said Mr. Higgins, for ascertaining if a bill is properly before him. All the legal requirements being complied with, and the measure being considered by the Governor a proper and useful one, it received his signature, and the Governor was not aware, until the publication of a telegram, that the bill had not passed the Assembly.

WHAT THE GOVERNOR SAYS.

A telegram from Pasadena says that Governor Markham, now there, stated yesterday that the bill came to him in due form signed by the Assembly Clerk, the Secretary of the Senate the Governor's Private Secretary, the Speaker of the Assembly and President of the Senate. After looking the bill over he signed it, supposing, of course, that it had passed both houses of the Legislature. He did not know.

POSSIBLY DUE TO CARELESSNESS.

An attache of the last Senate says the trouble over Senate Bill No. 693 must be attributable to the Reading Clerk of the Senate. That officer kept a tab of all bills, so did the Assistant Minute Clerk and two assistant clerks. These could not all have been mistaken if the clerk had not read falsely. His tab must have been wrong, too, because all three of these clerks checked their record with his tab after each adjournment.

The daily History Clerk and the Enrolling Clerk, who recorded the indorsements on the bill, must also have been negligent of their duties or they would have discovered that 693 had been refused passage by the Assembly, and should have called the attention of the President of the Senate to the fact.

RAILROAD TAXES.

Second Installments Paid in for the Past Year.

The second installment of State and county taxes for 1892, due upon assessment by the State Board of Equalization from the various railroads and falling delinquent this month are as follows, as shown by the records of the apportionment in the Controller's office:

Northern California Railroad Company	$1,704 21
Central Pacific Railroad Company	95,705 16
San Francisco and North Pacific	10,924 43
Northern Railway Company	20,018 87
California and Nevada Railway Company	427 04
Atlantic and Pacific Railroad Company	986 22
North Pacific Coast Railroad Company	2,386 12
Pacific Coast Railroad Company	2,568 57
Nevada, California and Oregon Railroad Company	870 59
Nevada County Narrow-Gauge Railroad Company	1,096 58
Southern Pacific Railroad Company	109,227 71
Southern California Railroad Company	20,211 86
Carson and Colorado Railroad Company	2,389 15
California Pacific Railroad Company	11,897 96
South Pacific Coast Railroad Company	7,927 15
Gualala River Railroad Company	318 75

Improving Its Premises.

The Buffalo Brewing Company is beautifying its grounds around the big brewery on the hill. A neat, substantial fence has been built south of the building, the ground sown to alfalfa, and shade trees, such as orange, palm and elm, planted on the edge of the sidewalks. With Twenty-first street graded, graveled and street cars running over it, Nob Hill lots will be at a premium in the near future.

Best City in the State.

Hon. Chris Green is in the city and speaks hopefully of its future. He states that from his observation and knowledge Sacramento is to-day the best business town in the State but that we can go on if we will and make it the Chicago of California. The city has everything in its favor if the people but show their faith and push their natural advantages.

The Haberdank Trial.

The Haberdank case is still on trial in Judge Catlin's court, but the examination of witnesses is nearly concluded. Mrs. Marble, the defendant's mother-in-law, testified that he could not have swindled Kaeding, as charged, as he was working on her place at the time.

KNOWLEDGE

Brings comfort and improvement and tends to personal enjoyment when rightly used. The many, who live better than others and enjoy life more, with less expenditure, by more promptly adapting the world's best products to the needs of physical being, will attest the value to health of the pure liquid laxative principles embraced in the remedy, Syrup of Figs.

Its excellence is due to its presenting in the form most acceptable and pleasant to the taste, the refreshing and truly beneficial properties of a perfect laxative; effectually cleansing the system, dispelling colds, headaches and fevers and permanently curing constipation. It has given satisfaction to millions and met with the approval of the medical profession, because it acts on the Kidneys, Liver and Bowels without weakening them and it is perfectly free from every objectionable substance.

Syrup of Figs is for sale by all druggists in 50c and $1 bottles, but it is manufactured by the California Fig Syrup Co. only, whose name is printed on every package, also the name, Syrup of Figs, and being well informed, you will not accept any substitute if offered.

Cures Others

Will cure You, is a true statement of the action of AYER'S Sarsaparilla, when taken for diseases originating in impure blood; but, while this assertion is true of AYER'S Sarsaparilla, as thousands can attest, it cannot be truthfully applied to other preparations, which unprincipled dealers will recommend, and try to impose upon you, as "just as good as Ayer's." Take **Ayer's** Sarsaparilla and **Ayer's** only, if you need a blood-purifier and would be benefited permanently. This medicine, for nearly fifty years, has enjoyed a reputation, and made a record for cures, that has never been equaled by other preparations. AYER'S Sarsaparilla eradicates the taint of hereditary scrofula and other blood diseases from the system, and it has, deservedly, the confidence of the people.

AYER'S Sarsaparilla

"I cannot forbear to express my joy at the relief I have obtained from the use of AYER'S Sarsaparilla. I was afflicted with kidney troubles for about six months, suffering greatly with pains in the small of my back. In addition to this, my body was covered with pimply eruptions. The remedies prescribed failed to help me. I then began to take AYER'S Sarsaparilla, and, in a short time, the pains ceased and the pimples disappeared. I advise every young man or woman, in case of sickness resulting from impure blood, no matter how long standing the case may be, to take AYER'S Sarsaparilla."—H. L. Jarmann, 33 William st., New York City.

Will Cure You

Prepared by Dr. J. C. Ayer & Co., Lowell, Mass

Railroad Time Table.

SOUTHERN PACIFIC COMPANY
[PACIFIC SYSTEM.]
FEBRUARY 1, 1893.

Trains Leave and are Due to Arrive at Sacramento:

LEAVE (For)	TRAINS RUN DAILY.	ARRIVE (From)
10:50 P	Ashland and Portland	4:15 A
7:10 A	Calistoga and Napa	11:05 A
3:05 P	Calistoga and Napa	8:10 P
10:40 A	Deming, El Paso and East	7:05 P
4:55 P	Colfax	10:10 A
7:10 P	Knights L'ding & Oroville	7:10 A
5:50 P	Los Angeles, Ogden and East—Second Class	10:30 A
11:55 A	Central Atlantic Express	5:40 P
9:00 P	for Ogden and East	6:50 A
*3:00 P	Oroville via Roseville J'n'c	*10:30 A
3:00 P	Red Bluff via Marysville	10:30 A
10:35 A	Redding via Willows	4:00 P
4:35 A	San Francisco via Benicia	12:05 A
6:15 A	San Francisco via Benicia	11:30 A
7:10 A	San Francisco via Benicia	8:40 P
3:05 P	San Francisco via Benicia	8:10 P
6:00 P	San Francisco via Benicia	10:30 P
*10:00 A	San Francisco via steamer	§6:00 A
10:40 A	San Fran. via Livermore	2:50 P
10:40 A	San Jose	2:50 P
5:50 P	Santa Barbara	10:30 A
*7:10 A	Santa Rosa	11:05 A
3:05 P	Santa Rosa	*8:10 P
8:20 A	Stockton and Galt	7:05 P
10:40 A	Stockton and Galt	2:50 P
5:50 P	Stockton and Galt	10:30 A
11:55 A	Truckee and Reno	5:40 P
9:00 P	Truckee and Reno	6:50 A
3:05 P	Vallejo	11:05 A