TWENTY-FOURTH DAY

(LEGISLATIVE DAY OF TUESDAY)

MORNING SESSION.

WEDNESDAY, February 21, 1912.

The Convention met pursuant to recess, the president in the chair.

The delegate from Erie [MR. KING] was recognized to continue his remarks.

Mr. DOTY: Will the gentlemen yield a moment? I move that the question under consideration be postponed until one minute after recess this afternoon.

The motion was carried.

The PRESIDENT: What is the further pleasure of the Convention.

Mr. WINN: I ask unanimous consent to make a report from a standing committee.

The PRESIDENT: Is there objection. There is none, and the member from Defiance [MR. WINN] offers a report.

The report was read as follows:

> The standing committee on Rules, to which was referred Resolution No. 62—Mr. Winn, having had the same under consideration, reports it back with the following amendment and recommends its adoption when so amended:
>
> Strike out the preamble and all after the word "Resolved" and insert the following: "That it is the policy of this Convention to submit all of the proposals which shall pass, to the electors in the form of separate amendments to the present constitution.

The PRESIDENT: The question is on agreeing to the report.

Mr. WINN: We prefer that this report be placed on the calendar for future consideration, and I therefore move that it be placed on the calendar for tomorrow.

The motion was carried.

REPORTS OF SELECT COMMITTEES.

Mr. HARRIS of Hamilton: I have a report of a committee.

The report was read as follows:

> The committee on the observance of Washington's birthday suggests:
>
> That the Convention recess Thursday, the 22nd inst., at 11:30 o'clock a. m. for one hour; that Prof. George W. Knight deliver the address for and in behalf of your committee and take not exceeding fifteen minutes for his said address; that Capt. Evans be allowed fifteen minutes of the recess; and that the remaining thirty minutes of the recess be used by members who desire to relate personal reminiscences, or otherwise.

The PRESIDENT: The question is on the adoption of the report.

Mr. BAUM: I suggest that the secretary read the names of the committee signed to this report.

The secretary read as follows:

George Washington Harris, George W. Knight, George Washington Pettit, George Washington Miller.

Mr. DOTY: I move that the report be amended by striking out the "W" in Professor Knight's name and inserting in lieu thereof "Washington."

The amendment was agreed to.

The report of the committee was agreed to.

MOTIONS AND RESOLUTIONS.

Mr. KERR: I offer a resolution and move its adoption.

The resolution was read as follows:

Resolution No. 77:

> *Resolved,* That the president of this Convention is hereby authorized and directed to invite that matchless soldier, statesman and lawyer, ex-Governor Joseph Benson Foraker, to address this Convention at as early a date as will suit his convenience.

The PRESIDENT: The resolution will lie over under the rule.

Mr. LAMPSON: We do not care to proceed with the regular business at this time. I suggest that we informally suspend business.

Mr. DOTY: We have some references that we can make.

The PRESIDENT: If there is no objection we will proceed to reference of proposals to committees.

REFERENCE TO COMMITTEES OF PROPOSALS.

The following proposals on the calendar were read by their titles and referred as follows:

Proposal No. 264—Mr. Dunn. To the committee on Judiciary and Bill of Rights.

Proposal No. 265—Mr. Dunn. To the committee on Corporations other than Municipal.

Proposal No. 266—Mr. Dunn. To the committee on Equal Suffrage and Elective Franchise.

Proposal No. 267—Mr. Dunn. To the committee on Equal Suffrage and Elective Franchise.

Proposal No. 268—Mr. Dunn. To the committee on Taxation.

Proposal No. 269—Mr. Dunn. To the committee on Labor.

Proposal No. 270—Mr. Dunn. To the committee on Labor.

Proposal No. 271—Mr. Dunn. To the committee on Labor.

Proposal No. 272—Mr. FitzSimons. To the committee on Municipal Government.

Proposal No. 273—Mr. Doty. To the committee on Municipal Government.

Proposal No. 274—Mr. Harbarger. To the committee on Taxation.

Proposal No. 275—Mr. Harbarger. To the committee on Taxation.

Proposal No. 276—Mr. Hoffman. To the committee on Judiciary and Bill of Rights.

Proposal No. 277—Mr. Bowdle. To the committee on Judiciary and Bill of Rights.

Proposal No. 278—Mr. Bowdle. To the committee on Judiciary and Bill of Rights.

By unanimous consent, the proceedings of the Convention were suspended.

Ex-President Roosevelt, accompanied by the committee appointed to escort him, appeared at the bar of the Convention.

The PRESIDENT: The Convention will be in order. Benjamin Franklin once wrote to his daughter that his face had become as familiar to the world as that of the Man in the Moon. The world-wide fame of that great statesman-philosopher has never been surpassed by any citizen of this republic save by him who is our guest this morning.

I find it indeed awkward to present him to you; and so, Mr. Roosevelt, I present to you the one hundred and nineteen delegates of Ohio's Fourth Constitutional Convention.

ADDRESS OF THEODORE ROOSEVELT.

Mr. President, and Members of the Ohio Constitutional Convention: I am profoundly sensible of the honor you have done me in asking me to address you. You are engaged in the fundamental work of self-government; you are engaged in framing a constitution under and in accordance with which the people are to get and to do justice and absolutely to rule themselves. No representative body can have a higher task. To carry it through successfully there is need to combine practical common sense of the most hard-headed kind with a spirit of lofty idealism. Without idealism your work will be but a sordid makeshift; and without the hard-headed common sense the idealism will be either wasted or worse than wasted.

I shall not try to speak to you of matters of detail. Each of our commonwealths has its own local needs, local customs, and habits of thought, different from those of other commonwealths; and each must therefore apply in its own fashion the great principles of our political life. But these principles themselves are in their essence applicable everywhere, and of some of them I shall speak to you. I cannot touch upon them all; the subject is too vast and the time too limited; if any one of you cares to know my views of these matters which I do not to-day discuss, I will gladly send him a copy of the speeches I made in 1910, which I think cover most of the ground.

I believe in pure democracy. With Lincoln, I hold that "this country, with its institutions belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it." We progressives believe that the people have the right, the power, and the duty to protect themselves and their own welfare; that human rights are supreme over all other rights; that wealth should be the servant, not the master, of the people. We believe that unless representative government does absolutely represent the people it is not representative government at all. We test the worth of all men and measures by asking how they contribute to the welfare of the men, women, and children of whom this nation is composed. We are engaged in one of the great battles of the age-long contest waged against privilege on behalf of the common welfare. We hold it a prime duty of the people to free our government from the control of money in politics. For this purpose we advocate, not as ends in themselves, but as weapons in the hands of the people, all governmental devices which will make the representatives of the people more easily and certainly responsible to the people's will.

This country, as Lincoln said, belongs to the people. So do the natural resources which make it rich. They supply the basis of our prosperity now and hereafter. In preserving them, which is not merely a state but a national duty, we must not forget that monopoly is based on the control of natural resources and natural advantages, and that it will help the people little to conserve our natural wealth unless the benefits which it can yield are secured to the people. Let us remember, also, that conservation does not stop with the natural resources, but that the principle of making the best use of all we have requires with equal or greater insistence that we shall stop the waste of human life in industry and prevent the waste of human welfare which flows from the unfair use of concentrated power and wealth in the hands of men whose eagerness for profit blinds them to the cost of what they do.

Let me inject again there. Don't forget that that applies just as much to the little man as to the big man. I want to control the sweat-shop man who sweats ten employes just as much as the big corporation which sweats a thousand.

I am emphatically a believer in constitutionalism, and because of this fact I no less emphatically protest against any theory that would make of the constitution a means of thwarting instead of securing the absolute right of the people to rule themselves and to provide for their own social and industrial well-being. All constitutions, those of the states no less than the nation, are designed, and must be interpreted and administered, so as to fit human rights. Lincoln so interpreted and administered the national constitution. Buchanan attempted the reverse, attempted to fit human rights to, and limit them by, the constitution. It was Buchanan who treated the courts as a fetish, who protested against and condemned all criticism of the judges for unjust and unrighteous decisions, and upheld the constitution as an instrument for the protection of privilege and of vested wrong.

I wish some of the people who pay such ready lip loyalty to the memory of Lincoln would take the trouble to read what Lincoln said from 1857 to 1865 and then apply it not to issues that are dead but to issues that are living.

It was Lincoln who appealed to the people against the judges when the judges went wrong, who advocated and secured what was practically the recall of the Dred Scott decision, and who treated the constitution as a living force for righteousness. We stand for applying the constitution to the issues of today as Lincoln applied it to the issues of his day; Lincoln, mind you, and not Buchanan, was the real upholder and preserver of the constitution, for the true progressive, the progressive of the Lin-

coln stamp, is the only true constitutionalist, the only real conservative. The object of every American constitution worth calling such must be what it is set forth to be in the preamble of the national constitution, "to establish justice," that is, to secure justice as between man and man by means of genuine popular self-government. If the constitution is successfully invoked to nullify the effort to remedy injustice, it is proof positive either that the constitution needs immediate amendment or else that it is being wrongfully and improperly construed. I therefore very earnestly ask you clearly to provide in this constitution means which will enable the people readily to amend it if at any point it works injustice.

Don't you get so fascinated with your work as to think that nobody can ever improve on it. No doubt you will do a first-class job, but give the people a chance to make alterations in it when they see fit.

Permit the people themselves by popular vote, after due deliberation and discussion—I emphasize that, due, deliberation and discussion—but finally and without appeal, to settle what the proper construction of any constitutional point is. It is often said that ours is a government of checks and balances. But this should only mean that these checks and balances obtain as among the several different kinds of representatives of the people—judicial, executive, and legislative—to whom the people have delegated certain portions of their power. It does not mean that the people have parted with their power or cannot resume it. The "division of powers" is merely the division among the representatives of the powers delegated to them; the term must not be held to mean that the people have divided their powers with their delegates. The power is the people's, and only the people's. It is right and proper that provision should be made rendering it necessary for the people to take ample time to make up their minds on any point; but there should also be complete provision to have their decision put into immediate and living effect when it has thus been deliberately and definitely reached.

I hold it to be the duty of every public servant, and of every man who in public or private life holds a position of leadership in thought or action, to endeavor honestly and fearlessly to guide his fellow-countrymen to right decisions.

A public servant who is worth his salt will speak the truth to the people. The last time I was in this city I spoke what I thought were necessary truths without any regard to whether they would be agreeable at the moment or not.

It is his duty to speak honestly and fearlessly to guide his fellow-countrymen to right decisions; but I emphatically dissent from the view that it was either wise or necessary to try to devise methods which under the constitution will automatically prevent the people from deciding for themselves what governmental action they deem just and proper. It is impossible to invent constitutional devices, which will prevent the popular will from being effective for wrong without also preventing it from being effective for right. The only safe course to follow in this great American democracy is to provide for making the popular judgment really effective. When this is done, then it is our duty to see that the people, having the full power, realize their heavy responsibility for exercising that power aright. But it is a false constitutionalism, a false statesmanship, to endeavor by the exercise of a perverted ingenuity to seem to give to the people full power and at the same time to trick them out of it. Yet this is precisely what is done in every case where the state permits its representatives, whether on the bench or in the legislature or in executive office, to declare that it has not the power to right grave social wrongs, or that any of the officers created by the people, and rightfully the servants of the people, can set themselves up to be the masters of the people. Constitution-makers should make it clear beyond shadow of doubt that the people in their legislative capacity have the power to enact into law any measure they deem necessary for the betterment of social and industrial conditions. The wisdom of framing any particular law of this kind is a proper subject of debate; but the power of the people to enact the law should not be subject to debate. To hold the contrary view is to be false to the cause of the people, to the cause of American democracy.

Lincoln, with his clear vision, his ingrained sense of justice, and his spirit of kindly friendliness to all, forecast our present struggle and saw the way out. What he said should be pondered by capitalist and workingman alike. He spoke as follows (I condense):

"I hold that while man exists it is his duty to improve not only his condition but to assist in ameliorating mankind. Labor is prior to and independent of capital. Labor is the superior of capital, and deserves much the higher consideration. Capital has its rights, which are as worthy of protection as any other rights. Nor should this lead to a war upon property. Property is the fruit of labor. Property is desirable, is a positive good in the world. Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself, thus by example assuring that his own shall be safe from violence when built."

This last sentence characteristically shows Lincoln's homely, kindly common sense. His is the attitude we ought to take. He showed the proper sense of proportion in his relative estimates of capital and labor, of human rights and the rights of wealth. Above all, in what he thus said, as on so many other occasions, he taught the indispensable lesson of the need of wise kindliness and charity, of sanity and moderation, in the dealings of men one with another.

We should discriminate between two purposes we have in view. The first is the effort to provide what are themselves the ends of good government; the second is the effort to provide proper machinery for the achievement of these ends.

The ends of good government in our democracy are to secure by genuine popular rule a high average of moral and material well-being among our citizens. It has been well said that in the past we have paid attention only to the accumulation of prosperity, and that from henceforth we must pay equal attention to the proper distribution of prosperity.

But it behooves us to remember also that there is no use in devising methods for the general distribution of prosperity unless the prosperity is there to distribute. That ought to be fairly elemental. The only prosperity worth having is that which affects the mass of people. We are bound to strive for the fair distribution of prosperity. But it behooves us to remember that

there is no use in devising methods for the proper distribution of prosperity unless the prosperity is there to distribute. I hold it to be our duty to see that the wage-worker, the small producer, the ordinary consumer, shall get their fair share of the benefit of business prosperity. But it either is or ought to be evident to every one that business has to prosper before anybody can get any benefit from it. Therefore I hold that he is the real progressive, that he is the genuine champion of the people, who endeavors to shape the policy of the nation and of the several states so as to encourage legitimate and honest business at the same time he wars against all crookedness and injustice and unfairness and tyranny in the business world (for of course we can only get business put on a basis of permanent prosperity when the element of injustice is taken out of it). This is the reason why I have for so many years insisted, as regards our national government, that it is both futile and mischievous to endeavor to correct the evils of big business by an attempt to restore business conditions as they were in the middle of the last century, before railways and telegraphs had rendered larger business organizations both inevitable and desirable. The effort to restore such conditions, and to trust for justice solely to such proposed restoration, is as foolish as if we should attempt to arm our troops with the flintlocks of Washington's continentals instead of with modern weapons of precision.

Flintlocks were good guns in 1776, but this is 1912. Flintlock legislation—I want you to remember the term—is useless except for giving an opening for certain kinds of oratorical effort.

Flintlock legislation, of the kind that seeks to prohibit all combinations, good or bad, is bound to fail, and the effort, in so far as it accomplishes anything at all, merely means that some of the worst combinations are not checked, and that honest business is checked. What is needed is, first, the recognition that modern business conditions have come to stay, in so far at least as these conditions mean that business must be done in larger units, and then the cool-headed and resolute determination to introduce an effective method of regulating big corporations so as to help legitimate business as an incident to thoroughly and completely safeguarding the interests of the people as a whole. We are a business people. The tillers of the soil, the wage-workers, the business men—these are the three big and vitally important divisions of our population. The welfare of each division is vitally necessary to the welfare of the people as a whole. The great mass of business is of course done by men whose business is either small or of moderate size. The middle-sized business men form an element of strength which is of literally incalculable value to the nation. Taken as a class, they are among our best citizens. They have not been seekers after enormous fortunes; they have been moderately and justly prosperous, by reason of dealing fairly with their customers, competitors, and employes. They are satisfied with a legitimate profit that will pay their expenses of living and lay by something for those who come after, and the additional amount necessary for the betterment and improvement of their plant. The average business man of this type is, as a rule, a leading citizen of his community, foremost in everything that tells for its betterment, a man whom his neighbors look up to and respect; he is in no sense dangerous to his community, just because he is a integral part of his community, bone of its bone and flesh of its flesh. His life fibers are intertwined with the life fibers of his fellow-citizen. Yet nowadays many men of this kind, when they come to make necessary trade arrangements with another, find themselves in danger of becoming unwitting transgressors of the law, and are at a loss to know what the law forbids and what it permits. This is all wrong. There should be a fixed government policy, a policy which shall clearly define and punish wrongdoing, and shall give in advance full information to any man as to just what he can and just what he cannot legally and properly do. It is absurd and wicked to treat the deliberate lawbreaker as on an exact par with the man eager to obey the law, whose only desire is to find out from some competent governmental authority what the law is and then live up to it. It is absurd to endeavor to regulate business in the interest of the public by means of long-drawn lawsuits without the accompaniment of administrative control and regulation, and without any attempt to discriminate between the honest man who has succeeded in business because of rendering a service to the public and the dishonest man who has succeeded in business by cheating the public.

So much for the small business man and the middle-sized business man. Now for big business.

The big business always shudders slightly when I speak of it. It is imperative to exercise over big business a control and supervision which is unnecessary as regards small business. All business must be conducted under the law, and all business men, big or little, must act justly.

To refer back to what I have already said: A small sweat-shop man may be just as bad according to his power as the biggest man that lives; and if that is the case, I want to correct him just as much as the other man.

But a wicked big interest is necessarily more dangerous to the community than a wicked little interest. "Big business" in the past has been responsible for much of the special privilege which must be unsparingly cut out of our national life. I do not believe in making mere size of and by itself criminal. I would like to underscore that last. The mere fact of size, however, does unquestionably carry the potentiality of such grave wrongdoing that there should be by law provision made for the strictest supervision and regulation of these great industrial concerns doing an inter-state business, much as we now regulate the transportation agencies which are engaged in inter-state business. The anti-trust law does good in so far as it can be invoked against combinations which really are monopolies or which restrict production or which artificially raise prices. But in so far as its workings are uncertain, or as it threatens corporations which have not been guilty of anti-social conduct, it does harm. Moreover, it cannot by itself accomplish more than a trifling part of the governmental regulation of big business which is needed. The nation and the states must cooperate in this matter. Among the states that have entered this field Wisconsin has taken a leading place. Following Senator La Follette, a number of practical workers and thinkers in Wisconsin have turned that state into an experimental laboratory of wise governmental action

in aid of social and industrial justice. They have initiated the kind of progressive government which means not merely the preservation of true democracy, but the extension of the principle of true democracy into industrialism as well as into politics. One prime reason why the state has been so successful in this policy lies in the fact that it has done justice to corporations precisely as it has exacted justice from them.

It is always difficult to get applause for a sentiment like that. (Applause).

Good for you, I congratulate you.

Its public utilities commission in a recent report answered certain critics as follows:

"To be generous to the people of the state at the expense of justice to the carriers would be a species of official brigandage that ought to hold the perpetrators up to the execration of all honest men. Indeed, we have no idea that the people of Wisconsin have the remotest desire to deprive the railroads of the state of aught that, in equality and good conscience, belongs to them, and if any of them have, their wishes cannot be gratified by this commission."

This is precisely the attitude we should take towards big business. It is the practical application of the principle of the square deal. Not only as a matter of justice, but in our own interest, we should scrupulously respect the rights of honest and decent business and should encourage it where its activities make, as they often do make, for the common good. It is for the advantage of all of us when business prospers. It is for the advantage of all of us to have the United States become the leading nation in international trade, and we should not deprive this nation, we should not deprive this people, of the instruments best adapted to secure such international commercial supremacy. In other words, our demand is that big business give the people a square deal and that the people give a square deal to any man engaged in big business who honestly endeavors to do what is right and proper.

On the other hand, any corporation, big or little, which has gained its position by unfair methods and by interference with the rights of others, which has raised prices or limited output in improper fashion and been guilty of demoralizing and corrupt practices, should not only be broken up, but it should be made the business of some competent governmental body by constant supervision to see that it does not come together again, save under such strict control as to insure the community against all danger of a repetition of the bad conduct. The chief trouble with big business has arisen from the fact that big business has so often refused to abide by the principle of the square deal; the opposition which I personally have encountered from big business has in every case arisen not because I did not give a square deal but because I did.

All business into which the element of monopoly in any way or degree enters, and where it proves in practice impossible totally to eliminate this element of monopoly, should be carefully supervised, regulated, and controlled by governmental authority; and such control should be exercised by administrative, rather than by judicial officers. No effort should be made to destroy a big corporation merely because it is big, merely because it has shown itself a peculiarly efficient business instrument. But we should not fear, if necessary, to bring the regulation of big corporations to the point of controlling conditions so that the wage-worker shall have a wage more than sufficient to cover the bare cost of living, and hours of labor not so excessive as to wreck his strength by the strain of unending toil and leave him unfit to do his duty as a good citizen in the community. Where regulation by competition (which is, of course, preferable) proves insufficient, we should not shrink from bringing governmental regulation to the point of control of monopoly prices if it should ever become necessary to do so, just as in exceptional cases railway rates are now regulated.

In emphasizing the part of the administrative department in regulating combinations and checking absolute monopoly, I do not, of course, overlook the obvious fact that the legislature and the judiciary must do their part. The legislature should make it more clear exactly what methods are illegal, and then the judiciary will be in a better position to punish adequately and relentlessly those who insist on defying the clear legislative decrees. I do not believe any absolute private monopoly is justified, but if our great combinations are properly supervised, so that immoral practices are prevented, absolute monopoly will not come to pass, as the laws of competition and efficiency are against it.

The important thing is this: that, under such government recognition as we may give to that which is beneficent and wholesome in large business organizations, we shall be most vigilant never to allow them to crystallize into a condition which shall make private initiative difficult. It is of the utmost importance that in the future we shall keep the broad path of opportunity just as open and easy for our children as it was for our fathers during the period which has been the glory of America's industrial history — that it shall be not only possible but easy for an ambitious man, whose character has so impressed itself upon his neighbors that they are willing to give him capital and credit, to start in business for himself, and, if his superior efficiency deserves it, to triumph over the biggest organization that may happen to exist in his particular field. Whatever practices upon the part of large combinations may threaten to discourage such a man, or deny to him that which in the judgment of the community is a square deal, should be specifically defined by the statutes as crimes. And in every case the individual corporation officer responsible for such unfair dealing should be punished.

We grudge no man a fortune which represents his own power and sagacity exercised with entire regard to the welfare of his fellows. We have only praise for the business man whose business success comes as an incident to doing good work for his fellows. But we should so shape conditions that a fortune shall be obtained only in honorable fashion, in such fashion that its gaining represents benefit to the community.

In short, then, our fundamental purpose must be to secure genuine equality of opportunity. No man should receive a dollar unless that dollar has been fairly earned. Every dollar received should represent a dollar's worth of service rendered. No watering of stocks should be permitted; and it can be prevented only by close governmental supervision of all stock issues, so as to prevent overcapitalization.

We stand for the rights of property, but we stand even

more for the rights of man. We will protect the rights of the wealthy man, but we maintain that he holds his wealth subject to the general right of the community to regulate its business use as the public welfare requires.

This is the fundamental point of my thesis. We also maintain that the nation and the several states have the right to regulate the terms and conditions of labor, which is the chief element of wealth, directly in the interest of the common good. It is our prime duty to shape the industrial and social forces so that they may tell for the material and moral upbuilding of the farmer and the wage-worker, just as they should do in the case of the business man. You, framers of this constitution, be careful so to frame it that under it the people shall leave themselves free to do whatever is necessary in order to help the farmers of the state to get for themselves and their wives and children not only the benefits of better farming but also those of better business methods and better conditions of life on the farm.

Moreover, shape your constitutional action so that the people will be able through their legislative bodies, or, failing that, by direct popular vote, to provide workmen's compensation acts, to regulate the hours of labor for children and for women, to provide for their safety while at work, and to prevent overwork or work under unhygienic or unsafe conditions. See to it that no restrictions are placed upon legislative powers that will prevent the enactment of laws under which your people can promote the general welfare, the common good. Thus only will the "general welfare" clause of our constitution become a vital force for progress, instead of remaining a mere phrase. This also applies to the police powers of the government. Make it perfectly clear that on every point of this kind it is your intention that the people shall decide for themselves how far the laws to achieve their purposes shall go, and that their decision shall be binding upon every citizen in the state, official or non-official, unless, of course, the supreme court of the nation in any given case decides otherwise.

I will come to the courts later. You have a period of suffering before you still.

So much for the ends of government; and I have, of course, merely sketched in outline what the ends should be. Now for the machinery by which these ends are to be achieved.

In the barest outline right at the outset I want to put my position as clear as I can on two great fundamental points. In the first place while machinery is important, it is easy to overestimate its importance. Don't ever get it into your mind that machinery will get a good government by itself. It won't. If it has not got the right men behind it the best machinery in the world will work badly. Just the same as guns: I believe in the modern weapons of precision and not in the flintlock rifle. I know a man to whom you could give the best kind of rifle invented and when he gets it I will beat him with a club.

A veteran of the Civil War here says that is right.

The next point is that each community has the absolute right to determine for itself what that machinery shall be, subject only to the fundamental law of the nation as expressed in the constitution of the United States. Massachusetts has the right to have appointive judges who serve during good behavior, subject to removal, not by impeachment, but by simple majority vote of the two houses of the legislature whenever the representatives of the people feel that the needs of the people require such removal. New York has the right to have a long-term elective judiciary. Ohio has the right to have a short-term elective judiciary without the recall. California, Oregon, and Arizona have each and every one of them the right to have a short-term elective judiciary with the recall. Personally, of the four systems I prefer the Massachusetts one, if addition be made to it as I hereinafter indicate; but that is merely my preference; and neither I nor any one else within or without public life has the right to impose his preference upon any community when the question is as to how that community chooses to arrange for its executive, legislative, or judicial functions. I would say that to Massachusetts about Arizona and I have said it to Arizona about Massachusetts. But as you have invited me to address you here, I will give you my views as to the kind of governmental machinery which at this time and under existing social and industrial conditions it seems to me that, as a people, we need.

These views were written out several days ago. Judging from reports I see in the papers on one point a majority of your body has taken a position with which I differ; but I am going to say what I have to say anyhow.

In the first place, I believe in the short ballot. You cannot get good service from the public servant if you cannot see him, and there is no more effective way of hiding him than by mixing him up with a multitude of others so that they are none of them important enough to catch the eye of the average, workaday citizen. The crook in public life is not ordinarily the man whom the people themselves elect directly to a highly important and responsible position. The type of boss who has made the name of politician odious rarely himself runs for high elective office; (he knows better) and if he does and is elected, the people have only themselves to blame. The professional politician and the professional lobbyist thrive most rankly under a system which provides a multitude of elective officers, of such divided responsibility and of such obscurity that the public knows, and can know, but little as to their duties and the way they perform them. The people have nothing whatever to fear from giving any public servant power so long as they retain their own power to hold him accountable for his use of the power they have delegated to him.

If ever the people get into such a condition that they cannot hold their own against a man they have elected when he comes up for election again, then the people are in a bad way.

You will get best service where you elect only a few men, and where each man has his definite duties and responsibilities, and is obliged to work in the open, so that the people know who he is and what he is doing, and have the information that will enable them to hold him to account for his stewardship.

I believe in providing for direct nominations by the people, including therein direct preferential primaries for the election of delegates to the national nominating conventions. Not as a matter of theory, but as a matter of plain and proved experience, we find that the con-

vention system, while it often records the popular will, is also often used by adroit politicians as a method of thwarting the popular will. In other words, the existing machinery for nominations is cumbrous, and is not designed to secure the real expression of the popular desire. Now as good citizens we are all of us willing to acquiesce cheerfully in a nomination secured by the expression of a majority of the people, but we do not like to acquiesce in a nomination secured by adroit political management in defeating the wish of the majority of the people.

I believe in the election of United States senators by direct vote. Just as actual experience convinced our people that presidents should be elected (as they now are in practice, although not in theory) by direct vote of the people instead of by indirect vote through an untrammeled electoral college, so actual experience has convinced us that senators should be elected by direct vote of the people instead of indirectly through the various legislatures.

I believe in the initiative and the referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative. Here again I am concerned not with theories but with actual facts. If in any state the people are themselves satisfied with their present representative system, then it is of course their right to keep that system unchanged; and it is nobody's business but theirs. But in actual practice it has been found in very many states that legislative bodies have not been responsive to the popular will. Therefore I believe that the state should provide for the possibility of direct popular action in order to make good such legislative failure. The power to invoke such direct action, both by initiative and by referendum, should be provided in such fashion as to prevent its being wantonly or too frequently used. I do not believe that it should be made the easy or ordinary way of taking action.

I want to say right here if you do make it easy—very easy—you run a great risk of destroying its usefulness in inviting reaction against it. In the great majority of cases it is far better that action on legislative matters should be taken by those specially delegated to perform the task; in other words, that the work should be done by the experts chosen to perform it . But where the men thus delegated fail to perform their duty, then it should be in the power of the people themselves to perform the duty. In a recent speech Governor McGovern, of Wisconsin, has described the plan which has been there adopted. Under this plan the effort to obtain the law is first to be made through the legislature, the bill being pushed as far as it will go; so that the details of the proposed measure may be threshed over in actual legislative debate. This gives opportunity to perfect it in form and invites public scrutiny. Then, if the legislature fails to enact it, it can be enacted by the people on their own initiative, taken at least four months before election. Moreover, where possible, the election actually to be voted on by the people should be made as simple as possible. In short, I believe that the initiative and referendum should be used, not as substitutes for representative government, but as methods of making such government really representative. Action by the initiative or referendum ought not to be the normal way of legislation; but the power to take it should be provided in the constitution, so that if the representatives fail truly to represent the people on some matter of sufficient importance to rouse popular interest, then the people shall have in their hands the facilities to make good the failure. And I urge you not to try to put constitutional fetters on the legislature, as so many constitution-makers have recently done. Such action on your part would invite the courts to render nugatory every legislative act to better social conditions. Give the legislature an entirely free hand; and then provide by the initiative and referendum that the people shall have power to reverse or supplement the work of the legislature should it ever become necessary.

As to the recall, I do not believe that there is any great necessity for it as regards short-term elective officers. On abstract grounds I was originally inclined to be hostile to it. I know of one case where it was actually used with mischievous results. On the other hand, in three cases in municipalities on the Pacific Coast which have come to my knowledge it was used with excellent results. I believe it should be generally provided, but with such restrictions as will make it available only when there is a widespread and genuine public feeling among a majority of the voters.

There remains the question of the recall of judges. One of the ablest jurists in the United States, a veteran in service to the people, recently wrote me as follows on this subject:

"There are two causes of the agitation for the recall of judges. First, the administration of justice has withdrawn from life and become artificial and technical. The recall is not so much a recall of judges from office as it is a recall of the administration of justice back to life, so that it shall become, as it ought to be, the most efficient of all agencies for making this earth a better place to live in. Judges have set their rules above life. Like the Pharisees of old, they have said, 'The people be accursed, they know not the law' (that is our rule). Courts have repeatedly defeated the aroused moral sentiment of a whole commonwealth. (Remember, this is the judge, not me.) Take the example of the St. Louis boodlers. Their guilt was plain, and in the main confessed. The whole state was aroused and outraged. By an instinct that goes to the very foundation of all social order they demanded that the guilty be punished. The boodlers were convicted, but the supreme court of Missouri, never questioning their guilt, set their conviction aside upon purely technical grounds. The same thing occurred in California. Nero, fiddling over burning Rome, was a patriot and a statesman in comparison with judges who thus trifle with and frustrate the aroused moral sentiment of a great people, for that sentiment is politically the vital breath of both state and nation. It is to recall the administration of justice back from such practices that the recent agitation has arisen.

"Second, by the abuse of the power to declare laws unconstitutional the courts have become a lawmaking, instead of a law-enforcing, agency. Here again the settled will of society to correct confessed evils has been set at naught by those who place metaphysics above life. It is the courts, not the constitutions, that are at

fault. It is only by the process which James Russell Lowell, when answering the critics of Lincoln, called 'pettifogging the constitution,' that constitutions which were designed to protect society can thus be made to defeat the common good. Here again the recall is a recall of the administration of justice back from academical refinements to social service."

So much for what the judge says. Now I go on:

An independent and upright judiciary which fearlessly stands for the right, even against popular clamor, but which also understands and sympathizes with popular needs, is a great asset of popular government. There is no public servant and no private man whom I place above a judge of the best type, and very few whom I rank beside him. I believe in the cumulative value of the law and in its value as an impersonal, disinterested basis of control. I believe in the necessity for the court's interpretation of the law as law without the power to change the law or to substitute some other thing than law for it. But I agree with every great jurist, from Marshall downward, when I say that every judge is bound to consider two separate elements in his decision of a case, one the terms of the law, and the other the conditions of actual life to which the law is to be applied. Only by taking both of these elements into account is it possible to apply the law as its spirit and intent demand that it be applied. Both law and life are to be considered in order that the law and the constitution shall become, in John Marshall's word, "a living instrument and not a dead letter." Justice between man and man, between the state and its citizens, is a living thing, whereas legalistic justice is a dead thing. Moreover, never forget that the judge is just as much the servant of the people as any other official. Of course he must act conscientiously. So must every other official. He must not do anything wrong because there is popular clamor for it, any more than under similar circumstances a governor or a legislator or a public utilities commissioner should do wrong. Each must follow his conscience, even though to do so costs him his place.

That is the test. Follow his conscience and keep his place is what it should be.

But in their turn the people must follow their conscience, and when they have definitely decided on a given policy they must have public servants who will carry out that policy.

Keep clearly in mind the distinction between the end and the means to attain that end. Our aim is to get the type of judge that I have described, to keep him on the bench as long as possible, and to keep off the bench and, if necessary, take off the bench the wrong type of judge.

That is the end. The machinery, the means, may differ in one community from another community. Let each community adopt the machinery that it finds best suited to achieve its purpose. What may be necessary in one community may be inadvisable in another. As to the judges in California and Missouri, under the conditions described in the letter I have quoted, I would have voted for their recall, because no damage that could come from the adoption of the recall could equal the damage done by having on the bench men who prostituted justice in such fashion.

I do not believe in adopting the recall save as a last resort, when it has become clearly evident that no other course will achieve the desired result. But either the recall will have to be adopted or else it will have to be made much easier than it now is to get rid not merely of a bad judge but of a judge who, however virtuous, has grown so out of touch with social needs and facts that he is unfit longer to render good service on the bench. It is nonsense to say that impeachment meets the situation. The impeachment does not. The fact that we only have impeachment as a remedy has meant that during the last thirty of forty years we have not been able to get off the bench men whose presence on the bench was a great and lasting detriment to the people. Not all of them were corrupt. Some of them were good, upright men, who could not face new conditions. I would say they were fossilized, only that expression seems to hurt feelings, so I won't use it.

In actual practice we have found that impeachment does not work, that unfit judges stay on the bench in spite of it, and indeed because of the fact that impeachment is the only remedy that can be used against them. Where such is the actual fact it is idle to discuss the theory of the case. Impeachment as a remedy for the ills of which the people justly complain is a complete failure. A quicker, a more summary, remedy is needed; some remedy at least as summary and as drastic as that embodied in the Massachusetts constitution. And whenever it be found in actual practice that such remedy does not give the needed results, I would unhesitatingly adopt the recall.

But there is one kind of recall in which I very earnestly believe, and the immediate adoption of which I urge. There are sound reasons for being cautious about the recall of a good judge who has rendered an unwise and improper decision. Every public servant, no matter how valuable, and not omitting Washington or Lincoln or Marshall, at times makes mistakes. Therefore we should be cautious about recalling the judge, and we should be cautious about interfering in any way with the judge in decisions which he makes in the ordinary course as between individuals. But when a judge decides a constitutional question, when he decides what the people as a whole can or cannot do, the people should have the right to recall that decision—not the judge—if they think it wrong. We should hold the judiciary in all respect; but it is both absurd and degrading to make a fetish of a judge or of any one else. Abraham Lincoln said in his first inaugural: "If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the supreme court, * * * the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal. Nor is there in this view any assault upon the courts or the judges." Lincoln actually applied in successful fashion the principle of the recall in the Dred Scott case. He denounced the supreme court for that iniquitous decision in language much stronger than I have ever used in criticising any court, and appealed to the people to recall the decision—the word "recall" in this connection was not then known, but the phrase exactly describes what he advocated. He was success-

ful, the people took his view, and the decision was practically recalled.

If you don't like the word recall, if you are afraid of that name, phrase it differently. I am not much interested in questions of terminology. If you don't like the word recall, say that the people will reserve for themselves their right to decide whether the legislature or the judiciary take the right view of the constitution if the two bodies clash. You can put it that way. It is a little more clumsy, but as long as you do the job I don't think it makes much difference what name you give it.

Under our federal system the remedy for a wrong such as Abraham Lincoln described is difficult. But the remedy is not difficult in a state.

I want to interpose right here. It has been suggested to me that it will be simply doing as they do in all English-speaking countries but ours, not to have the courts interpret constitutional decisions at all. I don't agree with that. I would be glad to have the courts interpret them for the guidance of the people. I think if the court knew that its decision would be subject to action by the people, it would be a good deal more careful than it sometimes is at present in giving a decision; and on the other hand I am sure the people would pay all heed—all possible deference and consideration—to the decision of a court and would follow it unless they became definitely convinced—as I am definitely convinced as regards certain decisions I shall mention in a minute or two—that the courts have gone wrong.

Many eminent lawyers who more or less frankly disbelieve in our entire American system of government for, by, and of the people, violently antagonize this proposal. They believe, and sometimes assert, that the American people are not fitted for popular government, and that it is necessary to keep the judiciary "independent of the majority or of all the people;" that there must be no appeal to the people from the decision of a court in any case; and that therefore the judges are to be established as sovereign rulers over the people. I take absolute issue with all those who hold such a position. I regard it as a complete negation of our whole system of government; and if it became the dominant position in this country, it would mean the absolute upsetting of both the rights and the rule of the people. If the American people are not fit for popular government, and if they should of right be the servants and not the masters of the men whom they themselves put in office, then Lincoln's work was wasted and the whole system of government upon which this great democratic republic rests is a failure. I believe, on the contrary, with all my heart that the American people are fit for complete self-government, and that, in spite of all our failings and shortcomings, I know them well, we of this republic have more nearly realized than any other people on earth the ideal of justice attained through genuine popular rule. The position which these eminent lawyers take and applaud is of necessity a condemnation of Lincoln's whole life; for his great public career began, and was throughout conditioned by, his insistence, in the Dred Scott case, upon the fact that the American people were the masters and not the servants of even the highest court in the land, and were thereby the final interpreters of the constitution. If the courts have the final say-so on all legislative acts, and if no appeal can lie from them to the people, then they are the irresponsible masters of the people. The only tenable excuse for such a position is the frank avowal that the people lack sufficient intelligence and morality to be fit to govern themselves. In other words (I want your attention to that) those who take this position hold that the people have enough intelligence to frame and adopt a constitution, but not enough intelligence to apply and interpret the constitution which they have themselves made. Those who take this position hold that the people are competent to choose officials to whom they delegate certain powers, but not competent to hold these officials responsible for the way they exercise these powers. Now the power to interpret is the power to establish; and if the people are not to be allowed finally to interpret the fundamental law, ours is not a popular government. The true view is that legislators and judges alike are the servants of the people, who have been created by the people just as the people have created the constitution; and they hold only such power as the people have for the time being delegated to them. If these two sets of public servants disagree as to the amounts of power respectively delegated to them by the people under the constitution, and if the case is of sufficient importance, then, as a matter of course, it should be the right of the people themselves to decide between them.

I do not say that the people are infallible. But I do say that our whole history shows that the American people are more often sound in their decisions than is the case with any of the governmental bodies to whom, for their convenience, they have delegated portions of their power. If this is not so, then there is no justification for the existence of our government; and if it is so, then there is no justification for refusing to give the people the real, and not merely the nominal, ultimate decision on questions of constitutional law. Just as the people, and not the supreme court under Chief Justice Taney, were wise in their decisions of the vital questions of their day, so I hold that now the American people as a whole have shown themselves wiser than the courts in the way they have approached and dealt with such vital questions of our day as those concerning the proper control of big corporations and of securing their rights to industrial workers.

Here I am not dealing with theories; I am dealing with actual facts. In New York, in Illinois, in Connecticut, lamentable injustice has been perpetuated, often for many years, by decisions of the state courts refusing to permit the people of the states to exercise their rights as a free people to do their duty as a conscientious people in removing grave wrong and social injustice. These foolish and iniquitous decisions have almost always been rendered at the expense of the weak; they have almost always been the means of putting a stop to the effort to remove burdens from the wage-workers, to secure to men who toil on the farm and on the railway, or in the factory, better and safer conditions of labor and of life. Often the judges who have rendered these decisions have been entirely well-meaning men, who, however, did not know life as they knew law, and who championed some outworn political philosophy which they assumed to impose on the people. Their associations and surroundings were such that they had no conception of the

cruelty and wrong their decisions caused and perpetuated. Their prime concern was with the empty ceremonial of perfunctory legalism, and not with the living spirit of justice. A typical case was the decision rendered but a few months ago by the court of appeals of my own state, the state of New York, declaring unconstitutional the workmen's compensation act. In their decision the judges admitted the wrong and the suffering caused by the practices against which the law was aimed. They admitted that other civilized nations had abolished these wrongs and practices. But they took the ground that the constitution of the United States, instead of being an instrument to secure justice, had been ingeniously devised absolutely to prevent justice. They insisted that the clause in the constitution which forbade the taking of property without due process of law forbade the effort which had been made in the law to distribute among all the partners in an enterprise the effects of the injuries to life or limb of a wage-worker. In other words, they insisted that the constitution had permanently cursed our people with impotence to right wrong, and had perpetuated a cruel iniquity; for cruel iniquity is not too harsh a term to use in describing the law which, in the event of such an accident, binds the whole burden of crippling disaster on the shoulders least able to bear it—the shoulders of the crippled man himself, or of the dead man's helpless wife and children. No anarchist orator, raving against the constitution, ever framed an indictment of it so severe as these worthy and well-meaning judges must be held to have framed if their reasoning be accepted as true. But, as a matter of fact, their reasoning was unsound, and was as repugnant to every sound defender of the constitution as to every believer in justice and righteousness. In effect, their decision was that we could not remedy these wrongs unless we amended the constitution (not the constitution of the state, but the constitution of the nation) by saying that property could be taken without due process of law! It seems incredible that any one should be willing to take such a position. It is a position that has been condemned over and over again by the wisest and most far-seeing courts. In its essence it was reversed by the decision of state courts in states like Washington and Iowa, and by the supreme court of the nation in a case but a few weeks old.

I call this decision to the attention of those who shake their heads at the proposal to trust the people to decide for themselves what their own governmental policy shall be in these matters. I know of no popular vote by any state of the Union more flagrant in its defiance of right and justice, more short-sighted in its inability to face the changed needs of our civilization, than this decision by the highest court of the state of New York. Many of the judges of that court I know personally, and for them I have a profound regard. Even for as flagrant a decision as this I would not vote for their recall; for I have no doubt the decision was rendered in accordance with their ideas of duty. But most emphatically I do wish that the people should have the right to recall the decision itself, and authoritatively to stamp with disapproval what cannot but seem to the ordinary plain citizen a monstrous misconstruction of the constitution, a monstrous perversion of the constitution into an instrument for the perpetuation of social and industrial wrong and for the oppression of the weak and helpless. No ordinary amendment to the constitution would meet this type of case; and intolerable delay and injustice would be caused by the effort to get such amendment — not to mention the fact that the very judges who are at fault would proceed to construe the amendment. In such a case the fault is not with the constitution; the fault is in the judges' construction of the constitution; and what is required is power for the people to reverse this false and wrong construction.

I wish I could make you visualize to yourselves what these decisions against which I so vehemently protest really represent of suffering and injustice. I wish I had the power to bring before you the man maimed or dead, the woman and children left to struggle against bitter poverty because the bread-winner has gone. I am not thinking of the terminology of the decision, nor of what seem to me the hair-splitting and meticulous arguments elaborately worked out to justify a great and a terrible miscarriage of justice. Moreover, I am not thinking only of the sufferers in any given case, but of the tens of thousands of others who suffer because of the way this case is decided. In the New York case the railway employe who was injured was a man named, I believe, Ives. The court admits that by every moral consideration he was entitled to recover as his due the money that the law intended to give him. Yet the court by its decision forces that man to stagger through life maimed, and keeps the money that should be his in the treasury of the company in whose service, as an incident of his regular employment and in the endurance of ordinary risks, he lost the ability to earn his own livelihood. There are thousands of Iveses in this country; thousands of cases such as this come up every year; and while this is true, while the courts deny essential and elementary justice to these men and give to them and the people in exchange for justice a technical and empty formula, it is idle to ask me not to criticise them. As long as injustice is kept thus intrenched by any court, I will protest as strongly as in me lies against such action. Remember, when I am asking the people themselves in the last resort to interpret the law which they themselves have made, that after all I am only asking that they step in and authoritatively reconcile the conflicting decisions of the courts. In all these cases the judges and courts have decided every which way, and it is foolish to talk of the sanctity of a judge-made law which half of the judges strongly denounce. If there must be decision by a close majority, then let the people step in and let it be their majority that decides. According to one of the highest judges then and now on the supreme court of the nation, we had lived for a hundred years under a constitution which permitted a national income tax, until suddenly by one vote the supreme court reversed its previous decisions for a century, and said that for a century we had been living under a wrong interpretation of the constitution (that is, under a wrong constitution), and therefore in effect established a new constitution which we are now laboriously trying to amend so as to get it back to be the constitution that for a hundred years everybody, including the supreme court, thought it to be. When I was president, we passed a national workmen's compensation act. Under it a railway man named Howard, I think, was killed in Tennessee, and his widow sued

for damages. Congress had done all it could to provide the right, but the court stepped in and decreed that congress had failed. Three of the judges took the extreme position that there was no way in which congress could act to secure the helpless widow and children against suffering, and that the man's blood and the blood of all similar men when spilled should forever cry aloud in vain for justice. This seems a strong statement, but it is far less strong than the actual facts; and I have difficulty in making the statement with any degree of moderation. The nine justices of the supreme court on this question split into five fragments. One man, Justice Moody, in his opinion stated the case in its broadest way and demanded justice for Howard, on grounds that would have meant that in all similar cases thereafter justice and not injustice should be done. Yet the court, by a majority of one, decided as I do not for one moment believe the court would now decide, and not only perpetuated a lamentable injustice in the case of the man himself, but set a standard of injustice for all similar cases. Here again I ask you not to think of the mere legal formalism, but to think of the great immutable principles of justice, the great immutable principles of right and wrong, and to ponder what it means to men dependent for their livelihood, and to the women and children dependent upon these men, when the courts of the land deny them the justice to which they are entitled.

Now, gentlemen, in closing, and in thanking you for your courtesy, let me add one word. Keep clearly in view what are the fundamental ends of government. Remember that methods are merely the machinery by which these ends are to be achieved. I hope that not only you and I but all our people may ever remember that while good laws are necessary, while it is necessary to have the right kind of governmental machinery, yet that the all-important matter is to have the right kind of man behind the law. A state cannot rise without proper laws, but the best laws that the wit of man can devise will amount to nothing if the state does not contain the right kind of man, the right kind of woman. A good constitution, and good laws under the constitution, and fearless and upright officials to administer the laws — all these are necessary; but the prime requisite in our national life is, and must always be, the possession by the average citizen of the right kind of character. Our aim must be the moralization of the individual, of the government, of the people as a whole. We desire the moralization not only of political conditions but of industrial conditions, so that every force in the community, individual and collective, may be directed towards securing for the average man, and average woman, a higher and better and fuller life, in the things of the body no less than those of the mind and the soul.

Mr. PECK: I move that the Convention tender ex-President Roosevelt our profound thanks for the very able and instructive address he has delivered.

The motion was carried.

Mr. DOTY: I move that the Convention recess until three o'clock p. m.

The motion was carried.

AFTERNOON SESSION.

The Convention was called to order by the president, consideration of Proposal No. 151 — Mr. Anderson was resumed and Mr. King was recognized.

Mr. KING: When the recess was moved yesterday I supposed that I had nearly covered the ground I intended to cover in the opening statement upon this proposition. One or two things were suggested to me by members of the Convention to which I desire to refer for a few moments.

In the first place it was suggested on the floor by the gentleman from Hamilton [Mr. WORTHINGTON] that the thirteenth line in the proposal might be made more definite by adding after the word "is" the words "may be" or "may hereafter be" or "shall hereafter be," or some expression of that kind, and I agreed if that would make that clause plainer it ought to be inserted. From a legal standpoint I hardly think that Judge Worthington would say that it would make it any more definite or certain. The use of the word "is" covers the future as well as the present. While it is the present tense of the verb "to be," it refers to the existing state of affairs whenever you refer to the constitution as long as the constitution is in force. If that is fifty years from now that clause left as it is will live exactly as it does now. It will provide then that where the traffic is prohibited under laws applying to the counties, municipalities or residence districts, it shall not be licensed, just as effectually as though you put into it the words suggested by the gentleman from Hamilton [Mr. WORTHINGTON]. However, as a question of phraseology, I am willing to leave it to the distinguished professors and students of English in the Convention, who, I would assume, have a more varied experience and active experience in constructing sentences out of the English language than I have. But speaking as a lawyer, I want to be understood as saying that the word is as effective in that clause now as it can be and as long as that proposition shall be a part of the constitution; at least, that is my judgment about it, but I am willing to join in anything that makes plainer the intent of the author of the proposal.

Let me state my position upon that subject again. My intention, and the intention of those who more particularly favor this proposal than any other, is, briefly stated and simply stated, that the legislature is commanded to license the traffic in the territory where it is lawfully carried on and not to license it in the territory where it is prohibited by any law, no matter what law it may be. That is the intention, and it is the intention also in addition to that to save the power of the legislature to amend any one of those laws, whatever they may be, or repeal them or re-enact them, whenever the legislature shall deem it wise so to do. That is the intent. If the language does not state that, it falls short of the intent, but I think it states it.

Leaving that word "is," another suggestion is made—that if the clause here appearing later, to which I shall refer but a moment, could be made to more plainly refer to certain classes of law, not embraced within the words "such prohibitory laws," that it would relieve the situation. The gentleman who called my attention to that is certainly a gentleman and a scholar, and I want to call his attention beginning at the end of line 16. Re-

peating a little, the first three and a half lines provide the grant of power and make it mandatory that the legislature shall license the traffic throughout the state. That covers the whole state and the law being of a general nature must have effect in the whole state unless for other reasons than appear in that law it is not in operation, but this law would be in operation so far as all its final provisions are concerned everywhere. That is the grant of power: "Provided that where the traffic is prohibited under laws applying to counties, municipalities, townships or residence districts, the traffic shall not be licensed in such of said local subdivisions so long as the prohibition of the said traffic by law shall be operative therein." Now there is a proviso attached to the grant which provides that wherever in the state the traffic is prohibited under these laws that apply to counties, municipalities, townships or residence districts, the traffic shall not be licensed in such of said local subdivisions so long as the prohibition of the said traffic shall by law be operative therein. Then it goes on: "Nothing herein contained shall be so construed as to repeal or modify such prohibitory laws or to prevent their future enactment, modification or repeal." Now note the words which follow that word. Let me drop out one or two words that are not necessary to the sense: "Or to repeal any laws whatever now existing to regulate the traffic in intoxicating liquors." There the suggestion of the gentleman from Hamilton [Mr. WORTHINGTON] might be pertinent and the use of the word "now" might make it more pertinent than where the verb "is" is used, but the particular part to which I call attention is "that nothing herein contained shall be construed to repeal or modify such prohibitory laws, nor prevent their future enactment, modification or repeal, or to repeal any laws whatever now existing to regulate the traffic in intoxicating liquors." Now, I say with that clause added to the one saving all the prohibitory laws, or saving such prohibitory laws as are prescribed, covers every law in the state of Ohio upon the liquor question, and I make that statement without any very serious idea that it will be controverted.

In the third volume of the General Code of Ohio, adopted a year or so ago, statutes 13194 to 13224 are the penal regulatory statutes upon the liquor question in Ohio, every one of which is absolutely saved in all of its entirety by Proposal No. 4. Now what are they? There is a variety of things. Let me refer to a few of them. First there is the general statute — nobody would want that repealed — that whoever keeps a place where intoxicating liquors are sold, furnished or given away in violation of law, shall be on conviction fined and punished so and so. That is a general statute covering every conceivable violation of every law on the statute books of the state of Ohio. If all the rest were wiped out, there would be a penal statute for which a person convicted could be punished.

The second section of that chapter is a regulatory one, passed purely and simply under the police power vested in the general assembly under the general grant of legislative power.

Now here is one of those statutes:

> Whoever drinks whiskey, beer, ale or other intoxicating beverage while aboard an engine or car propelled by steam or electricity, except in a dining, cafe or other car with buffet or cafe attachment, shall be fined not less than five dollars nor more than one hundred dollars for each offense.

I do not know what genius conceived that law. But it is not repealed or modified or affected. If the legislature wants to keep that on the statute books they can keep it there. It only permits us fellows who have enough money to get in a dining car to take a drink.

The next section is:

> Whoever sells or gives away spirituous, vinous or malt liquors on an election day, or, being the keeper of a place where such liquors are habitually sold and drunk, fails, on an election day, to keep it closed, shall be fined not more than one hundred dollars and imprisoned not more than ten days.
>
> Whoever buys intoxicating liquor for, or sells, or furnishes it to, a person who is intoxicated or in the habit of getting intoxicated, unless given by a physician in the regular line of his practice, shall be fined not less than ten dollars nor more than one hundred, or imprisoned not less than ten days nor more than thirty days, or both.
>
> Whoever sells, exchanges or gives away intoxicating liquor in a brothel shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than one month nor more than six months.
>
> Whoever sells or serves intoxicating liquor on the same floor of a building, hall, room, or rink on which a public dance, roller skating or like entertainment is being held or given, during the progress of such entertainment, or in a room connected therewith by a door or stairway, connecting such hall, room or rink with a room or place on the same floor wherein such liquor is sold or kept for sale, or, being the owner or lessor of a building containing a dance hall, room, or rink fails to post in a conspicuous place therein a copy of this section and the next succeeding section, shall be fined not less than fifteen dollars nor more than one hundred dollars or imprisoned not more than sixty days, or both.
>
> The mayor of a city or village, where necessary, shall detail police officers to preserve order at a public dance, roller skating rink or other entertainment mentioned in the next preceding section and enforce the provisions thereof.

Now here is section 13202:

> Whoever sells or gives away ale, beer, wine, cider or other intoxicating liquor within one mile of the boundary line of lands occupied by a home, retreat, or asylum for disabled volunteer soldiers, or soldiers and sailors, established by this state, shall be fined not less than twenty-five dollars nor more than one hundred dollars and imprisoned thirty days. On conviction of the owner or keeper thereof, the place wherein such intoxicating liquor was sold or given away shall be abated as a nuisance within ten days thereafter by order of the court wherein such conviction was had.

There are two or three of those laws to which I want to refer a moment, but perhaps while I have the book here I had better read the rest of the sections.

The next section provides:

> Whoever sells or gives away ale, beer, wine, cider or other intoxicating liquor within one and one-half miles of the boundary line of land occupied by a home, retreat or asylum for disabled volunteer soldiers, or soldiers and sailors, established by the United States, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and imprisoned thirty days.

There are two separate sections which went into the General Code by two separate acts, passed by the legislature at two different times, intended to prevent the operation of a saloon or the carrying on of the liquor traffic within a mile and a half of the Dayton Soldiers' Home or within a mile and a half of the Ohio Soldiers' and Sailors' Home. None of these sections will be affected in any degree by the passage of my proposal. Under the very terms of the grant a man applying for it must apply for it where the sale of liquor is lawful, and the authority granting the license can only grant it because it is lawful to sell it. So where there is territory within which, or within a certain distance of which, it is not lawful to sell whisky, no license can be granted to sell whisky in that territory. So I say in consequence of the suggestion of my friend from Franklin county [Mr. KNIGHT], who did suggest it, that that clause perfectly safeguards every regulatory statute upon the liquor question in Ohio.

There is a lot more of these, but I need not stop to go over them. There are penal provisions that the legislature can keep in or take out, as it pleases. There are some thirty or forty of these sections.

I ought to have said there are a large number of penal sections that relate to local option laws in addition to the other regulatory statutes. Here is a statute coming from 1854 making it an offense to sell to a minor, to sell within a certain distance of certain public institutions of the state, Wilberforce University, and others along that line.

So I say that the grant of the power to the legislature to license a traffic is a grant subject to all the laws now upon the statute books. Unless the laws now on the statute books are repealed they would become a part of any license law that is adopted. The punishment for violation therof would be a part of that license law. Now I submit to you seriously, aside from my mere personal opinion about the merits of the liquor traffic, aside from any preconceived notions, that you can pass this proposal without interfering in the slightest with any of the prohibitory regulatory laws now on the statute books of the state of Ohio, that it accomplishes just that purpose and nothing else, and, as I said yesterday, however much that proposition is scouted, the idea of the last three lines was simply to safeguard the power granted in the first four lines. If those three lines are out, it is claimed by those who believe those three lines are essential to the validity of that proposal that there would be no remedy whatever for a wilful disregard by the legislature of the real fair interpretation of the grant of power in the first four lines. Now do we want to adopt or to submit to the people any proposal that directs the legislature to do something without any power of enforcement if the legislature ignores our command and enacts a law with extravagant provisions in it? The advocates of this measure do not believe they should be put in that position. The whole question of license is a question of opinion as to how you shall deal with the liquor traffic where the liquor traffic is allowed to exist. That is all there is to it.

There is none other before the Convention. We have certain laws reasonably satisfactory in their operation where the people have put them into operation, but where the people have not put them into operation they have no regulation whatever. Tax on this will not alter it. There are probably as many saloons in counties that permit the paying of $1,000 tax per year as there were in 1883 when the Pond law was first enacted. In other words, the levy of that tax, which has been considered a high tax, has not had any effect on the traffic. In some places it has prevented some very respectable people from engaging in the business because they were too poor. There have been some places where of Sunday afternoons the poorer element would drop in and take their glass of beer—some of these have been compelled to close because the patronage was not sufficient to justify the payment of the tax, but that has not interfered with the number of saloons. On the contrary, the number has continued to grow. So I say there is nothing regulatory about these tax laws. They are not intended to be. They were stuck on the saloons or liquor traffic because the legislature could not devise anything else in the face of the constitution of 1851 which declared for no license. So I say it is not regulation. I say that the wit of man has never yet designed any other way of regulating the liquor traffic except by license. So if that be true why should not this proposal pass in just the form it is? If you want honest regulation, if you want to make the saloon a little more respectable, this is the way to do it, and don't pay any attention to these appeals to stand for the old. Our distinguished visitor referred to the flintlock rifle of bygone days. They are of no use now. So I refer to these flintlock regulations. Do you want to stand to the flintlock regulations of 1851? Are you refusing to march ahead? If there are any of that class of people in this Convention they should vote against the proposal, but if you are willing to rise to the present, if you are willing to say that we should have a law to deal with men and methods of the present, vote for this proposal. And it should be voted for substantially in the form that we have it here, without material change in its phraseology. Of course I would be willing to have it changed if the change is honestly intended to make the law more effective for the accomplishment of its purpose, but any change that is intended to ride it to death, or to make it unpopular with a large class of voters, should be voted down by every friend of the license system in this Convention.

I think there is only one course to be pursued and that is to vote down the minority report and adopt this Proposal No. 4. The people of Ohio have a right to have this proposition submitted to them for their votes.

Mr. ANDERSON: Haven't they just as much right to have the question of absolute prohibition submitted to them as this?

Mr. KING: No.

Mr. ANDERSON: Why not?

Mr. KING: I don't think the people of Ohio want to adopt prohibition.

Mr. ANDERSON: Why not give them a chance?

Mr. KING: I am entirely willing, but I don't want this proposal to be weighted down by that. That is the idea. If you want that proposition put up I won't say that I will vote against it, but it should be separate from this.

Mr. LAMPSON: Suppose a separate license proposition were submitted and a prohibition proposition were also submitted and both carried, where would you be?

Mr. KING: We wouldn't be anywhere.

Mr. LAMPSON: Then to do the wise thing this should be submitted in the alternative?

Mr. KING: Now answer this question: Would you like to have this alternative thrown into the waste basket and the alternative of prohibition put in so that the people could not exercise their choice?

Mr. LAMPSON: I asked the question on separate propositions, and then as to the alternative.

Mr. KING: I would be willing to let the license system run against prohibition in Ohio to see which gets the most votes; but this proposal was drafted with the idea that those opposed to the license system as a means of regulating the liquor traffic wanted the provisions of the present constitution to remain. That is why that alternative was put in there. It was to give them a fair chance to say whether we shall have license or allow the constitution to remain as it is with no license and the right to regulate the traffic to provide against its evils. That is why prohibition was not put in. But it does not alarm me to have prohibition put up against license to see which gets the most votes.

Mr. WINN: Do I understand you would be willing to cut out section 18 as it is now and put in its place state-wide prohibition?

Mr. KING: I would. However, that leaves out the other proposition.

Mr. WINN: Yes.

Mr. KING: Under all the other provisions contained in here——

Mr. WINN: Just a second; if such a proposition as that is offered will you support it?

Mr. KING: I can not say now, but I suppose so. [Laughter.] Now there is nothing funny about that. Personally I shall support it. But I shall act entirely in consonance with the views of the gentlemen here supporting the license proposition. I shall not leave them in a lurch. But so far as my personal influence would go I would be in favor of doing exactly that sort of thing. It would not be fair to the people, but so far as the success of the license system is concerned I am wholly willing.

Mr. WINN: I was thinking myself I would be glad to make that compromise and I think the people with me will agree to it.

Mr. KING: We are two and there are a hundred and seventeen others. Now, gentlemen of the Convention, I have said on this proposition all I ought to and probably a good deal more. I did not expect to take this much time.

Mr. ANDERSON: The gentleman has forgotten the question that I asked him on two other occasions, on each of which he promised to answer later.

Mr. KING: Will you be kind enough to remind me of it?

Mr. ANDERSON: Would anything in Proposal No. 151, if it became the organic law of Ohio, interfere with a license law in any way or with the separate submission of the question of license?

Mr. KING: Yes; it would.

Mr. ANDERSON: What?

Mr. KING: It would depend on the legislature whether it would interfere altogether. It would interfere. That is the reason it is put as an alternative proposition, or at least as a part of one, to the license proposition. It is not germane to the idea embraced in this proposal that there shall be granted in Ohio a license to traffic in intoxicating liquor in the territory where the law otherwise permits it to be carried on. You have said over and over and over again that under that very clause the legislature of Ohio, without submitting it to a vote of the people, can enact state-wide prohibition. That is why it is inimical.

Mr. ANDERSON: One other question?

Mr. KING: Yes.

Mr. ANDERSON: Did you have this pamphlet sent out by the brewers prior to your election?

Mr. KING: No, sir; I had no communication with the brewers prior to my election nor even with Mr. Wheeler.

Mr. ANDERSON: Have you read it — this pamphlet, I mean?

Mr. KING: No, sir; I have not read it nor seen it that I know of.

Mr. ANDERSON: Don't you know that in that pamphlet it is stated that they do not wish to take from the constitution of 1851 that part of it which is embraced in No. 151?

Mr. KING: I don't know what is in that book, but I saw that in a newspaper shortly after that. Shortly after that I saw an interview with Wayne B. Wheeler, in which he said that they proposed to have the law left as it was, whereupon, as I understand it, it was determined that that should be placed as an alternative proposition, and to provide for the retention of all the prohibitory and regulatory laws now upon the statute books with the right to pass others. Who wrote that or why I can not say.

Now, with an apology to the Convention and with the hope that I have thrown some light somewhere on this proposition, I submit it to you.

Mr. KNIGHT: It is with no little diffidence that I speak upon this subject as I am not an orator; but this is not a question of oratory, but a question for the exercise of common sense and cool thought, for invective is not argument, eulogy is not conviction and personalities convince nobody. So I may venture to speak with the consent of the Convention briefly on the pending amendment, formerly known as the minority report of the committee on Liquor Traffic.

At the outset may I venture a brief explanation, the necessity for which seems to be evident from one or two inquiries made at the close of the discussion yesterday, when a few members seemed to think that this discussion was really a discussion upon a question of parliamentary

procedure as to which of two propositions has precedence. I think we can simplify the discussion if we dismiss that from our minds and recognize the cold fact that the two questions under discussion are two distinct proposals of amendments to the constitution. The former majority report of the committee, now the amendment by substitute for Proposal No. 151, is one distinct proposal which has been elaborately explained by its proponent, who has just taken his seat, my honored colleague from Erie [Mr. KING]. The other is an equally distinct and complete proposal or amendment to the constitution, amending or proposing to amend, if it be adopted, that clause of the constitution in section 9 of article XV which has been in the constitution since 1851. I make this explanation lest we may get tripped or tangled on what it is we are talking about. The plain issue before us is, which, if either, of the proposed amendments to the constitution shall be adopted by this Convention and submitted to the voters of this state, not as a part of the constitution, but as a separate amendment, which, if adopted, would become part of the constitution.

The question, as I said a moment ago, is a practical one. It might be discussed from the standpoint of sentimentality, morals or pure pyrotechnics, but from any of these standpoints, it would be but a partial discussion of the question. The real question is a practical question for the people and citizens of the state of Ohio.

There are certain facts which we must all recognize. The liquor traffic, both in its wholesale and in its retail features, is here. It is a recognized business and occupation in this state. That fact is one of the facts upon which there seems to be no controversy in this Convention or elsewhere. The second practical fact is that it is conceded by everybody that it is a business that needs regulation. At least I have never heard anybody in the state of Ohio, in or out of this Convention, who denied the necessity of the regulation of the business. In other words, it is one of that kind of things among us, which so long as it exists,—and I venture to say it will exist so long as any of us are on this earth—so long as it exists brings in its train certain consequences which make it a matter of public policy to control and regulate the business in some fashion.

The third point is that the present regulatory laws in this state are in the main good so far as they go. That seems to be conceded on all hands, because every feature of both the proposals before us now implies the necessity and desirability of retaining those, and, as near as I could roughly estimate, my learned colleague from Erie [Mr. KING] spent about three-fourths of his time trying to convince us that his proposal did preserve those. I hope he convinced himself; I am very certain there are some of us that he did not succeed in convincing. It seems then to be certain that the desire is to retain those regulatory features. Certain it is that that is the desire of those who support the pending amendment.

The fourth point on which the citizens of this state, or a great majority of them, are agreed, is that there should be a continuing power preserved in our law-making bodies to provide further legal measures, not simply to preserve those we have, but to enact further regulatory measures. But the real heart of the problem after all, as it seems to me — and I may as well insert the parenthesis here as any other place, as it will save time to the Convention later. The parenthesis is simply this: That I doubt if anyone has any right either to affirm or to assume the gentlemen upon this floor are advocating the minority report in order to load down the license proposition because they are really opposed to a license. For myself I have no hesitancy then in saying here and now that I am advocating and shall continue to advocate as heartily and as strongly as I can the amendment now pending, because I believe it is an improvement upon our present situation. I expect to support it here, and, gentlemen, I expect to have an opportunity to support it at the polls later on.

The problem, I say, of the better and more satisfactory regulation and restriction of this traffic in those portions of the territory of this state where it is permitted, is the real problem, and that is the only real central problem involved in this whole question. For both proposals seem to preserve—I know that the minority one does—the right to make more and more territory dry. But, as we all know as citizens, the problem is better regulation, for our present laws do not give us full opportunity for better regulation. We need greater opportunity for the better regulation of the saloon where it exists legally, in our cities, in our municipalities, in our villages, and even in our rural townships, where the business is operated pursuant to and not in violation of the present law. This then is the serious problem.

If you will pardon another parenthesis, I suppose it is not necessary to say that neither directly nor indirectly do I represent those who are engaged in the business, nor directly nor indirectly do I represent, other than as they are citizens of the state of Ohio, anyone who is officially, legally or professionally engaged in doing what he may be able to do in any organization for the better regulation of the liquor business. I speak simply as a representative of the central county of the state. In that respect there are no strings of any sort to me, as I hope and am glad to believe there is none tied to any of the other members of this Convention. There is a widespread feeling of the inadequacy of the present legislative authority. There is a desirability of added authority and in a large measure of a different kind of authority. The license system seems to some to provide this. I believe personally that it does. But there are all kinds of licenses. I think I will not be misunderstood when I say there is such a thing as a license system which provides free trade in licenses, where anybody can get a license and it is a license system that provides for no revocation under any circumstances or conditions. I suspect there is no crystallized definition of a license system and there is just the trouble with the majority report, that it makes no distinction between a license to traffic in liquor and a license on an automobile. I don't know that there is any limitation as to the number of automobiles. Similarly in our municipalities, certain businesses are licensed without any limitation in any way on the number of licenses issued. That is as distinctly a license system as any other. Therefore, the argument turns in a considerable degree on the definition of what kind of a license system we mean when we put it in the constitution, and there is one of the essential differences between the two reports.

The purpose then of the pending amendment is to sub-

mit to the people the simple question, as I apprehend it, "Do you or not want additional means for regulation, in the form of authority to the legislature to utilize the license system as an additional means of regulating the liquor traffic, not as a substitute for it necessarily, but as an additional means of regulating it?"

Any amendment that shall be submitted touching this matter must fulfill certain requirements. It must invalidate no laws now in existence. It must secure the right to modify and subtract from or add to the regulations now in existence from time to time as the legislature, or the people, may in their wisdom see fit. If we are to have a license system it must authorize and not command the legislature to utilize the good features of the present system, in addition to, as I said a moment ago, not in place of, the present regulation.

The original King Proposal No. 4 proposes to command the legislature to regulate the liquor traffic in one particular way, but to put no other command upon it. In other words, it leaves it wide open in all other kinds of regulations, but says you must regulate in this particular way, if this amendment is adopted. I submit that that is to require the legislature to adopt a particular method in preference to all others, and no matter what happens, however wise we may get on other lines, we can not exercise our increased wisdom on that subject without amending our constitution, whereas the minority report puts it in the power of the legislature to utilize the license system if it chooses so to do. And I think most of us have considerable use yet for the legislature, subject to correction by the people where they do not exercise their powers rightly. The minority plan puts it in the hands of the legislature to utilize the system if it so pleases, but it does not say to them that you must do so and so with no alternative.

Now does the minority report accomplish the things which were suggested a moment ago as essential in a proposition such as we have under consideration? For a moment may I re-analyze the pending amendment. The first test that was suggested was that any amendment proposed must not invalidate any of the laws now in existence. I do not think it will take anyone advocating this report two hours and a half to convince himself that this proposition does not invalidate any such laws. I think the simple reading of lines 17 and 18 of the pending amendment, recognized better as Proposal No. 4, as it would read if the minority report would be adopted, settles that matter: "And provided further, that nothing herein contained shall invalidate, limit or restrict the provisions of any law now in force relating to such traffic." It is not any "such" law as has been previously described of the four specific kinds, and four only, as are found in lines 14 and 15 of Proposal No. 4. Again the word "such" in line 17, if it has any significance whatever, refers specifically and distinctly to the four kinds of local option laws, but does not refer to any other sort whatever. Further than that, while I am on this point, elaborating the explanation of a moment ago, in lines 17 and 19 of the King proposal it says: "Nothing herein contained shall be so construed as to repeal or modify such prohibitory laws or to prevent their future enactment, modification or repeal, or to repeal or to prevent the repeal of any laws whatever now existing to regulate the traffic in intoxicating liquors." But, gentlemen, have you observed that it nowhere says that the legislature shall hereafter have the right to re-enact any such laws if they are once repealed? Suppose you repeal the law prohibiting the sale of liquor within a certain area, there is absolutely no power in the general assembly thereafter, if Proposal No. 4 is adopted, to re-enact such laws. All it does is to preserve the laws of that kind now on the statute books. Whether that was inadvertent or not, the continuing power is not there to enact any kind of prohibitory legislation in this state except the four kinds of local option laws described by their respective areas. I have submitted this proposal to no less than twenty different lawyers in the last two weeks and it is about a five-to-four decision as to what this King proposal means. Now I submit if the subject matter under it were the best in the world, and there were absolutely no difference of opinion as to the thing we wanted to do, a proposal of that sort, qualified in that way, is not a fit proposal to go before the people of the state of Ohio with opportunities given in nearly every line of it for legal controversy as to what it means. I say that if we were all agreed as to what we want to do, it is a bad proposition to put in the constitution a thing that is not clear. Compare that with the lines 17 and 18 of the minority report, which specifically provide as follows, after describing the power of the legislature: "And provided further, that nothing herein contained shall invalidate, limit or restrict the provisions of any law now in force, relating to such traffic, or in any way limit the right of the general assembly, under its police power, to provide against the evils resulting from the traffic in intoxicating liquors."

So much for existing laws; they are preserved in every way, in every feature, in every particular, every iota, without any ambiguity of language in any place or in any form. It does not take a court, it does not take a constitutional convention, it does not take the people by referendum, to decide what those two lines mean.

Now the second test suggested was, that any law to be satisfactory must secure the right to modify, to add to or subtract from, the regulations now in existence. I call your attention to lines 19 and 20 of the minority report: "And provided further, that nothing herein contained shall invalidate, limit or restrict the provisions of any law now in force, relating to such traffic, or in any way limit the right of the general assembly, under its police power, to provide against the evils resulting from the traffic in intoxicating liquors." I take it that is perfectly clear. The decisions of the highest courts of this and other states upon the subject of the police power make it clear, in my judgment, beyond peradventure that the general assembly under the police power has adequate authority to adopt such regulatory statutes to provide against any danger arising as it pleases. I am glad to accept the main point of Judge King on this subject. He concedes the police power is broad enough to do all these things and there is no ambiguity about it in this regard.

The third point to which I want to call your attention is contained in line 10 of the substitute proposal: "The general assembly shall be authorized to enact legislation providing for the licensing of the liquor traffic." At present the legislature is not only not authorized so to do, but is specifically prohibited from so doing.

Now line 10 is perfectly plain and the object is to au-

thorize our law-making body to use, if in its judgment it deems it wise so to do, the license feature in connection with other means of regulating, limiting, controlling, or taking care of the liquor traffic in territory where that traffic is not absolutely illegal. I take it that we are all agreed that no license law could license an illegal business. It is a contradiction of terms that we should legally license a business which is illegal in Ohio. Therefore, in territory where the business is illegal, you cannot license the business.

There is another feature essential in any law—and I admit I am defining my own premises, but I think there will be no quarrel with this one—and that is that its terms must be clear and unambiguous. I think that has been demonstrated sufficiently in reference to the third point mentioned. In this feature I must insist the minority report is in direct, absolute and positive contrast with the majority report.

I come now to an even more vital feature of the pending amendment, namely, certain provisions and limitations that according to this proposal must be respected by the legislature in the enactment of any license law it may decide to pass.

This is the distinct feature of the pending amendment wherein it differs radically and diametrically from the other one, that it proposes that if a license law is authorized, the makers of it, the legislature in its enactment, must respect certain provisions or limitations. These are embodied in lines 11 to 16 of the minority report, beginning with the words "but no such legislation shall authorize more than one license in each township, or municipality of less than 1,000 population, nor more than one for each 1,000 population in other townships and municipalities." Note, please—you hardly need to note it, we are all so familiar with it—that that is a direct limitation on the number of licenses which may be granted. May I at this point say that so far as I am personally concerned—I speak only for myself, but I have no doubt all others who joined with me in the minority report will agree—that so far as this limitation is concerned, it was intended to apply to the retail traffic in intoxicating liquors, that the license system should provide that not more than one license per thousand inhabitants should be granted for a retail dealer in liquor? I am speaking for myself and do not wish to be understood by anyone as speaking by the authority of the minority of the committee, but that is my understanding of what was meant.

Mr. HARTER, of Huron: You say "township or municipality." Do you regard them as one or is there a distinction?"

Mr. KNIGHT: One to each thousand in a municipality.

Mr. HARTER, of Huron: I know a little municipality that has six hundred inhabitants and the township has three thousand.

Mr. KNIGHT: How many saloons has the township outside of the village?

Mr. HARTER, of Huron: None.

Mr. KNIGHT: This provides for two outside of the municipality and one in, as the proposal stands, assuming your figures are correct.

I was about to say that I would have no objection to the insertion of such words in the twelfth and thirteenth lines as that the limitation of the license herein contained shall apply to retail traffic and not to wholesale traffic, but I am speaking in that for myself only.

The other limitation is, "provided, however, that any license so granted shall be deemed revoked if in the place operated under such license any law regulating such traffic in intoxicating liquors is violated."

Now the language in this minority report is perfectly clear except in the point with reference to the use of the word "retail," and with your permission I want to assume in the rest of the discussion, at least for my purposes, that the word "retail" is to be inserted. The language is clear and requires no explanation. There is a limit upon the number and a provision for absolute revocation for violation of any of the regulative laws as to the liquor traffic in this state. Now what are the reasons for those restrictions?

I think we can classify the people of the state for the purpose of this discussion into three groups:

1. Those who are engaged in the retail traffic in intoxicating liquors, or wholesale either, though in a moment I shall have to say to you that even that will have to be subdivided.

2. Those who are actively opposed to the saloon as a thing in existence and one that ought to be put down at once, if possible; if not, as soon as possible. I am not undertaking to say which is right, but simply classifying the people of the state.

3. Those who do not fall into either of these two groups. You can easily tell those who are in the business and those who are actively opposed to it, and the rest of the people are in this third group.

Now I have not a copy of that pamphlet upon which a question was based a few moments ago, but I think you will all agree with me that this is in there — I say I have never heard those engaged in the business deny the proposition, on the contrary they affirm, that they want a license system for two — among other — reasons. The first one is to limit the number of saloons for some reason or other, and second to lessen the lawlessness in connection with the conduct of the business, and they go so far as to say that the lessening of the lawlessness will be accomplished by the revocation of a license misused. Understand I shall be glad to withdraw it if that proves to be wrong. I do not hear anyone objecting to it, so I assume that those are two — among other — reasons why the license system is advocated by those engaged in the business.

Now, what about the second class, those opposed to the saloons? They insist that if a license system is to be placed in any way in the constitution it must contain two — among other — features, namely, limitation to the number of saloons and absolute revocation for non-compliance with the regulative laws. There is an apparent agreement, though it may be a disagreement later on.

The third is the class which, knowing the liquor traffic is here, and knowing it is in need of regulation, insists, in large numbers, to my personal knowledge, on these limitations, at least a good many of them. So that it is claimed by some, it is demanded by others and insisted on by a third class.

Now I can not find anybody among the people of Ohio who do not come under one of those three groups. The business men in general, the professional men in general,

not engaged in this business but engaged in other business which brings them in contact with what is around them in every-day life, the opponents of the business, those in the business and, consequently, its advocates. I do not blame those who are in the business for wanting to get such legislation as will best serve their interests, but I do think that when they insist that they want a certain kind of arrangement to accomplish certain things that they are estopped from objecting to a proposal which contains those very things. So I say it is conceded by some and demanded by others that this ought to be an inherent part of the plan to license.

I want to read right at this point a letter addressed to me, which in my judgment has a rather important bearing on this question. It comes from a gentleman whom I know well. He is chairman of the council of the Ohio State Pharmaceutical Association. It reads as follows, under date of February 10:

> Dear Sir: I understand the question of license or no license for the sale of intoxicating liquors is before the Constitutional Convention.
>
> As representing the interests of the drug trade of this state, I wish to say that the druggists as a body believe that neither a general license nor a general prohibition will receive the support of the people, and that nothing can be accomplished by either extreme.
>
> It may be a matter of knowledge to you that the question of the sale of intoxicants has been for years a thorn in the flesh of the drug trade, and we wish now, when the opportunity is presented, to be placed where we belong — on a proper basis before the public.
>
> We have to ask that you will urge the presentation to the people of a proposition which will provide for a license for the sale of intoxicants, which license shall be limited according to the population and which shall be guarded as far as possible by moral and monetary qualifications.
>
> We feel that if either extreme is proposed it will come to naught, and will leave the drug trade just where they now are, in a position which subjects them to the ridicule and indignities of the public.

Now that represents, I apprehend, a rather large body of men very closely connected with the necessary — and some of them I suppose, though I don't know, with the unnecessary — traffic in intoxicating liquors.

I want to read at this point a sample of a number of letters that have come to me from private citizens in different parts of the state, all of them absolutely unsolicited and many of the writers total strangers to me:

> I see by the papers that there has been introduced a bill to regulate the traffic in intoxicating liquors. It strikes me as the right thing to regulate according to the population of the city with a forfeiture of license for violation of restriction.

I read these simply to show that in this particular instance at least, I am doing what is supposedly not often done by one of my profession, speaking on practical grounds rather than theoretical ones, and that there is some ground for the statement that I am attempting to make. I have taken considerable pains within the last ten days or so throughout my own city and I have met people on the street and I have gone into various stores and shops, picked at random, to find out what the sentiment was or seemed to be among the business men, laboring men and professional men of all kinds upon this question which bears on the real issue on this point: "Do you prefer that there should be submitted a proposition to turn loose in the hands of the legislature the right to pass any kind of a license law it chooses, or would you prefer to have a constitutional provision that contained some limitation in it. If so, what?" More than eighty per cent of those with whom I have talked — and I trust you will believe me, I did not pick them out for the purpose of getting a vote one way or the other, but picked them at random — more than eighty per cent have said: "One with limitations in it. We who live in Columbus know what it means to turn a proposition absolutely loose into the general assembly without any limitation as contrasted with one where we know in advance there are certain things they cannot do." And the two limitations, more universally spoken of than any others were the limitations on the number according to population and absolute revocation of license for violation of restriction.

Mr. HALFHILL: Is it possible under the present law, or any laws under the present constitution, for us to restrict the number of saloons?

Mr. KNIGHT: I am not absolutely sure of that. I prefer to turn that question over to some of my legal brethren. I think it is not possible, but I am not sure of it.

Mr. HALFHILL: Would you assume that a license clause such as you advocate here would be an improvement on the present condition?

Mr. KNIGHT: I thought I stated that at the very beginning. That is my thesis or I would not be advocating it.

Mr. HALFHILL: If we cannot in any way restrict the number of saloons under the present constitution we would be just as well off with a license law that did not restrict the number in the constitution itself, would we not?

Mr. KNIGHT: If you do not make it mandatory, assuming my answer, of which I am not certain. If you made it mandatory. I think you would be worse off, because you would then shut out all other ways.

Mr. HALFHILL: I was not speaking of anything except the one point.

Mr. KNIGHT: Yes. The further advantage which the minority report has as compared with the majority report is that it does do something, and I think a large thing, in the way of removing or attempting to remove the liquor question from current politics. It takes two points out of political controversy. Some of us who are getting past the point where our hair is the color it once was when we were younger hope that we may live long enough to see some general assembly, at least one now and then, elected upon some other issue than simply the question of whether the members are wet or dry. I want some day to have, what I have rarely had, the privilege of asking simply and solely the question, is the man who seeks my vote competent to legislate for the people of the state of Ohio on general subjects? I think, in other

words, that one of the chief evils in this whole thing is that it is in politics and one of my objections to Proposal No. 4 is it puts it further in politics. It adds one more question that will be in politics constantly so long as that stands, namely, what kind of a license law we shall have, all the way from a license law that is a farce, like the one that my good friend from Erie [Mr. KING] is advocating, up to one that is strict prohibition. We have now enough of it in politics regarding the regulative laws with reference to dry territory. This proposition, the unadulterated King proposal, puts the whole question of license into politics and gives us two distinct questions involving the liquor traffic constantly instead of one.

Mr. JONES: I ask a question merely as a matter of information. What specific thing that is desirable with reference to the liquor traffic, with reference to providing against the evils of it, is there that can be done under a system of license that can not be done under the present constitution?

Mr. KNIGHT: There are a good many things that can be done under the system of license embraced in the minority report which never have been done and which we have never been able to get done under the present constitution. I speak not now as a professional opponent of the saloon. It may be possible to get them done under the present constitution, but we have never been able to do it. If we utilize the license system we shall certainly get two out of our road at once.

Mr. JONES: Possibly I did not make myself clear. Is there anything that could be done under a license system that can not be done now? If so indicate what it is.

Mr. KNIGHT: I answered the same question in another form. I am not at all clear, though I do not believe it is possible to regulate the number of saloons in wet territory.

Mr. JONES: Why not?

Mr. KNIGHT: Because there is no authority to do it. That is one reason and perhaps enough to cover the whole subject.

Mr. ROEHM: In line 10 it says: "The general assembly shall be authorized to enact legislation providing, etc." Under that provision the general assembly would not have to do so?

Mr. KNIGHT: No, sir.

Mr. ROEHM: In other words, it would be a question of electing the general assembly so that the matter would still be in politics unless the general assembly did enact such a law?

Mr. KNIGHT: To that extent.

Mr. ROEHM: And another legislature could afterwards repeal it?

Mr. KNIGHT: As they should have a right to do.

Mr. ROEHM: Under lines 19 and 20 of the same proposal, the minority report or substitute, could the general assembly, even though a license law were passed, pass a prohibitory law without referendum?

Mr. KNIGHT: I suppose they could.

Mr. ANDERSON: Is it your opinion that under the police power the number of saloons could be regulated as it now stands?

Mr .KNIGHT: Under the police power, yes.

Mr. ANDERSON: Is there anything in the constitution today that in any way limits the police power?

Mr. KNIGHT: I am not so sure. I am rather inclined to the belief—though I may be wrong on that—that it would not allow the limitation of the number of saloons.

Mr. JONES: I understand the gentleman to say in reply to a question that the number of saloons could not be limited, that there is now no power to do that. Why haven't we the power to do that under the law?

Mr. KNIGHT: Why I cannot tell you. I simply say we have not, in my opinion.

Mr. JONES: You say it could not be done because there is no power?

Mr. KNIGHT: I have answered that four times.

Mr. ANDERSON: It is your opinion that the number of saloons can not be specified unless you have a license clause?

Mr. KNIGHT: I did not say that. I said it certainly could be under a license clause.

Mr. ANDERSON: You didn't put it the other way.

Mr. KNIGHT: As long as there is only power to tax I do not know that you can limit the number.

Now the objection is made that to put a limitation of this sort in the constitution is legislation, and, therefore, highly objectionable. In the first place, matters which are matters of absolute common agreement, become in themselves substantially fundamental. Therefore the argument turns on whether these are matters of substantial agreement, the regulation of license and the number of saloons. Further than that, as was shown the other day by the member from Defiance [Mr. WINN], and it was admitted by the gentleman from Erie [Mr. KING], matters of legislative character run through all the constitutions. There are matters of restriction in the federal constitution, limitations in the constitution of the United States, which a good many of us think is the best constitution ever in existence. But concede for a moment that it is legislative in character, it covers provisions which a very large number of the people of the state seem to want. Therefore it becomes to that extent constitutional and no longer a field of controversy unless we deliberately choose to leave it in the field of controversy.

Now in conclusion, the pending amendment, the minority report, certainly conserves and preserves all we now have. It is not clear that the King Proposal No. 4 does that. In fact, it is fairly clear to most of us that it does not do it. In the second place the minority report leaves the people free for further regulative legislation as hitherto. The King proposal, in addition to being ambiguous, in one clause specifically takes away the power on certain other points by the use of the word "such" which, as I understand it, the proponent of that proposal has never yet indicated his willingness to allow it to disappear and have some other word take its place. I have myself put that proposition to him and as yet have failed to receive an affirmative answer expressing his willingness to drop the word and substitute some other word for it.

Mr. PETTIT: Are you a member of the Liquor Traffic committee?

Mr. KNIGHT: Yes, sir.

Mr. PETTIT: Was the King proposal changed in the slightest degree after it was submitted?

Mr. KNIGHT: Not to my knowledge.

Mr. PETTIT: It is exactly as it was submitted?

Mr. KNIGHT: So far as I know.

Mr. PETTIT: And you have been a member of the committee the whole time?

Mr. KNIGHT: Yes.

Mr. PIERCE: If you put a clause in the constitution limiting the number of saloons, how would you determine what saloons would go out of existence and which ones would remain in existence where the number in a place exceeds the limit we fix?

Mr. KNIGHT: That is purely a legislative question. The machinery of how to do the thing is a matter of legislation.

Mr. PIERCE: Is it not a matter of legislation to put that kind of a clause in the constitution?

Mr. KNIGHT: I have just said in my judgment it is not.

Mr. PIERCE: In my judgment it is.

Mr. KNIGHT: As I say, this minority report gives the opportunity to choose the best features, and there may be a difference in opinion as to whether there are any good features in the license system, but it does give the opportunity to the people to use the best features of a license system in addition to other methods of regulation which we now have. In the third place it provides two proper and in my judgment fundamental — proper and fundamental in themselves — features that should exist in any license law enacted, and it makes it clear that we can have no license law without those features and if we have a license law it must have those features. The King proposal is absolutely silent on that point.

In the next place it leaves the least possible room for legal controversy as to its meaning. The King Proposal No. 4 creates, I was about to say, the largest number of possible opportunities for legal controversy as to its meaning, but I won't put it that way—I will say in my judgment it creates an unnecessary number, and there are certainly ambiguities in it to most people.

The minority report removes a large part of the liquor question from state politics. The King proposal initiates an entirely new question in politics.

The minority report gives to the people — and here is about the only feature in which it agrees with the majority — it gives the people an opportunity to adopt in my judgment this advanced step in liquor traffic regulation, or on the other hand to retain specifically exactly what we have in the constitution, section 9, article XV.

Just a word to those engaged in the business. They say they want a license system, that they need a license system to "clean up the business." I quote that phrase, it is not mine. I quote it from advocates of Proposal No. 4 in this room, not members of the Convention, that they want it to clean up the business. Presumptively then they think it needs cleaning up. If that is so, and I am ready to assume they mean what they say, and they want the license system, let me venture to say this to them, that the people in this state will never consent to Proposal No. 4 which perpetuates the controversy and imposes no restriction in the license system which it proposes to make mandatory; in other words, to compel the legislature to put in force the license system without any restriction whatever, that the people can see or know of in advance, as to what it shall provide.

The delegate from Lorain [Mr. REDINGTON] was here recognized. He yielded to Mr. Harter of Huron, who moved a recess until tomorrow morning at ten o'clock.

The motion was carried.