

# TWENTY-THIRD DAY

## MORNING SESSION.

TUESDAY, February 20, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rabbi Joseph S. Kornfield, of Columbus, Ohio.

The journal of yesterday was read.

Mr. ANDERSON: I call for the special order to-day, Proposal No. 151.

Mr. PRESIDENT: The journal has not yet been approval. Are there any corrections? If none the journal will stand approved as read.

### SECOND READING OF PROPOSALS.

Mr. KING: I offer an amendment.

The PRESIDENT: The gentleman from Mahoning [Mr. ANDERSON] calls up the special order Proposal No. 151 and the member from Erie [Mr. KING] offers an amendment which the secretary will read.

The secretary read the amendment as follows:

Amend Proposal No. 151 by striking out all after the word "Proposal" and inserting the following:

"To submit substitute for schedule, section 18, of the constitution.—Relating to licensing the traffic in intoxicating liquors.

*Resolved, by the Constitutional Convention of the state of Ohio,* That a proposal shall be submitted to the electors to amend the constitution by substituting for section 18 of the schedule the following:

SECTION 1. At the time when the vote of the electors shall be taken for the adoption or rejection of any revision, alterations, or amendments made to the constitution by this Convention, the following articles, independently of the submission of any revision, alterations or other amendments submitted to them, shall be separately submitted to the electors in the alternative in the words following to-wit:

#### FOR LICENSE.

License to traffic in intoxicating liquors shall hereafter be granted in this state, and license laws shall be passed to regulate and restrict the said traffic and shall be operative throughout the state, 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 shall by law be operative therein. 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. Nor shall any law be valid which has the effect of

defeating or negating directly or indirectly the regulation of the traffic by a license herein provided for.

#### AGAINST LICENSE.

No license to traffic in intoxicating liquors shall hereafter be granted in this state; but the general assembly may by law provide against the evils resulting therefrom.

SECTION 2. At said election, a separate ballot shall be in the following form:

#### INTOXICATING LIQUORS.

	For License.
	Against License.

SECTION 3. Separate ballot boxes shall be provided for the reception of said ballots.

SECTION 4. The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words "For License" if he desires to vote in favor of the article first above mentioned, and opposite the words "Against License" within the blank space if he desires to vote in favor of the article second above mentioned. If a cross-mark is placed opposite both phrases or neither phrase, then the vote upon that subject shall not be counted.

SECTION 5. If the votes for license shall exceed the votes against license, then the article first above mentioned shall become a part of article XV of the constitution, regardless of whether any revision, alterations, or other amendments submitted to the people shall be adopted or rejected. And if the votes against license shall exceed those for license, then the second article above mentioned shall be a part of article XV of the constitution."

Mr. LAMPSON: The question pending is upon the engrossment. The period for amendment has not yet been reached.

Mr. DOTY: The question is "Shall the proposal be engrossed?" but it is just as amendable now as at any other stage. There is no question about the power of this Convention to amend this proposal when it is regularly before us.

Mr. LAMPSON: Can you refer to that rule?

Mr. DOTY: What rule?

Mr. LAMPSON: The rule that permits amendments.

Mr. DOTY: No more than you can refer to any rule that is against it. It was decided twenty years ago by a speaker of this house that the question of engrossment being before the house the matter is subject to amendment. The main question here is " Shall the proposal

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be engrossed?" but before we decide to engross the proposal we may decide to amend it.

The PRESIDENT: The president will so rule that the amendment is in order.

Mr. LAMPSON: Is this offered as an amendment to No. 151 or as a complete substitute?

The PRESIDENT: As a complete substitute.

Mr. LAMPSON: I would like to inquire—a parliamentary inquiry of the president—if he would hold it in order if the minority report of the Committee on Liquor Traffic were offered now as an amendment or substitute to this?

The PRESIDENT: The president doesn't know anything about the minority report now. A member of this Convention has offered a substitute for a proposal that is before the house and the president holds that it is in order.

Mr. FESS: I would like to ask the delegate from Erie [Mr. KING] whether the substitute just offered is not Proposal No. 4?

Mr. KING: All after the name of the proposer.

Mr. FESS: It is identical with Proposal No. 4.

Mr. KING: After the name of the proposer, I say.

Mr. FESS: Then I would like to have the president's ruling on a point of order, whether the report of the majority, which must give way to the report of the minority, can come in at this stage.

Mr. KING: We are not considering any reports here now. We are considering Proposal No. 151. The gentleman sought to place that ahead of either of the reports of the committee. It is as if there never were any reports made so far as this matter is concerned.

The PRESIDENT: The president has ruled and rules again that the member from Erie [Mr. KING] is in order as a member of this Convention and not as a member from any committee in offering an amendment to a proposal which is before the house.

Mr. FESS: Then I would like under the point of order—

Mr. ANDERSON: I rise to a point of order.

The PRESIDENT: The gentleman from Greene has the floor.

Mr. FESS: If the gentleman is in order in substituting the wording of the majority report of this Proposal No. 151, I would like to know whether the minority report as a substitute for this would not be in order?

The PRESIDENT: The president will rule that Proposal No. 151 is before the house and under our rules there are three amendments possible to be considered, pending at the same time.

Mr. ANDERSON: A point of order.

The PRESIDENT: The member from Mahoning will state his point of order.

Mr. ANDERSON: The point of order I wish to make is that the substitute contains the title, and is therefore out of order under the rule, and I want a ruling on that and then I want to be heard on Proposal No. 151.

The PRESIDENT: The president will rule that the amendment as offered is in order.

Mr. ANDERSON: Won't you consider my proposition? I say it contains the title. Won't you look and see if it does?

The PRESIDENT: The president has ruled. If the member wants to appeal from the decision of the chair,

the matter can be debated and the member can state his reasons.

Mr. ANDERSON: May I explain my position on that?

The PRESIDENT: With the consent of the Convention.

Mr. LAMPSON: There is limited debate allowed on a point of order.

The PRESIDENT: The president has already decided the point of order, but the member from Mahoning [Mr. ANDERSON] is at liberty to make an explanation.

Mr. ANDERSON: I admit I am not very conversant with the rules, and I don't believe anybody is except Mr. Doty, but I have understood—

Mr. DOTY: I will teach you if you want to take lessons.

Mr. ANDERSON: I would like to. The point I desire to make, Mr. Chairman—

Mr. DOTY: Call him "president" not "chairman."

Mr. ANDERSON: Mr. President: Will you permit the gentleman from Cuyahoga [Mr. DOTY] to take your seat up there so that he can make his rulings from the chair?

Mr. DOTY: I was giving you your first lesson.

The PRESIDENT: The gentlemen will please be in order.

Mr. ANDERSON: The point I am making, or attempting to make, is that a substitute must not contain the title, which this substitute does. In other words, you can not offer a substitute for a proposal and have in it the title and I insist that this does. If you will examine it you will see that it does.

Mr. HARRIS, of Ashtabula: I am frank to say that I am of the same opinion as the gentleman from Mahoning [Mr. ANDERSON]. This matter comes to us from the Liquor Traffic committee in the shape of a majority report under which it has a title. At the same time there is submitted from the same committee a minority report. A given hour has been fixed as a special order for those propositions by name. Now a distinct proposal under another number, which had a special hour fixed for consideration, has come up. The delegate from Erie [Mr. KING], a member of the majority reporting from the committee on Liquor Traffic, proposes now to offer that proposal, which has a time set for special hearing, as a substitute for this proposition. I object.

Mr. LAMPSON: At the outstart I made a point of order against this proposed amendment and the chair ruled that my point of order was not well taken. I still believe it was well taken. Ordinarily there is a special rule that a pending bill in a legislative body can not be offered as an amendment to another pending bill which has already been printed and has its place. This situation is exactly the same, logically and actually, except that we have no specific rule on the subject. Now here is a complete proposal, regularly reported by a regular standing committee and made a special order for a regular time, and it is now offered as an amendment to another proposal which has a different number and a different title, and which has also been made a special order for a special time. This is in contravention of all good parliamentary practice, although I admit that we have no special rule which provides against it. But it is an outrage upon common parliamentary law, and in violation

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of common parliamentary procedure, and in legislative bodies usually in congress there is a special rule which provides against it, that one bill upon the calendar can not be taken up and offered bodily as an amendment to another and that is this case.

Mr. KING: This is not a legislative body. It conducts business according to its own rules. One of the rules which this Convention adopted was, if the proposal has been amended—

A DELEGATE: What is the number of the rule?

Mr. KING: No. 90 It reads "If a proposal has been amended prior to its second reading, the date and page of the Convention journal containing said amendment shall be noted on the calendar immediately below the title of the proposal."

Mr. LAMPSON: May I ask the gentleman a question? Does not the gentleman really think that that means amended by a committee to which it has been referred?

Mr. KING: No; it does not say so.

Mr. LAMPSON: No; it does not say so, but would not that be the fair interpretation?

Mr. KING: There is nothing in any other section to indicate that that refers to an amendment in committee. It says plainly if the proposal be amended prior to its second reading. Now I insist that you may do it upon the question of engrossing, just as the chair has ruled.

Mr. WINN: I desire to offer the following amendment to the substitute offered by the member from Erie [Mr. KING].

The amendment was read as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

"SECTION 1. At the time when the vote of the electors shall be taken for the adoption or rejection of any revision, alterations, or amendments made to the constitution by this Convention, the following articles, independently of the submission of any revision, alterations or other amendments submitted to them, shall be separately submitted to the electors in the alternative in the words following to-wit:

The general assembly, shall be authorized to enact legislation providing for the licensing of the liquor traffic, 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; 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.

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.

SECTION 2. At said election, a separate ballot shall be in the following form:

## INTOXICATING LIQUORS.

	For License.
	Against License.

SECTION 3. Separate ballot boxes shall be provided for the reception of said ballots.

SECTION 4. The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words "For License" if he desires to vote in favor of license. And opposite the words "Against License" within the blank space, if he desires to vote against license, and in favor of allowing section 9, article XV of the present constitution to remain unchanged. If a cross-mark is placed opposite both phrases, or neither phrase, then the vote upon that subject shall not be counted.

SECTION 5. If the votes for license shall exceed the votes against license, then the article \* \* \* above mentioned shall become a part of article XV of the constitution, regardless of whether any revision, alterations, or other amendments submitted to the people shall be adopted or rejected. And if the votes against license shall exceed those for license, then section 9, article XV of the present constitution shall remain unchanged."

The PRESIDENT: The question is on the adoption of the amendment to the amendment.

Mr. WINN: I think, Mr. President and gentlemen of the Convention, that this brings before us now for consideration the minority report of the Liquor committee. So that we may start right, let us know at the beginning that the substitute offered by the member from Erie is Proposal No. 4, recommended by the majority of the Liquor committee, and that the amendment or substitute offered by me is the minority report of the committee. So we are now, if I understand the situation, precisely where we would have been if the member from Erie had permitted things to take their usual course. A distinguished member of this Convention said to me the other day that he was opposed to capital punishment on general principles; that he was opposed to capital punishment even by electrocution, and was especially opposed to strangulation. The method of capital punishment seems to be a favorite with some members on the floor of this Convention, and I may include in that number the distinguished member from Erie [Mr. KING], for the tactics resorted to here are not upon the merits of the proposition, but merely for the purpose of strangling a plain, fair proposal, offered by the member from Mahoning [Mr. ANDERSON]. My notion about this question is that we ought to debate it, discuss it and determine it, just as we would debate, discuss and determine, or have determined, in a court of justice, some question in which we are deeply interested. Not since we have convened in this hall, and probably not again, will we be called upon to consider a question of so much concern as the one we are now debating. Other questions deal with property rights,

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with the right of free speech, with personal liberty, but this one deals with all of those, and it deals with human life.

I shall attempt while I discuss this question to be just as deliberate as possible. To me, generally speaking, the notion of licensing a thing that I believe to be a crime, is detestable. But I look this question fairly in the face, and I adopt the language of our distinguished member from Hamilton county [Mr. PECK] when he said last week "Whatever is for the general benefit of the people of Ohio must prevail"; and the language of our distinguished member from Cuyahoga [Mr. DOTY] when he said "The people in the city of Cleveland are interested in the public schools of Cincinnati. We are interested in the public schools of Cincinnati because it is the school system of the state that makes for a better civilization, and whatever makes for a better civilization, be it in Cincinnati or Cleveland, commands the respect and attention of every good citizen wherever he lives"; and the language of the distinguished member from Hamilton [Mr. BOWDLE], who said a day or two ago that "School houses are built and teachers are employed to police the pupils in our public schools against the evils of ignorance surrounding them, to the end that the coming generation may grow up to be strong men and strong women." And upon those principles he supported a measure of much concern to the state, and upon those principles I support the amendment to the substitute now under consideration.

This question must be settled sometime and settled right. It has been a bone of contention since 1883, and looking back over the history of my life, I think if there is any act that I have just cause to be ashamed of more than any other it is the small part I had in a political convention of a great political organization, with which I had affiliated all my life, in making a platform upon which it was to go before the people in 1883. If you remember the history of the liquor legislation in Ohio, you know that in 1882 the first law was written upon our statute books providing that those engaged in the liquor traffic should pay into the public treasury some amount of money to care for the evils of the traffic. A small, insignificant amount, and yet there never was a law enacted in the state that created so much disturbance as that to which I refer. And then that great political party with which I then and do yet affiliate came together solemnly in a convention in Columbus, and in a most deliberate and solemn manner declared that "We, the democrats of Ohio, are unalterably opposed to any sumptuary laws." Not more than half of us knew what that meant except that we understood in a general way it was a bid for the votes of the rum sellers, and we received them. We elected George Hoadley governor and we elected one of my very dear friends as judge of the supreme court. The others I do not remember, but I do know that the old party of Jackson and Jefferson and Monroe the party that gave to the country many of the men whose names adorn the pages of American history, by this declaration, tied itself to the tail end of a beer wagon, and from that day to this very moment we have been compelled to go about under the stigma of being a whisky party. For that reason I am especially pleased to speak upon this subject today, because in the course of human events I shall not be privileged to participate in many

more conventions. But some place along the pathway of my life I hope to see the time when that old party, with which I have so long affiliated, will cut the rope that has bound us so long to that stigma.

Now, with these general remarks, and they have but little to do with the question under consideration, I am going to discuss for a little while, and I shall be brief as I can, my objections to Proposal No. 4.

If you will turn to your bill book you will notice that this proposition is mandatory upon the legislature, "License to traffic in intoxicating liquors shall hereafter be granted in this state." I am opposed to the use of the word "shall" and I will briefly tell you why.

As the schools, referred to in the remarks of the gentleman from Cincinnati [Mr. BOWDLE], to which I made reference a while ago, are continued in operation, public sentiment on the liquor question will change from time to time. As more schools are established, as education becomes more general, public sentiment changes accordingly. And the time may come in the very near future when a legislature will be chosen to represent the people of Ohio, a very great majority of which will be, as I am on general principles, opposed to the license proposition. And supposing that should be the case? With this proposition written into our organic law, such general assembly, chosen from the body of the electors of the respective communities—perhaps under pledges—must violate such pledges to their constituencies. No member of the general assembly should be put in a position where he must vote a certain way when perhaps he has the instructions of his constituents to vote the other way.

I am opposed to it in the next place because there are no restrictions in it. I know what the answer will be to this objection. It will be urged as it was in committee by the author of Proposal No. 4 that these things are all with the general assembly; that there should not be anything written here except a general provision, a direction to the general assembly to carry out the purposes of this Convention.

I submit to you, gentlemen, that there never will be a time so opportune as the present moment for the people of this state to have written into our laws the restrictions that should accompany a license proposition.

The first restriction in the proposed amendment is that there shall not be licensed a greater number of institutions than one for each one thousand of the population.

It will be urged here that in some communities that is not enough. Well, I have the notion that if there is one saloon to each one thousand population, there will be opportunity enough for every person in the whole community to get all the liquor he needs.

But it will probably be urged by the author of Proposal No. 4, that in some communities those engaged in the traffic would have too much of a monopoly and would become wealthy at too early an age in their business career. In answer to that I have to say, if that be true, if experience shall demonstrate it to be true, it is the easiest thing in the world for the general assembly to take from the persons licensed a part of such profits and apply the amount to the proper care of those who become public charges by reason of the business. There is no trouble on that score. If there is but one saloon to every ten thousand persons, there is no reason why the general assembly cannot by proper legislation see to it that the

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profits shall not become too great. But there is every reason why these limitations should prevail. It is provided here, as you will notice, that in municipalities and townships containing a population of less than one thousand persons there shall be only one such institution—but one grogshop in a municipality of a population of less than one thousand—and I ask you who live in rural counties and who know what results from the liquor traffic in those small localities, I ask you, if that, in your judgment, is not enough?

When the legislature convenes, if Proposal No. 4 is adopted this question will be before the general assembly for solution. What will be the result of all of it? Why, if over in my county I were to be nominated for the general assembly somebody else would be nominated who believes differently from what I do, and the result would be the whole campaign would be fought out upon the liquor question. It will be so this year. It will be so at the next election, and so from time to time, unless this restriction is written into the organic law. Now this is the time to do it. There never again will be such opportune time. In my judgment this proposition, if written into the constitution should contain a limitation as to the number of places that may be licensed. It should also contain, next, a provision forfeiting the license, as the amendment does. It should contain in detail the tribunal, or the commission, or the authority, whatever it may be termed, that is to pass upon the qualifications of those who may engage in the business. It should contain all those details, and I should have written them into this amendment if I did not know that there are those here who will never vote for Proposal No. 4 unless there are some restrictions written into it, one of which must be a limitation as to the number of licensed institutions. It was reported to the committee when this matter was under consideration that in the city of Sandusky there is one saloon for every two hundred persons; in Cincinnati, one for every two hundred and fifty; Cleveland, one for every three hundred. I am told that in the city of Toledo there is one for every two hundred and seventy persons. In the little city where I live there is one saloon for every four hundred, and I am quite certain that if there were only one saloon to every two thousand persons the saloon would accommodate all of the people. If we settle this question now, if we put in these limitations, we will have removed the subject from politics insofar as the settlement of the number of saloons is concerned.

Now it is proposed, as I understand it, that before we shall conclude our deliberations there will be submitted to the people the question of preserving to the people the right to initiate laws. What will be the result if this question is left open to be settled either at the polls, under law to be initiated by the people, or in the general assembly, by those who have been chosen to represent us? Is it difficult for you to see that if Proposal No. 4 is adopted without any restrictions and if the people of this state are given an opportunity themselves to initiate a law upon this subject, they will initiate one the terms of which will be so much different from the proposition contained in this amendment that those favoring Proposal No. 4 will gasp in wonderment? Is it difficult for you to see that as often as the people may have an opportunity to speak upon this subject, they will be repeating the demand for a law that will change the restrictions, change

these limitations from time to time? No; the question will never be settled unless we settle it in the constitution.

It was insisted in the committee and will be here, I presume, that the provisions in the proposed amendment respecting the forfeiture of license in case of violation of some law relative to the traffic is too severe in its terms. I will read it:

And 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.

You will remember, gentleman, that there is an organization called the Model License League. I have had much of its literature. Its literature has been published in the papers, and one of the things that the Model License League insists upon is that saloons shall be limited to one to each one thousand population. Another thing it insists upon is the provision that whenever a license is granted to a person and he violates any law of the state upon the subject, his license shall be revoked and not renewable.

Now, wherever that industry finds itself confronted with a strong local option sentiment, or with a prohibition sentiment, it insists that its model license law shall be adopted. But if, perchance, in the election of the general assembly, those interests shall have a majority, or if in choosing delegates to a constitutional convention it shall somehow become convinced that it has a majority favorable to its traffic, then it shuts and locks its door as respects any model license and asks for the enactment of a license law without any restrictions whatever. Over in Maine last fall, and I was over there when they were fighting upon the question of retaining prohibition in their constitution, men from Ohio and from all over the United States, or from many of the states at least, campaigning throughout that state, told of the beautiful operation of the local option laws of Ohio, and they insisted that there was nothing so beneficial to the people of a great commonwealth as local option laws in which the county is the unit. Well, in Ohio, the very same orators, representing identically the same interests are telling the people what a monstrosity it is and that it should not go into the constitution of Ohio. So the question of regulation; the question of good or bad saloons; the question of the sale of intoxicating liquors to those who should not be allowed to buy them, is of no consequence whatever except as it may be used for the purpose of obtaining votes in some general assembly, some constitutional convention or at the ballot box.

Now there is another reason, and the strongest reason I have to urge why this amendment should be adopted. I have hoped for a good many years that I may live to see the day that public sentiment will demand that the liquor traffic be banished altogether, especially in Ohio. I no longer hope to see that time. Younger men may do so, but persons of my age can not hope to see the day when all persons, or a large majority of the people of the state of Ohio, will look upon this institution as I do. Therefore it is my notion that we should give to the people of the state the very best protection possible, and I submit to you this minority report of the committee, the amendment we are now considering, is the best and embraces a better proposition than has ever been written

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into the law of any state in the Union, unless it be in those states where prohibition prevails. Why so? As I said before, this proposition contains these restrictions, but that is not all. It is provided in terms so certain that no person can misconstrue them that no law on the statute books shall be deemed affected in any manner by the adoption of this statute. "No law relating to the liquor traffic shall be invalidated, restricted or limited in its operation." What does that mean? That means that all these laws written from time to time in the last twenty or thirty years, shall remain just as they are—the Aiken tax law, the township local option law, the municipal local option law, the county local option law, the Dow law—all shall remain just as they are; and those laws that make it unlawful to erect a saloon within a certain distance of a schoolhouse shall remain; those laws that make it unlawful to erect a saloon within a certain distance of a place where a meeting is held by an agricultural society, shall remain; those laws relating to the sale of intoxicating liquors within a certain distance of state institutions, like the Boys' Industrial Home or the Soldiers' Home at Dayton, shall remain; in short, all such laws shall remain identically as they are, while by the main proposal, No. 4, they are all rendered ineffectual. But that is not all. This proposal contains the further provision that "Nothing herein contained shall 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." Now think of that. "Nothing herein contained shall be deemed to limit the right of the general assembly under its police power to pass any law it deems necessary to provide against the evils resulting from the traffic in intoxicating liquors." Now against that we have this in the King proposal: "Nor shall any law be valid which has the effect of defeating or negating directly or indirectly the regulation of the traffic by a license system herein provided for."

Just think of that! Just ahead of that, in the two preceding paragraphs, it is proposed that nothing herein be so construed as to repeal or modify such prohibitory laws or to prevent their future enactment, modification or repeal; and then after preserving or attempting to preserve these four laws, under which prohibition in a limited way is made possible, comes the sweeping and all-powerful proposition "Nor shall any law be valid which has the effect of defeating or negating directly or indirectly the regulation of the traffic by a license system herein provided for."

If I were altogether selfish in this matter, I would keep my seat today and allow the King proposal to be submitted to the people, and I would do that because I believe, as much as I believe I am standing on this floor addressing my fellowmen, that if the people of Ohio were given an opportunity to vote upon this proposal it would be defeated by a majority the like of which was never rendered against any proposition or any candidate since the state was organized. But that is not my purpose in this Convention. My purpose is to write and submit to the people something that will give us a better law than the one we now have upon the statute books. You ask me why I believe such a proposition would not be ratified by the people? I can tell you quickly. I believe it would be rejected by the people because of the personnel of that tremendous army that will be against it. I know some

will be for it. There will be some of the best people in the commonwealth. There will be our brother from Erie, a man who has been greatly honored by his fellow citizens and deservedly so. There will be other members of this Convention too—splendid men—who are just as conscientious in their belief as I am, and there will be along with them all the brewers, and all the saloon keepers, and all the bartenders, all the spittoon cleaners, and all the bums and thugs and thieves and prostitutes and keepers of houses of prostitution. They all will be rubbing elbows with these splendid men I have been talking about and they will all be lined up on one side. But on the other side there will be the mothers, God bless them, of this old commonwealth. They will not be voting when this is submitted, but their influence will be felt; and there will be all the preachers—no, I don't mean that, I do not mean all of them, because, over in the northwest part of the state where I was campaigning a few years ago, there was a man who pretended to be a preacher, and who made speeches on the other side of the question. I told him he reminded me of the Irishman who said that when he died he wanted to be buried in a Jewish cemetery because that is the last place the devil would look for an Irishman. So I said it was a surprise to me, because that was the last place that I would ever be looking for the preacher. There will be the preachers and the heads of the institutions of learning, and the Sunday school superintendents and the scholars—practically all the scholars in our institutions of learning—ah, there will be a splendid array of splendid citizenship upon the other side, and do you think that that small array, that limited array of splendid men whom I have mentioned, supported, encouraged, aided, and assisted by their less respectable associates and companions, will be able at the ballot box to overthrow that splendid army of respectability? I think not. And if I had here no object except that something might be submitted that would be defeated, I would keep my seat, and I would say "Submit to the people the King proposal, give the people in the state a chance at it so we may demonstrate to them the stuff of which the citizenship of Ohio is made." But I have a higher motive than that, a loftier purpose than that. It is that finally something shall be produced and written into the constitution that will be better than anything we have ever had.

Now let us see how this amendment will operate. In the little village of Sherwood, with a population of seven or eight hundred souls, there are either three or four saloons. That little place under the amendment I propose would have just one. The man who operates it could well afford to operate it in as perfect a manner as a saloon can be operated. He could well afford to conduct his place without selling intoxicating liquors to any man who is in the habit of getting drunk, or to minors. He can afford to operate it without operating after the time when, according to the ordinance of the village, he should be closed.

Mr. TALLMAN: Are there any saloons in your town?

Mr. WINN: If you have any questions to ask for information I will be glad to answer them. I will answer that right now. He asked me if there are saloons in my village. I had better answer that right now. A little over three years ago the Rose local option law went into



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effect. Soon after September 1 of that year petitions were put in circulation and local option elections were begun. One after another they were held until twenty-nine elections had been held in twenty-nine different counties, and there was not one in which the saloon interests were successful. But when the election was held in the county that sent me here, those who viewed this matter as I do went down in defeat by a majority of about a thousand. Talk about there being no saloons in Defiance county! It is a good county in which to live, because there are enough persons opposed to the traffic to keep it pretty respectable, but speaking of it as a wet or dry town, I am here to say that it is about the wettest place any where this side of the ocean.

A DELEGATE: How about your village?

Mr. WINN: I don't live in a village. I live in a city of between seven and eight thousand souls with nineteen saloons in it. The village of Sherwood, with seven or eight hundred people, has three or four saloons, and the village of Ney, with one hundred and ninety or two hundred population, has two or three saloons. Oh, yes, we have saloons up there. There may be a notion here that I was given a seat in the Convention hall because of the fact that the old county from which I come is dry territory, but that is not the fact. There is nobody within the limits of the county of Defiance who has any doubt respecting my position on this question, and when my friends placed my name before the electors of the county as a candidate for a seat in this Convention, I hastened as rapidly as I could to publish in all the newspapers of the county—and at my own expense, too—the statement that if chosen to a seat on this floor I would fight to the very last ditch against any proposition for the unrestricted and unlimited licensing of the sale of intoxicating liquors. Notwithstanding there was also placed in nomination one of the best men in our county—and a Democrat, too; so there was no politics involved—although there was nominated against me, a man who never drank intoxicating liquor, a man who stands as high as any man who ever lived in the county of Defiance, still because I stood by the principles I am now fighting for I was chosen over my adversary. It was not because it was I, but because the people of Defiance believed in the principles I am here advocating. They stand as I do, unalterably opposed to any proposition to license the liquor traffic unless it is safeguarded by the proper restrictions, such as those written in this amendment.

It is for this reason, I say, that I am here to obtain for the people of the state the very best license law possible. This amendment is not my idea. I think I have already said that if I had my way about it I would put more restrictions in it. But when the other side is heard upon this proposition you will hear the argument that it is no part of the business of a constitutional convention to write into the constitution these things, but that such things should be written in by a legislature. I sat down this morning to look that question up, to see whether that is the practice of the different states. The first constitution I turned to was that of the state of New York. I found that section 2 of article II of the constitution of New York, adopted in 1894, contains what those who are favorable to Proposal No. 4 will call statutory law.

It has no relation to the liquor traffic, but it shows that other constitutional conventions, in framing constitutions,

did not deem it proper to write a constitution leaving everything to the general assembly. Now here is the provision of the constitution of New York to which I refer:

No person who shall receive, accept, or offer, to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contribute, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward from the giving or withholding a vote at such election, and has not made any promise to nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or any infamous crime.

Why, if I were to offer a proposition of that sort upon the floor of this Convention a large number of men would hold up both hands in holy horror and say "Don't you know, Winn, that is nothing for a constitutional convention to deal with? That is for the legislature alone." But down in New York they didn't seem to think so. Now a little bit further on it is provided:

Any person holding office under the laws of this state who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, anything of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statutes in relation to the offense of bribery.

Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

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Think of it, written out in the constitution that if a man shall be bribed to withhold his voice, or to vote in a certain way, or to do one of these other things, he shall be guilty of a felony! Why do you suppose they wrote that in the constitution of New York? I will tell you why they did it. To me it is as plain as the noon day sun. Down in New York they know how general assemblies are constituted. When that constitutional convention came together it was a body of men like this one, not a man of whom could be under any circumstances or in any way induced to do a thing which he did not believe was right. But the constitutional convention of the state of New York said, "Knowing the general assembly of the state as we do, knowing that it will never put upon the statute books a provision to the effect that a member of the general assembly or any other officer who shall be bribed shall be deemed guilty of a felony, we will put it in here ourselves," and they wrote it out in the organic law; and that was the proper thing to do.

What will be the result if this Convention adopts Proposal No. 4 and puts it up to the general assembly to enact such regulatory laws as may be necessary? Why the result will depend altogether on which element wins at the election first held for members of the general assembly after this election.

Now I will turn back to the first constitution of Ohio, and I am going to read this to illustrate the fact that away back in 1802 there were those in the state of Ohio who were not frightened at writing into the constitution what they thought right on this subject. In section 2 of article VII it is provided as follows:

Any elector, who shall receive any gift or reward for his vote, in meat, drink, money or otherwise, shall suffer such punishment as the law shall direct; and any person who shall, directly or indirectly, give, promise, or bestow any such reward, to be elected, shall thereby be rendered incapable, for two years, to serve in the office for which he was elected, and be subject to such other punishment as shall be directed by law.

So you see that away back yonder we were not afraid to write in the organic law something that was right, even though it sounded a statutory provision.

Mr. DOTY: Will the gentleman yield to let me move to take a recess?

Mr. WINN: Oh, certainly.

Mr. DOTY: I move that the Convention recess until half-past one.

The motion was carried.

#### AFTERNOON SESSION.

The Convention was called to order by the president pursuant to the motion for a recess, and the delegate from Defiance [Mr. WINN] resumed his remarks.

Mr. WINN: Before proceeding with my remarks, I have a request to present. I have a letter from the member from Henry [Mr. CAMPBELL] saying he has been suddenly called away by business and will not be here for several days and he asks for indefinite leave of absence.

The PRESIDENT: If there is no objection the leave will be granted.

Mr. WINN: Now, gentlemen, at the time of recess I was calling attention to the provisions in some of the different constitutions of the states in which what is denominated here "legislative enactments" are written into the organic law. There is just one other provision of that sort to which I will call attention. It is section 9 of article VIII of the constitution of Pennsylvania, adopted in 1873. It reads as follows:

Any person who shall, while a candidate for office, be guilty of bribery, fraud, or wilful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this commonwealth: and any person convicted of wilful violation of the election laws shall, in addition to any penalties provided by law, be deprived of the right of suffrage absolutely for a term of four years.

Section 15 of the same article reads:

No person shall be qualified to serve as an election officer who shall hold, or shall within two months have held any office, appointment or employment in or under the government of the United States, or of this state, or of any city, or county, or of any municipal board, commission or trust in any city, save only justices of the peace and aldermen, notaries public and persons in the militia service of the state; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law.

I only read these provisions from the constitutions of the different states for one purpose, and that is, to dispel the notion that seems to prevail here to some extent among certain members that all limitations should be left to the legislature. The very moment you speak of any modification of the license proposition, they say all regulations and restrictions should be left entirely to the general assembly. When we were listening to the addresses made before the committee in this hall, questions were propounded to those on the other side as to what particular restriction should be written into the law finally if the license plan is adopted, and you will remember how every man, whether he were a lawyer or a layman, experienced in such things or inexperienced, threw up his hands in a moment and declared that all such things must of necessity be left to the legislature. They were for regulation of the saloons; regulation as to the hours of keeping open; regulation as to the issuance of the license, and how it may be suspended or revoked, and all these things, but the very moment we say a word as to limitations, the other side takes fright and says all of these things must be left to the general assembly. Now I have looked through several of these constitutions of different states, going away back to some of the very first constitutions of the very oldest states, and I have here in my desk all the constitutions of all the states that were ever adopted, and there is scarcely one of them where you do not find so-called legislative provisions carried into the constitution to a very much larger extent than is proposed by this amendment. I assume that



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course is pursued, rather than to leave things to the general assembly, for the very reason that I urged here today for the adoption of this amendment with its restrictions.

We have already seen how easily the general assembly may be influenced one way or the other, if it is known to a certainty that there is no dictagraph in the neighborhood. Waiting rooms may be provided for business transactions to be carried on in the absence of delicate instruments of that sort, so constructed that such instruments can not be used at all. There is a way to get around even such instruments as the dictagraph. So it is proper now for us, if we are working for the best interests of the people, to write into this proposal such reservations and limitations as we deem necessary.

At the time this matter was being discussed in the committee the author of Proposal No. 4 admitted that the last paragraph prevents, or was intended to prevent, any extension of the prohibition of the liquor traffic throughout the state. Indeed the author of the proposal said, when the question was propounded to him, that he hoped the effect of it would be to stop prohibition where it is, or words to that effect, and that it certainly was intended to do that.

As I said this forenoon, I may never live to see the day when prohibition in Ohio will have been extended beyond the limits of county lines—where the unit shall be greater than the county—but who knows? Who can look into the future and predict a thing of that sort. Who of all within the sound of my voice would have said fifteen or twenty years ago that in the state of Kentucky in 1912, by a large majority in both branches of the general assembly, local option—county option—would be made possible.

As I was going through these books I turned to the constitution of the state of Oregon, adopted in 1857, and I find something here, not bearing directly upon the subject of debate, but having some bearing upon the thought I now have in mind, which is, that the future may bring results which we now little contemplate. In submitting its constitution for adoption, these questions were submitted to the electors of Oregon:

Do you vote for slavery in Oregon—Yes or no? Do you vote for free negroes in Oregon—Yes or no.

Then it was further provided:

If this constitution shall be accepted by the electors, and a majority of all the votes given for and against slavery shall be given for slavery, then the following section shall be added to the bill of rights, and shall be part of this constitution.

Persons lawfully held as slaves in any state, territory, or district of the United States, under the laws thereof, may be brought into this state, and such slaves, and their descendants, may be held as slaves within this state, and shall not be emancipated without the consent of their owners.

And if a majority of such votes shall be given against slavery, then the foregoing shall not, but the following section shall, be added to the bill of rights, and shall be a part of this constitution:

There shall be neither slavery nor involuntary

servitude in the state, otherwise than as a punishment for crime, whereof the party shall have been duly convicted.

And if a majority of all the votes given for and against free negroes shall be given against free negroes, then the following section shall be added to the bill of rights and shall be part of this constitution:

No free negro or mulatto, not residing in this state at the time of the adoption of this constitution, shall come, reside, or be within this state, or hold any real estate, or make any contracts, or maintain any suit therein; and the legislative assembly shall provide by penal laws for the removal by public officers of all such free negroes and mulattoes, and for their effectual exclusion from the state, and for the punishment of persons who shall bring them into the state, or employ or harbor them therein.

Looking backward we can scarcely contemplate that as recently as 1857 it was deemed necessary for the people in any state of this great free land of ours to pass at the ballot box upon such questions as were submitted to the people of Oregon in that year. A few years ago I visited for the first time the old Hotel Royal in the city of New Orleans. Many of you perhaps have been there. If so, you were attracted, as I was, to the old auction block built in the rotunda of that old hostelry as a part of the building itself, where for years and years, while that old inn was the most popular in all the Southland, slaves were sold in the market as we sell our stock today. And then, as I contemplated the scenes that were enacted in that place only a few years ago, my guide said to me "Before leaving here you should look into this other part." He opened an old iron door and I looked in but saw nothing but a dark room, and he said: "Here it was that the slaves, brought from all sections in the South, on big auction days were locked until they were brought out to be sold on the auction block." And I said to myself, is it possible that within a few decades of time such things took place in this country of ours, with all its Christian influences, with **all the things making for the betterment of human kind**—is it possible that such things were permitted under the sanction of law? And I must say the same thing when I read of what was proposed as a part of the constitution of Oregon in 1857.

I only speak of this to show you that we are living in an age of progression; that we are living better lives than we ever lived before. I speak of this to impress upon you, my fellow delegates, that we are living today a better civilization than we ever lived since the world was created; that never since the time when the stars first sang together; never since the time when God said "Let there be light" have the people lived a life of such perfect civilization and intelligence as today. What will be the conditions fifty years hence? Ah, what may be the conditions twenty years hence? I believe as much as I believe we are living for a better future that fifty years from now if somebody stands in this old hall discussing what took place today and turns to the printed journals he will read with as much wonderment as I read today the propositions submitted to the people of

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Oregon in 1857 of the question we propose to submit on this subject as the result of our deliberations. As much as I believe in the greatness of my country, so do I believe that the time will come and that there are men and women now living who will see the day when men and women will look upon the institution that we are contending against on this floor with the same horror that we now look upon the institution of slavery.

I am speaking of these things for one purpose only and that is that we may, in writing this constitution, leave it possible for coming generations to take advantage of the conditions that may confront them.

In this amendment that is all looked to.

I want to call particular attention to this, because when we come to a vote it will be on the question shall the substitute of the member from Erie be amended as proposed by my substitute? Now I want to read this substitute carefully, and I want to analyze every word of it, so that no person can vote without knowing what his vote means. I will read it.

The general assembly shall be authorized to enact legislation providing for the licensing of the liquor traffic.

That is the whole proposition. It simply says to the legislature, you have the authority to do this.

But no such legislation shall authorize more than one license in each township, or municipality of less than one thousand population, nor more than one for each one thousand population in any other township or municipality.

That is all very plain.

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.

That is plain; nobody can misunderstand that. Now comes the next provision, and I want to compare this with the same provision in Proposal No. 4:

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.

What could be fairer than that? If we are legislating for the whole body of the people what could be fairer than to say that all the laws that have been written upon our statute books shall remain just as they are, and that nothing we shall do here today, or do during this Convention, shall be deemed sufficient to invalidate or restrict or limit anything that the legislature has written in the laws of the state; nor shall anything that we do be deemed sufficient to prevent the legislature, under its police power, to pass whatever laws may be necessary to provide against the evils resulting from the sale of intoxicating liquors?

The supreme court of the state of Ohio has held in several decisions, as most of you, perhaps all of you, know, that under the police power of the state the legislature has the authority to pass a law prohibiting the

traffic throughout the state. The day may never arrive when it becomes expedient to pass a law of that sort, but if in the evolution of things, in the progress of the civilization of the state, the time arrives when it shall be deemed proper, necessary and prudent for the general assembly to say that in all municipalities having a population of less than a certain number the traffic in intoxicating liquors shall be prohibited, we have foreclosed the right to do anything of that sort if Proposal No. 4 is passed. Indeed we have foreclosed the right to extend the prohibitory laws at all.

Now again turn to Proposal No. 4. I have already read the corresponding paragraph from the amendment. Now let us see what Proposal No. 4 says:

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 shall by law be operative therein.

Just so long as such laws are operative! But suppose a dry county, under the provisions of the Rose law, shall become wet territory. Then it can be licensed, and where, I ask, under the provisions of this could it ever become dry territory again? Because this paragraph is followed with the further language: "Nor, shall any law be valid, which has the effect of defeating or negating directly or indirectly the regulation of the traffic by a license system herein provided for."

Let us in building this law build it for the future. Let us build it first to provide against the evils of the traffic as much as may be. I am not standing upon the floor of this Convention hall, asking that anybody be deprived of the right to drink intoxicating liquor. I have never claimed, and I do not now claim that any legislature may prescribe what I may eat or drink; but I do insist that we have a right, if the public welfare requires it, to dispense with any public institution the tendency of which is to tear down the citizenship of the state. And so let us build with an eye to the future, to the end that whenever the people have been lifted up to that degree of intelligence that they are ready to banish liquor from any community or political subdivision of the state, they may have the right to do so. It will not affect us now, but it may some time in the future. The argument of the other side is that we must not interfere with a man's personal liberty, not even if the public welfare requires it, and also that we can not change a man's habit by legislation. Well, we may at least withdraw the temptation from men who are not sufficiently strong to stand against it, whose appetite overcomes their judgment, and who become slaves to the habit.

Perhaps I might illustrate this by an incident that occurred over in the state of Massachusetts. You know over there they take a vote on a proposition of this sort either every year or every two years. There is submitted to the electors of every municipality the question whether or not the liquor traffic shall be licensed within the town, city or village as the case may be. This story was told me some years ago and it affected me very much and because it illustrates the thought which I have in mind I will tell it for that purpose. In a little village of perhaps less than one thousand population there were two saloons.

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One of them was on a street diagonally across from a blacksmith shop. The owner or proprietor of the blacksmith shop was a man named Tom Jones, a big, broad-shouldered, strong man, strong in every way but one. He could not stand the temptation of an open saloon, and he became a drunkard. Then the time came for them to take a vote. They voted the saloons out of the little town for a year or two—I forget the exact time—and the village was dry territory. The temptation was removed from Tom Jones, and for that period of time he was a sober, industrious man, a good father to his children and a good husband to his wife. Then they had another election, the question again being “Shall the saloons be licensed in this municipality?” Just the night before the election they held a great meeting at which all the voters of the municipality were present. It was held in the city hall and was addressed by the judge of the courts, a man who had presided on the bench for a number of years—he made a powerful speech. I presume that he stood in the presence of his countrymen and said to them that it was an infringement upon a man’s personal liberty to deprive him of the right to drink intoxicating liquor, whenever and wherever he pleased. He probably railed against the notion that a municipality was better off without a saloon, and insisted that on the following day when they voted on this question each man should vote for his personal rights. They did, and the two saloons came back again; and it was not long until Tom Jones was the same drunken brute he had been before. The temptation had been removed, and during the time the temptation was removed Tom Jones was a good citizen, a good father and a good husband. He was a man again. But when the temptation came back Tom Jones was unable to withstand it and he fell again. Now this is not all of that story. There is just a little more to it. It may not interest some of you, it may not affect any of you, but it did me when I heard it. It was not long after the saloons were voted back in this town until Tom Jones came home one night staggering under the influence of the intoxicants that he had been drinking. He was met upon the piazza of his home by his wife and two children. The wife was in tears, and seeing her weeping Tom Jones did just what a drunken man usually does, the very thing he would most despise in his sober moments, he cursed her, and when his little boy begged him not to abuse his mother, he violently thrust him aside and the boy fell off the porch upon a stone step, resulting in an injury to his head from which he suffered a short time and then died. Tom Jones became a prisoner at the bar, to be tried before the same judge who on the night before election had advised his fellow citizens to bring back the saloons because it was an infringement upon their personal liberty to take them away. Upon trial he was convicted of manslaughter—convicted of killing his own child. It was not to that part of the story that I wanted particularly to call your attention, but what followed. Tom Jones was arraigned before the majesty of the law and asked whether or not he had anything to offer why judgment and sentence of the court should not be pronounced against him. It was then he made a speech in his awkward, broken way that should be heard by every loving father throughout the whole world. He said:

I have not much to say, Judge, except that I have been convicted after a fair trial. I am guilty.

I knew it all the time. God knows, however, that I never intended to kill my boy. But, Judge, that is not what I wanted to say before I receive my sentence. As I stand in this presence I cannot help but go back to the night before the election when you spoke in my home town. You spoke as few men are able to speak. You said to your fellow citizens, who came out to honor you with their presence, that it was an infringement upon their personal rights to take the saloons away from their town, and because of the high regard they had for you they went to the polls the next day and voted them back. The return of the saloon brought before me temptations that I was unable to withstand. Had it not been for your speech, the saloons would not have been there; had it not been for your speech I would not have had the temptation before me; had it not been for your speech my child would be at home today; had it not been for your speech I would not be standing in this presence pleading for mercy in your court. But that is not all I have in mind, for I am wondering, as I stand here awaiting the judgment and sentence of this court, if when the final summons shall come, if when we are called upon to answer to that other court, higher than any here on earth—I am wondering, Judge, whether I must take on my shoulders all the responsibility for the death of my little child, or whether you, too, will not have to share it with me.

And I conclude my argument today by saying that we here should stand as a bulwark between the temptation of this kind and this appetite. It may be that by the votes we cast on this proposition other men like Tom Jones will suffer because of what we will do, and I trust that as I take my seat I may leave this thought with you in addition to all I have said. Most of us believe that when the long last sleep shall come, it is to awaken into another life; and I believe as much as I believe in my own existence, as much as I believe there is a life beyond this one, that when the final judgment day shall reach us we will be judged by what we do here today as well as by what we shall do elsewhere; and I believe that if by our votes on this proposition we shall make it possible to put in the presence of some man a temptation that shall result in some great tragedy, when the roll shall be called and we stand to receive sentence we must accept the responsibility of our acts.

In conclusion I urge that in what we do here we build for the future; that we build for the uplift of mankind; that we build for a better citizenship and a better intelligence than the world has ever seen. In other words, let us build the constitution, so far as licensing the liquor traffic is concerned, better than any that has been written in any of our sister states. We can do that by writing in it this proposed amendment to the substitute offered by the gentleman from Erie [Mr. KING]. But upon the other hand, if we write in this constitution this monstrosity, this Proposal No. 4, we will have taken a step more than fifty years backward, a step from which this splendid old comonwealth of ours may never be able to recover.

Mr. KING: Gentlemen of the Convention: I come to

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the discussion of the question before this Convention with a profound feeling of inadequacy of my ability to discuss it as I think it deserves. I am here to advocate, not the passage of a law, but that these representatives of the people shall permit the electors of the state of Ohio by ballot to pass upon the question of whether this traffic, the center of a stormy legislation for more than a hundred years in this state, shall or shall not be licensed. And if I understand my position at all, I conceive that it does not deserve the abuse and contumely that is flung out by a great many very worthy people of our state. It has occurred to me from the beginning that the question this Convention was to determine is whether they will permit the proposition to be voted for, whether the people may have license if they want it—incidentally the form of submission, but I regard that as secondary to the primary question "Shall the people of our state be permitted to vote on license?" When that is said a great many good people raise their hands in holy horror and insist that the very idea of permitting men twenty-one years of age to pass upon this question would be an outrage upon civilization. Is that so in this year of 1912, when I find on every hand a demand for a more adequate representation of the people, a more adequate expression of the voice of the people on the great public questions? To make that more easy is the ruling spirit, I might say, almost of the hour all over our country. This is a constitutional question which from time immemorial, by the mandates of the constitution under which we live, must be submitted to their vote before it shall have any authoritative effect.

Why not permit them to say? I do not come here with the idea that I possess the power or the right or the authority to dictate to the people of Ohio upon what propositions they may themselves express their opinions. When I find a large class asking that they be permitted to vote upon the question of license, I feel that I am bound to submit it. My friend, the honorable gentleman from Defiance [Mr. WINN] started his very able and exceedingly interesting argument upon this subject with an idea that I must notice before I go to the main question; and that was, that in some manner this Proposal No. 4 had been brought forward, if I understood him, for the purpose of strangling some other proposition. Whether he meant Proposal No. 151 or some other, I am not able to say. I want to say in reply that the motion to postpone the consideration of Proposal No. 151 was the result of a desire upon my part to escape strangulation at the hands of those who had pushed No. 151 ahead of either report of the committee, for I was certainly astonished the other day when this Convention assigned No. 151 to be considered by the Convention before it would consider a report from its committee to which had been delegated this subject and which report was already upon the calendar. I was astonished that the Convention would so treat its committee that it would not even consider its report when they had two of them, the two signed by every member of the committee, and introduced ahead of it a proposal that had no bearing, as far as this subject is concerned, upon the questions involved in either report. It might become an appropriate amendment to at least one of the reports.

Mr. ANDERSON: A question please? The same question I asked the other night. Is there anything in

No. 151, provided you do not in any way wish to interfere with the regulatory temperance clause now on the statute book, that would in any way interfere with any kind of license proposition?

Mr. KING: I will answer that later.

Mr. ANDERSON: You dodged it the other night. Won't you answer it now?

Mr. KING: I object to your language. I did not dodge it. It was not the subject under discussion at that time and it is not now the subject of my proposition.

I say putting No. 151 ahead of the report of the Liquor committee was in effect to allow the Convention, if they adopt No. 151, to shunt the report of the Liquor committee to one side, because that proposition covered section 18 of the schedule. Therefore I said it was inappropriate to come in here for prior discussion, and so for that reason and that only I offered the amendment which I did this morning, that that might bring before the Convention, as we have it, the discussion of this whole subject. I take it that when this Convention gets through with this subject, whatever proposition it adopts, it will be in one proposition. It will not be scattered throughout the constitution from preamble to the end. It will be presented in one proposition, or two if you present them alternatively, only one of which is to be adopted, so that the liquor question so far as treated in the constitution will be treated of in one single proposition, one single section, and not in two.

Now then, we have the question before us for general and wide-spread discussion. Before I come to the motion and the amendment, or rather the two amendments to the original motion, let me for a moment look at the conditions that confront us. It may be and probably is true that these conditions will not strike me—do not come to my vision as they will come to the visions of others differently situated, and around whom there has been perhaps a different environment. Yet I claim, in something more than forty years of adult life, I have used my experience to some advantage for myself, at least upon this subject that has been continually before us. My friend, the honorable gentleman from Defiance [Mr. WINN] says he would hope that this matter might be disposed of before he shall have left this mortal sphere, but doubts it. Well, if it should be disposed of forever and finally it will certainly be a remarkable conclusion to happen in this century of ours. It has been a source of legislative and constitutional discussion for a good many more than a thousand years. Every government has had its problem in dealing with the liquor question. It is not new at all, and the fathers of Ohio in their constitution of 1802 saw fit to enact no provision upon that subject. They left it for the legislature to deal with it as it would. They granted to the legislature all the legislative power that was in the state, and the legislature saw fit in its wisdom and judgment to legislate, among other things, for a license enactment that was three or four or half a dozen times amended or repealed. We came down to 1851 and the question was up again.

Mr. ANDERSON: Will the gentleman yield for another question?

Mr. KING: Oh, yes.

Mr. ANDERSON: If No. 151 becomes a part of the constitution and no other temperance or liquor laws

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are passed, would not the constitution, provided it is ratified, be in exactly the same position so far as this question is concerned as the constitution of 1802 up to 1851, so that the legislature might give license or anything else that it saw fit?

Mr. KING: Yes; I can answer that easily. There is no doubt about that, and I shall have more to say about your No. 151 later.

We came on down to 1851 and then the advocates, or a part of the convention of that year, determined it was necessary to have a positive provision in the constitution upon this subject. First, they said, we have had license. It has not stopped the liquor traffic. The evils are still existing that arise from intemperance. Men still drink to excess. Now, they said—to make it brief, for I do not care to quote exactly what they said—“Take away your government recognition, give us a fair field and a free fight, and we will down the demon rum.” And the convention listened to their argument and adopted their proposition. The people indorsed it at the polls by eight thousand majority in two hundred and thirty thousand votes, and it has been our constitutional provision for sixty years. The field has been open. The fight has been fair, but where is the liquor traffic? More than ten times as much money is invested in it today than was invested in 1851. More than three times as many men are engaged in it in Ohio than were engaged in it in 1851. It has grown great and strong, and why has the traffic increased? There is only one answer—the consumption increased. More men drank liquor than previously, because the moment you convert or convince the reason or intelligence of men that they should not use intoxicating liquors then the wine seller and the distillers and the brewers will all go out of the business. They must stop and the middle man with them, the saloonkeeper. So that the demand for this article has brought into it the vast amount of invested capital in our state. It has brought into it a large number of men who depend for their daily livelihood upon its different varieties and forms. In the county in which I lived, a small county, in a small town more than \$6,000,000 are invested in this industry, and the value of large areas and tracts of land in that county has been increased because of the valuable crops of grapes they can raise upon that land, and that is true to a greater or less extent all along the shore of Lake Erie. That, as I say, has become true because the traffic has been free and untrammelled, practically unregulated under the constitution of 1851.

My friend, the gentleman from Defiance [Mr. WINN], exercised his humor a little as he sort of delicately—he intended to be delicate about it—pictured the conditions that would result if my proposal were adopted when we went to the polls, or, during the campaign that might precede our going to the polls, to vote upon this constitution. He very carefully referred to the author of Proposal No. 4 and said several other able, refined and educated gentlemen would be found with a whole lot of other much less respectable people side by side. I want to say to my friend from Defiance [Mr. WINN] that that probably is one of the conditions that none of us can help, but that history informs me, and men who are still living and old enough to remember also inform me, that when they went to the polls in 1851 to adopt

section 18 the ministers of the gospel, the radical and rank temperance cranks, together with the keepers of the lowest dives in the community, shoulder to shoulder, carried that election of 1851. It was what both of them wanted, they said. Prohibitionists wanted it, the ministers of the gospel, laboring for better conditions, wanted it, and the keepers of saloons, down to the very lowest character of people, wanted it. And why should they not? It was practically unrestricted, free trade in the traffic, they supposed and understood it. No one dreamed that in 1851, under that constitution, you could have anything more than the regulation put in the acts of 1854, to prohibit the sale of liquor to minors, to persons in the habit of being intoxicated, and to be drunk where sold, excepting ale, beer, porter and wine. They excepted the great product of Ohio and they excepted beer. Since this discussion began around here it has been the beer brewers and the drinkers and consumers and retailers of beer that have been inveighed against. Why, in 1851, they thought it was a temperance measure to increase the sale of beer and prohibit all the other and stronger liquors. To an extent that was true. To an extent I believe that is correct. That is what they sought to do. Those are the things they thought they could do under the constitution of 1851. They could perhaps have done more, but they did not then believe they could. Of course there were other things that followed. Yes, I ought to say that in 1854, two days after the passage of the statute to which I referred above, there was passed a statute authorizing municipal corporations to regulate and prohibit ale and beer shops and houses, and under that statute was decided the case of the City of Canton vs. Nist, in 9 Ohio State, page 439, holding an ordinance of the city of Canton invalid because it prohibited the opening of a beer saloon on Sunday and did not except from its operation persons who conscientiously observed the seventh day of the week as the Sabbath.

In Thompson vs. Mt. Vernon, 11, Ohio State, the supreme court of the state in 1860 decided an ordinance of the village of Mt. Vernon to be invalid which provided against the sale of intoxicating liquors in any quantity, including wine, cider drawn over thirty days from the press—thirty days from the press will make good sharp cider, as I know—ale, porter or beer, or other fermented beverages, to be drunk on the premises where sold. It was held void because it was against the general policy of the state, as evidenced by the statute passed May 1, 1854, prohibiting the sale of liquor to minors and drunkards and to be drunk where sold, except the malt liquors which I have named. This is the only instance in Ohio where I know of one statute being held unconstitutional because contrary to the general policies of the state as indicated by another statute.

In 1869, 66 O. L. 181, the legislature passed a statute to “regulate, restrain and prohibit ale, beer or porter houses or shops, etc.” and at the December term, 1870, in Burcholter vs. McConnelsville, 20 O. S. 308, the supreme court held an ordinance of the village of McConnelsville, passed under that statute prohibiting the things allowed to be prohibited in that statute, to be valid, and held that it did not conflict with Canton vs. Nist or Thompson vs. Mt. Vernon. It held the statute of 1869 and the ordinances in question to be valid as an exercise

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of the power to regulate the traffic and provide against the evils resulting therefrom which might exist more notably in cities or villages than elsewhere.

Mr. ANDERSON: What were the names of those cases?

Mr. KING: The first of these I refer to were: *Canton vs. Nist*, 9 O. S., 439; *Thompson vs. Mt. Vernon*, 11 O. S., 68; *Burcholter vs. McConnelsville*, 20 O. S., 308.

Mr. ANDERSON: Were not all those cases where they were trying to escape decent regulations?

Mr. KING: They were cases where there was a violation of a law or ordinance. That is nothing new.

But we ought not to be too severe in our criticism of this offender in this last case whoever he was. The supreme court prior to 1870 had held two such ordinances invalid and had let the saloon keeper go free, so that when they reached the *McConnelsville* case the man there had a pretty good right to think these two decisions were right and he would be all right and was not violating any law.

Mr. CASSIDY: Did not the supreme court hold that ordinance valid in 20 O. S. because the constitution contained the words that Mr. Anderson seeks now to retain?

Mr. KING: I think they used that language, but they didn't say it was because of that. And I want to say right now, to rivet that statement, it was not because of that that it was declared constitutional.

That ended the provisions of the statute along this line until we reached 1882, when the legislature started out on a new track. That was thirty years after the adoption of the constitution. There had been then up to 1882 a condition of almost entire, free, unlimited, uncontrolled traffic in intoxicating liquors, and nobody had discovered, nor did they for a good many years, discover, and not then until after a long fight, that there was constitutional power that would permit legislation. But under the influence of a lawyer of considerable ability who had been attorney general of the state—Francis B. Pond—the legislature passed the Pond law. It provided that each person engaged in traffic should pay, outside of city or village \$100; in city and village of less than 2,000, \$150; under 10,000, \$200; in a city of the second class of 10,000 or more, \$250; of the first class, \$300; and at the time of engaging in the traffic should execute a penal bond in the sum of \$1,000 with approved security, bond to have a description of the property endorsed on it, the name of the owner and conditioned for the faithful performance of all and singular the requirements of the Pond act, and that any person who continued the traffic without paying the money named should be held to have broken the condition of the bond and be liable on it for double the amount of the default; every person who should engage in the business without executing the bond should be guilty of a misdemeanor and fined from \$500 to \$1,000, or imprisoned from thirty days to a year; making it a penal offense to sell or engage in the traffic with one who had violated this act with a fine of from \$200 to \$2,000 and a jail sentence as in the preceding section.

That law was brought before the supreme court in the case of *State vs. Hipp*, 38 O. S., 199, and held constitutional by a divided court. Judge Okey delivering the opinion concurred in by Judges White, McIlvaine and

Longsworth, and Judge Johnson dissenting. Judge Okey, delivering the opinion of the court, said:

The power to license a certain class of business, impose a charge therefor in the form of a tax, and enforce the payment of the tax as a condition precedent to the lawful prosecutions of the business, is well settled. *Mays vs. Cincinnati*, 1 O. S. 268; *Baker vs. Cincinnati*, 11 O. S. 534; *Gas Co. vs. State*, 18 O. S. 237; *Telegraph Co. vs. Mayor*, 28 O. S. 521. This relates only to employments which in one form or another impose burdens upon the public. Such tax can not be imposed merely for general revenue, for the only mode of raising such revenue, whether for state, county, township, or municipal corporation purposes is found in the twelfth article of the constitution (*Raney, C. J.*, in *Hill vs. Higdon*, *Zanesville vs. Richards*, 5 O. S. 243, 589; 18 O. S. 237, 31 O. S. 329); and as *Gholson, J.*, remarked in *Baker vs. Cincinnati*, supra, "it could not be employed as a mode of taxing property without reference to the uniformity and equality required in section 2, article XII, of the constitution." \* \* \*

With respect to traffic in liquors, however, the power to license is, as we have seen, in terms denied; but in relation to such traffic, express power is granted to "provide against evils resulting therefrom."

And he refers to the case of *Miller vs. State*, 3 O. S. 475.

Now the case of *Miller vs. State* arose under this law of 1854 prohibiting the sale of liquor to minors and persons addicted to the use and also to certain classes of liquor to be drunk where sold. Judge Thurman, delivering the opinion of the court in that case—and you will remember that was almost immediately after the adoption of the new constitution, that case having been decided in 1855—says in his opinion: "We by no means affirm that the legislature has the power to wholly prohibit traffic in intoxicating liquors," but he says "the law in question is not prohibitory," but belongs to that class of acts called police laws which are framed with a view to regulate and not destroy, and that if to guard against any of the evils some restraint on the traffic is necessary, "it may lawfully be imposed, the fact being always borne in mind, and always acted upon, that the power is a power to regulate and not to destroy."

That was the opinion of the court first speaking after the new constitution had been adopted in 1851.

Mr. ANDERSON: Do you not know that in 46 O. S., commencing at page 637, it expressly holds that we can have state-wide prohibition?

Mr. KING: Yes; and if the gentleman from Mahoning [Mr. ANDERSON] will pardon me and let me pursue my argument in my own way I shall be exceedingly obliged to him. I shall reach 46 O. S. directly. I am now saying what the first court created by that constitution, and the first one that sat under it, said about the constitutional provision, and on that court sat one of the ablest men and who also sat in the Convention of 1851 concurring in the proposition that the constitution of Ohio did not authorize prohibition, but that the power was one to regulate and not to destroy. I make that em-



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phatic for the purpose now — you may call it what you will, progress or anything else. It may be progress to some and retrogression to others — to show you that the court has changed its position upon that subject, and very latterly, too, because Judge McIlvaine in delivering the opinion of the court in *State vs. Frame*, 39 O. S. 399, being the first case decided after the passage of the Scott law and which held it constitutional, said:

It has been said that the power of the general assembly over the traffic in intoxicating liquors is to regulate and not to prohibit. *Miller & Gibson vs. State*, 3 O. S. 475. With this construction of the constitution we agree. The general assembly may by law provide against evils resulting therefrom. It seems to us to be fairly implied from these terms that in the judgment of the framers of the constitution, the traffic in intoxicating liquors might be carried on without resulting in evil and to that extent it should not be prohibited. Such traffic would undoubtedly embrace sales for mechanical, medicinal and sacramental purposes, and upon such traffic this statute has imposed no burden whatever.

So that in 1882 or in 1883 the court had not yet reached the stage where it was willing to say that our constitution authorized prohibition. It did not need to say that to either hold the law constitutional or unconstitutional.

Now after that I need not stop except to indicate what has possibly converted the court to the doctrine of the increased power given by the constitution:

On April 17, 1883, the same legislature, coming together after the decision on the Pond law, enacted the "Scott law," which provided that upon the business of trafficking in intoxicating liquors there shall be assessed yearly and paid into the county treasury by every person engaging therein \$200, provided that if the only traffic is malt or vinous he should pay one-half that sum; that the same should be a lien upon the real property in which the business was carried on and that if he engage in the business on premises not his own without getting the written consent of the owner he should be guilty of misdemeanor and liable to a fine of from \$25 to \$100, or imprisoned not exceeding ten days, or both. The act prohibited the sale of liquors on Sunday, except by a druggist on a prescription from a regular physician for medical purposes. It repealed the Pond law, authorized municipal corporations to regulate, restrain and prohibit ale, beer and porter houses, prohibited the sale to minors, and repealed section 6941 of the Revised Statutes of Ohio, which was the penal section of the act originally passed in 1854 and which prohibited the sale of intoxicating liquors to be drunk where sold, except ale, beer or vinous liquors. So that the Scott law, for the first time since 1854, took away or repealed the penal provision making it a misdemeanor to sell liquor to be drunk where sold; but it contained all the other police regulations of all the other laws up to that time. That law came up at the January term, 1883, in *State vs. Frame*, and was held constitutional, all the judges agreeing except Judge Okey, who dissented, holding that the Scott law was not essentially different from the Pond law and was, therefore, a license.

It was in that case that Judge McIlvaine made the statement, which I have just quoted, in which he said that the power of the general assembly over the traffic in intoxicating liquors is to regulate and not to prohibit.

The majority of the court concluded that if this law was passed to provide against the evils of the traffic, the legislature had full power to pass it and they are clear that no license or special privilege is obtained under it as was true in the Hipp case. They do not question the correctness of previous decisions, that as to taxation the laws must be squared by the provisions of section 2 of article XII, but that burdens may be imposed in the form of excise taxes, unless they are prohibitive, upon such classes of business as are in their nature injurious to the public welfare, and moneys so raised are properly placed in the public revenues, although it would be unconstitutional to impose such burdens merely to raise revenue, whether they be imposed as a license or a tax, and they held that the raising of revenue is a mere incident to the tax imposed by this statute, which was, as the legislature itself declared, intended to further provide against the evils resulting from the traffic. Judge Okey thought that the evil of the Pond law had been transmitted to the Scott law and that it was a license law.

In 1884 the judicial wheel turned another notch and the court, consisting of Judges Johnson, McIlvaine, Okey, Owen and Follett, had again before it the Scott law in *King vs. Capeller*, 42 O. S. 218, *Butsman vs. Whitbeck*, 42 O. S. 223, *State vs. Sinks*, 42 O. S. 345, and in which *State vs. Frame*, 39 O. S. 399, was expressly overruled and the Scott law held to be unconstitutional, because in substance and effect it was a license for the reason that it imposed a lien on the real estate occupied by a tenant for the payment of the so-called tax.

At the January term, 1886, the court took another step. It now consisted of Judges McIlvaine, Follett, Spear, Owen and Johnson, and in *Hogan vs. State*, 44 O. S. 536, *Adler vs. Whitbeck*, 44 O. S. 539, 576, *Anderson vs. Brewster*, 44 O. S. 576, 589, the court by a majority opinion, held the Dow law, passed May 14, 1886, which in terms was somewhat like the Scott law, to be constitutional, Judges Owen and Follett dissenting. These cases up to 1886 established the principle of the right to levy a tax without conditions. They have not perhaps fully exhausted the argument as to the power of the legislature to impose conditions upon taxation, or in other words, to permit a traffic that is not prohibited by complying with certain conditions. In line with this the court in *Mack vs. Haggerty*, 51 O. S. 521, in 1894, held that an act to tax the business of trafficking in cigarettes was constitutional.

Now I have thus far gone into that simply for the purpose of showing just how far the people of this state have progressed and how long it took to do it. The Pond law was a shock to the public and legal mind. It was certainly an abrupt change from any policy that had been enforced before. And the court held it unconstitutional. Judge Johnson, who dissented, did so in what I regard as a very well-considered and able opinion. I am not here to say whether he was right or wrong, because the provisions of the Pond law were extremely severe. They went far beyond any law before or since and there was a requirement in that law that the man

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who should traffic should go before the auditor, I think, and execute a bond in the penal sum of \$1000 that he would obey every provision of that law, not of any other law. They did not seek to go outside of that. There were no police regulations in the Pond law.

That was the principal condition and if he failed to do that he was liable to punishment, or if he failed to give the bond he would be liable to punishment for failing to give it, so that they had him either way. Now that was a very strong law.

Yet the Dow law and the Aiken law, and others passed since, have the same provisions, the same regulations and the same limitations upon the traffic, and so has the Dean law. I never thought much of that Dean law. I know it has been held constitutional, but it comes very close to the line of being within the provisions of the no-license clause of the constitution. Later the legislature began to pass a series of laws relating to local option. They began with the townships. They then extended it to the municipalities and they extended it to districts and then to counties. I may not have stated that in the exact order, but that is substantially it. One by one all of those laws have been held to be constitutional.

Now I come to that question of my friend from Mahoning [Mr. ANDERSON]. I want to say that if this section 18 was not in the constitution proper at all the local option laws would be constitutional. In other words, when the constitution by the first section of article II provided that the legislative power of the state shall be vested in a general assembly it meant all of the legislative power and it does not do anything to limit it. That it has the power to pass any sort or any kind of law is granted unless it may infringe the constitution of the United States; but as long as it does not infringe that instrument there is no limit to the power of the legislature to legislate on any kind of subject. So to put in the constitution a provision that the legislature may do a thing which it would have ample power to do without the provision is not adding anything to its power. That is my answer to Proposal No. 151. It doesn't add anything. You can drop it out forever and your constitution is wider and more unbounded and the legislature has greater power to legislate than with that in.

Now, gentlemen of the Convention, I thought that if I had good luck I would talk about half an hour.

DELEGATES: You have.

Mr. KING: Now I have recited the conditions that existed as I understood it in 1851 and casually the conditions that exist today for with all this legislation the anti-saloon people, the people who are opposed to the traffic in any form, consistently and honestly, have come exactly to this position. The tax law is of no benefit to them. It is a provision for raising revenue. It is a dead-level tax, and whosoever pleases can step up and pay it and enter upon the business. It is not a regulatory measure at all. It can not point out the subjects who may pay that tax and become under its provisions, the beneficiary of the right—not at all. It just gives Tom, Dick and Harry from anywhere—anybody in the commonwealth has the right to go to the treasurer, pay the money and embark in the traffic. So banish that

from our minds as being any sort of a regulatory power. It is not.

Then you have these police regulations on the one hand and the prohibitory laws on the other—local option laws founded on the idea of passing a law which intends absolutely and unqualifiedly to prevent the people of any one community from engaging in a business which up to the time of the passage of such law had been absolutely free. If you are to go to the extent of depriving people of their property, of shutting up their houses and places of business, of preventing them from carrying on a business that had been free and lawful and recognized so by every government and every law, it ought not to be done except by force of public opinion, expressed at the ballot box. So that I think these district, municipal or political-subdivision prohibitory laws are based upon a righteous principle. They permit the people of those localities to govern as to that question.

Now this is slightly different from the Massachusetts provision upon that subject. The time within which they may tear the whole country up and embark upon an election is limited to three years instead of one.

I think I understood my friend from Defiance [Mr. WINN] to say that the Massachusetts law required an election every year. I do not think that is so. There is a difference between the municipalities and the towns of Massachusetts. The towns meet at their polling places every year and there are certain things which they do there, certain regulations which they adopt or change by votes, and one of them is the liquor traffic. I think they determine every year, in the spring of the year, I believe, whether they will have liquor sold in that town or not, but in cities I do not think that is true. In those it becomes optional local option—in Massachusetts. However I insist that the system of local option laws is wise. I might as well say here that I do not believe in the justice of the Rose local option law because I believe it has worked inequitably and for the reason that communities are permitted to control other communities having different notions and ideas; as for instance, that rural townships control the municipalities. I say that has worked badly. I say that the universal testimony has been to the effect that the Rose law has acted badly in permitting the control of the traffic in cities of ten or fifteen or twenty thousand inhabitants and even greater by a vote of rural people, who of course don't want the saloons. But that is neither here nor there. For the purpose of this discussion I recognize that the Rose law is one of the statutes of the state. It is there to stay, if you have the right under prohibitory laws to prohibit the traffic in counties, townships and municipalities.

Then you have the right to prohibit it in the largest political subdivision in the state less than the state. In other words, it is the next and last thing to state-wide prohibition. Now Proposal No. 4 reserves full power to the legislature to pass exactly that kind of a law. Bear in mind that I said that if section 18 is dropped out and no other provision supplied that the legislature has unlimited power to legislate upon this subject.

So that we have reached a condition today where these laws are conceded within the constitutional power, conceded to be of a kind of law that the public can not reasonably complain of, unless, as I said a moment ago,

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in counties where large cities are controlled as to the traffic in them by the people outside. There is no reasonable complaint as to that class of law. When this question first came up to be considered this year it was announced that the advocates of license were going to try and have the Constitutional Convention submit to the people a provision authorizing license or striking out of it the negative provision in the present constitution. And along with that, or soon thereafter, came the Anti-Saloon League and said if anything of that kind was going to be done they should insist that there be put into the constitution a provision which should acknowledge the validity of the present prohibitory laws—the right to have them continued in effect upon the statute books.

We went along to the election and we were elected to the Convention and then came the discussion of what form this should take. I gave it some thought. I declared early that I was for license. I need not go back and recite any personal history except to say that I was reared in a very strict temperance community and county; I lived there until I was twenty-five years of age. I was admitted to the bar and I was prosecuting attorney of the county and city solicitor of the village. The gentleman from Medina [Mr. WOODS], whom I do not see in his seat, represents that county. Just about the time I settled there to try to practice law, in 1873, the council passed one of these McConnellsville ordinances. There were three or four saloons in the town before that and that shut them up. Then I was elected city solicitor and it was my business to see that they were shut. I also had the grand jury end of it, and outside of that town and perhaps two others in the county there was no place that gave us any bother with intoxicating liquors, but the grand jury used to get busy in those three places.

We enforced those ordinances as well as we could, but it was a sight to behold. In that little community, then having about twelve hundred people—all of them yankee people, nearly all of them born in the county, either born there or had come there from New York or New England—and it was a strong temperance community, and yet I have seen in that town on a day when people came there to functions—a fair or a circus—more drunken people on any one of those days in that little village than you can find in the city where I live in a month, and it has twenty times as many people and its saloon doors are wide open. Why those country boys came in there and bought their liquor at the drug store by the bottle, and drank it up and went to sleep in the corner of a fence.

Mr. ANDERSON: Is it the logic of that which you have now stated that the more open saloons the less drunkenness? If that is true, would it not be a bad thing to restrict the number of saloons?

Mr. KING: It might be. I will grant you that the number of saloons is not necessarily what creates the drunkenness. It is the character of the concern. It is the character of the control. But if you convert a man into a hypocrite and a sneak you make him a drunkard. If he can go in openly and fearlessly and take a drink you will have very little drunkenness, especially where men are brought up from boyhood to drink, or let it alone. You will not find as many persons ruined by alcohol out of thousands as you will out of hundreds where you

attempt to prevent it by prohibitory law. That was the conclusion I came to when I was twenty-five years old, and I said then that there was no regulation to this traffic that was fit to be adopted except a strong, regulatory license law. I have never changed. That is why I advocate it now. When I announced my candidacy in 1911, I said that I should be for a license system. I have had occasion to say on numerous other public occasions, in talking about the taxation question and others, that the liquor traffic should be regulated by a license law. I have no apology to make for taking that position and nobody in the county where I live expects me to take any other position and be honest about it. Yes, I am honestly for a license system, and I say to the delegates in this Convention who want the license system, I appeal to you to consider it and to consider how we should get it.

Mr. LAMPSON: If Proposal No. 4 should become a part of the constitution and thereafter a dry county should vote wet, could it at a later period vote dry?

Mr. KING: Yes; I am going to answer that. There is no question about that.

Now I have said, and I repeat it, that as far as No. 151 is concerned if you drop it out and say nothing the legislature has all that power. If you drop it out and do say something and don't say anything that prevents the exercise of the authority granted in section 18, the power still remains in the legislature.

Now that brings me to two questions relating to Proposal No. 4. The first is its recognition of the present laws, and that will include an answer to the gentleman from Ashtabula [Mr. LAMPSON]. As I said, shortly after the election I began an investigation of this question and drafted two or three tentative proposals. Afterwards they were submitted to other people and a line or two added or changes were made and I committed myself to Proposal No. 4.

Now, I am not here to say that either in language, phraseology or in effect is Proposal No. 4 the last word to be said upon an effective license proposition. But first I want you to understand that I am for license, and the only question is how shall the idea of license be best perpetuated in the constitution?

It has been criticised by the leader of the Anti-Saloon League, and it was criticised by the gentleman from Defiance [Mr. WINN] that we had drafted this provision that license to traffic "shall" hereafter be granted and that license laws "shall" be passed. Why, one would think that was an unheard of proposition in the constitution, to hear some of these people talk. Why don't you authorize, as in the minority report, "the general assembly shall be authorized to enact legislation providing for the license of the liquor traffic?" If we were to repeal all authorization you would have that power completely. Why say anything about it if that is what you want to do? I wanted it understood by every legislator who should sit while that was in the constitution that a license to traffic in intoxicating liquors was to be issued in Ohio to the traffickers in a territory where the traffic was permitted to exist, and I did not want any doubt about it, and I don't want any dodging of the proposition. And let me say to the gentleman who spoke with such holy horror about this word "shall" in the constitution, that in the constitution under which we have lived for sixty years the legislature and the various departments of

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government are required to do certain things in a hundred and seven places. The word "shall" is used affirmatively that many times, and in thirty-seven sections "shall not do so and so" is used, making one hundred and forty-four times that word "shall" is applied to the legislature and the executive in the constitution, while in only eight sections is the word "may" or "authority is hereby granted" used so that in that many sections of the constitution you have enjoined upon the legislature that they must do this, that or the other thing. What harm does it do? Why not say it if you are for it? You don't want to hold out these promises and then cheat us in the end. Why not impose the obligation upon the legislature that they shall pass a license law so that nobody will be cheated by your proposal, so that we will know when you have adopted that proposal that we will get what we ask for? We don't propose to accept any "may" or "is authorized to." That is why "shall" is written there. It is not a new word, it is a word time-honored in constitutions. It is always there when the people impose upon the legislative power of the state their commands. They expect them to be executed and executed in the language of the constitution, without any sneaking, without any hiding and without any getting behind closed doors or secret caucuses. Whatever is done, do it boldly. "You shall pass a license law." Why not? Will any man in this Convention tell me why should not that declaration be mandatory? Now I come to another question.

Mr. LAMPSON: May I ask one more question?

Mr. KING: I have not answered your other question yet; I am just coming to that.

Mr. LAMPSON: Is that word "shall" equally mandatory in the preservation of the local option feature of the law?

Mr. KING: Yes; if it is used. I suppose it is. It is used three or four times there. Now, I come to this: "License to traffic in intoxicating liquors shall hereafter be granted in the state. License laws shall be passed to regulate and restrict the traffic and shall be operative throughout the state." That is a grant. That is there because for sixty years we have had a declaration that no license shall be granted. Now if you put the proposition up and make it without any declaration by the Convention upon that point, the people will not understand it. There is always an assumption that the legislature gets its power from the express grant rather than from the general language in the constitution. Of course, it must be a grant or the legislation will not amount to anything. It must come from some source, but if you leave it to be reasoned out by argument that it comes from the general grant of legislative power in the second article in the constitution nobody understands it. Why, we have had no license plainly before the people for sixty years. Now why not turn around and say affirmatively "You shall have license?" They will know what that means. Now up to the words, where I have stopped, is all the grant of power in this section, that the license shall be granted. Now comes certain exceptions and limitations: "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 shall by law be operative therein. Nothing herein contained shall be so construed as to re-

peal 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."

Some of that language I am a little proud of. I undertake to say, beyond any kind of successful contradiction, that that saves absolutely and unqualifiedly every law now on the statute books in the state of Ohio. I except none from that statement. I know it to be as broad as language can make it.

Now if the law is on the statute books, I ask my esteemed legal friend from Defiance [Mr. WINN], who repeated what I regard as the silliest argument I have ever heard emanating from that distinguished non-constitutional delegate, Mr. Wheeler, that you couldn't have any other election under the local option law after this went into force — "Nothing herein contained shall be so construed as to repeal or modify such prohibitory laws or to prevent their future enactment" — if it is on the statute books why can't you have an election? It is in effect a general law, in force in every point and corner of Ohio, and will be in effect all over the state until it is repealed by act of the legislature. Now, whether you leave it in operation or not, depends on us, the people, as to whether we give the necessary authority, and when the time comes that we have had an election if the election goes wet, that won't prevent anyone from going out the next day with a local option petition for another election, except that when you have one election you have to wait three years under the provisions of the law now in force. But if you don't repeal that law from the statute books you can have elections forever and ever until it is repealed. What does this do except to say, "Nothing herein contained shall be so construed as to repeal or modify such prohibitory laws or to prevent their future enactment?" What does that mean? If it has been repealed, make a new one. But who is going to repeal it? The legislature, if anybody. Who is going to amend it? The legislature, if anybody. Who is going to re-enact a new local option law? The legislature, if anybody. So that provision saves all laws now in force. It does not prevent their amendment or repeal, and it does not prevent their re-enactment.

Mr. JONES: Will the gentleman permit a question? I ask it merely for information.

Mr. KING: Certainly.

Mr. JONES: This proposal, as you have said, provides for the saving of all present laws prohibiting the liquor traffic. It provides for the enactment of all laws of that character in the future, but does it provide for the enactment of any regulatory clause in the future?

Mr. KING: Yes; the first clause authorizes you to regulate the traffic. You can make it as regulative as you please. That is all up to the legislature. It is in the grant, but if it were not in the grant the legislature has it under general power unless prohibited here, and it is certainly not prohibited here.

Mr. JONES: But my inquiry is this: Whether permitting the legislature to license would not be a prohibition of the regulatory provision?

Mr. KING: No; we are proceeding upon the theory that it is necessary to have a grant of power in order to pass a license law at all, which, as I have said, is unnecessary, but we added for form's sake that a license

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law should be passed to regulate and restrict the traffic, and there is an affirmative retention of the right of the legislature to regulate and restrict. The words "regulate and restrict" are not restricted in any form nor are the words "regulate and restrict" otherwise prohibited. We had it before. Now we have it as an affirmation of a power.

Mr. JONES: But is not this a command or authorization with regards to the regulation of the traffic limited to a regulation by and through and under license?

Mr. KING: What difference does that make?

Mr. JONES: I merely ask, is that so?

Mr. KING: If it does then your law has to go a little further and put in, as they put in the Scott law, all the regulatory provisions we have today in force on the statute books, re-enact them in the same form except to modify the penal provisions of one section.

Mr. JONES: As I understand, your proposal preserves all regulatory laws. Now if this regulation provided for is regulation under license and we now have regulation of a different character, is it not a restriction on the present right to regulate?

Mr. KING: No; all the regulation we have now is under the police power of the state, unless you count the Dean law regulative. The Dean law has elements of a character that are peculiarly within the province of a license law.

Mr. LAMPSON: I would like to call the gentleman's attention to these words: "Nor shall any law be valid which has the effect of defeating or negating directly or indirectly the regulations of the traffic by a license system herein provided for." Would not a local option law have the effect of negating or defeating directly the regulation of the traffic by the license system herein provided for?

Mr. KING: I don't think it would. I expect to treat of that section when I reach it. I want to confine myself to the subject I am talking about now until I get through with it, and I am talking now about the prohibitory law.

Mr. WORTHINGTON: Will the gentleman yield for a suggestion?

Mr. KING: Yes.

Mr. WORTHINGTON: Is not the difficulty about a wet district turning dry caused by the word "is" in line 13, and would not that difficulty be removed by making it "shall be"?

Mr. KING: I think it would. I think that would remove it from the domain of discussion. I never thought that that word "is" permitted discussion as to the right of exception from the provisions of any license law of those prohibitory laws that are adopted or in operation and effect in different townships, counties, municipalities and residence districts and providing that such traffic shall not be licensed in such local subdivisions.

That brings me to another objection, that the law does not provide any means for—in fact it prevents—the collection of any license in territory that is dry. That is another of the absurd things that are thrown into the Constitutional Convention by the people outside of it who think they have a patent right on all of these wise ideas. I read from a booklet here: "It prevents the collection of a license in dry territory, thus giving a speakeasy keeper in dry territory an advantage over what he has under the present constitution."

Now at the bottom of page four and the top of page five he says: "A prohibition system and a license system are antagonistic. The essential element of license is permission to traffic; the essential element of prohibition, is refusal to traffic." That is not good grammar. It is not a refusal to traffic at all. It is the prevention of traffic. He says: "These two propositions cannot stand together."

And now in answer to the proposition that this law will prevent the collection of a license fee in dry territory. It does. It is not intended to collect license in dry territory. It is intended to grant the right—which otherwise could not be exercised—the right to conduct this business where the business may be lawfully carried on, to grant a license to traffic upon conditions and limitations. Of course, in dry territory, where they only have the speakeasies, this has nothing to do with them. The license law will be framed by the legislature. I expect the legislature will have at least an average amount of intelligence. I judge that from the material that surrounds me. There are half a dozen of our most distinguished members here who have acquired their fame in their younger days from being members of the legislature of the state of Ohio. So I expect the legislature to be reasonable, and no legislature would think of passing a license law requiring that before a man should traffic he should secure a license and pay the price, whatever it was, without imposing penalties for engaging in the traffic without paying the license. With provisions for licensing, of course, there would be a penalty for trafficking without the license and the penalty, like all the other provisions of the law, would be in effect throughout the state. A man engaging in the business who has not a license, whether because it was prohibited business or because he didn't want to get one, did not want to subscribe to the conditions imposed, or could not show the elements that were required to make him eligible to a license—if he engages in the business there is a penalty, and I assume it will be enforced. That I suppose will be put in the law.

Mr. HALFHILL: In line 12 of your proposal for licensing under the grant it is stated that "laws shall be passed to regulate and restrict said traffic." I will ask you whether or not with restriction it would be possible for the general assembly to restrict on a per capita basis?

Mr. KING: Undoubtedly.

Mr. HALFHILL: So that if the legislature in its wisdom decides to fix a per capita basis similar to that in the minority report, is the power in your proposal?

Mr. KING: Yes; that particular thing was in mind when that word was used, although it is not limited to that application alone.

Mr. HALFHILL: Now one other question: Commencing at line sixteen. "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"; assuming that some future general assembly desires to have an election under the Rose law once a year as in Massachusetts, could legislation of that kind be enacted under that provision?

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Mr. KING: Undoubtedly; without the slightest question. It certainly could.

Mr. HALFHILL: Then I ask the further question: Could other statutes of a regulatory nature similar to what we call the present local option laws be enacted under that provision?

Mr. KING: They certainly could. And referring a little further to the gentleman from Fayette [Mr. JONES] I want to say that that clause also, in addition to the first clause contained in the grant, is an inhibition and deprivation of the legislative power to repeal or modify any such prohibitory laws, but its construction shall not prevent their future enactment, modification or repeal, or its construction shall not be to repeal or to "prevent the repeal of any law now existing to regulate the traffic in intoxicating liquors." You have in your proposal the implication that all things that are not absolutely prohibited the legislature has a right to do; and there is no prohibition in the proposal anywhere as to the right of the legislature to pass any prohibitory laws or any regulatory laws of any sort, shape or character.

Mr. ANDERSON: A question, please; does the gentleman yield?

Mr. KING: I have to. I wanted to say something about another matter, but I have forgotten it; so go on.

Mr. ANDERSON: I am not going to ask you the question you did not answer, but another one.

Mr. KING: Which one was that?

Mr. ANDERSON: Referring to lines 11, 12 and 13: "License to traffic in intoxicating liquors shall hereafter be granted in this state and license laws shall be passed to regulate and restrict the said traffic and shall be operative throughout the state"—does not that interfere with home rule for cities?

Mr. KING: I hope not.

Mr. ANDERSON: In other words, could any city deal with this question within its own boundaries?

Mr. KING: If the constitution, when we get it up, gives home rule, and the legislature shall provide it under the license proposition, it does not interfere. It is exactly what I want to see done, because I believe implicitly in the right of a municipality to absolutely control the traffic in intoxicating liquors within its borders without anybody's consent or interference. I believe in that myself. That is my individual opinion as a citizen, and certainly this proposition will not interfere if there is otherwise a constitutional provision permitting cities, or permitting the legislature to grant cities, the right to control their own government. The power is there; it is not curtailed nor inhibited nor prohibited by anything in this proposal—the right of municipalities to control their own affairs.

Now, I had as well move along. I come to the clause: "Nor shall any law be valid which has the effect of defeating or negating directly or indirectly the regulation of the traffic by a license system herein provided for."

Two or three questions have been asked me about that. I think the gentleman from Defiance [Mr. WINN] quoted me as saying that this prevented the enactment of state-wide prohibition. I do not think he quite understood me, or at least he does not correctly quote me. I said that clause, construed with the whole section, would in my judgment prevent the enactment by the

legislature of a state-wide prohibition law. He quotes me as having said that that would prevent acquiring or getting state-wide prohibition. This is not true. At the hearing before the committee the leader of this business, who works here on a salary over time, held up a map on which were several black spots, one of which I discovered was my home county, and said "We hope and want the time to come when step by step and county by county, from the lake to the river, this 'cause shall grow until that map shall become as white as the whitest spot upon it." That was not state-wide prohibition, and up to this hour that gentleman has never said to my knowledge or in my hearing that he wanted state-wide prohibition. So I say the adoption of Proposal No. 4 will give to Mr. Wheeler and his paid agents the very thing they ask for, the right to continue to adopt local option, county by county, and he will continue to draw his salary time without end, because he will be a very long time converting Ohio into a prohibition state, county by county. It does not interfere with the right though to enforce that Rose law just as repeatedly and fast as public opinion in any county wants it. I must insist on making that declaration strong, that it does not impair any right that any citizen of Ohio has under any of the four regulatory laws today unless they are repealed. As long as they are in force they are there to be operated under. If you want to operate under that section, it is exactly what the leader of the Anti-Saloon League said they wanted done, permission to throw Ohio into a prohibition state by voting it dry county by county.

Mr. LAMPSON: What would be the legal effect if those three lines were stricken out? How would it affect your proposition?

Mr. KING: I hate to tell you what I think about that.

Mr. LAMPSON: I really would like to know.

Mr. KING: Now I want to talk about that a little further. You are not going to get me into a legal argument on that just yet. I may have one later. I will tell you why they were put there, at least what I understand their purpose is. Anybody else has his own right to guess on that. The experience of men of greater experience than I have had in legislative bodies induces the opinion that the smaller counties have a larger representation per capita than the larger counties. It also induces the opinion that likely or possibly at some time in the mutations of political elections a general assembly will be found that wants to cut the life out of a decent regulatory restrictive license law and they will proceed to hamper it with unreasonable restrictions. For instance, they might raise the license fee to \$10,000 and provide that there shall be only one saloon for a hundred thousand people, or some other foolish or ridiculous regulation like that. This was intended by the writer of it to guard against the power of the legislature to cripple or render ineffective or unreasonable a proper regulatory and restrictive license law. That is what it was written in there for.

Mr. LAMPSON: Would not a local option law cripple it?

Mr. KING: No; it would not cripple it. The local option law is excluded by the terms of the proposal itself from the grant. Therefore there is no antagonistic



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element there at all. It simply does not cover the prohibited territory at all.

Mr. ANDERSON: Then is it your intent and purpose to limit the legislature in its action by your Proposal No. 4?

Mr. KING: It certainly is. It is my notion to limit them so that no act of theirs shall be valid that has the effect of defeating or negating entirely a proper license system in its operation where a license may have effect.

Mr. TAGGART: But who is to determine that question?

Mr. KING: The courts. That could not be determined anywhere else but in a court. That construction may not be very clear, but I take it that there is a doctrine of reasonableness and unreasonableness; at least the supreme court of the United States has thought so.

Mr. LAMPSON: Does not the gentleman think that the language in those three lines is sufficiently uncertain to enable the court to render almost any sort of an opinion?

Mr. KING: No; I think the court would be guided by the reasonableness of the proposition. There is one word and only one that could have any bearing upon it, "defeating". If it defeated it entirely it would not be difficult of construction. "Negating directly or indirectly" I concede would be more difficult of interpretation. It perhaps, to some extent, would depend upon the judgment of the court as to what directly or indirectly negated the affirmative grant of license.

Mr. ANTRIM: Before taking your seat would you be kind enough to tell in a general way what seems to be the exact difference between the King proposal and the Winn proposal?

Mr. KING: I ought to do that before I forget it. I have attempted to explain my own proposal. I think I heard a sort of murmur over here on my left which probably indicated the notion that I was unreasonable in saying that the enactment of these prohibitory laws somewhere or somehow might come in conflict with these last three lines. They certainly never could, unless it be that the enactment of state-wide prohibition would be in opposition to them.

And I want to say something about the right to carry on this crusade, which is absolutely unimpaired. I assume that this Convention before it leaves its work will provide means for amending the constitution by a vote of the people. I don't think the state of Ohio will put in any prohibitory law without a vote of the people. Of course, when that time comes, everybody has to stand from under and take his medicine. I don't believe in sending a legislature down here and allowing it to say that the traffic in the state shall be prohibited.

Mr. WINN: Would you be satisfied to submit as an alternative proposition the right of the people now to determine whether they shall have prohibition?

Mr. KING: No; on that I have the same opinion as about some others. When this discussion first started we were told by those who were opposed to license that what they wanted was the present constitutional provision to remain, and in drafting this proposal that was put in as the alternative under the mistaken notion that it was exactly what our friends the enemy wanted. I see now, it being in, they don't want it. Acting on what

they said—my honest desire was, so far as I am concerned, to save all the laws now on the books, with the right along the same lines to continue their enforcement and their amendment and their repeal or re-enactment, and with the honest desire that those laws should be saved. Because we have attempted to do that we are told that the proposal is full of holes, has sleepers in it, and other various disagreeable animals ready to rush out when we are not looking and devour us all.

Mr. LAMPSON: Are you willing to submit the Winn amendment as an alternative proposition at the election?

Mr. KING: Which one do you mean?

Mr. LAMPSON: The minority report as an alternative.

Mr. KING: That is the license proposition?

Mr. LAMPSON: Take it as it is.

Mr. KING: That would not be an alternative at all. I was trying to explain why the alternative was left as it is. It was because we thought it was what the gentlemen opposed to license wanted. They wanted the constitution as it was and we proposed to have a license proposition submitted.

Mr. LAMPSON: It was a mere matter of accommodation?

Mr. KING: Personally it was, because I can draft a provision for giving license that won't occupy a quarter of the space that this does.

Mr. PETTIT: Do you admit that the language in lines 21 and 22 is such that it would give the saloon interests a chance to litigate so as to have the court tell what it means?

Mr. KING: If it should happen that the legislature should pass a law it would give anybody the right to litigate it. Whether it would be the saloon keeper or not I don't know. I expect, indeed I know, that any citizen could test it in a proper form. If the legislature did not undertake furtively and dishonestly to cripple the license law there would be no occasion for that litigation. If the legislature will be square about it, we won't have any trouble with those three lines.

Now my attention is particularly drawn to one proposal, which came in here first by the report of the minority committee, and which I want to treat with all the respect it should receive.

The first clause follows the language of section 1 in Proposal No. 4. I have already adverted to my objection to the language of the Winn proposal, that the legislature or general assembly, using that term "shall be authorized" to enact legislation licensing the liquor traffic or not, as they please.

My objection is to the features which are purely legislative, such as that there shall be only one saloon. By the way, that is not what it says; it says only one license. Now bear in mind, before we get any further, that licensing the traffic in intoxicating liquors does not mean necessarily the retail traffic. Anybody who deals in the business, in the goods, in the things, in whatever form he may do it, is trafficking. This says there is to be one license to traffic in a township of a thousand people or less, and one license in each thousand in any other place having more than a thousand. It provides that it shall be revoked if in the place operated under the license any law regulating the traffic is violated. I have several objections to that. The first is that it is

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purely legislative, and with all due respect to the minority of the committee, in my judgment, as to most of them, it was the idea to so load the proposition that when it was submitted to a vote of the people it would be voted under. I am against it because it does load it with just exactly the language I don't want in the constitution at all. I do not want it there because it is legislation pure and simple, and because it will provoke opposition, and it was intended to provoke opposition. It is intended to so fix it that you will have a large vote in every city and every county of the state opposing the proposition that would not be if they did not know in advance what it is going to do with them. There is not any doubt that any regulatory license will limit the number of saloons. I am not satisfied with the limitation of this section, but that is not a matter of importance. I realize that in a large part of the state a saloon for a thousand people is a reasonable limitation, but I also realize that in other parts of the state it is not a reasonable limitation. The gentleman from Defiance [Mr. WINN] gave the number of saloons in several cities. You can see what would happen if there should be a city in which there was one saloon to two hundred inhabitants and you would put this in the constitution. Four-fifths of them would go out of business.

But I admit that in a good many places one saloon to one thousand people would be reasonable, but you must always bear in mind that different communities have different notions about these things. I know a village that in the winter season has a population of only about four or five hundred people. I think generally it has one saloon. It is as wet as the lake, for it is absolutely surrounded by the lake. They raise grapes. They manufacture wine, and in the summer season they have from three to ten thousand people a day visiting them. You will see that one saloon will be a pretty good graft in the summer time, although the saloonkeeper might not have such an elegant job in the winter with only three or four hundred people frozen in and left to enjoy themselves as best they can. This is a peculiar situation that does not exist in any other place in the state. That is the village of Put-in-Bay. They have from three thousand to fifteen thousand people a day. Wednesdays, Saturdays and Sundays they have ten thousand people, while other days it runs different numbers. I was told that they run ten to twelve saloons last summer and in the winter they dropped off to one. But, as I say, that is a peculiar situation not existing any place else.

Mr. ELSON: Does the gentleman think it would be a good plan to regulate the whole state of Ohio of several million people with reference to that little village?

Mr. KING: Exactly not. That is what I meant when I said a little while ago that I was in favor of home rule. I say the conditions in different localities vary and vary very materially, and we must remember that this provision in the constitution provides for a license to traffic—don't forget that word "traffic," which is just as broad as any commercial dealing can be. A man who manufactures and sells by the barrel will be trafficking; the man who may act as distributing agent will be trafficking. You can have but one license where there are but one thousand people. That would be absolutely unreasonable. Take this same village of Put-in-Bay. I cannot tell you how many wine-producing establishments there are on

that island, but it is safe to say that there are three or four at least. They manufacture wine for the trade. Now every one of them would be amenable to a license under this provision. They would have to pay it or go out of business.

Mr. ANDERSON: I do not believe you understand my question. What I mean is this: Suppose a certain thing would be good a good thing for all the rest of the state except the little village of Put-in-Bay, would it be a proper thing to have the laws of the state made with reference to that little village regardless of the rest of the state?

Mr. KING: No; but I don't think these limitations are good anywhere.

Now we have gotten into the habit of discussing this question as if nobody trafficked in intoxicating liquors except the saloon keeper. We know there are a great many others who traffic in intoxicating liquors. There are a great number of very fine gentlemen engaged in trafficking in the liquors, the peers of any gentlemen on this floor in character and ability, men of the very highest standing in their community. So if you are going to absolutely limit the traffic to one to so many people, you ought to consider all the relations of the traffic and who are engaged in it. As I said a while ago in the city where I live there are at least a dozen mercantile establishments manufacturing and selling wine, and there are at least \$6,000,000 invested in the various plants. Now it might be that there are very many others that this limitation would absolutely deprive of getting license. This is the first time I ever heard of any such limitation of any legitimate business, intended to promote not only the prosperity of the men engaged in it, but the prosperity of the community in which it is carried on. So I am opposed to this limitation for these reasons: It is legislative and it is unreasonable in its application to the traffic.

Mr. ANDERSON: If the phraseology were so changed that the restriction would apply only to retailing would you then have any objection to it?

Mr. KING: Yes; I would still have the objection that it is legislative. Of course I could not still have the other objection.

Now my friend from Defiance [Mr. WINN] argued that there are constitutions filled with legislative provisions. There is no doubt about that. He need not quote from New York; he could quote from almost any state in the Union. They all have them. Some of them are filled with page after page of legislative requirements, but that does not make them better constitutions. It has been the history of constitutional conventions, at least since the federal convention, which seemed to have been ruled by a spirit that knew better than to inject legislative provisions into the constitution, that a constitutional convention has always been a body willing to put everybody's ideas into the constitution. That would make it legislative, but there has always been a conservative force trying to hold that back.

The nearer you can approach absence of legislation the nearer you approach perfection in constitution making. I do not say that you will do it, I do not say that it is done here, but I do say that when you put in a limitation and fix it in here you may put something there that will curse you hereafter and be an obstruction to proper regulation.

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Now the regulation that the license must be absolutely forfeited when it has become a valuable asset to a man because he shall violate any law is objectionable. I have been of the opinion that a more reasonable proposition along that line was to enumerate the laws for violation of which you propose to subject a man to fine or imprisonment or some loss of valuable property interest. Enumerate the laws. I think a man ought to know what law he must not violate.

Then I would have a provision in the license law authorizing the license authority to suspend the operation of the license for non-observance of regulations, and I would have it so that after two convictions the license should be forfeited and the individual forever prevented from securing another.

Mr. ANDERSON: One more question.

Mr. KING: Cannot I finish this talk? I would do that because you know and I know that sometimes there are honest mistakes and the retail dealers should be treated as fairly as anybody else. There are a multitude of these provisions and he might violate one without intending it at all. Then sometimes the circumstances may be against him when he really hasn't violated any of them. Now what is your question?

Mr. ANDERSON: Does this meet with your approval. I read from Proposal No. 216 which was indefinitely postponed: "If any licensee is more than once convicted of a violation of the laws or ordinances in force to regulate the traffic in intoxicating liquors, the license of said licensee shall at once be revoked, and no license shall thereafter be granted to such convicted licensee."

Mr. KING: No; I don't want that in the constitution because it is legislative in character. I would not vote for that in the legislature because it is not particular enough. It is just as easy to draft a law saying if the licensee violates this, that or the other law—describing every law—that the license may be suspended, and if the offense is repeated the license shall be revoked forever and he shall never be allowed to have another. But all of those are purely legislative provisions, and certainly we ought not to put any such things in the constitution. That ought to be entirely relegated to the legislature.

Again, a trial of many of these things may indicate that they are impractical in a manner and do not work well. They may be too lax or too lenient. So the legislature ought to change them. Then why not let the legislature handle all these details of license and not load this proposal with so many legislative features for the purpose of defeating it and not giving the friends of license a fair show to get what they want?

I said before the committee, and it is in my published article, that there was no contradiction in terms in leaving in force the tax laws now upon the statute books as applicable to any one who engages in the sale of liquor

illegally. I am taken to task for that; they said the license law could not be operated in connection with it, that the license law was not applicable to dry territory and that they could not enforce a tax law. But I think the supreme court of the state of Ohio has held the exact opposite, and that they can have the enforcement of the tax on a traffic that is prohibited if the legislature is not wise enough to repeal it. It will still operate on the traffic, where it is not prohibited. If the legislature does not limit the Aiken law and provide that it shall not be enforced against the licensees both laws may be enforced and there is nothing contradictory in the two. The license stands upon a different principle than the levy of the Aiken tax, and if the legislature should pass a regulatory license law and then forget to except from the provisions of the Aiken law those who take out the license under the license law, they would be liable to pay whatever is provided in both laws. But I take it that the legislature would except those who are licensed from the payment of the Aiken tax, and if it did that would still leave the Aiken law on the statute books to be enforced against those people who engaged in the traffic in dry territory.

That was substantially held in a case in 65 O. S., page 49—the circuit court's opinion on the direct question holds differently—and in a common pleas decision somewhat later by the distinguished and somewhat notorious Judge Blair in the case of Reider vs. Davis, 20 O. S. 407, in a very long and able opinion. He cites the case of Conwell vs. Sears, 65 O. S. 49, and also the case of Pioneer Trust Company vs. Stich, 71 O. S. 459. He also cites the license tax case in 72 U. S. 462, Maguire vs. Commonwealth, 70 U. S. 387, Youngblood vs. Sexton, 32 Mich. 406. He cites almost every opinion in the Ohio circuit court on the subject of license and also Foster vs. Speed, 120 Tenn. 470, where the court said, "A business which is prohibited may be taxed." Then they go on to say that a law prohibiting the sale of liquor in a certain place, if the statutes are violated the tax is applied to all those who violate it.

Now there are other matters on this point that I feel I ought to refer to, and I fear I have overlooked a few, but I shall not take any longer at present on this proposition. I return to it by saying that the friends of Proposal No. 4 are asking the Convention to submit to the people the right by their vote at the polls to adopt a straight, plain, fair provision upon the subject of license.

Mr. TAGGART: Will the gentleman yield to a motion to adjourn?

Mr. KING: Yes.

Mr. TAGGART: Then I move that we recess until tomorrow morning at 10:30.

The PRESIDENT: The gentleman from Wayne moves that we recess until tomorrow at 10:30.

The motion was carried.