

out of the regular course to have this done, but under the circumstances I see no other way than to report to the Committee on Revision. But if they don't report to-morrow I don't see how we are going to compel them.

The motion of Mr. CAMP was seconded and adopted.

Mr. APPLETON. I desire to offer the following resolution and move its adoption:

*Resolved*, That the Committee on Revision and Adjustment be requested to report the following as an article of the Constitution:

"The State Treasurer shall invest all funds that may come into his hands as such Treasurer belonging to the State of North Dakota in Government bonds, except the sum of \$50,000. All interest collected from said bonds to go to the State, and shall sell said bonds whenever the funds shall be needed."

Mr. SPALDING. This resolution is out of order without a suspension of the rules.

Mr. APPLETON. I move that the rules be suspended and that the article pass to its first and second reading.

Mr. McHUGH. I move that the further consideration of the resolution be indefinitely postponed.

The motion was seconded and carried.

Mr. WILLIAMS. I move to adjourn.

The motion prevailed, and the Convention adjourned.

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## FORTY-FIRST DAY.

BISMARCK, *Tuesday, August 13, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Communications were read from Grand Forks, Casselton, Jamestown, Lisbon, Minto, Park River, Sheldon, Portland, Hatton, Mayville, Lakota, Wheatland, Fargo and other places relative to File No. 143.

Mr. SCOTT. I move that the further reading of these resolu-

tions be referred to a committee of five, to be appointed by the Chair.

The motion was seconded by Mr. MILLER.

Mr. PURCELL. I hope this motion will not prevail. It seems to me that these expressions of the people should be heard here. It seems to me the people have a right to send petitions to this body, and that we have a right to hear them.

Mr. BARTLETT of Griggs. I wish to endorse the sentiment of the gentleman from Richland. We have adopted a section which gives the right of our citizens to petition their representatives, and says that it shall not be denied, and I don't doubt the very man who made this motion voted for that section.

Mr. BARTLETT of Dickey. I think the motion should not prevail. I think it is no more than right that these communications should all be read.

(The remainder of the communications were read.)

Mr. MILLER. I move that all these communications be referred to a committee of five, to be appointed by the Chair.

The motion was carried.

The committee was appointed as follows: Messrs. MILLER, JOHNSON, SELBY, STEVENS and COLTON.

Mr. MOER. I find on my desk the report of the Revision Committee. It gives us the Constitution in full as recommended by that committee, and in view of the fact that we have had no time to examine it, and I think we need time to do so, I would move that we adjourn until 8 o'clock this evening.

The motion was carried.

## EVENING SESSION.

The Convention proceeded to consider the report of the Committee on Revision and Adjustment.

The Preamble was read as follows:

"We, the people of North Dakota, grateful to Almighty God, for the blessings of civil and religious liberty, do ordain and establish this Constitution."

Mr. ROWE. As a substitute I move that File No. 38 be substituted for this Preamble. It reads as follows:

"We, the people of North Dakota, in order to establish justice, insure domestic tranquility, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution."

Mr. BARTLETT of Dickey. I hope the members will give these two sections serious reflection. It is a matter of some importance. Those who are conversant with ancient history know that this question of religion in the constitutions or in the law has been the means of deluging the world with blood. It has been the means of more human sacrifice—the destruction of more human life than everything else, and for my part while I believe in a Deity—while I believe it is right to worship, and I don't believe there is any good man that does not worship, I don't believe that these things should be in a Preamble of a Constitution. I hope they will give this matter consideration and put File No. 38 in the Preamble.

Mr. STEVENS. This question has been once definitely settled by this Convention that the Preamble of this Constitution should contain the name and words "Almighty God" and for that reason I move that the gentleman's motion be laid on the table

The motion of Mr. STEVENS was carried and the Preamble as read was adopted.

#### THE BLACK LIST.

Section twenty-three with the recommendation of the Committee on Revision was read as follows:

SEC. 23. Every citizen of this State shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, keeping a black-list, interfering or hindering in any way, a citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of conspiracy against the welfare of the State, which offense shall be punished as shall be prescribed by law.

[Committee recommend that this section be stricken out as in conflict with section nine of "Declaration of Rights."]

Mr. PARSONS of Morton. As we have discussed this matter, I move that the recommendation of the committee be laid on the table.

The motion was seconded and lost by a vote of 24 to 39.

Mr. SPALDING. I move that the words "keeping a black list" which occur in the section be stricken out.

The motion was seconded.

Mr. SCOTT. I move as a substitute that the recommendation of the committee be concurred in.

The motion was seconded.

Mr. LAUDER. I desire to amend by moving that the section as it appears in this Constitution be adopted.

The motion was seconded.

Mr. CARLAND. Perhaps it is due the Convention for some member of the Committee on Revision and Adjustment to state in a brief manner what the ideas of the committee were in regard to this section. It is not the black list part of it that is so objectionable. But let us read it. Section nine is as follows:

SEC. 9. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictment or informations for libels the jury shall have the right to determine the law and the facts under the direction of the courts as in other cases.

In all countries having a republican form of government this section nine is the common law, almost. Every man shall have the right freely to write, speak and publish his opinions on all subjects, being held responsible for the abuse of that privilege. That is the fundamental right guaranteed in the bill of rights. What do you say in this section twenty-three? If any man shall interfere, or hinder in any manner a citizen from obtaining or enjoying employment already obtained he shall be guilty of conspiracy. I may have employed help, and the man may have been guilty of embezzlement. A friend or relative who knows the man writes to me and says that he is not trustworthy and that makes him guilty of conspiracy against the State. A mercantile agency could not report the condition of a merchant. The law is that a man may express his opinion, and he may publish and write his opinions, but he is responsible in the law for the abuse of that privilege. If I wrongfully slander a person I am liable for damages. If a railroad corporation has done wrong to a man who has been in its employ, or in the employ of another corporation, the man has his remedy. The claim for damages is the only remedy a person slandered has got. The two sections are in direct conflict.

Mr. LAUDER. I do not desire to occupy the time of the Convention in discussing this question. It was discussed at great length before the Convention on the second reading. It seems to me that the arguments adduced by the gentleman from Burleigh were all met at that time to the entire satisfaction of this Convention, so much so that the position he now takes was defeated by a very large majority. I hope in the meantime the members have not changed their minds. I dare say there is not a State in the

Union that has a constitution in which there is not incorporated a section exactly similar to section nine—the section which the gentleman from Burleigh says meets every want, or supplies the place of the section under consideration. In other words, with section nine the section under consideration (23) is unnecessary. Now, we were told when this question was before the Convention the reason why the section under consideration was inserted here. I grant that there will be times when it will be to the public interest that there be kept a black list so that one business man might inform another of a customer who would not pay—that one corporation might inform another of the character of men who make application to that corporation for employment. As was said at the time, if that was all there was to it there would be no necessity for this section. But that is not all there is to this question. These black lists are kept, as everybody knows, simply to intimidate laboring men—so that a man shall not only do his work well, so that the corporation which owns him shall not only have the benefit of his services, but will own him body and soul; so that he dare not assert his manhood and be independent, or if he does he will be put on the black list, and it does not make any difference as to how well or how ill he performs his tasks. They want the man's vote; they want him to sink and surrender every particle of his manhood, and if he does not he is put on the black list, and he cannot get employment elsewhere, unless he will submit to the demands of his employers. It is to prevent anything of that kind that it is sought to put this section in the Constitution.

Mr. MOER. I was not here at the time the discussion took place, but if this section is in conflict with section nine—and we have the opinion of a gentleman on this subject whom we all respect—it seems to me it should not stand. Still, the point raised by the gentleman from Richland is a good one—that it is wrong to have a black list. It may be one of those wrongs that we cannot right without working a greater injury. It would seem that we ought not to pass a section here so if we tell one of our friends or neighbors not to employ a certain man we will be guilty of conspiracy. The point raised by the gentleman from Burleigh is well taken—that is, if any person is put on the black list he has his legal remedy at law, and it seems to me this section is so far reaching that in the long run it would do more harm than good. Certainly we should not put two sections in this Constitution that are in conflict with each other.

Mr. BARTLETT of Dickey. The gentleman who has just spoken goes on and talks about good men being beaten out of employment. I have hired a good many thousand men, and I never yet heard of a good man wanting work if there was any to be had. I stand up here and say that I believe in the black list. I am willing that my constituents and friends should know it. Railroad companies and all other companies will never blacklist a good man. Good men are the men they want, and it is the fellows who are all the time hatching trouble that they black list. It is all a mistake about good men being black listed. I tell you it may do to talk in politics—it may do to talk it here among delegates who are not in the habit of hiring men, but when you talk to men who have been in the habit of hiring others to work for them, it is all wind. It is nothing but the merest sham.

Mr. CARLAND. There is another objection to section twenty-three, which it seems to me is fatal to its going into this Constitution, and every lawyer will see it. It says, “any person, corporation or agent therefor, keeping a black list, interfering or hindering in any way a citizen from obtaining or enjoying employment already obtained from any other corporation or person, shall be deemed guilty of conspiracy.” I would like to have some one tell me how any one person or corporation can be guilty of conspiracy? It is impossible in law—impossible under any circumstances for one person or any one corporation to be guilty of conspiracy.

Mr. PARSONS of Morton. I am not sufficiently educated in legal language perhaps to make the point clear to the gentleman that he wishes to have explained. I would like to say, however, that this measure has met all these objections from the same gentlemen who stood on the floor and argued and talked this, and it is the same old story. The gentleman from Burleigh started up by saying there is nothing in File No. 23 but what is contained in the common law. I ask him what anyone is kicking for if this is the case? But now he turns round and objects to it strenuously because it is contrary to the common law or some other law. It seems to me that consistency would be desirable in this as well as in other things. The gentleman speaks of conspiracy. Anyone will see at once that before a person can come under the clause specified he must have committed some offense. This offense must be known and must be committed with others, and I don't know any rule that governs us that would prevent us from putting

this in the Constitution. The Constitution is the fundamental law, and if the Constitution says a thing it will be supported in the courts or anywhere else. If the Constitution says that such an act shall be conspiracy it will be so and the courts will hold it so. I am not going to quibble over the word conspiracy. If he wishes to state that it is "contrary to public policy" or "contrary to the welfare of the State" it will suit me. It is shown by the remarks by the gentleman from Dickey that the men who are opposing this section are not the men who earn their living by the sweat of their brows. There are many farmers here, and the word "farmer" includes, we suppose, the man who earns his bread by the sweat of his brow. I don't know a man who toils and labors at days' wages who has ever been opposed to the measure of the gentleman, and did not wish that it might be carried. There is no resource under section nine, for the men we are seeking to protect, or under any other section of this Constitution, and it is in the interest of justice and right that this measure has been introduced. It has been fully explained, and unjust and notorious efforts have been made to mislead. I ask you to stand by the action that you have already taken. I believe that there is no clause that can go into the Constitution which can lead more hearts to be sincerely thankful than this one. I am a railroad man, and have become experienced in this matter. I know how it works, and there are men to-day who are as good as any man on this floor who are persecuted from one end of the United States to the other, and all because they dared to go against the wishes of some corporation. It makes a great deal of difference where a man stands. I ask for this section on behalf of the poor man. It has been asserted here that these measures were introduced in behalf of corporations. I don't believe there is a delegate here on this floor who is so blind and stupid as to believe that assertion. It is simply the remark of a demagogue. There is a principle of right and justice at stake. There have been decided changes in this country during the last twenty-five years. We see evils growing up at an alarming rate on every side. It has been discussed on the floor of this House, and there is nothing in the arguments that have been advanced. I ask that those of you who have listened to what has been said will stand by your former action.

A vote was taken on Mr. LAUDER's motion to adopt the section. It was lost by a vote of 24 to 38.

The substitute of Mr. SCOTT that the recommendation of the committee to strike out the section was adopted by a vote of 37 to 25.

Mr. LAUDER. I move that the following be inserted as section twenty-three of the article on Declaration of Rights in this Constitution:

“Every citizen of this State shall be free to obtain employment wherever possible, and any person, corporation or agent thereof, interfering or hindering in any way a citizen from obtaining or enjoying employment already obtained from any other corporation or person, shall be deemed guilty of a misdemeanor and shall be punished as shall be prescribed by law.”

Mr. CAMP. I rise to a point of order. The motion is not in order.

The CHAIRMAN ruled that the motion was in order.

Mr. SCOTT. I move that the motion be laid upon the table.

The motion was seconded.

Mr. LAUDER. It seems to me that there is a disposition here to enforce a sort of a gag rule. I hope every member of this Convention will study this section—look over it carefully, and see, satisfy yourselves, if you can, that there is nothing wrong about it. It provides that every citizen shall be free to obtain employment wherever possible. That protects a man who is seeking employment from interference by those who are on strike, or who would prevent it. “Any person, corporation or agent thereof, interfering or hindering in any way a citizen,” and so on. That protects the man who is seeking employment from being hindered and if there is anything wrong about that I would like to have it pointed out to me.

Mr. SPALDING. I move to amend the section so that it will read as follows: Insert the word “maliciously” before “interfering” and change “a” in the fourth line to “any” and leave out the latter part of the section in regard to punishment.

The substitute offered by LAUDER was adopted.

The Preamble and Declaration of Rights, as amended, was adopted.

Mr. PARSONS. I move to adjourn.

The motion prevailed and the Convention adjourned.