

DEFENDS CONSERVATION ARTICLE IN NEW CONSTITUTION

By Louis Marshall,
Member of Conservation Committee,
Constitutional Convention of 1915.

An astounding publication addressed "To the Sportsmen and Voters of the State," bearing the signature of George A. Lawyer of the New York State Fish, Game and Forest League, with headquarters at Watertown, N. Y., has been industriously circulated throughout the State, evidently at great expense. It bears the startling headlines, "Vote Against the Constitution!" "Preserve the Adirondacks!" "Shall the Work of a Lifetime Be Destroyed?" In substance it charges that the conservation article was inserted into the new Constitution for the benefit of the lumber and water-power interests, and is intended to subject the State Forest Preserve to their tender mercies. The circular ends with an appeal for money and an admonition to sound the battery against the Constitution.

To those who know the history of the conservation article, who participated in writing it into the proposed Constitution, and who have read the debates of the convention, this is the most extraordinary exhibition of malicious misrepresentation and of falsification of facts that it is possible to conceive.

The conservation article was passed by a vote of 121 of the delegates for and only 11 against it, there being but one Democratic vote in the negative. The committee which framed it included in its membership Charles N. Dow, for many years an active member of the Niagara Commission; George Clinton of Buffalo, one of its most honored and beloved citizens; President Rhee of Rochester University; Professor O. N. Landreth of Union University; Hon. Morgan J. O'Brien, Arthur J. Baldwin, who had acted as the counsel for the legislative committee which a few years ago concluded a thorough investigation of the State water supply; Senators Blauvelt and Saxe, Edward N. Smith, prominent at the bar and in the civic affairs of Watertown; James S. Whipple and H. Le Roy Austin, both of whom had served as State Forest Commissioners; William P. Bannister, a leading architect of Brooklyn; Timothy A. Leary, a lawyer of recognized integrity, and W. Barlow Dunlap, one of the leading citizens of Amsterdam. There were but two members of the committee who were avowedly interested in lumbering: Messrs. Meigs and Angell; but none of the other members of the committee, of whom I was one, was either directly or indirectly interested in that industry, and none of them had any other purpose to subvert than that of furthering the public interest in the conservation of the natural resources of the State.

Every organization in the State that was concerned in the subject was given abundant opportunity to be heard before the committee. Mr. Lawyer did not appear. Much testimony was taken from scientists, public officials, educators, and sportsmen, and from those of practical experience. Men of national reputation advised the committee, and it deliberated for months upon the adoption of the best methods for protecting the public interests. It was recognized that in the subject of conservation was included not only the preservation of the forests, but that of husbanding the waters of the State for purposes of navigation, municipal water supply, and agriculture, and its fish and game—all being intimately interrelated. It was believed that these great objects had been materially advanced by the action of the convention. Yet it is now vociferously and vehemently proclaimed, regardless of the implied reflection on the integrity of the members of the convention, that the proposed amendment was in fact intended to enable the lumbermen to seize and destroy the forests for their own advantage. How this is possible in view of the prohibitory language of Section 2 of the article, is not indicated. Bald assertion is deemed more important than a reference to the language of the Constitution. It expressly declares:

The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the trees and timber thereon be sold, removed, or destroyed.

This is a re-enactment of the provision inserted in the Constitution of 1854, strengthened, however, by solving the doubt hitherto existing as to the comprehensiveness of the prohibition against the sale, removal or destruction of timber, by specifically including "trees" in the prohibition. In spite of the efforts made by the lumbermen to commercialize the forests, to permit the cutting of timber and to divide the preserve into zones, every effort in that direction made in the convention was voted down peremptorily, and there was added to the former Section 2 the following:

The department is, however, empowered to reforest lands in the forest preserve, to construct fire trails thereon, and to remove dead trees and dead timber therefrom for purposes of reforestation and fire protection solely, but shall not sell the same.

By this clause there was removed every incentive for destroying the forests. Not even dead trees or dead timber can be taken away except for the sole purpose of reforestation and fire protection, and even in such event they may not be sold. How, then, can any honest man contend that under such a constitutional provision it is within the range of possibility for the lumbermen to encroach upon the forests? Although efforts were made by them in the convention to permit the building of highways throughout the forests, it deliberately set its face against such a policy, knowing that it would serve merely as a subterfuge for the improvident and wasteful cutting of timber, and would in the end result in the destruction of the Forest Preserve. The building of a single State highway was authorized along a clearly defined course, and this modification of the report of the committee was adopted at the instance of no less a personage than President Schurman of Cornell University.

The provision of the present Constitution with regard to the construction and maintenance of reservoirs in the Forest Preserve was continued without change. Permission was also granted to the City of New York to acquire, for just compensation and for its municipal water supply, lands constituting in the aggregate not to exceed 100 acres in Ulster and Greene Counties, all indicating the most meticulous care to prevent either public

or private interests from interfering with the continuity of the policy of forest preservation. Having established that policy, the method of administering the natural resources of the State became a matter of secondary importance, since no commission, whether it consisted of one, three, or nine members, whether paid or unpaid, could modify the effect of the affirmative prohibitions which have just been pointed out. Accordingly, it was declared with respect to the Department of Conservation, which was created by Section 1 of Article VII:

Subject to the limitations in this Constitution contained, the department shall be charged with the development and protection of the natural resources of the State; the encouragement of forestry and the suppression of forest fires throughout the State; the exclusive care, maintenance, and administration of the forest preserve; the conservation, prevention of pollution, and regulation of the waters of the State; the protection and propagation of its fish, birds, game, shellfish, and crustacea, except migratory fish of the sea within the limits of the marine district, with the power, subject to the veto within thirty days of the Governor, to enact regulations with respect to the taking, possession, sale, and transportation thereof, which shall have the force of law, when filed in the office of the Department of State and published as the Legislature may provide, until and unless the Legislature shall hereafter modify such regulations. The department shall also be intrusted with the enforcement of the general laws of the State respecting the subjects hereinbefore enumerated and exercise such additional powers as from time to time may be conferred by law.

It will thus be seen that neither the Department of Conservation nor the Legislature could by any possible method depart from the express limitations which guarantee the continuance of our Forest Preserve as "wild forest lands." The courts have hitherto jealously maintained the effectiveness of this prohibition, so far as it is to be found in the present Constitution. The new provisions emphasize and strengthen the efficacy of the existing prohibitions. The only opposition in the convention to these prohibitions came from Mr. Meigs and Mr. Angell, and it was found necessary in the debate, in order to demolish their contentions, to refer to the dangers of that scientific method of forestry which they advocated, as set forth in the decisions to which Mr. Lawyer's circular refers.

But it is said that the Department of Conservation is to consist of nine Commissioners, who are to be appointed by the Governor, by and with the advice and consent of the Senate, for terms which shall expire in

Hon. Louis Marshall, Member of Conservation Committee at the Constitutional Convention. Replies to Critic Who Alleges That the Article Was Drafted for the Benefit of Special Interests.

nine successive years, and that one Commissioner shall reside in each judicial district, and that this proposal "had its origin in the camps of the lumber interests and in the brain of Mr. Meigs." That is untrue. His proposal was for the establishment of a board of twelve members, to be elected by the Legislature on joint ballot, for a term of twelve years. They were to be given the control of all the State's natural resources, including Forest Preserve lands and waters thereon, but not subject to the limitations to which I have referred. In other words, they were to exercise their own discretion as to the extent to which lumbering might be pursued; as to the construction of highways; as to the leasing of camp sites, and the innumerable other methods by which the character of the forests could be changed. His plan was rejected by the committee and by the convention. Moreover, so earnest were the delegates in their insistence upon the preservation of the resources of the State, that at the instance of Alfred E. Smith this additional safeguard was inserted:

No person shall be eligible to or shall continue to hold the office of Commissioner, who is engaged in the business of lumbering in any forest preserve, or who is engaged in any business in the prosecution of which hydraulic power is used or in which water is distributed or sold under any public franchise or who is an officer or holder of the stock or bonds of any corporation engaged in such business within the State.

How, then, can any fair-minded man say that the department can ever come under the sway of the lumbering or water-power interests or that it would be possible for them to deprive the State of the twig of a tree or a single drop of water? Besides all this, the Commissioners are subject to removal by the Governor on charges, after an opportunity to be heard, and, finally, under Section 5 a remedy is given to any citizen to restrain any violation of the provisions of the article by suit, brought with the consent of the Supreme Court in Appellate Division, on notice to the Attorney General.

To carry out the policy of reforestation, which is fully as important as the preservation of the forests which now exist, the Legislature is directed



Hon. Louis Marshall. Photo by Post.

to make annual appropriations for the purchase of real property within the Adirondack and Catskill parks. This

is also necessary for the protection of the present holdings of the State and for the prevention of the erosion of our mountaintops, which follows closely on the heels of their denudation. The real purpose of the conservation of the forests is to maintain their function as sponges to hold and absorb the water, so as to enable it to flow into our streams slowly, as required. Instead of in torrential floods. Because of our failure in the past to observe this necessary precaution, our streams have been drying up and our agricultural lands have become more arid, not only because of the lack of surface water, but because of the gradual falling of the subterranean water level to an extent which has been startling. There are today over 10,000,000 acres of waste lands in New York State suited for no other purpose than that of reforestation. It is the purpose of the conservation article, which has been thus violently attacked, to stimulate the planting of forests, not only in the present preserves but throughout the State.

But it is said that the nine Commissioners are to appoint and remove a Superintendent, and that he will be an executive tool. This is an absurdity. The model upon which this department has been created is the Board of Regents of the University of the State of New York. Its members are also selected one from each judicial district. They serve for terms of twelve years. They have the power to appoint and remove the President of the University, who is the Director of the Department of Education. The existence of the Board of Regents is co-extensive with the history of the State. It has been admirably successful, and there is no reason why the Department of Conservation under a like organization cannot be equally successful. To bestow upon a single Superintendent, without supervision by such a board, the vast powers of the Department of Conservation would be unwise; whereas, with proper guidance by a board of men of eminence, serving without compensation, and selected because of their interest in the public welfare, there is every reason for expecting more

satisfactory results than have hitherto been obtained through the various agencies adopted for the management of our natural resources.

Mr. Lawyer also makes the insulting suggestion that the commission is to be packed. Who is to pack it? The Governor? The Senate? It is said that it will be difficult to find a man in each district fitted by study and experience who can or will perform the duties without compensation. Has it been difficult to find suitable members for the Board of Regents or for the State Board of Charities? It is said that "it subordinates fitness of a Commissioner to the senseless theory of established geographical representation." Is the gentleman from Watertown so anxious that the administration of the forests shall be left solely to those who reside in the lumbering regions? Does he not forget that the entire State is interested in conservation? Does he not know that it includes land, waters, fish, game, and other natural resources, and that the citizens of the First, Second, Sixth, Seventh, Eighth, and Ninth Judicial Districts are fully as much interested in the problems, and are as capable of understanding them, as are the residents of the Third, Fourth, and Fifth Judicial Districts, or any single individual who may be appointed?

A great hue and cry is raised with respect to the grant of power to the Department of Conservation concerning the enactment of regulations as to the taking, possession, sale, and transportation of fish, birds, game, shellfish, and crustacea. That provision is essential to a proper administration of our game laws. Under the present system, from 80 to 100 amendments to those laws are passed annually by the Legislature. They determine when suckers may be caught in certain waters. These measures are of a character in which the members of the Legislature as a whole have no concern, and which are generally enacted as a matter of course, by way of compliment to the members who propose them.

The Department of Conservation can deal more efficiently and reasonably with subjects of this nature, and is better able than the Legislature to investigate and study any suggested change in our game laws. But its determination is not conclusive. The Governor has the power to veto any regulation which it adopts. The Legislature may modify.

To one who is familiar with the statutes of New York it is ridiculous to

prate of tinkering with our game laws. But this protagonist with the legal label, who is thus fearful lest they be tinkered with, discovers "the Italian hand" in the Fish Trust, whatever that may be, in the provision which deprives the department of jurisdiction over "the migratory fish of the sea within the limits of the marine district. He apparently forgets that our present game laws, which he now seeks to exalt, contain the very same exception, for the obvious reason that the regulation of the migratory fish of the sea is a matter that comes within the jurisdiction of Congress and can only be dealt with effectively by the Federal authorities. At all events, there is nothing in the conservation article which prevents the Legislature from exercising such powers as it possesses in dealing with the subject of migratory fish, which, after all, relates to an industry, and therefore does not come specifically within the purview of the game laws.

In conclusion, it may be interesting to call attention to the fact disclosed by the Syracuse newspapers, that at the meeting of the New York State Fish, Game, and Forest League, called by him on short notice, at which but few members were present, Mr. Lawyer declared that from a single source he had been assured of a fund of \$50,000 to defeat the Constitution. Why so large a sum of money from a single source? He was asked to specify, but declined to do so. Why this secrecy? May it not be possible, after all, that the lumber interests, against which he so violently inveighs, may lay claim of maternity to this fund? Who else can have so controlling a motive to defeat the conservation article? The Society for the Preservation of the Adirondack favors it. Every scientific organization supports it. The New York State College of Forestry has indorsed it, and, so far as the hunters, fishermen, and sportsmen are concerned, one would suppose that they would rejoice in the establishment of a department where they may at any time be heard with respect to the wisdom of the game laws in which they are concerned.

It is interesting to learn whether the voters of this State will give heed to so unworthy an appeal as against the affirmative action of the disinterested men who, without regard to political affiliations, by a vote of ten to one adopted the conservation article, with the most disinterested motives and against the protests of those who sought to commercialize the forests and to break down the administration of our natural resources.