

FIFTEENTH DAY

MORNING SESSION.

TUESDAY, February 6, 1912.

The Convention met pursuant to adjournment and was called to order by the vice president.

Prayer was offered by the member from Knox [Mr. McCLELLAND].

The journal of yesterday was read and approved.

SECOND READING OF PROPOSALS.

Proposal No. 54 was read as follows:

Proposal to submit an amendment to article I, section 5, of the constitution.—Relative to the reform of the jury system.

Resolved by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

Section 5. The right of trial by jury shall be inviolate; but the general assembly may authorize that in civil cases a verdict may be rendered by the concurrence of not less than three-fourths of a jury.

Mr. PECK: I move that the house resolve itself into a committee of the Whole for the discussion of this proposal.

The motion was carried.

THE VICE-PRESIDENT: The chair will call to the chair Judge Norris.

Mr. NORRIS: I ask to be excused.

Mr. DWYER: With the consent of the Convention, I would suggest that Vice President Fess act as chairman of the committee of the Whole.

The motion was carried.

Mr. LAMPSON: Mr. President: I voted to make this breach of the rules, but upon further reflection it will put us in a very awkward position, for the reason that at the conclusion of the consideration in committee of the Whole the presiding officer leaves the chair, then the regular presiding officer takes the chair and the presiding officer of the committee of the Whole steps in front and makes his report to the regular presiding officer. And one can't very well report to himself; he can not act in both capacities.

The VICE PRESIDENT: Gentlemen, you understand that I can not report to myself, therefore I will call the gentleman from Medina [Mr. Woods] to the chair.

Mr. WOODS: I would like to be excused.

The VICE PRESIDENT: I will call Dr. Brown, of Highland, to the chair.

Thereupon Mr. Brown, of Highland, took his position as chairman of the committee of the Whole.

In Committee of the Whole.

The CHAIRMAN: What is the pleasure of the committee?

Mr. DOTY: I move that the proposal be read.

The CHAIRMAN: If there is no objection the secretary will read it.

The proposal was read as follows:

Proposal No. 54.—Mr. Elson. To submit an amendment to article I, section 5, of the constitution.—Relative to the reform of the jury system.

Resolved by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

Section 5. The right of trial by jury shall be inviolate; but the general assembly may authorize that in civil cases a verdict may be rendered by the concurrence of not less than three-fourths of a jury.

Mr. THOMAS: I move that we recommend the adoption of the proposal as read.

Mr. LAMPSON: I make a point of order. That is not in order at this time. We should first listen to the explanation of the chairman of the committee, and then this proposition is open to debate.

Mr. HALFHILL: Mr. Chairman: I should like to have a statement of the matter before the house.

Mr. PECK: Mr. Chairman and Gentlemen of the Committee: This proposition was adopted almost with unanimity of the Judiciary committee. I thought at the time it was unanimous, but it seems there are one or two of the committee who did not agree. It is signed by 18 members of the Judiciary committee. It is a very simple proposal, namely, that the general assembly be empowered to provide that three-fourths of a jury may render a verdict. You will observe it does not directly require that that shall be the law, but it simply empowers the general assembly to so enact. It was necessary to empower the general assembly to make any change in the jury system, under the section that provides that trial by jury shall be inviolate, so we put this modification at the end of that, "but the general assembly shall have power to authorize that a verdict may be arrived at by the concurrence of not less than three-fourths of a jury in civil actions." This only applies to civil actions. It seems to me that this is in line of progress.

I undertook to make some explanation of this the other day, but it was just as the president arrived and there was some confusion. Perhaps nobody remembers what was said and I might repeat it.

The original reason for requiring the unanimity of a jury has long since ceased to exist, and it is not consistent with that conservatism that characterizes the law, but even the law can and ought to progress and we think this is in line with progress. It has been adopted by a number of states—two of our neighbor states, Indiana and Kentucky. My information is accurate as to Kentucky; as to Indiana I may not be correct. I know in Kentucky it is operating to the satisfaction of the people and there is no complaint at all about it.

It obviates the difficulties which everybody who has

Reform of Jury System.

observed the courts can see arises out of the rule requiring unanimity. We all know that under the rule requiring unanimity one obstinate man can hang a jury, and every once in a while he does it. It is a difficulty which causes a waste of time and loss of money to the state and officers of the state. It also causes great waste of time and money to the litigants. All that has been done up to that time goes for nothing if the jury can not agree, and the whole matter has to be done over again.

There is another difficulty caused by this rule. One or two obstinate men can, and frequently do, force a jury to come to their view and make a compromise verdict, which is nearly always unsatisfactory to everybody. It does not compensate the plaintiff for his injury, nor is the defendant satisfied, so that the operation of this unanimous rule is to enable one or two obstinate persons to prevail by threat of disagreement. In order to do away with this we have adopted this rule, which has been adopted by a number of the states, and presented it to this Convention for adoption. The rule of unanimity does not prevail in hardly any other relation in life. This body is not required to be unanimous in anything it does. We can change the constitution of Ohio by a majority of one vote. The general assembly can change the laws by a majority vote, and so every corporation in the state, in performing its functions, can dispose of millions of dollars of property by a majority vote of its board of directors. I know of no case in which unanimity is required, but here we have it where every controversy must be decided unanimously. It causes such great difficulty in the workings of the jury system as to make it desirable that there should be a change. Where there is a pronounced majority of three-fourths of a jury that agree on a subject I submit their voice should prevail. I submit that this is in the line of progress and we always say that we can progress as well as digress.

Mr. ELSON: I beg to say a few words on this question. It is a proposal that I put in. Of course, I am greatly interested in the subject. We are creators of custom. We all know that. Now, custom may be right or it may be full of defects. A famous writer has said that "Custom without truth is but a rust of error." Usually, I agree, custom is fuller of truth than error, but it seems to me we know that often our customs bind some of us to some error for generation after generation and century after century.

Now the jury system is an English growth, as we know. I suppose it is safe to say that the jury system is the greatest single contribution of the English nation to the work of civil government. It is something like a thousand years old. For hundreds of years after the jury system was well established in England, in France it was possible for a man to be accused, convicted, condemned, imprisoned for life or put to death by the mere fiat of the king. Before the organization of the jury system the English king was in the habit of doing the same thing, and the people awakened to the tyranny of the kings condemning their subjects without a trial. We have in that and in the human ordeal the foundation of the whole system.

Let me just for a few moments run over the jury system. Take first the old ordeal, how in England a trial was by ordeal of people. Two men who had a difficulty or litigation of any sort would choose to fight over it,

and the man coming out victor won his case. There were various forms of ordeal. For instance, the accused was required to run over red-hot plowshares barefooted. If he came out unscathed and unharmed he was innocent. He was blindfolded as well.

Then there was another kind of ordeal used generally in the case of accusations of witches and wizards, people they really desired to get rid of. One was bound hand and foot and thrown into a body of water. If he sank to the bottom, he was considered innocent; if he rose to the surface, he was called guilty; so in any case he was put to death. There was little chance in a case like that. It was to get rid of such barbarous customs that the jury system finally came into existence. At first men regarded it as necessary that the jury should be made up of men who understood all the facts of the case. They were really to give the testimony and from their own observations they gave their verdict. This was in vogue for a long period, and finally the number twelve came to be the fixed number. But it was discovered in time that it was sometimes exceedingly difficult to find twelve men who understood the case, who knew about it, and so the custom came into vogue of bringing in as witnesses persons who knew something about it and who told what they knew to the jury. This worked so well that they did it again and again, and finally the practice came about of choosing a jury of men who did not know anything of the case and who were expected to make up their minds from the testimony of the witnesses. And thus we have the beginning of the jury system in the form we now have it.

Now as far as the number twelve is concerned, I don't know whether there is any particular reason why that number was finally decided on. There are twelve months in the year; there were twelve apostles; twelve makes a dozen. It happened that they hit on twelve, no more, no less; just why, I don't exactly know. And it was required that each man of these twelve give the same verdict. Now, England was nearly two hundred years in bringing about that condition; that is, fixing the exact number twelve and requiring unanimity. How it came about we don't quite know. With the foundation of the American government the English system was transferred bodily, unanimity and all. And so it has continued from that time to the present.

Continental Europe adopted the jury system of England, but in transferring it across the channel they made two improvements—what I call improvements. One is, unanimity is not required. Another is, that in choosing a jury in continental Europe alternative jurors—two, sometimes three—are chosen whose qualifications are the same as those of the regular jurors. They are to sit near the jury and listen to every word of the trial; they are to know all about it from the beginning. And in case of the incapacity of any one of the twelve regular jurors, whether by death or illness or anything of the sort, instead of the trial miscarrying one of these alternatives who has been sitting by from the beginning and who knows all about the trial takes his place, and the trial goes on. If that is not an improvement over our system, I don't know what you would call it. I am sorry something of that sort has not been embodied in this proposal.

The other improvement is that unanimity is not re-

Reform of Jury System.

quired. Why should it be? Judge Peck just discussed that. Why should it be required? It isn't in anything else. A majority of two-thirds or three-fourths will carry in the political world or in anything else. Why should absolute unanimity be required in the jury system? I would extend this to criminal cases also. At the same time, we will be making a long step in the right direction if this is extended to civil cases.

In France and various other countries a bare majority is sufficient to convict of guilt. I would prefer following our old custom of requiring unanimity to the custom of permitting a bare majority, for I think that is farther wrong than we are.

Let's take Germany. Germany requires two-thirds to convict, but only five out of twelve to acquit, so that even in Germany we see that the accused has a better chance. Let me say that this is in criminal cases only, because the German law does not require any jury at all in civil cases, but in criminal cases eight can convict and five can acquit. Now, we have made it a little more favorable in this proposal for the accused; we have made it nine. I regret that we can not, at least by making it ten, include criminal cases also. It would be much more difficult to bribe three or four men than one man—that would be a great advantage. Let me read a little from an article in the *Arena* of 1905:

The class from which city criminal juries are drawn is by no means a high one. There are exceptions to this rule, of course, but the average is ordinarily a low one. Furthermore, the city criminal jury has another defect. It is frequently corruptible. In the language of the street, you can "do business" with it if you have the money and the desire to use it in that way. Because of this fact, the scandals that frequently attach to criminal juries are rendered easy. An unscrupulous attorney, a defendant with means, and the average city jury, furnish all that is essential to produce a miscarriage of justice.

This reference to criminal cases of course can be applied to civil cases as well. Now I have evidence that for years in the city of Chicago there was a regular system that was used by the Chicago Traction Company of bribing jurymen; I have evidence of that. There were certain men in the city, men from the submerged tenth, from the slums, who were professional jurymen. Now and then these men would get on a jury. Whenever there was any case of damages against the traction company these men, fixed before hand, already bribed, would get on the jury. Thus the traction company was saved thousands of dollars that ought to have gone to people injured by the company. Then there is another fault and that is, sometimes there is an obstinate person on the jury, a man who makes up his mind. All the other men may differ from him, but he thinks he is right and he hangs out, and thus he hangs the jury and there is a mistrial and another case. Some years ago there was a clergyman on trial for murder in a New England state. He had a long and fair trial; it was shown almost without a possibility of doubt that he was an innocent man. And the jury went out to deliberate. Eleven of them pronounced him innocent on the first ballot; one man pronounced him guilty of murder in the

first degree. They took another ballot, with the same effect, then another, and they kept on and on, and finally had to report that they could not agree. The judge sent them back to ballot again, and this man would sit in the corner with his hands around his knees and say, "No, no, no, no," He would not yield, he did not yield, and the result was that the jury disagreed.

Mr. NORRIS: Where was that, did you say?

Mr. ELSON: In Connecticut, and a number of years ago. I can find the literature of it if the Judge would like to see it.

Suppose ten men, or even eleven men, had been able to render a verdict in a case of that sort, what would have been the result? There was almost no doubt that the man was innocent. It was discovered afterwards that this juror was an atheist and had a grudge against all clergy in the world; that no other reason was ever discovered why he took the stand against the eleven other jurymen.

Now we know it is not an unusual thing for a judge to send a jury back after disagreeing, send it back again and again, until they finally agree and bring in a unanimous verdict. Let me ask, is that a fair and unanimous expression of these men's opinion? Would it not be far better for these men to go on record with their real sentiments than to be forced into a verdict like that, several of them rendering a verdict in which they did not believe? That is another thing that would be obviated if unanimity was not required. I believe we will be making a great advance if we can apply this principle to civil cases, but I regret we can not apply it to criminal cases also.

Mr. NORRIS: I understand that the Judiciary committee, in fact I know, being a member of that committee, has appointed a select committee to look up and make inquiry and furnish authority and inform this Convention as to what degree the ordinance of 1787 applies to the subject that is here under discussion, as well as to other matters that may address themselves to the Judiciary committee. Now, it might be a possible assistance to this discussion if we allowed that committee to make report, and avail ourselves of the very material information with which that committee will enlighten this body of gentlemen.

Now, I do not know whether it is in order or not (I am not up on parliamentary usage), but I make the suggestion, if it is deemed worthy of notice, that we defer the discussion of this very interesting subject until such time as that committee, composed of very learned gentlemen (I am not a member of it), will make report to this Convention.

Mr. DOTY: Will the member yield to a question?

Mr. NORRIS: Yes:

Mr. DOTY: You asked us to postpone further discussion until we hear the report of some committee. Is that a standing committee of this house?

Mr. NORRIS: That committee is a special committee appointed by the Judiciary committee to investigate that subject and confer with the attorney general and with the other authorities that may have knowledge on the subject, and they will make a report and inform the Convention in that behalf. As I understand that committee will be ready to report possibly by tomorrow, I imagine it will materially aid and assist the members of

Reform of Jury System.

this Convention to hear that report as to the application of the ordinance of 1787 and other basic laws to the question that is now under discussion and others that may hereafter be.

Mr. DOTY: It is a report of the Judiciary committee then that you ask us to wait for, because we have nothing to do with any subcommittee.

Mr. ANDERSON: I should like to ask the gentleman a question. Judge Norris, say, for instance, you appoint a committee of five as was suggested in a prior resolution, and that committee reports that by reason of the ordinance of 1787 anything this Constitutional Convention may do will be unconstitutional, would you adjourn?

Mr. NORRIS: I do not know what the gentleman himself would do. That committee was appointed. It seemed to be so worthy of consideration that the Judiciary committee—and I am not sure but this Convention affirmed it, and perhaps made the appointments. This Convention, I am told, made the appointment of this committee. It was considered of such importance that this Convention appointed that committee to investigate this subject. I do not know what the Convention may do or what disposition they may make of that report.

The CHAIRMAN: That committee was dispensed with by motion, if that is the one you refer to.

Mr. NORRIS: I am informed by my friend that the committee will be ready to report to the Judiciary committee and the Judiciary committee will report tomorrow or next day to the Convention. I do not know whether Brother Anderson would adjourn or not. I would not.

Mr. PECK: I think this matter about this subcommittee has not as yet been quite accurately stated to the Convention. While we were considering this matter in the Judiciary committee, some suggestions were made about the ordinance of 1787 as bearing upon this and other subjects, and it was suggested that we investigate the present status of the ordinance of 1787 as bearing on the laws of the state of Ohio. After some discussion, it was voted to appoint a subcommittee of three members. The real reason of the investigation was the Boone case, which has recently been decided by the supreme court, in which there is something which looks like a dictum, in which it was said the ordinance is under and before the constitution and laws of the state of Ohio. That seemed a very sweeping assertion and we appointed this committee to report to the Judiciary committee. That is all the power that the subcommittee has. We expect to report probably to this Convention. It is in the discretion of the Judiciary committee as to what they will do about it. It is a matter of doubt. I do not know that the question of the right of trial by jury will necessarily be affected by it, or that it would have any effect upon the discussion now proceeding.

Mr. HARRIS, of Ashtabula: It seems to me that raising a question now on the matter between the select committee and the Judiciary committee reflects a little upon the Judiciary committee, in that after having appointed a select committee to look up a particular proposition in advance of the select committee's report the Judiciary committee is now reporting to the Convention on that proposition.

Mr. PECK: The committee was not appointed in reference to that at all.

Mr. HARRIS, of Ashtabula: It seems rather a peculiar plight to me. I think that ought to be cleared up between these gentlemen.

Mr. PECK: There were various questions before the committee on constitutional questions, and my colleague from Hamilton county [Mr. WORTHINGTON] raised the question and called attention to the supreme court's decision in the Boone case.

Mr. HARRIS, of Ashtabula: Do I understand that the report of this select committee was not intended to influence the Judiciary committee?

Mr. PECK: It was for the information of the committee generally. The committee was not appointed for the preparation of this report at all.

Mr. WATSON: It is quite evident to some of us that this fossilized, outworn and mediaeval ordinance of 1787 is being used as a monkey-wrench in the hands of plutocracy chieftains to block the cogwheels of progressive legislation that seeks to get rid of some of the measures that have been a curse to the people for years.

Mr. BOWDLE: I want to call attention to article II of this monkey-wrench ordinance that is stopping the wheels of progress. It provides that the inhabitants of said territory shall be entitled to the benefits of judicial proceedings according to law, and under the Boone decision that would imply the common law, which would be a verdict of a jury of twelve men.

Mr. WORTHINGTON: Lommen vs. Minneapolis Gas Light Co., 65 Minn. 196, 309 (1896): "The essential and substantive attributes or elements of jury trial are and always have been number, impartiality and unanimity. The jury must consist of twelve; they must be impartial and indifferent between the parties; and their verdict must be unanimous."

Mr. BOWDLE: I agree that after we get further into the bowels of this difficulty we may find there is nothing there to allow us to have a verdict of nine men rather than twelve men, but as yet the committee is not quite sure of that. We have progressed. We have found we are under three constitutions now in Ohio. It is just possible that Washington's farewell address to the army may be found to be binding also. At all events, we expect to make a report and permit me to say we expect to throw a very great deal of light upon this question.

Mr. HARRIS, of Ashtabula: It seems to me this discussion is rambling and irrelevant. As I understand, Judge Peck's explanation is that the Judiciary committee held itself under no obligation to wait for this report. It seems to me that the discussion of the question itself is without any reference to the ordinance of 1787.

Mr. PECK: We have assumed that the ordinance is not in force.

Mr. ROCKEL: It seems to me it is not germane to this question what this committee may decide in reference to whether or not the ordinance of 1787 applies or not. If this report of the Judiciary committee is adopted and the legislature makes a provision in accordance with the authority given them by this provision, our supreme court will settle the question of the applicability of the ordinance of 1787 without regard to what this Conven-

Reform of Jury System—Publication of Debates.

tion or the Judiciary committee or the special committee thinks on that question. So we are just back where we were before. And we may discuss this question here for six months and we won't ever come to a definite conclusion. I am in favor of the adoption of the report. I would go one step farther and strike out the words "civil cases", and leave the whole matter in the hands of the legislature. I think we could trust the legislature. I would not be in favor myself of making it apply to the criminal cases of a greater degree, but I think there are a great number of minor criminal cases to which the legislature might apply the rule. So, I might repeat, we can wait for the committee or we can go ahead; and if we do go ahead and the legislature exercises this power and it is declared null and void we will still have the jury of twelve men.

Mr. DOTY: I would like to state that the select committee appointed by this Convention on an important matter, is ready to report and would like to make a report before we continue this discussion, which is likely to take the rest of the day; and I move that the committee rise and report progress.

The motion was seconded.

Mr. ANDERSON: What is meant by that, that the committee rise and report progress?

Mr. FESS: I rise to a point of order. Remarks are not in order.

A vote being taken on a division, the motion was declared carried and the vice president resumed the chair.

Mr. BROWN, of Highland: Mr. President: The chairman of the committee of the Whole begs to report that the committee of the Whole has had under consideration the report of the Judiciary committee on Proposal No. 54, and the committee has agreed to rise and report progress, no definite decision having been arrived at.

The report was received.

The VICE PRESIDENT: What is the further business of the Convention?

Mr. KNIGHT: The report of the select committee should come at this time.

The VICE PRESIDENT: If there is no objection we will hear the report of the select committee headed by the gentleman from Franklin [Mr. KNIGHT].

The report was read by the secretary as follows:

The committee has solicited and obtained proposals in writing from responsible parties for reporting verbatim proceedings and debates of this Convention as follows:

	Daily Copy	Weekly Copy	Monthly or within set time after adjournment
Orrin B. Booth	\$80 per day Delivery 10:30 a. m.	\$75 per day Delivery following Tuesday	\$70 per day
Wisensall & Faulkner			\$15 per day plus 20c per folio; final delivery of copy within 45 days of adjournment
Brown & Faulkner	\$100 per day or \$75 per day plus 8c a folio	\$95 per day or \$70 per day plus 8c. a folio	Same as weekly
Clarence E. Walker	\$75 per day	\$60 per day delivery copy Monday	\$55 per day; copy on following Tuesday
Frank I. Brown	No daily	\$200 per week, plus 8c folio first copy and 4c folio additional carbons; copy on Mondays	\$150 per week and same folio rate as weekly
Ias. H. Gardner	\$575 per week	\$75 per day plus 45 c page, 2 copies; 55c page, 3 copies; (i. e. original and one copy called 2 copies)	
James A. Newkirk	\$3,125 per month; copy 3 hrs. after adjournment	\$2,750 per month, copy 30 hours after weekly adjournment	\$2,175 per month; copy during progress of Convention; final copy within 30 days after adjournment.

Publication of Debates.

After careful examination and comparison of the foregoing bids it is clear that the bid of Clarence E. Walker is the most advantageous, as well as the lowest. The committee is of the opinion that the contract should be entered into for the making of a verbatim report of the debates and proceedings so that they may be printed and delivered in pamphlet form weekly. We therefore recommend that a contract be entered into with Clarence E. Walker on the basis of his second proposal, viz.: Sixty (\$60.00) dollars per diem, copy to be delivered to the printer weekly.

The VICE PRESIDENT: You have heard the report; what shall be done with it?

Mr. Elson: I beg to ask what "per day" means; does it merely mean the days we are in session?

Mr. KNIGHT: I offer a resolution.

The resolution was read as follows:

Resolution No. 63:

Resolved, That the president of this Convention and the chairman of the committee on Claims be authorized and directed to enter into a contract for and in behalf of this Convention with Clarence E. Walker for reporting the debates and proceedings of this Convention in accordance with the terms of his bid for reporting and furnishing copy weekly.

Mr. DOTY: I move that the rules be suspended and the resolution be considered at this time.

The motion was carried.

Mr. KNIGHT: In answer to the question as to what is meant by "per day" it means the days on which the Convention is in session, but the contract further provides this: That there must be at least four days in each week; that if the Convention adjourns over a week that week shall not count; if the Convention is in session five days in a given week, then Mr. Walker is to be paid for five days; if for six days, then he is to be paid for six days; but in any event, four days in each week.

Mr. HARRIS, of Hamilton: Suppose the Convention recess for a month, two months or three months, is the minimum charge to be two hundred and forty dollars per week?

Mr. KNIGHT: No, sir; no recess or adjournment covering a week or more is to be counted.

Mr. ELSON: Does this include all the debates of the committee of the Whole?

Mr. KNIGHT: Yes, sir.

Mr. ELSON: Or merely the debates on general proceedings?

Mr. KNIGHT: What is meant by "general proceedings?"

Mr. ELSON: Anything that takes the place of the journals.

Mr. KNIGHT: No, sir.

Mr. ROEHM: Will that include any publishing of the debates?

Mr. KNIGHT: No; the gentleman of the committee on Printing and Publication are supposed to make a contract for that. I will say by way of explanation that the gentleman has already been official reporter for the constitutional convention of the state of Kentucky and also for the state of Alabama in its constitutional convention,

and he comes to us with the highest recommendations from gentlemen who know him well. Directly in answer to the question: It is subject to such editing as the committee on Printing and Publication shall see fit to permit. It does not contemplate the right of members of this Convention to talk five words and print fifty. It contemplates taking what is said on the floor of this Convention, and not printing what is not said.

Mr. BEATTY, of Wood: I did not hear how much it would cost.

Mr. KNIGHT: Sixty dollars per day while in session.

Mr. BROWN, of Highland: I would like to ask just one question. In explaining to the gentlemen you stated that if this Convention adjourned for more than a week, then that would not be paid for—that is, if the Convention adjourned for as much as a week?

Mr. KNIGHT: Yes, sir.

Mr. SMITH, of Hamilton: Was not there a bid submitted for two hundred dollars per week? Sixty dollars per day means two hundred and forty dollars per week; if we meet four days. If I caught the reading of the proposal on that there was one for two hundred dollars.

Mr. KNIGHT: Two hundred per week plus eight cents for folio for the first copy, twelve cents for two copies. That, as the committee has figured it, would mean an additional charge amounting to more than two hundred and forty per week.

Mr. JONES: There is such a marked difference in these bids, some of them five or six times as much as others, that for my own satisfaction I would like to know clearly and distinctly what is contemplated by these lowest bids. I understand from what has been said, so far as this bid of Mr. Walker's at sixty dollars per day is concerned, that it includes the taking of the stenographic reports of what is said on the floor of this Convention while in session or in committee of the Whole, and includes the transcribing of those notes and the delivery of them to the printer?

Mr. KNIGHT: To the secretary of this Convention, ready to be printed.

Mr. JONES: And their delivery in form for publishing?

Mr. KNIGHT: Yes, sir; and there is another thing which the Convention has to do, and which it would have to do for any reporter, and that is to furnish a room in which the reportorial staff will do its transcribing. That, I understand, can be easily provided for without any expense.

Mr. JONES: Further than that the contract that is proposed to be entered into, does not in any way contemplate anything additional?

Mr. KNIGHT: Nothing additional; that is the sum total of it.

Mr. HARRIS, of Hamilton: Do we understand, Mr. Knight, that the total expense for stenographic reports, transcribing of the same and delivery of the same, in proper shape to be printed, is represented by the charge of sixty dollars per day, the said charge of sixty dollars per day to be for a minimum number of four working days in any one week, and any day that the Convention is in session over the four days shall be charged for at the rate of sixty dollars per day additional?

Publication of Debates, Etc.

Mr. KNIGHT: Yes, sir; but it does not include the charge for printing. That is perfectly clear.

Mr. BOWDLE: Mr. President: I have opposed from start to finish the expenditure of one dollar of the state's money for the publication of speeches that have not been made. I am opposed to the insufferable, collective and individual egotism of making elaborate and extremely expensive arrangements for the publication of speeches that have not been made. I therefore offer a substitute which at least will minimize the damage to the commonwealth of Ohio:

That all after the resolving clause be stricken out and the following substituted:

That a daily stenographic report of the proceedings of this Convention be made by competent stenographers; that their notes be safely kept, and that this Convention determine before adjournment all questions relative to the transcribing and publication of said notes.

Substitute seconded.

Mr. DOTY: I move that the substitute be laid on the table.

The VICE PRESIDENT: It has been moved that the substitute be tabled.

The motion was carried.

Mr. WOODS: I demand the previous question.

The vote being put on the previous question, the same was carried.

The roll being called on the adoption of the resolution resulted—yeas 68, nays 45, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Partington,
Antrim,	Holtz,	Peters,
Baum,	Hoskins,	Price,
Beyer,	Hursh,	Read,
Brown, Highland,	Johnson, Madison,	Redington,
Brown, Lucas,	Jones,	Riley,
Collett,	Kerr,	Rockel,
Crosser,	King,	Shaffer,
Cunningham,	Knight,	Shaw,
Davio,	Kramer,	Smith, Geauga,
Doty,	Lambert,	Stalter,
Dunlap,	Lampson,	Stamm,
Dwyer,	Leslie,	Stevens,
Elson,	Longstreth,	Stewart,
Fackler,	Marriott,	Stilwell,
Farnsworth,	Marshall,	Stokes,
Fess,	Matthews,	Tannehill,
FitzSimons,	Mauck,	Tetlow,
Fluke,	McClelland,	Thomas,
Fox,	Miller, Fairfield,	Wagner,
Hahn,	Moore,	Winn,
Halfhill,	Norris,	Woods.
Harris, Ashtabula,	Nye,	

Those who voted in the negative are:

Beatty, Wood,	Halenkamp,	Peck,
Bowdle,	Harbarger,	Pettit,
Brattain,	Harter, Huron,	Pierce,
Brown, Pike,	Harter, Stark,	Roehm,
Campbell,	Henderson,	Rorick,
Cassidy,	Hoffman,	Smith, Hamilton,
Colton,	Johnson, Williams,	Solether,
Cordes,	Kehoe,	Taggart,
Crites,	Keller,	Tallman,
DeFrees,	Kunkel,	Ulmer,
Donahey,	Leete,	Walker,
Dunn,	Ludey,	Watson,
Earnhart,	Malin,	Weybrecht,
Eby,	Miller, Crawford,	Wise,
Farrell,	Okey,	Worthington.

The resolution was adopted.

Mr. DOTY: I move that we recess.

Mr. LAMPSON: I ask unanimous consent to make a little statement concerning a point of order.

The VICE PRESIDENT: If there is no objection.

Mr. LAMPSON: My reason for doing so is this, as this Convention proceeds everybody will come to see the necessity of following the rules of order.

What the committee of the Whole did was to adopt a motion to rise and report progress. That report had not been made. We were in a transition state. The regular chairman or vice president had taken his place, but the chairman of the committee of the Whole had made no report, which he was directed to make by the committee of the Whole. Suppose intervening business had been allowed to take place before the chairman of the committee made his report, the journal would show that the business was transacted in the committee of the Whole, not in the Convention. Suppose a motion to adjourn had been made, the journal would show that the committee of the Whole adjourned and not the Convention. The committee of the Whole, under Rule 75, cannot adjourn, it can simply rise and report to the Convention its action. Suppose we had decided to recommend the resolution by the committee of the Whole, and before the chairman of the committee could have reported the action of the committee of the Whole someone had been recognized, and in that transition period, before we had gotten out of the committee of the Whole, a motion to adjourn had been made and carried, the journal would not show the action of the committee of the Whole at all, and the journal is the thing that determines the legality of our proceedings. It is highly important that it be kept correctly. The point is simply this, that the chairman of the committee of the Whole, by order of the committee itself, must report the action of the committee to the Convention, and in doing that the committee of the Whole is simply in the transition state, from the committee to the Convention, and there isn't anything else in order and nobody has any right to recognition, and when that report is made then we are back in the Convention and the journal shows the proceedings correctly. That is why I take this time and make this request to explain my position, because of the great importance of this. Suppose what we do here comes into question after we have finally adjourned? The journal is the only thing we have to determine what has been done.

The VICE PRESIDENT: All of this matter is simply by unanimous consent.

Mr. ANDERSON: Doesn't Robert's Rules of Order provide—

Mr. LAMPSON: Nothing can provide except to do the thing that is necessary to get from the committee of the Whole back into the Convention. There isn't anything else that can provide, otherwise you are not back in the Convention.

Mr. PECK: I move we adjourn.

The VICE PRESIDENT: Just wait a moment. I want to say to this body of men the position that the chair took, and the position that he will take whenever he is in the chair. I make that announcement now. The committee of the Whole, in its report, stands exactly on the same plane that a committee of any other kind stands on, and when the committee voted to rise the chair took

Discussion on Method of Procedure in Committee of the Whole.

the position here, and that is the thing that put this organization in regular order. When the chair took the position the Convention was in order. The committee reports are in order only when it comes in regular order. Any man can rise here before that committee reports and fix a time to which to adjourn before the committee reports. You could make a motion to adjourn if you want before the committee reports, and the committee report from the committee of the Whole is in order only as any other committee would be in order. I want you to know now that while I am in the chair Robert's Rules of Order, which fixes that very clearly, will be consistently observed, and if Mr. Doty or anyone else has anything to say, I will hear what he has to say, and if he is not in order he will be called out of order. If Mr. Lampson makes a motion he will be recognized and if he is out of order he will be called out of order. He can appeal from the decision if he wants to. How did I know what he was going to bring up?

Mr. LAMPSON: But the report of the committee had not yet been made.

The VICE PRESIDENT: I did not know what he wanted.

Mr. PECK: I rise to a point of order. I move we adjourn.

Mr. DOTY: I had the floor and yielded to Mr. Lampson.

Mr. LAMPSON: I desire that the point of order should be clearly understood by the Convention. It is that the Convention had directed that the committee should rise and report progress. It was in progress of following out that order when the chairman of the committee of the Whole was interrupted in following out that command of the committee of the Whole by what I supposed was an attempt to bring up some other business.

Mr. DWYER: The chair has decided the matter and the gentleman is out of order.

The VICE PRESIDENT: I want to ask Mr. Lampson if no man can rise to make a motion of any sort until after the report is made?

Mr. LAMPSON: Certainly; there is nothing else in order.

The VICE PRESIDENT: The chair decides you are out of order.

Mr. DOTY: I move we recess until half-past one.

Mr. PECK: I move we adjourn. There are various committees that want to meet here.

The motion to adjourn was seconded by Mr. Marriott.

The motion was lost.

The vote being taken on the motion to recess, the same was carried.

AFTERNOON SESSION.

The Convention was called to order by Vice President Fess.

Mr. DOTY: The Convention has been all this forenoon considering a certain proposal. My notion of how to consider these proposals is somewhat different from that of practically all the rest of you. I do not think there is anything gained by this cumbersome method of considering at least our simple proposals of three or four lines. If this proposal is at this stage taken out of the

hands of the committee and considered in the regular order, the next stage, if we had not gone into the committee of the Whole, would be to have it read the second time. It will then be open for amendment and final consideration on a vote by yeas and nays. That is the orderly, quick and easy way of carrying on the business. This matter of referring our simple proposals to the committee of the Whole is cumbersome, and I think is an unnecessary way of doing our work. Therefore, I move you that the committee of a Whole be relieved of further consideration of Proposal No. 54.

Mr. LAMPSON: The committee of the Whole has not that proposal before it now. It is reported back to the Convention, and we would have again to move to go into the committee of the Whole to get it before the Committee of the Whole.

Mr. DOTY: I don't care which way it is done, but the way the rules have it now it is cumbersome and time wasting.

Mr. LAMPSON: The house may not again vote to go into the committee of the Whole on that.

The VICE PRESIDENT: The Convention will be in order. It is the province of the chair to give the status of the business before the house, and the chair now states that the committee of the Whole had under consideration Proposal No. 54. It was taken to the committee of the Whole because there you do not limit debate and you can not move to amend by substitutes. The principal motion that is allowed there is that the committee rise. The motion to rise was passed and the minute the motion to rise passed, a record was made of it and the committee of the Whole was in session no longer. When the committee of the Whole rises the president resumes his position as the presiding officer of the Convention. The Convention is then in order and the disturbance that came up was when the gentleman from Cuyahoga rose and I did not know what motion he was going to make. I was in order to recognize him to find what he was going to say. After that the chairman of the committee of the Whole made a report and that report was accepted. That takes the matter out of the hands of the committee of the Whole, and it is now before the house just as it was before we went into committee of the Whole.

Mr. DOTY: I therefore call for the second reading of the proposal.

The PRESIDENT: The second reading of Proposal No. 54 is called for.

Mr. LAMPSON: It is immaterial whether we discuss this matter in the committee of the Whole or before the Convention. In the committee of the Whole we have a little more freedom of debate and discussion and for offering amendments and that is the object of the committee of the Whole.

Mr. DOTY: The gentleman is in error. We have no liberty of amendment in the committee of the Whole. We have perfect liberty of discussion, but no amendment. The only difference is you have more liberty of debate.

Mr. LAMPSON: All I desire to say about the trouble this morning is that the gentleman from Cuyahoga moved that the committee rise and report progress—

Mr. PECK: Oh, don't open up that again.

Mr. LAMPSON: I think it is a very material mat-

Reform of Jury System.

ter. I just call attention to Rule 329 in Jefferson's Manual, which makes the matter very clear. I am not keen to discuss the matter, but I do think it is pretty important to the Convention that we have a full and free debate upon these important questions.

Mr. PECK: Do you move that we go into committee of the Whole?

Mr. LAMPSON: Just as the gentleman from Hamilton desires.

Mr. PECK: I am willing to second it if you make the motion.

Mr. LAMPSON: You make the motion.

Mr. PECK: All right. I move that the Convention resolve itself into a committee of the Whole for the purpose of further discussing Proposal No. 54.

The motion was carried. The vice president called Mr. Lampson to the chair.

In Committee of the Whole.

The CHAIRMAN: The committee of the Whole will be in order. The committee of the Whole Convention is in session for the purpose of considering Proposal No. 54, which the secretary will read.

The proposal was read as follows:

Resolved by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

Section 5. The right of trial by jury shall be inviolate, but the general assembly may authorize that in civil cases a verdict may be rendered by the concurrence of not less than three-fourths of the jury.

The CHAIRMAN: The question is now open to debate. Does the gentleman from Hamilton [Mr. PECK] desire to make any further remarks?

Mr. PECK: I do not know that I do. I explained the reasons of the committee for making this proposal and I do not like to repeat my talk again. It seemed to me it was clear enough. We think it will be an improvement in our judicial procedure and that it can not possibly work any harm to anybody. It is in use in a number of states of this Union and has met with favor wherever it has been put into effect. I think it is in a line of progress and its utility has been demonstrated in various ways. I hope the proposal will be adopted.

Mr. SMITH, of Hamilton: I would like to have the chairman of the Judiciary committee tell us the reason why the legislature should not arrange to enforce the matter in criminal as well as in civil cases?

Mr. PECK: I did not state the reasons, but there are several reasons. One was to impress the jury that a man should not be condemned to death except by a unanimous verdict; that the sentence of death was such a severe penalty that it should not be pronounced against anybody except after a unanimous verdict of twelve men. There is a great majority of minor criminal cases in which the three-quarters verdict would be perfectly available and would not be anything out of the way in any aspect of the case. Personally I would not have any objection to the general assembly allowing a three-quarters verdict in this class of cases, but we were of the

opinion that it would be regarded in the Convention as revolutionary if we applied it to criminal cases and we preferred to limit it to a class of cases to which we thought there could not be any objection. That is the real reason why we put it that way.

Mr. ROCKEL: I offer an amendment. I move to amend Proposal No. 54 as follows: Strike out in line 6 the words "in civil cases." It would then read "the right of trial by jury shall be inviolate, but the general assembly may authorize that a verdict may be rendered by the concurrence of not less than three-fourths of the jury."

Mr. ELSON: I sincerely hope this will be adopted. A motion is in order, is it not?

The CHAIRMAN: The question would be upon the amendment when debate is closed.

Mr. ELSON: Well, just a word or two, as I do not wish to consume time.

It seems to me if there should be any particular opposition among the people to this provision, the fact that it is left to the legislature would be sufficient safeguard. If the people are not ready for such an innovation the legislature will always be subject to popular opinion on this matter, and I do not think putting it in that form will be any particular menace to the constitution being adopted. It is well known — we all know it — that the United States is a reproach throughout the civilized world on account of its lax enforcement of the criminal law. We all know that. If I have the figures right, in the past few years, out of seventy-four homicides only one has been punished by the capital penalty.

The city of London is exceedingly strict in this respect. We know how quickly justice acts there and the result is in London there is not one homicide where there is half a dozen to the same population in the United States. This much does seem to me certain, if twelve men can render a correct verdict, nine or ten can do the same thing, and just as surely as the twelve men are right the nine men will be right.

I believe where a jury is hung by a single man, or even two men, it arises from one of two causes. First, the jury may have been tampered with in some way — somebody has been bribed; or second, there is a wrong-headed person in there, such as I referred to this morning, some man who can not be convinced. Now, so far as bribery is concerned, we know that in Ohio one man on a jury may be bribed, but that it would be an exceedingly difficult thing to bribe three or four and if we allow nine men to bring a verdict it would then be necessary to bribe four of the jury to secure a miscarriage of justice in a case of that sort. It seems to me that would be practically impossible.

Mr. HARRIS of Hamilton: Does not the gentleman from Athens know that in England it requires twelve men to convict in a criminal case?

Mr. ELSON: Yes.

Mr. HARRIS, of Hamilton: Then what has the number required to return the verdict to do with the expedition of the law? Has it anything to do with it?

Mr. ELSON: In this particular case it has not; but in England they have a method of expediting criminal cases.

Mr. HARRIS, of Hamilton: But that is a method of criminal procedure, is it not?

Reform of Jury System.

Mr. ELSON: Yes.

Mr. HARRIS, of Hamilton: And it has no bearing on the jury question.

Mr. ELSON: If we can not come up to England in some respects, we can at least go beyond in one. It would be better in England if unanimity were not required; but they handle criminal cases in a way we do not. A jury here is apt to be swayed by some criminal lawyer. Very often a member or two are particularly swayed in this manner. It is not nearly so apt to occur in England.

Now, one word more. As for the ordinance of 1787, I confess that I have not made any investigation, but I have been in correspondence with Doctor Hall, the head of the law department of the University of Chicago. I do not think he has any superior in the United States as an authority on this subject. I asked him in particular about the amendment to the constitution? The seventh amendment, I believe it is, requires jury trials according to the common law. He assured me that this did not refer to state law at all, but to federal court trials only. Now, I think the same would hold with respect to the ordinance of 1787. I have not made any investigation so far as that is concerned. Professor Knight has done something of that sort. But I do not believe that the ordinance of 1787 will interfere in the slightest degree with anything we do in this direction.

Mr. DWYER: As a member of the subcommittee to inquire into the question how far we are governed by the ordinance of 1787 in regard to our jury proceedings, I have made examination of the matter and I am in accord with the chairman of our committee. I, with all the members of our committee, believe that when Ohio came into the Union, it came in as a sovereign state, the same as all other states of the Union. It did not come into the Union with a string to it. Neither did the other four states comprising the Northwestern Territory come in with strings to them. We find and expect to report that the state of Ohio came in as a sovereign state, the equal of the original thirteen states, and you will find that the trend of authorities is altogether in that direction, as we shall show when we make our report.

I deny absolutely the idea that any sovereign state is inferior to the original thirteen. I deny that any sovereign state should be tied by any string of any kind from governing itself as a sovereign state. I say we shall show it clearly by the decisions of the supreme court of the United States. We will cite those decisions and show them to you, and they do not recognize any such right to be subject to the ordinance of 1787 as held by the supreme court in the Boone case.

Now, in regard to this jury matter, I think I can speak on this subject with some authority. I believe I have tried as many criminal cases as any gentleman on the floor of this chamber. I think I have in my time sent about three hundred and fifty men to the penitentiary of Ohio and I can say to the gentlemen of the Convention that we have not any fraud or corruption in our county. If a man is guilty there, he goes to the penitentiary when tried by a jury. I am surprised to hear so much about fraud and corruption from members from different parts of the state on the floor of this Convention. I never had any trouble in my county or in the county adjoining where I have held court in finding men

guilty through the action of the jury when they were guilty. I say it is an humane principle to require a unanimous verdict of twelve men in criminal causes, and I think we had better retain that number. It is ancient. It is honorable. It is venerable, and I believe should be lasting. I say on the score of humanity, if nothing else, we should retain that number.

Going back to the early history of juries, we come to the time of Alfred the Great of England. It is said that they had the jury system then. But when the Conqueror came and established the feudal system, the jury system in England was destroyed, and was only brought into being again at Runnymede when Magna Carta was extorted from King John. And that system meant a jury of twelve men.

In the early times, as my friend said this morning, it was a jury of the vicinage. They tried men in those days by men who knew them, by their neighbors. But in time, it grew to be that a jury should not know anything about the facts of the case, and that is as we have it today. The jury does not know anything about the party or the case, but is expected to try the case on the law and evidence. While it is all right in a civil case that nine men should return a verdict, I think we should retain the time-honored principle of having the unanimous verdict of twelve men on the trial of a criminal case. I say to you, Mr. Chairman, and I say to the gentlemen here that I scarcely ever found an indictment in a court over which I presided that the party was not found guilty for the reason that I instructed the grand jury in advance not to return an indictment unless they had sufficient proof. I said I did not want the county put to the expense and I did not want the time of the court wasted by returning indictments unless the grand jury had before them such proof as would satisfy a petit jury in convicting the party. The result was I scarcely ever had an indictment when the party was not convicted when tried before the petit jury. I am almost tired of hearing about corruption here. We heard of it in our stenographic matters and everything else. We are here to represent the state of Ohio as square, honorable men. We are not here to hesitate on anything we do. I say as to this jury matter we ought to allow the old time-honored principle of a verdict by twelve men in a criminal case — we ought to require the verdict to be unanimous as to whether the party is guilty or not.

Mr. WOODS: I offer an amendment.

The CHAIRMAN: The secretary will report the amendment.

Mr. REDINGTON: Mr. Chairman —

The CHAIRMAN: Does the gentleman from Lorain desire to discuss the pending amendment or the question generally?

Mr. REDINGTON: The main question.

The CHAIRMAN: The chair will recognize the gentleman next and the secretary will read the amendment of Mr. Woods.

The amendment was read as follows: Amend the amendment to the substitute for Proposal No. 54 as follows: In line 6 strike out "civil cases" and in line 7 strike out "three-fourths" and insert "five-sixths."

Mr. WOODS: What this amendment does is simply this. It makes this apply to criminal as well as civil

Reform of Jury System.

cases, but makes it necessary to have ten men concur in the verdict instead of nine.

I certainly am in favor of amending our jury laws in this way, and I think we should all remember that we ourselves are not changing the jury system. All that we are doing is to give to the general assembly of the state of Ohio the right to change the existing laws. We ourselves are not changing them. We are simply giving that discretion to the assembly of this state if it sees fit to do it.

I certainly think the law should be changed with reference to juries in civil cases. I think ten men or even nine men should have a right to decide a civil case. I do not think one man should set up his judgment against that of eleven others and thus bring about a disagreement of the jury. I do not believe that one man's judgment is better than the judgment of the eleven. Now if that is true in a civil case I think it is more than true in a criminal case.

We have now come to the age when we are all getting very independent. We are getting awfully that way. Why, even in a political way you can hardly find a man who will vote a straight ticket. You put twelve men in a jury box and they simply feel that they must not all stand together. There must be some kicker, and one man who may be entirely honest can bring about a mistrial, and then the case will have to be tried over again. Now we all know in criminal cases, especially in felonies, a grand jury has first to indict a man before he can be brought to trial. The indictment must be found by twelve out of fifteen. Then when the man is brought to trial we all know that the court in charging that jury has to charge them that on every one essential element of that crime the jury must find the defendant is guilty beyond all reasonable doubt. And some judges dwell on that subject "reasonable doubt" so long that the members of the jury can hardly think of anything else when they go out. I don't believe anybody is going to be injured if ten men are allowed to bring in a verdict. I don't think an innocent man will be convicted one time in a thousand. If you or I or any other man are sitting on a jury when a man is tried, we certainly will give that man the benefit of all reasonable doubt. Now if we provide that five-sixths of that jury must vote "guilty" before the man can be convicted it does seem to me that we are giving the man the benefit of every doubt that possibly can exist.

Now I think that one of the things this body is supposed to do is to provide ways and means for shortening litigation and bringing about justice quicker. That is one of our troubles in this state. You get into court, and if you are a defendant with plenty of money you can almost figure that the chances are nine out of ten on the result before your lawyer ever starts to litigating your case. I think one of the big propositions for us to deal with is to devise ways and means whereby we can shorten litigation and bring a man to justice quicker. We all remember that down in Virginia a short time ago a man named Henry Clay Beattie was indicted for a very serious crime. He was wealthy and was a member of one of the old families. We all remember how quickly that man was indicted, tried and electrocuted. If that man had committed that same offense in Ohio I do not believe there is a man in this Convention who believes that

under existing laws he would have been electrocuted even up to this time.

Mr. NORRIS: How many men were on that jury that tried Beatty?

Mr. WOODS: I am told twelve, but I don't know.

Mr. COLLETT: Would it not be better to have a different number in criminal cases than in civil? Would it not be well to have a three-fourths jury, or nine out of twelve, in civil cases and five-sixths in criminal cases except where capital punishment could be inflicted, and in these latter cases require the full twelve to agree on the verdict?

Mr. WOODS: In answer to that I think it is hard to draw the line, but I want something less than twelve men to be allowed to return the verdict, and I think this is one of the ways and means by which we can bring about more speedy results in the trials in our courts. It will stop a great many mistrials. A mistrial always makes a large expense. That falls upon somebody and sometimes prevents the ends of justice being met on time. In a small county if there is a mistrial you can not try your case right away at the same term of court without impanelling a special jury. That makes the case go over to some future time — delay. Of course lawyers for the defendants are always asking for delays. I am not criticizing them at all, but that is one way by which the defendant can win, by delaying as long as you can.

Mr. ROEHM: Suppose that the members of a criminal jury are straightforward, honest men, if two of those did not agree with the other ten would not that be an indication that there was a reasonable doubt?

Mr. WOODS: I would think there would be more chance for a reasonable doubt than if there were only one, but I think we can trust ten men in any case to do justice. One man may be mistaken, two men may be mistaken, but I don't think eleven men should be controlled by the other one. That is the point I want to get at. I think, as a whole, it is better for the state to let ten men decide the case.

Mr. STALTER: How many disagreements have there been in your county in the last year?

Mr. WOODS: I can not tell you, but I have tried two cases where the jury disagreed.

A DELEGATE: Railroad cases?

Mr. WOODS: No, sir.

Mr. FESS: With the wording of the clause suggested in the new plan, how does that differ from the present status under our constitution? The question I want to ask the gentleman from Medina [Mr. Woods] is, when our present constitution says trial by jury shall be inviolate, why could not the legislature under this constitution grant the privilege of a verdict by three-fourths or five-sixths?

Mr. PECK: Because trial by a jury is supposed to be a trial by twelve men; and to be inviolate it should remain that way.

Mr. FESS: Is that common law?

Mr. PECK: Yes; and it has been so held by the supreme court.

Mr. FESS: I just wanted to know if we could not have a majority verdict under the present constitution.

Mr. EARNHART: I want to ask every lawyer in this house if it is not a fact that on almost every jury there are jurors who, when they find themselves in the

Reform of Jury System.

minority, will readily change to the majority side? I think every man who has ever served on a jury will recognize that fact. The law presumes every man is innocent until he is proved guilty, and it often happens, especially in criminal cases, where a man's life is in jeopardy that part of that jury will save a man when he really ought to be saved. I have seen cases in my home county where a jury was hung by two men. A man was charged with burning his own store and the ten of the jury were in favor of convicting him. The jury was hung by two men. That necessitated another trial. That trial came on afterwards and it was developed that the man was innocent. I think it is too serious a thing to jump at conclusions, especially in criminal cases. We know very well that in a great many juries there are men who have no particular mind and who jump with the majority, and it may develop in time that three men of the best thought and brain may be in the minority. Now, as has been said, men accused of crime ought to be proved guilty beyond a reasonable doubt, and my own opinion is that the present system is good enough and twelve men ought to agree after hearing the evidence and having the law laid down that the person charged is guilty before a verdict of guilty should be received.

Mr. PIERCE: Are amendments in order?

The CHAIRMAN: There are two amendments pending now, but if the gentleman has one, he can read it for information.

Mr. PIERCE: I would like to offer an amendment to Proposal No. 54 by striking out the words "in civil cases" in the sixth line and inserting the words "except in capital offenses" after the word "jury" in the seventh line.

The CHAIRMAN: When the pending amendments are disposed of the gentleman can offer his amendment. If he desires to he can discuss it now, together with the general subject.

Mr. PIERCE: I do not desire to discuss this question at any great length. It seems to me the ground has been covered. I am in favor in civil cases of allowing a jury of nine or of some number less than twelve to return a verdict, but in criminal cases, especially in offenses where capital punishment can be inflicted, I feel that a jury ought to be unanimous. Perhaps in the minor criminal offenses we should not require unanimity, but where a man's life is at stake, I think we should require absolute unanimity, and at the proper time I shall offer this as an amendment to Proposal No. 54.

Mr. JONES: I had prepared and expected to offer, at the proper time, an amendment in line with that proposed by the gentleman who has just taken his seat. It occurs to me that at this day and age we should look at this question exactly as if it were an original proposition. There are two tendencies that are with us in life on almost all questions. One is the tendency to cling to a thing simply because we are familiar with it and it has age; another is the tendency to run to new things simply because they are new. The true line to be drawn, I think, is between those. We should not bind ourselves to a thing simply because it is old and familiar to us, nor should we run to a thing merely because it is new or novel. It appears to me, as has been said, that the reasons for this present jury system having long since disappeared, we should now look at the matter simply as an original proposition to be considered now for the

first time, and we should apply to it the same rules for its determination that we would apply to any other proposition.

Now our action is liable to be influenced very largely by what is the fact as to whether the reasons and the whole of the reasons for our present jury system have disappeared. That involves an inquiry, first, as to what were the reasons for the creation of our present jury system, not its creation in every aspect of the institution, but what were the reasons for the creation of these particular features of the jury system that we are now considering, to-wit, unanimity of verdict? It would be somewhat reiterating matter of common history and what has already been said upon this floor to say that the reasons that called forth that feature of our jury system was the determination on the part of the people to resist the exercise of arbitrary power. We know that formerly the whole power rested with the government, with the king or those in authority. When the judges were under the control of the government, when the administration of the law was under the government, when all the king had to do was to suggest that a certain party ought to be gotten out of the way, or that a certain party's presence was inconvenient, or that a certain party's property ought to be taken, under the old system that could be accomplished. The whole machinery was in the hands of those in power. The king could say to his bailiffs and his sheriffs, "Go out and seize that man's property, or seize the man and bring him in," and they could subject him to such trials as they might prescribe. Hence, those great principles arose that a man's property should not be taken from him without due process of law; that he should be entitled to be tried in the county or the place where the crime was alleged to have been committed and not be taken off to some other place for trial; that he should be tried by a jury of his peers; that he should not be deprived of his property or his liberty, or denied that freedom of action which every man was entitled to enjoy, so long as it did not conflict with the rights of somebody else, except by the unanimous judgment of twelve of his peers. Those were important and necessary provisions in those days. Now, what have we in this age? Is there any longer any such conditions as would call for those provisions in the administration of justice? As has been suggested, they have long since disappeared. The government now, instead of being exercised against the people, is a government of their own creation and being exercised by themselves. There is no longer any separate and independent power that may become an arbitrary power distinct from the people, but the people are the source of power and the means themselves of executing all power. So it occurs to me that now the provisions with regard for protection against arbitrary power and its exercise can no longer have any application, and the use that we now make of the jury system is not in protecting us against the exercise of arbitrary power, but is in settling the disputes between man and man, between an individual and the society in which he lives. In other words, all of those matters are involved in civil cases affecting the rights of parties, and in criminal cases involving merely the question as to whether or not a man has transgressed not a rule made by some other power and sought to be enforced by some independent power against him, but a

Reform of Jury System.

law he has himself helped to make. That being so, if those are the questions to be determined in this day and age by the jury, I submit, what sense is there in having those old provisions that applied to an entirely different state of affairs? In ninety-nine out of a hundred — aye, more than that — of the civil cases that are to be determined by the jury, they involve simply questions between individuals, simply the determination of property or personal rights, nothing else involved in them, and why, I submit, apply to it any other rule than you would apply in determining ordinary matters in the affairs of life?

Mr. TAGGART: If your position is correct, why have a jury at all?

Mr. JONES: Because we must have some tribunal for the purpose of determining facts, and long experience has developed — and if we had not had that experience it would be manifest as an original proposition — that a jury selected from the body of the people, whose rights as between themselves would be determined, would in all probability be better judges of the facts relating to the transaction in question than a court or a number of judges upon a court would be. For that reason, I am not for a moment questioning the soundness of the proposition that questions of fact should be determined by juries, but merely as to the manner of determining them.

Now, as an original proposition, if any two gentlemen had a controversy between themselves, and we would for a moment forget that we had a jury system that was the outgrowth of hundreds of years, and had its origin as a means of protecting against arbitrary power, what would be the judgment of ninety-nine out of a hundred as to who should determine that question, assuming, of course, that you would determine it by a number of men selected from the body of the community? Why, without any sort of question, we would all say submit it to a certain number, with the power of determination in the majority. That is done in all of the affairs of life, and in every relation where anything else is involved except the exercise of our ancient institution of trial by jury. Now, lawyers have had more means probably, of observing the results of jury trials than citizens generally, but not much more.

Mr. HARRIS, of Hamilton: In the arbitrament of private differences, don't the people involved pick out their arbitrators?

Mr. JONES: Often they do not, but suppose they do and they cannot agree?

Mr. HARRIS, of Hamilton: Don't they then pick out a third arbitrator?

Mr. JONES: Yes.

Mr. HARRIS, of Hamilton: Then if they do, and they do not have that same privilege in picking out a jury, it seems to me that your whole argument falls to the ground.

Mr. JONES: Yes; but as we all know, in selecting a jury the parties themselves do have the right in a large degree to determine the character of the jury. It is done first by the selection of three jury commissioners, who are selected with reference to their especial fitness to get good men to start with. Then after the jury is called each party has a right to examine each juror as fully as desired with reference to all of the facts affecting his

desirability or undesirability. Then after that is gone through with they have their peremptory challenges, so that the law has provided means for the parties, where they cannot agree upon the arbitrators, of selecting under forms of law the best arbitrators they can get. But that does not settle it. To come back to the original proposition as to what we would do if we were now dealing with this question as a new one, what would we provide as to the member of that set of arbitrators who should bring in the award? As I was proceeding to say it is a matter of common knowledge that one of the great obstacles in the administration of justice promptly and effectively is this very thing we are constantly running up against, the unanimous verdict by a jury. Reference has been made to the criminal lawyers. It is the duty of a criminal lawyer, or any man defending another, to give him the benefit of all of the provisions of the law, and if the law provides for a verdict by twelve men and provides that one man may prevent a verdict, it is the right at least of the party defending the person charged to do all that he can to get a jury which will not convict his man. Two things are always kept in view. One is to get a jury to acquit, and if you can't do that the next best thing is to get one that will fail to agree. And it is a matter of common knowledge that every means is adopted that is available within the limits of the ethics of the profession to secure at least a jury that will not convict.

Mr. HARRIS, of Hamilton: Are not the same means adopted by the prosecution to secure a conviction that are adopted by the defense to secure an acquittal?

Mr. TALLMAN: Yes; the prosecution adopts all means it can to secure a conviction, but the prosecution does not want a hung jury. A hung jury doesn't do the prosecution any good.

Mr. HARRIS, of Hamilton: But doesn't the prosecution still try to get a conviction?

Mr. JONES: Yes; but the means of preventing a conviction are ten to one on the side of the defendant in respect to this matter we are discussing.

It is suggested here, does anybody know of any instances of hung juries in their vicinity? I happened to inquire when I returned to my home last Saturday night, the court having been engaged during the week in trying the criminal docket, how many cases they had tried, and they had tried three. In one there was an acquittal and in two there were hung juries. At this very term of our court a number of cases in which I have been personally engaged resulted in mistrials and half of the cases in our court that have been tried by a jury in the past six months have resulted in disagreements. That may be exceptional, and I realize that you must not formulate general rules from individual instances. There may be other counties where the percentage is not so great, but I do not think there is any county where there is not frequently mistrials by reason of disagreements of juries.

Now, another argument occurs to me in favor of this proposition. We have the familiar checks and balances under our present system of government and we have them with reference to the jury. It is suggested that a man ought not to be convicted, no matter what the character of the case is, unless there is evidence that will convince the jury beyond a reasonable doubt, and that

Reform of Jury System.

means that they all ought to be convinced of his guilt. In civil cases under the law of Ohio the trial court cannot do much towards convincing a jury on the determination of facts. In other words, our judges cannot review the facts as in some jurisdictions, cannot analyze the evidence relating to the issues of fact as they can do in some jurisdictions. Yet the trial court itself, when the verdict is brought in, may review the facts, and if the verdict is manifestly against the weight of the evidence the trial court can set the verdict aside. Then you can go to the circuit court, where all of this evidence can be carefully and calmly gone over by three judges after the fullest argument by counsel on both sides, and if the verdict is manifestly against the weight of the evidence it will be set aside. So that there is no danger that anybody can be hurt by the provision that three-fourths of a jury may render a verdict. Those means will fully protect everybody, and they will fully protect too a man in a criminal case. By reason of the rule of law that a man charged with crime must be convicted beyond a reasonable doubt, both the trial court and the reviewing court will scrutinize the evidence to see if it supports the verdict. So there is no danger when it is merely now a question of determining the simple matter of whether the defendant has transgressed one of the rules of society—whether or not he has violated some of his duties to his fellow-man, not as I said before as to whether he is being subjected to the exercise of arbitrary power. But when that is the office and function of a jury substantially as in civil cases, I submit there is no longer reason for a provision for unanimity in criminal cases, and I am heartily in favor of this amendment that in both civil and criminal cases three-fourths of a jury can return a verdict if the legislature should so determine, with the single exception and that not because it is based on reason or principle, as I conceive, but simply out of deference to the feelings and prejudices which have been established in us through long, long years of adherence to doctrine and theory, that it probably ought not to be undertaken to be applied to cases where capital punishment might be inflicted.

Mr. PRICE: If I understand you correctly, you take the hypothesis that the jury in its present form has been a bulwark against the exercise of arbitrary power. If that is true, would it not be a fact that the reduction of the power of the jury would invite a return to arbitrary power?

Mr. JONES: But where is the arbitrary power to come from? All power now is in the people themselves. Are they going to exercise arbitrary power against themselves?

Mr. NORRIS: Has it not always existed since the institution of the republic that the power was in the people as now?

Mr. JONES: Yes.

Mr. NORRIS: Why does this suddenly assume such proportions then?

Mr. JONES: It must be remembered that when this provision with reference to jury trials was incorporated into the constitution of Ohio it had just been recently incorporated into the federal constitution, a few years before. It had been incorporated into the constitutions of the thirteen states, which were framed before or about the time the federal constitution was framed, by reason

of the fact that right at that time the people of this country had a lively sense of the attempted exercise of arbitrary power and a long list of specifications was given of the exercise of arbitrary power.

Mr. NORRIS: The right of trial by jury is found in the twenty-ninth chapter of Magna Carta, and did we not inherit it like any other inherited liberty?

Mr. JONES: Trial by jury is not in the Magna Carta, but there is this provision in Magna Carta, which is thought by some to be tantamount to a provision for a jury trial as we now understand it, that a man shall be entitled to be tried at the place where the alleged crime was committed and by a jury of his peers. But Magna Carta did not undertake to define how many should constitute the jury or as to whether the verdict of the jury should be unanimous, and it was not until nearly two hundred years afterward, or a little more, that it became a distinct provision of the English law that a jury should consist of twelve men and that the verdict should be unanimous.

Mr. NORRIS: In your argument you are confining yourself to the time or about the time that the thirteen independent states formed themselves into a federation or established a federation. You say then trial by jury was instituted. Was it not instituted before? Is it not a fact that among the reasons for dissolving our political relations with Great Britain it is set forth in the Declaration of Independence "for depriving us in many cases of trial by jury"?

Mr. JONES: That is the very thing I was speaking of a moment ago, the attempt on the part of the British crown to exercise arbitrary power over the colonies, and the institution at first of a jury of twelve men and requiring them to render a unanimous verdict, in connection with the provision that a man was to be tried in the vicinity in which the crime was committed was the great bulwark against the exercise of that arbitrary power. But we have no longer any foundation for any such specification of injuries that were inflicted or appear to have been inflicted upon us as a country as set out in that immortal Declaration of Independence.

Mr. MARSHALL: I would like to ask one question. Suppose a murder is committed within the corporate limits of this city. Some man is locked in jail for it. In due time that man is brought before the court. The next step that is taken is to procure a jury of twelve men. The witnesses are examined and the wheels begin to move. I would ask the gentleman, is that man's life in the hands of those twelve men, or in the saving powers of the electors of the state of Ohio, and is the judgment of six men as good as the judgment of eight, and eight as good as the judgment of ten, and is the judgment of ten as good as the judgment of twelve?

Mr. JONES: The statement of that question furnishes its own answer except in one respect. The life of the prisoner at the bar is in the hands of twelve jurors who are impanelled to try him under the guidance of the court. He agreed when he became a member of society of which he is a part to be bound by certain rules for the guidance of men in their relations one with the other. The only question involved there is one between him and the society of which he is part, and it is just as important to the one as to the other. His rights—his individual rights—cannot rise higher than the rights of

Reform of Jury System.

the whole society. It is just as important—aye, more important—that the rights and interest of the whole society be protected and guarded, as that his individual rights be protected and guarded. We have now passed the point where it is anything else in the administration of the criminal law than purely the determination of questions that arise between society and the individual, just as we determine questions in civil cases that arise between one individual and another individual; and it occurs to me, in cases especially below homicide, that there can be no sound reasons, looking at it as an original proposition, why any different rule should prevail in the one case than in the other.

Mr. MARSHALL: Is it not a fact that in the history of Ohio men have been arrested, tried and convicted by the verdict of twelve men, and sentenced to be hung, and yet those men were innocent?

Mr. JONES: That thing has occurred; and it has also occurred that there have been many men turned loose that were guilty. As I said a moment ago, we cannot formulate general rules from individual instances. Every lawyer can cite instances in his own experience of miscarriages of justice. I have never had one fall under my observation, but probably there is in the experience of every lawyer of any age instances where he thought an innocent man was improperly convicted; but in all of our experiences we have seen cases where guilty men have escaped punishment. But you must come down to the matter and view it as you would view any other proposition, from a plain, practical, sensible standpoint, not what might happen as an extreme case one way or the other, or upon the one side or the other of the question, but what rule applied will in the greatest number of cases work out the proper result. Now, what rule is it, I submit to gentlemen of the Convention, that will determine that?

In the ninety-nine cases out of a hundred that occur between man and man, what rule is it that will determine in a majority of the cases where the truth lies if it is not the rule of the majority?

Mr. ANDERSON: Does the constitution of any state allow a conviction in felonies on less than the verdict of twelve men?

Mr. JONES: There are one or two states where it is authorized, but I am not prepared to say such provisions are enforced in felony cases in this country. But we have it that way in this country because we have always had it that way. We are now coming again to look at this matter from a different view point and from a different light, and we are coming to look at it as a proposition applying to conditions that exist at this time, and finally, I submit, that if upon reflection we can come to the conclusion that the reasons for these salient features, which we have been discussing in our jury system, have long since disappeared, these provisions themselves ought to disappear, and we should put into this constitution a provision which would authorize the legislature when it sees fit—not put it in the constitution so that any man can reasonably object to it on that ground, but put it in such shape that when the public shall demand it the legislature will have the power to grant the demand of the public.

Mr. WATSON: Is it not a fact that the chief objection to any reform in the present jury system comes

from corporation attorneys in that they hope to wear out and thereby to injure and oppress the poor?

Mr. JONES: No; I have no sympathy with that sort of sentiment. It is the common idea that it is the big interests on the one hand and certain interests on the other hand that want this or that, but this proposition is of application to the whole people and every class of people and every kind of people, and its provisions will have no more application to one class of cases than to any other so far as securing benefits is concerned.

Mr. HARRIS, of Hamilton: Does the gentleman from Fayette recognize any difference in principle between the safeguards that should be thrown around one charged with a criminal offense—bearing in mind that if convicted of criminal offense, the same follows him through life—and a safeguard that should be thrown around civil cases, where the sole thing involved is dollars and cents?

Mr. JONES: Certainly there is a difference. That is why I suggested that the provision ought not to extend to homicide, but I suggest again that in our admirable system of checks and balances in all departments of our government, we have a provision that if a man is improperly convicted, while he cannot get complete redress he can at least get partial redress by a pardon.

Mr. TALLMAN: Have we not in civil cases the same checks and balances—opportunity to get a new trial, to secure a rehearing—that they have in criminal cases?

Mr. JONES: Certainly; that is the reason why I say you are not going to be prejudiced by putting in force the three-quarters verdict, because of the opportunity we have to have that verdict thoroughly examined upon the facts, first by the trial court and next by your intermediate courts.

Mr. BROWN, of Lucas: Is it not true that the English administration of criminal justice is the surest and most expeditious in the world?

Mr. JONES: I have seen that fact stated frequently. It is certainly true that the administration of the criminal law in Great Britain is much more effective than here.

Mr. BROWN, of Lucas: Is it not further true that they have the same system of juries in criminal cases that we have?

Mr. JONES: That is also true, but that is not an argument against changing.

Mr. BROWN, of Lucas: Then is it not true that the law's delays in criminal matters are due to something quite different from the jury system?

Mr. JONES: No one questions that there are many things that cause delay in administration of justice that ought not to, but that this provision in reference to jury trials is one of the things that causes delay there is no doubt. Now, although there is danger of my trespassing upon the time of the Convention, I want to cite one instance from my own experience that has fallen under my observation. It was a case involving the simple question of the right of possession to a steer which had strayed and had gotten into a neighbor's lot, and which the neighbor did not claim and announced that he didn't claim. Another neighbor asserted a claim to it and said it was his steer, and the first neighbor disputed that fact, and they got into a lawsuit. They had three trials before a justice of the peace before a verdict was

Reform of Jury System.

reached, and then the case came to the common pleas court. They had three more trials, and finally a verdict was reached there. Then we went to the circuit court. I am not sure that a member of this Convention was not on the circuit court bench at the time, and we had a most exhaustive hearing before the circuit court, which court found that there was no basis for the verdict and reversed the judgment of the court below. The parties finally settled the case by the payment of about \$400 costs and at least that much or more lawyers' fees, and all of that largely because of a provision requiring unanimity in the jury. If that provision hadn't existed the case would have been settled before the justice of the peace and before the common pleas court with one trial, and then would have come before the circuit court, which would probably have determined it.

Mr. NORRIS: Is it not a fact that the clients had bad counsel in that case?

Mr. JONES: I think the whole trouble was that they had bad blood.

Mr. KING: It is with a great deal of hesitancy that I arise to express a little different opinion from that entertained by the distinguished gentlemen of the Judiciary committee, or at least a large majority of that committee. It was not possible, owing to other important arrangements, for me to be present when this proposition was submitted to or adopted by the committee. When the report was presented was the first opportunity I had to express any disagreement with it, and I declined to sign it. I am not going to discuss this question from the dawn of creation, but only to give briefly the reasons for my judgment against it, and if I can give any light to any member of the Convention I shall be abundantly satisfied for taking five or ten minutes of your time.

I have heard no one discuss here the object and purpose of the jury and the end to be reached by their verdict. It seems to me that the submission of controverted questions of fact to be decided by a tribunal that has unlimited power to decide it ought to involve some reason, some judgment, some consideration of the facts before the conclusion is reached. If the proposition reported by the majority of the committee be accepted by the legislature in the light which is therein incorporated, it gives to the legislature the right to enact a law that the jury upon retirement to consider a case will take a vote and if nine happen to agree, that ends the consideration of the case.

Mr. PECK: Is not the same thing true if there were twelve required to agree?

Mr. KING: Yes; but that would be a unanimous agreement of the twelve, while in the other case there might be three men, and very able men, disagreeing with the nine, and yet they would not be called upon to stop and discuss the case before them; they would simply take the vote, and the nine would return the verdict. The three may be entirely right. I have known many cases where a minority of three or less has convinced a majority of nine men that they were wrong in their first impressions of the case. If you can have a verdict by a vote of nine men, why not make it a mere majority, and have nothing but a question of voting and not a question of discretion or of candid, careful consideration and an attempt to arrive at a unanimous verdict?

Now, if there had been incorporated a provision that

the jury, when sent out to consider the case, should understand that it was their duty to consider the case and not simply to vote, but to consider the facts for the purpose of arriving at a unanimous conclusion, and then after such review and candid and careful consideration of the case as in the judgment of the trial court presiding was sufficient, then if the jury were disagreeing because of the opinion and judgment of one man the court might instruct the jury to return a verdict when such a number as the legislature has prescribed had agreed, it might be all right, but in my judgment that number ought not be less than ten.

Mr. ANDERSON: Do you want the legislature to provide that, or do you want us to put it in here?

Mr. KING: Before you undertake to change so radically a principle of law that has been in the constitution, in the bill of rights for hundreds of years—before you open the doors to the legislature to legislate upon that in a manner so radically different from what it has been in all of the past history of the people, you ought very carefully to chain down the legislature. I do not believe in giving it unlimited power to determine how many men should constitute a jury, nor that a majority should be allowed to return a verdict without consideration of the case, but I would lodge the right where it ought to be lodged to permit the verdict by a less number than twelve. I would lodge it with the court. All of the gentlemen I have heard speaking in favor of this proposition have said that it has happened that one or two men have held up the juries. I have known of those cases. You would reach that if you would require five-sixths of the jury, but if you allow as much of a minority as three, those three may be wiser than the nine.

I am not in favor of changing so radically our system of judicial procedure, our system of jury trials, as will permit a vote of nine to three to determine any question either of dollars and cents or of life and liberty.

Mr. NYE: Gentlemen of the Committee: I rise to voice my sentiments as opposed to a verdict by a divided jury. I believe a large majority of all lawsuits tried in a court of justice is an honest difference between the litigants, whether they be individuals or corporations. If it is a question of dollars and cents they may differ as to the amount that is due from the one to the other, and if they are unable to agree they go into court. There they have a tribunal consisting of a judge presiding upon the bench and twelve jurors. As I said before, the two litigants have been unable to agree. They must therefore submit it to a tribunal of twelve men to agree, and if that be true, why should not the twelve men be required to agree before they can compromise the rights of the individuals who are litigants?

It has been said upon this floor in this discussion that some of the jurors are liable to be bought. With a long experience in the practice and some years upon the bench, I want to say I have the utmost faith in the integrity and honor of jurors. It is true, my experience has been in a rural district that has no large city. The jurors have come from the country, the villages and the smaller cities, and I believe in the discussion of the rights between the individual and the state they have tried to reach a just and proper verdict. And with an experience of ten years upon the bench I think I can truthfully say I never had as many as ten disagreements of

Reform of Jury System.

the jury. Then why should we leave this old landmark? Why should we fritter away the rights of the individual on either side and say that nine men may render a verdict instead of twelve?

I now refer to a case within my own experience and my own observation where a jury stood eleven to one and the jury disagreed and was discharged. The case was tried again by a jury of twelve honest men and those honest men rendered a verdict upon the side where the one had stood before. So, apparently, instead of that one man being an obstinate juror, he was the man who was right and the others were wrong, and the eleven were not bought nor sold either.

Mr. JONES: What means have you of determining whether the conclusion of the twelve on the second trial was entitled to more respect than the judgment of the eleven on the first trial, except the mere preponderance of one?

Mr. NYE: I have this to say, that the case was reviewed and it was found that the last jury was right in its position. That is the best evidence I have of it.

Now it has been said upon this floor that nine or ten men should be allowed to agree upon a verdict in a criminal case. I think when we put it into the hands of the legislature to permit a partial number of jurors to agree upon a verdict, we are forfeiting the rights which we have for the individual protection of the citizen. Any man who has sat upon the bench and listened to the trial of a criminal case and had a verdict of conviction rendered, and then has had the man stand before him to pronounce sentence must realize something of the importance of the rights of the individual.

Mr. ELSON: Suppose on the first ballot the jury stands nine to three. Suppose another ballot is taken and then another and they finally agree. Is that final verdict any better, or is it any nearer the genuine opinion of each man than the first ballot? What advantage was there of unanimity in that case?

Mr. NYE: I admit that if the jurors stand nine to three when they go out and the three men go over to the side of the nine, that they have been convinced by the arguments adduced by the nine that they were wrong, and if they are honest men, as I assume they are, they have honestly changed their minds and have decided that the nine were right and that they were wrong. That is the best reason I can give for it and the only reason that can be given. The government that protects its individual citizen is the best government for the rights of the people, because the government or state is made up of individuals and the state that protects its individuals protects its citizens.

It has been said here that some men go free who ought to be convicted. I grant it, but we have a doctrine laid down to which we all agree, I believe, that it is better that ninety-nine guilty men go free than that one innocent man should be convicted. I know it is often said that this man or that man has been acquitted when he ought to have been convicted. That may be true, but let us not blame the system for that. Let us stand by the landmarks which we have that have been handed down to us from generation to generation. I am loth to vote for a proposition to take from a citizen the right of a trial by jury. If there is any trouble in the state about the disagreement of juries, in my judg-

ment, many times it may be the fault of the judge in not giving a clear and distinct charge to the jury. When a jury of honest men, calm business men, merchants, have a clear view of the law, I believe in ninety-nine cases out of a hundred they render the right verdict by the unanimous verdict of the entire jury, and I would dislike very much to have this Convention put it in the hands of the legislature to say that a less number than the whole could return a verdict affecting the life or liberty of a man or taking from him his money or his property.

Mr. STOKES: An hypothetical case founded upon my neighbor Jones' story in relation to the steer: Suppose we were both claiming the ownership of the steer. Suppose a steer were off half a mile and we both tried to get possession; I succeeded in getting the steer and you tried to dispossess me. In order for me to hold that steer I would only have to get one man on that jury, while you would have to get twelve. Is that fair?

Mr. NYE: It depends on whether you are the plaintiff or the defendant, that is the only difference. The law is just the same for all of us, whether it is a steer or something else. But here is another proposition you are talking about. You are talking about a compromised verdict. Here you are trying a case involving many thousands of dollars. One man claims he is entitled to many thousands of dollars and another man claims he is not entitled to a cent. Now, you may have nine men who say you are entitled to the many thousands of dollars, but the other three say you are not entitled to as much. Now, why not have the verdict of the entire jury to cut it down and apportion it and say it is not as much as the plaintiff claims, but it is more than the defendant admits, and make a compromise? That is fair. Then you have a verdict of the entire jury, a verdict of the twelve men.

Mr. ELSON: Is it not probable in a case of that sort that the nine men are right just because they are nine to three? And if they are right, that verdict ought to go, and not the compromised verdict.

Mr. NYE: Not necessarily. As I said before, there was a case where one man stood out against eleven and the next time the verdict was rendered by twelve men his way. The one man was right and the eleven men were wrong.

Mr. BROWN, of Highland: Under the present jury system, what would have become of justice in the recent famous case of the McNamara brothers if that case had gone to the jury when, as has been proven since, one of the jurors at least had been purchased by the defense? Is not that a specific and famous example of many similar conditions taking place throughout all of this state and throughout all of the states in this Union now and in the past ever since the history of the country began?

Mr. NYE: In answer to that question, I will say that I am not discussing this question upon the proposition that people are dishonest. I believe that mankind generally is honest.

Mr. ELSON: Will the gentleman yield to a question?

Mr. NYE: Not until I get through answering the other question. I believe that men generally are honest, that jurors are honest and that courts are honest, and that men do the right thing. Now, as to the specific

Reform of Jury System.

question of the McNamara case. If it had been ascertained after the verdict had been given in that case that a juror had been bribed the court could have set aside the verdict because of corruption. You cannot expect to make rules that will apply to all cases.

Mr. BROWN, of Highland: If the court set aside a verdict for the defendant, what would become of the rule that a man's life cannot be twice put in jeopardy?

Mr. NYE: You must have a verdict for or against. He is not in jeopardy unless the jury agree. That is well known.

Mr. ELSON: The gentleman professes to assume that the people are honest. If that assumption be true, it robs us of two-thirds of our argument. But is it true? We all know it is not. All people are not honest. A majority and a very large majority are honest, but in framing the constitution we must take the people as they are not as they ought to be.

Mr. NYE: I suppose we must frame our constitution so as to punish the dishonest and the criminal, but we cannot frame our constitution in such a way as to submit the deciding of cases to dishonest men. We have to submit our cases to an honest judge and an upright jury, and any other hypothesis than that would deprive us of the benefits of making a constitution that would be applicable to all men. Of course, we can submit a constitution that will punish the criminal, but there is no way of submitting a constitution that will deprive an honest citizen of the protection of the courts and the jury.

Mr. ANDERSON: Is it not the rule of our supreme court that in all civil cases probabilities rule? In other words, all you have to have is the probability with you to win the law-suit in civil cases?

Mr. NYE: I don't quite comprehend your question.

Mr. ANDERSON: In criminal cases you have to convince the jury to the exclusion of all reasonable doubts, not captious doubts, but all reasonable doubts; but in civil cases the rule of probabilities prevails. Is not that rule that all the plaintiff needs to do is to prove his case by probabilities, nothing stronger than that? Is not that the rule of the supreme court?

Mr. NYE: I do not suppose it is.

Mr. ANDERSON: Let me say it is.

Mr. NYE: I do not suppose you could try a case and get a verdict upon probabilities. I thought that you must have evidence and that you must have the weight of the evidence in the civil case and the weight of the evidence beyond any reasonable doubt in a criminal case.

I do not know that I can say anything further. I have already talked longer than I expected. I would hate very much to see anything go into the constitution that would take us away from the old landmark of having twelve jurors and having a unanimous verdict.

Mr. HALFHILL: Gentlemen of the Committee: I am disposed to look with a great deal of favor upon the report of the Judiciary committee, knowing the personnel of that committee and its distinguished chairman. Personally, I am not disposed to look with much favor upon a number of these amendments. It would not be worth while to attempt to discuss all of the reasons that are given in favor of the amendments, but in passing I will allude to two or three reasons furnished for their support. To start with, I think there is a decided difference

in principle between the rights dealt with in criminal proceedings and the rights dealt with in civil proceedings. I believe it would only need for each man here to take that application home to himself and he would be easily convinced that there is a wide difference in principle.

What is the nature of all civil controversies? Only dollars and cents. It may be a large or it may be a small amount. It may break a man as far as earthly fortune is concerned, but that is nothing to what is at stake in a criminal proceeding, is it? To me the answer is so clear that it needs no demonstration.

It has, however, been urged here in argument that criminal cases should also be decided by a three-fourths verdict, except that one charged with a capital offense should be entitled to a verdict of twelve men; that the common-law jury of twelve should decide when the supreme penalty of human life is to be exacted. It may not be at all impossible that when we have the next constitutional convention in Ohio they will look back to our time with some degree of wonder that in this year of grace the majority seriously believed that capital punishment was right; and that a member of this Convention from Athens county complained because only one out of seventy-four charged with a capital crime was either electrocuted or hanged. Many hope we will not always have capital punishment, and it is a grave question whether now there is not a better and more humane course than to follow the Mosaic law, and one which is more in accord with the civilization of today. To immure behind prison walls, without power of pardon in this world, would protect society, and save it from blood-guiltiness.

But suppose it is only petit larceny and you are not guilty. Is the punishment only a fine and imprisonment? More than that, it is loss of reputation, which should be dearer to you than your money, and inasmuch as everybody is presumed to be innocent, we must, in obedience to the Christian precepts of the law, presume that no one has committed a crime until the charge is proved by competent evidence and beyond a reasonable doubt. So I submit on principle there is every difference in the world, measured by responsibility, between the panel who try a man for his property and the panel who can take from him his life or his liberty or his good name. Why should we not have a jury of twelve men, and why should we not leave to every citizen in Ohio the right to have twelve men say whether his life should be taken or his property confiscated by fine, or whether he shall be immured within prison walls and his reputation taken from him—why should it not take twelve men?

It is argued here that the reason does not subsist simply because seven hundred years ago our forefathers marched forth and took from King John, and later from other kings who had the sovereign power, the right to arbitrarily exercise that sovereign power, and bestowed it on the jury. What is the difference in principle, and how can you distinguish the difference in sovereign power by the place of its abode? Does not sovereign power mean the same thing whether it resides in a king or in all the people? It is only such application of the difference, if any, that engages your attention here, for what profit is it that men should go forth and fight that the sovereign power of the king should not take their liberty or their lives, or their fortunes in the way of fines, unless twelve men should say so, being convinced by proof

Reform of Jury System.

beyond a reasonable doubt, when the children of such sires may suffer the same ignominy through the exercise of sovereign power that resides in all the people? Is there any difference in principle now why sovereign power should say that a less number of men should take your life, liberty or reputation? It is all nothing but the exercise of sovereign power. We are coming here by indirection on a proposition to take away from the individual, from the minority, a constitutional safeguard of supreme importance. By such procedure we are exercising against the individual that sovereign power to the extent of twenty-five per cent of his heritage by letting a three-quarter jury convict.

Is there yet any remaining doubt about the gravity of the difference between a civil case measured by paltry dollars and a criminal charge which may exact in penalty reputation, liberty and even life itself? Why should we have a bill of rights or in any way trouble ourselves about the rights of the minority? Simply because the state, or the majority, can always assert its power and its rights, but it is the minority we are aiming to safeguard in their rights when we make a constitution. A constitution is but the bit and bridle of restraint placed on sovereign power in calmness and deliberation, to guard the rights of the minority against the turbulence, excesses or passions of the majority.

Why then should we take away by one-fourth the right which the most humble man has had and has inherited from our English constitution? Why should we do it in criminal matters? I submit we should not do it. I submit when you ask that you are asking too much, and when you talk about making progress in civil procedure I say all speed to you, make progress along that line, but do not make progress at the expense of that which we consider the sacred right of free-born men, for a man who is charged with crime has a right to be presumed innocent until proved guilty to the satisfaction of twelve men, and beyond reasonable doubt. That means a great deal to me.

Mr. ELSON: Don't you consider that you have ignored one side of this question when you speak only of the rights of the criminal accused before the bar? You speak of his rights for proper protection; why should not society have a right to protection against the criminal? Has not society as much right to the protection of the law as this man has for protection, when it comes to the trial?

Mr. HALFHILL: I will answer that question and make myself as plain as I can: I have no doubt that society has both the right and the power to take care of itself at all times.

Mr. ELSON: Why have we had ten thousand homicides in the United States in one year?

Mr. HALFHILL: Because too long we admitted into the United States, without restraint and without number, the scum of the earth. You ignore that fact when you point to the smaller number of homicides in Canada and England and compare them with us.

Mr. ELSON: Why is it that the percentage of homicides in the countries from which this scum comes is very much lower than ours?

Mr. HALFHILL: I don't know, except that they are homogeneous in their own country, and percentages without accurate knowledge of all conditions is sometimes

misleading. But I can tell you why the percentage in England and in Canada is less—because those governments for many years have stood at the gateway and kept out from their borders a class that has been admitted into this country. For many years Canada, through its consular and other agents abroad, has inspected the list of immigrants; no criminals were admitted, none was wanted or welcome that did not go to the soil as agriculturists, and the foreign-born have not congested her cities.

Mr. MARSHALL: Will the gentleman from Athens [Mr. ELSON] answer a question?

Mr. ELSON: I have not the floor.

Mr. MARSHALL: I want the gentleman to define what he means by society.

Mr. HALFHILL: I presume that the gentleman means by "society" organized people of a higher order than mere tribal relations. When he asks why society should not be cared for, society is cared for. That is the very reason why the law requires a man to be convicted of crime beyond a reasonable doubt by a jury of twelve men, because society in the very first instance has a perfect right to arrest on the oath of any individual and by warrant from the justice of the peace pursue him, mayhap to the end of the earth, and bring him back. If you please, sometimes even innocent men are prosecuted, and sometimes even innocent men flee. It is not dealing at all in the realm of imagination to find an innocent man charged with a heinous crime, with circumstantial evidence apparent to such an extent that he would be bound over to the grand jury by an adverse verdict of the coroner, and after the grand jury has passed upon the question he would be indicted, and then placed on trial before a jury of his peers with all of the power of the state against him, and after society has had all that chance and public opinion has been wrought up to a fever heat against him, then he must not be convicted except by evidence that convinces twelve men of his guilt beyond all reasonable doubt; and that is right as well as humane, and should be a constitutional right to which he is entitled. I submit that society can take care of itself. It thus appears to me that these individual rights are more sacred than property rights, measured by dollars and cents. I am absolutely in favor of the committee's report, without change or amendment. I see where the legislature can under the report of the committee frame a law to help civil procedure. I would prefer a verdict should be returned by five-sixths instead of three-fourths, but let the legislature take care of that. I would prefer to have a jury deliberate twelve hours before a verdict of nine men should be received, because possibly three men with superior minds might have a better understanding of the facts and the law as charged by the court than the nine. But let the legislature take care of that. So that I am, gentlemen of the Convention, of the belief that we should stand by and adopt this report of the Judiciary committee. It is enough progress to make along that line, and it will not invade any of the ancient rights of free-born men that some of us consider sacred.

Mr. KERR: I have just a simple remark to make upon this subject. I am opposed to the amendment and to the amendment to the amendment, and I am opposed to it all. It does not seem to me that the proposition submitted here will remedy court proceedings. Gentlemen

Reform of Jury System.

who have argued for the three-quarter proposition take for granted that those three-quarter or those nine men will always be voting one way. A famous steer case has been cited here. I want to cite a horse case. A horse case was in our court for two terms and was tried twice resulting in mistrials, and in neither case were nine men one way or the other. The three-quarters wouldn't have remedied that matter. There they stood six and six and five and seven.

A good many points complained of in the matter of proceedings of court are not matters that the jury is wrong on, but matters in which the procedure is wrong, and that can be remedied by the legislature as it now stands.

If any of these propositions prevail, it should be the proposition for the five-sixths, because a jury in a justice of the peace's court is composed of six, and in that way you could get a verdict by five-sixths of the jury in a justice's court where you couldn't get three-fourths of six.

A case has been suggested by Judge Nye where it was shown on the second trial that the minority was right on the first, and I have two or three cases in our county that demonstrate that very thoroughly. As far as I am concerned, I prefer to have unanimity. It is a real safeguard for the protection of the rights of the people. I shall vote against the amendment and against the amendment to the amendment and against the proposal.

Mr. KNIGHT: It seems to me that the report of the Judiciary committee is one that may well and wisely be supported. Personally, I could only wish that it had gone further than it does. I suppose if there is any one class of people in the community which, next to the gentlemen of the bar, is inclined to think that because something has been therefore it must always be, it is those who are engaged in the kind of job I am when I am not here. But I propose to lay aside the fetish which seems to be working on most of the bar and a good many other people and admit that there is an opportunity for something new and better. Nine-tenths of the discussion here this afternoon has turned upon the proposition that because trial by jury was once a good and the best form of procedure in both civil and criminal cases, that, therefore, it is and must be now presumptively and for all time to come. I believe it is a good rule of law and if it is not some of the eminent criminal lawyers who have entertained us this afternoon can correct me—it is a good rule of law that when the reason for a rule ceases, the rule itself is bound to go. Now, the reasons that obtained when the jury trial came into vogue no longer exist. In the first place, in practically all civil cases the crux of the question is a business proposition, a problem of property and property rights. What other business that any of us can name, save under the most extraordinary circumstances, involving from five cents to five million dollars, as an ordinary business proposition, requires a unanimous vote of those who have the right to decide the question, from the largest corporation in the country down to a few boys squabbling over a nickel? It is not a question of unanimity, but of preeminence of one side over the other.

Most of another phase of the argument has proceeded upon the assumption, which we all know is not true, that all men are honest. Therefore, we are asked to adapt

our jury system to a phase of human society which we all know does not exist.

Now, I shall not waste time in insisting on a modification of the jury system as to criminals. Personally, I am ready to vote for its application to all criminal cases except where capital punishment can be imposed, for either three-fourths or five-sixths.

Now, one of the reasons that has been advanced over and over again is that somehow there is an inherent right to a unanimous verdict of twelve men. When did that right become inherent? Don't gentlemen know that from the beginning of the jury system, when there was a requirement for an agreement of the twelve, that it was an entirely different sort of a proposition as to the make-up of the jury and what the jury was for and its relationship to the case?

You have heard a good deal about the rights of the individual. I am going to try to avoid that word "society." I believe we all understood the word "community" better. I am coming of late years to be of the opinion that a community of ten thousand has some rights as against an individual of one person, and I venture that this proposition as coming from the Judiciary committee in no wise changes or destroys any inherent right. Why, gentlemen, if the jury system two hundred years ago had provided that a jury should consist of ten men we should hear all of these gentlemen arguing for a jury of ten men instead of twelve. If it had provided two or three hundred years ago that a five-sixths verdict was the thing, we would hear them arguing for that.

Mr. HALFHILL: You ignore the unanimity.

Mr. KNIGHT: I referred to that a moment ago.

Mr. HARRIS, of Hamilton: And if we had heard from our English ancestors that the law required a jury to consist of twenty-four men, you would be arguing just as vociferously for eighteen men to bring in a verdict as the nine.

Mr. KNIGHT: Yes.

Mr. NYE: In speaking of one man against the community, are you assuming that the one man is innocent or the community?

Mr. KNIGHT: I am making no assumption except what the law makes.

Mr. NYE: When you want the community protected, don't you assume the man on trial is guilty?

Mr. KNIGHT: No, sir; the law throws many more safeguards around the individual than around the community. However, I am not attempting to argue the application of this to criminal cases, much as I would personally have preferred to have it reported that way. I am supporting the report of the committee.

Mr. NORRIS: There is an amendment now before the Convention applying that to criminal cases.

Mr. KNIGHT: I understand that. I said simply that all this modification as reported by this Judiciary committee is to authorize the legislature to apply the same thing in the settlement of the business of one individual against another that we ourselves privately apply when we don't have the good or bad fortune to get into court. That is all there is of it. There is nothing sacred about a jury trial merely because it was established three or four hundred years ago, provided today there is some better rule. The rights to a jury trial exist just so long as we preserve them, and I am arguing for a modi-

Reform of Jury System.

fication which serves everybody and injures nobody and certainly facilitates the settlement of litigation, in any event in civil cases, and, as I have said three times, I would prefer it also to be extended to criminal cases.

Mr. ANDERSON: I am not in favor of the amendment for the reason that I do not believe that this Convention should take away from the individual any of the protection that he now has with reference to his life or liberty. I am heartily in favor of the provision so far as it applies to civil cases. As gentlemen have pointed out, there is a great deal of difference as to the amount of evidence required in criminal and civil cases. In a criminal case the jury has to be convinced beyond the existence of a reasonable doubt. I want to say that when you take away from any individual his rights to that extent, you hurt society and break it down. Now in civil cases, I want to give you the rule of our supreme court, and I submit to you now 80 Ohio State, page 289: "In civil cases the jury deals only with probabilities. A verdict is ordinarily not carried by a preponderance of the evidence. Hence, an instruction that the jury must be satisfied by the preponderance of the evidence of the truth of a fact in issue is misleading and erroneous;" and the case was reversed for that reason.

Now, if in civil cases, where all that is involved is property or the dollar, you only need to deal in probabilities and the jury need not be satisfied to the exclusion of a reasonable doubt, why is it that twelve men would have to agree before a person asking for a certain thing should receive it? Is not the defendant protected? Let us analyze that a moment. Say that Mr. Tetlow and I have entered into a contract and after the contract is completed he comes to me and says, "Anderson, you owe me so much." I say, "No, I do not owe you anything." Both of us are honest. He says, "Let us arbitrate." If I agree, I appoint one arbitrator and he appoints another and they select a third and two can settle the controversy, but if I want to be obstinate, I say, "No, I won't arbitrate," and there is only one avenue open to him and that is the court. He employs an attorney and files his suit. I employ an attorney and file a demurrer, and after we get through with that, if the court overrules it, I will file an answer and then a reply and an issue is joined, then we go before the jury. At the end of plaintiff's testimony the defendant can move for a verdict, and then again at the end of all of the evidence he can renew the motion; then after Mr. Tetlow has convinced twelve men that I am indebted to him I can make a motion for a new trial and that is heard by the court, and both the law and the evidence is considered by the court; then from there it goes to the circuit court and is again tried on the facts and the law, and from there it goes to the supreme court and is tried on the law there. It seems to me that the rights of plaintiff should be considered some and not too much emphasis laid upon the rights of the defendant.

You gentlemen can say that you don't want the subject of dishonesty introduced here, but it exists. Some of us may wish to believe that it does not exist, but it is present, less in the rural districts than in the larger cities. But we all know that a few years ago it was common knowledge that every one was talking about that it was impossible to get a verdict against the street-car company in Cuyahoga county. You could get eleven

jurors, but you couldn't get twelve. I remember getting ready to try a case at Cleveland in which Governor Stone was the opposing counsel. When we asked the jurors certain questions which the ordinary procedure prevented, but which we insisted upon, we found that out of twelve there were nine detectives. I grant you that this measure would not help us against nine detectives on the jury.

Now, I wish to read you something I have taken from a book called "The Beast", by Judge Lindsay, a gentleman we heartily applaud, page 21. The reason I read this is because it is true and because he gives the names of the people:

I had resigned my clerkship and gone into partnership with a fine young fellow whom I shall call Charles Gardner—though that was not his name—and this was to be our first case. We were opposed by Charles J. Hughes, jr., the ablest corporation lawyer in the state; and I was puzzled to find the officers of the gas company and a crowd of prominent business men in court when the case was argued on a motion to dismiss it. The judge refused the motion, and for so doing, as he afterwards told me, he was "cut" in his club by the men whose presence in the court puzzled me. After a three weeks' trial, in which we worked night and day for the plaintiff, with X-ray photographs and medical testimony and fractured bones boiled out over night in the medical school where I prepared them, the jury stood eleven to one in our favor, and the case had to be begun all over again. The second time, after another trial of three weeks, the jury "hung" again, but we did not give up. * * * One evening after dinner, when we were sitting in the dingy little back room on Champa street that served us as an office, A. M. Stevenson—"Big Steve"—politician and attorney for the Denver City Tramway Company, came shouldering in to see us—a heavy-jowled, heavy-waisted, red-faced bulk of good-humor—looking as if he had just walked out of a political cartoon. "Hello, boys," he said. "How's she going? Making a record for yourselves up in court?"

He sat down and threw a foot up on the desk and smiled at us, with the inevitable cigarette in his mouth—"Wearing yourselves out? Working night and day? Ain't you getting about tired of it?"

"We got eleven to one each time," I said. "We'll win yet."

"You will," He laughed amusedly. "One man stood out against you each time, wasn't there?"

There was.

"Well," he said, "there always will be. You aint going to get a verdict in this case. You can't. Now I'm a friend of you boys, ain't I? Well, my advice to you is you'd better settle that case. Get something for your work. Don't be a pair of fools. Settle it."

"Why can't we get a verdict?" we asked.

He winked a fat eye. "Jury'll hang; every time. I'm here to tell you so. Better settle it."

Reform of Jury System.

We refused to. What was the use of courts if we could not get justice for this crippled boy? What was the use of practicing law if we could not get a verdict on evidence that would convince a blind man?

So they went to our client and persuaded the boy to give up.

After that experience of Judge Lindsay with the tramway company of Denver, where the company each time had one man on the jury and where after weeks of trial the crippled boy could not get what was honestly due him, Judge Lindsay's partner, Gardner, was elected to the senate, and he introduced into the senate this same kind of measure. After that what happened? I read further:

I met Boss Graham in the corridor. "Hello, Ben," he greeted me. "What's the matter with that partner of yours?" I laughed; he looked worried. "Come in here," he said, "I'd like to have a talk with you." He led me into a quiet side room and shut the door. "Now look here," he said. "Did you boys ever stop to think what a boat you'll be in with this law that you're trying to get, if you ever have to defend a corporation in a jury suit? Now they tell me, down at the tramway offices"—the offices of the Denver City Tramway Company—"that they're going to need a lot more legal help. There's every prospect that they'll appoint you boys assistant counsel. But they can't expect to do much, even with you bright boys as counsel, if they have this law against them. You know that all the money there is in law is in the corporation business. I don't see what you are fighting for.

Now that is an actual conversation between Judge Lindsay and a representative of the tramway company.

Mr. NORRIS: That was a crime, was it not, to approach a man and offer him a bribe?

Mr. ANDERSON: He didn't offer him a bribe; he offered him employment.

Mr. NORRIS: Yes; he offered to appoint him to a lucrative position. It does not speak well for Judge Lindsay that he didn't seek the courts.

Mr. ANDERSON: He did seek the courts. He tried the best he could to get a unanimous verdict.

Mr. WATSON: According to the reading of that, the question I asked the gentleman from Fayette is very pertinent.

Mr. ANDERSON: I am not through yet:

I explained to him as well as I could that we were fighting for the bill because we thought it was right—that it was needed. He did not seem to believe me; he objected that this sort of talk was not "practical."

"Well," I ended, "we've made up our minds to put it through. And we're going to try."

By reason of his partner who was named Park, instead of the name given here, they succeeded in getting the bill through the senate. It then went to the house and was held up there until such time as Park—Judge Lindsay's partner's real name—in the senate held up the bill that the tramway company had introduced in the

house and sent to the senate, and then they succeeded in getting the bill through the house and it was passed. It was then taken to their highest court and there declared unconstitutional. The law that Judge Lindsay spoke of is found in Session Laws of Colorado 1899, page 245, practically the same as we have introduced here. The decision of the supreme court of Colorado holding it unconstitutional is found in the Colorado Reports, 28 Superior Reports, page 131, and in this way we get the true name of his partner.

One of the reasons why I object to taking the protection away from a man accused of crime is so far as I can find out, no other state has done it, and if any of the delegates know any state that has taken that right of twelve out of twelve away from a man accused of crime, I wish they would so state.

Mr. JONES: It has been done.

Mr. ELSON: In Scotland they have fifteen jurors and twelve can convict.

Mr. ANDERSON: But I am speaking of the United States. Does any delegate know of any such law applicable to any state of the Union? The supreme court of the United States, in 166 U. S., page 468, through Justice Brewer said:

In order to guard against any misapprehension, it may be proper to say that the power of a state to change the rule in respect to unanimity of juries is not before us for consideration.

Whether the thing we propose to place in the constitution will stand the test of the United States supreme court I do not know, nor can I find any decision that throws any light on it except the one in 166.

Mr. ELSON: I just want to restate the fact that I referred to before noon. I have been in correspondence with Dr. Hall, the head of the law department of the University of Chicago, than whom I suppose there is no greater expert on the subject in the United States, and he says that the restrictions in the seventh amendment to the federal constitution apply to federal courts only. That however, is simply the opinion of Dr. Hall. It is not the decision of any court.

Mr. ANDERSON: We would like to aid in the pushing of reform and I speak now for the Judiciary committee, though this report was not unanimous, for the day that this was decided upon by the committee, we were discussing the bill of rights and there were other matters of more importance than the bill of rights that demanded the attention of a few of the members of our committee, and those members did not sign the report.

Mr. NORRIS: I was there and voted against the proposition, and I did not sign it as did not others that I could name.

Mr. ANDERSON: The greatest questions are not decided by unanimous verdict. The question of whether or not an income tax was constitutional was not decided by unanimous verdict. It was decided over night—that is, one of the judges changed over night—and Hon. Walter Clark has said that that decision cost a billion dollars each year, taken in taxes from the poorest people instead of being collected from the most wealthy. Let me repeat that that decision which means a difference of billions of dollars every year being taken from the poorest instead of the most wealthy did not require a unani-

Reform of Jury System.

mous verdict. If it had, then the poor people would not be paying that billion dollars every year.

Before our courts today the wealthy and the poor do not stand alike. They do in theory, probably, but no man who has had the opportunity of observation will ever state that the poor and the wealthy today stand alike before the bar of justice. The wealthy man or the wealthy corporation can have delay. And I want to say this because it has been my experience, covering a good many years, that the corporation lawyer — and I am not criticising him; I am only criticising the corporation — is employed to delay for the purpose of starving out the plaintiff so that, as Judge Lindsay said, they can settle with him on the outside. Take the Federal Reports and take the State Reports of Ohio and read them and see the protection that is given to the wealthy.

Mr. DWYER: Is not that due a good deal to the courts instead of to the juries? Are not the judges to be blamed more than the juries for the delays you speak of?

Mr. ANDERSON: I would hate to give you my real opinion concerning that just now.

Mr. TALLMAN: Don't the same rule hold good even if this were amended?

Mr. ANDERSON: Yes; but it would be decreased.

Mr. NYE: Is it not true that with a jury it is easier for a poor man to get a verdict against a corporation than for a corporation to get a verdict against the poor man?

Mr. ANDERSON: No corporation ever suffered in a court of law, and I will tell you why. If a jury returns a verdict against the corporation the corporation has opportunity to move for a new trial, and then it has its day in the circuit court and there are three judges to protect the corporation and then to the supreme court.

Mr. NYE: I am not a corporation lawyer and never was.

Mr. ANDERSON: You don't look like one.

Mr. NYE: But I would like to have you answer my question: Is it not easier for a poor man to get a verdict by a jury against the corporation than it is for the corporation to get a verdict against a poor man?

Mr. ANDERSON: That is certainly true, but that is not any reason for allowing any corporation to prevent a verdict being returned in favor of a poor man. Take a railroad going through your land, you farmers. They want your property and they need the property and the question is what is your land worth? One man says it is worth so much and another man on the jury says it is worth so much and they go to compromising on the verdict.

Mr. KERR: Is it not a fact that every verdict returned is a compromised verdict?

Mr. ANDERSON: Yes; say there is at stake ten thousand dollars. Now we are all honest and some say ten and some four and some five and some between those. I don't mean that kind of a compromise verdict. The kind I mean is where they have one juror who votes for nothing, and by reason of setting his figure way down there the compromise verdict is not a fair verdict.

Mr. KERR: Does not the man who votes for nothing finally vote for something?

Mr. ANDERSON: He votes at first for a few cents or a few dollars and then when you divide it by twelve—

that unfair vote of his reduces the whole amount to an extent of making it not a just verdict.

Mr. KERR: You don't think that is the uniform rule?

Mr. ANDERSON: I think so. Probably you are not familiar with it where you live, but ask any man from Cincinnati or from Cleveland or from any of the larger cities and see what they tell you.

Another thing: In the rural districts the jury commissioners know practically everybody in the county. In the large cities the jury commissioners may take men from the directory that they never heard of before. Now, I do say for the plaintiff, if he is wrong in instituting his law suit let him find it out quickly and with as little expense as possible, but if he is right the money belongs to him at the time he was injured, and, therefore, let him get it quickly. There is not another transaction in life in any other line, even up into the billions, that all have to agree about. If you belong to a corporation what about your board of directors? Do they have to be unanimous? Do they all have to agree before they can spend the money of the stockholders? Certainly not, and you are not foolish enough to argue that. But you do say that an injured person has to convince twelve men before he can get his money.

Mr. WORTHINGTON: I object to the report of the committee for two reasons—one is a matter of form and the other is a matter of substance. As the hour is late I shall take up the matter of form and if I say anything on the substance it will be at a later time.

Trial by jury is a phrase that carries a great many ideas with it, bound up inseparably with it through three or four hundred—I don't know how many years. Courts have settled that it means certain things, and when our constitution of 1851 said that trial by jury shall be inviolate it meant trial by jury as known at the common law.

Now, passing over some of those attributes of trial by jury, I am going to read an expression of the supreme court of Minnesota as to one of them because it is compressed into fewer words than any other:

The essential and substantial attributes or elements of jury trial are and always have been number, impartiality and unanimity. The jury must consist of twelve; they must be impartial and indifferent between the parties and their verdict must be unanimous.

Mr. ANDERSON: From what report are you reading?

Mr. WORTHINGTON: That is the case of Loman vs. Minneapolis Gas Light Company, 65 Minn., page 196.

Mr. ANDERSON: How old is that case?

Mr. WORTHINGTON: 1896.

Mr. ANDERSON: What was the question involved there?

Mr. WORTHINGTON: I do not know. I did not look it up. I did know at the time, but I did not charge my memory with it. The point I am coming to is this, that when the constitution said "trial by jury shall be inviolate," it either meant that trial by jury shall be inviolate or not, and that the addenda that the committee has put to the main proposition is a direct contradiction to the proposition itself. First they say the right of trial

Reform of Jury System.

by jury shall be inviolate and second they say it shall not be inviolate because they say you can have a verdict by three-fourths of the jury.

Mr. ELSON: I would ask the Judge this: Do you mean that a trial in which less than a unanimous verdict is necessary is not a trial by jury?

Mr. WORTHINGTON: I meant just that thing. I am coming to that.

Mr. ELSON: Then what have they in continental Europe and in Scotland?

Mr. WORTHINGTON: A trial by jury in Scotland is not a trial by jury according to the common law any more than is a trial in continental Europe. A trial by jury under our constitution is a trial at common law.

Mr. ELSON: What is the origin of the common law?

Mr. WORTHINGTON: The customs of the people of England.

Mr. ELSON: We live in the United States.

Mr. WORTHINGTON: You asked me for the origin. Now, trial by jury involving unanimity has given a peculiar force to the verdict of twelve men agreeing upon a certain fact and because it has given that force courts are obliged to recognize and enforce it in a way that they are not obliged to give recognition to any other form of trial of facts.

Mr. ANDERSON: Are you taking the position that even if this is passed it will be unconstitutional under the constitution of the United States?

Mr. WORTHINGTON: No, sir; the supreme court of the United States has passed upon the exact proposition, I think in about 179 United States, that the fourteenth amendment does not prevent the states from dispensing with unanimous decisions of juries.

Mr. ANDERSON: Do you mean the way this proposal is worded would make it null and void if passed?

Mr. WORTHINGTON: I do not, but I say the way this proposal is worded is bad English. I said that I was talking about form now and not substance. I am aware that this is the form in which this clause is found in most of the states of the Union that have adopted it.

Mr. BROWN, of Highland: I only want to suggest that the committee on Phraseology will be open for any one to appear with suggestions as to changing matters of form, and even after passage any proposal can be changed, and if there be any defect of form here it can be corrected.

Mr. WORTHINGTON: It is because I am a member of that committee that I thought it best to make my objection here on the floor, because the change of phraseology which will meet the objection is so radical that I would not feel like urging it on the committee on Phraseology until it was brought before the Convention.

Mr. CASSIDY: Will the gentleman read his suggestion.

Mr. WORTHINGTON: I have it here and will read it. I say a verdict necessarily means the decision of twelve men. To say that it means anything else is to talk a language that is not English. At the proper time I shall offer an amendment to strike out from the proposition reported by the committee all that follows "inviolate" in the fifth line and insert "except in criminal cases, the legislature can authorize the court to receive a finding signed by three-fourths of the jury." That removes

the matter of form. As to the matter of substance I would add "which, if approved by the court, shall be accepted as a verdict," so that the decision of only a part of a jury shall not have the force and effect of a verdict until the court has approved of it.

Mr. HARRIS, of Ashtabula: It seems that much of the gentleman's argument turns on the definition of the word "verdict". What does the word "verdict" mean?

Mr. WORTHINGTON: "Verdict" means true saying, because the unanimous judgment of twelve men.

Mr. HARRIS, of Ashtabula: I don't know why nine men cannot speak the truth just as well as twelve.

Mr. WORTHINGTON: Nine men can speak the truth as well as twelve, but this is to be taken in connection with the other part of the constitution which says "the right of trial by jury shall be inviolate" and "trial by jury" there means a verdict by twelve men.

Mr. HARRIS, of Ashtabula: It all turns on the definition of the word "verdict," and the gentleman is arguing that a verdict must be an agreement of twelve men instead of nine. The word means "spoken truth" and the truth spoken by nine men if society accepts it—if the community accepts it—may be accepted just as well as the truth spoken by twelve men so far as that.

Mr. NORRIS: It all comes to this proposition, applying both to civil and criminal cases: As it applies to criminal cases, much has been spoken here about the rights of society. Society has its rights and it is necessary that society be protected because upon the well-being of society everything depends. But in criminal cases the effort is being made to take from the defendant, the accused person, that which society owes him, and that ought not to be done by any other rule except one that throws around him the necessary safeguards for his protection.

It has been said that the day of necessity for trial by jury as we know it and as it was known to our forefathers has passed, because this is not the day of arbitrary power. Whosoever may oppress is the user of arbitrary power. Whosoever may be oppressed is the victim of arbitrary power.

There have been steps taken by this Convention to inaugurate one of the most important matters that will be presented to this Convention, the initiative and referendum, to protect the people from arbitrary power, and so long as government exists the elements of arbitrary power will be present. So long as human society exists the elements of human power will be present and the purpose of governmental safeguards is to protect the weak from the exercises of oppression by arbitrary power.

Now as to the verdict in civil cases: We inherit the jury system from the common law. The common law is the foundation of every form of government that pertains at all to human safety and human liberty. Of course, there were methods of cruelty in it and of harshness. You can easily discover it now by the method of transferring land by twigs, etc.; but the right of trial by jury is something that we inherited. It is an inherited liberty and in a criminal case, unless upon a plea of guilty, it is an inalienable right, it is something that we can not separate ourselves from.

Now there is another inalienable right. The very first section of our bill of rights provides "All men are, by nature, free and independent, and have certain in-

Reform of Jury System.

alienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property." So that the right of property and the right of a man to his property are inalienable rights.

Mr. ANDERSON: Does not that mean just as much protection to plaintiff's rights as it does to defendant's rights?

Mr. NORRIS: I am not speaking of plaintiff and defendant.

Mr. ANDERSON: I am.

Mr. NORRIS: I am speaking of a man's rights to the possession and protection of his property. It has been remarked here that the poor man may not get his rights, that the corporation interests are in his way. But by the very argument of the gentleman, the jury system that we have at present is the chief protection to his rights and is the instrument in according him his rights. It is true that he may go into the higher courts. He may go to the circuit court, he may go to the supreme court, and he may be delayed, but if the circuit court and the supreme court delay and deny a poor man his rights, why should the jury system be attacked because of a defect in the judiciary?

Mr. ANDERSON: Don't you think it would reduce somewhat the delay that a plaintiff experiences before he gets that which is his if we would allow nine to return a verdict instead of twelve? Would it not at least tend that way?

Mr. NORRIS: No.

Mr. ANDERSON: Then you are right in your argument.

Mr. NORRIS: According to the rule that you quote from 80 Ohio State that the verdict of a jury in civil cases instead of resting upon the preponderance of evidence rests upon mere probabilities, it would be just as easy for twelve men to discover the mere probability as it would for nine men. So that the rule you read answers your question.

Now I deem this a very important matter. We are treading upon ground that some of us do not consider very sacred, but it is sacred now. I do not believe that a constitution is an instrument through which we should undertake voyages of discovery. I do not understand that the people have called us together here that we may mar and destroy. There are many, many provisions in our present excellent constitution that we should not disturb, and one of the chiefest of these is our jury system. Tested by the experience of ages, its worth far outweighs its trivial defects. It is the weapon of the common people against the encroachments of power; and in that behalf it has never yet failed them. It is the avenue, and the only avenue, through which the common man may take part in the administration of his government. It dignifies him and elevates him. He is called from his workshop and his farm and his place of business to sit in the forum and there make disposition of the property and rights and the liberty and life of his fellow citizens.

What more important duties can a man perform? What greater responsibilities may rest upon him? And the history of our judiciary bears me out in the declaration that of these obligations the jurors of Ohio have acquitted themselves with dignity, integrity, justice and mercy.

One complaint heard in favor of this measure is that the jury at times disagrees, and by not arriving at a verdict requires a case to be submitted to another jury. Not one time in fifty do they disagree. It is the duty of a man to stand fast to his conscientious conviction, and that he does not concede his opinion, to which he is sworn to adhere, is but the mark of his integrity.

But it is claimed that the chiefest reason in civil cases why seventy-five per cent. of the jury, nine men out of twelve, should return the verdict is that corrupt men are put on juries for the purpose of aiding the litigant who appeals to their dishonesty. Not once in a thousand cases, not once in many thousand cases, is this true. I have tried in my own experience—and you will pardon me if I refer to it—thousands of jury cases. I served the people in that capacity on the common pleas bench thirteen years and in reviewing courts for twelve years. For twenty-five years of my life have I been engaged in either hearing cases or reviewing the judgments of twelve men as to their conclusion of facts. And in all of the proceedings to set aside verdicts, and motions for new trials, and petitions in error—in all the reasons assigned for the rehearing of a cause, I have the first time to hear the integrity of the juror questioned. Not ten per cent. of the cases tried before juries are carried up. It is surprising to know how few of the cases the citizens are called on to dispose of as jurors are carried to the higher courts.

Mr. ANDERSON: Do you know what percentage of so-called personal injury or damage cases are taken to the supreme court from Cuyahoga county?

Mr. NORRIS: No, sir, I do not know.

Mr. ANDERSON: It is seventy-five per cent. in our county. It is greater than that—it is eighty per cent—in some others.

Mr. NORRIS: I have a table somewhere.

Mr. ANDERSON: I saw that table, but it did not tell the kind of cases, did it?

Mr. NORRIS: No; it did not. It may be that your experience is different from my experience. I tried all kinds of cases, personal injury cases, criminal cases. There is no right that a citizen possesses or could possess, but has been up in the courts I have been in. I do not know how unlucky a man has been whose practice is exclusively personal injury cases.

Mr. DWYER: Let me ask you one question: Is it not a fact that in most of the personal injury cases brought against corporations by some one injured, the juries, when they get a chance, return verdicts for the plaintiff?

Mr. NORRIS: Always.

Mr. DWYER: And if that verdict is reversed by an upper court, is it not the fault of the court and not the jury that the plaintiffs do not succeed?

Mr. NORRIS: About the only insurance case I ever tried where the plaintiff did not get a verdict was where a fellow refused to pay a premium on his policy and went back home and his house burned down and he slipped in the next morning and paid the premium and then undertook to collect the policy.

Now the door of the law is wide through which one who seeks a court of justice may retire an undesirable juror. If the system is not sufficiently guarded, why not place around it greater safeguards? How will at-

Reform of Jury System.

tack upon the system itself tend to purify and elevate it?

I feel that the proposed amendment and the reasons assigned for its necessity are an insult to the citizen who must respond to the call and sacrifice his own interest to thus perform a public service. It lowers and brings down in the esteem of every man the exalted position which a citizen there must occupy, and invites to the panel men who are less dependable to assume the great duties which there confront the honest man.

Now, men though equally worthy are not all of the same caliber. The three men who fail to respond to the opinion of the nine men, may, as has been suggested here, be the brains of the jury. It would thus encourage the defeated party to seek further remedy, as when the abler of the judges dissent from the conclusion of the majority, and would induce controversy and prolong disputes and smother the courts with litigation which otherwise would be determined by a single trial.

There are other reasons which appeal to me to oppose this amendment. I know there are learned gentlemen here who differ from me; but I have grave doubts that this Convention may legitimately invite the people to thus invade their charter rights and mar and impair that which has been one of the chiefest measures of safety of freemen for a thousand years.

I had hoped that the committee of which Judge Dwyer spoke would be ready to make its report. I expect to learn much from the investigations of those gentlemen.

I am a listener. I am not at home on my feet. I do not talk much. I am willing to listen because the men from whom I may differ may be right, and I want to hear them and I would like to hear the report of that committee which the Judiciary committee has authorized to consult with the attorney general.

Mr. PECK: No; they did not authorize any consultation.

Mr. NORRIS: Upon the question as to what relation this proposition bore to the ordinance of 1787?

Mr. PECK: I do not desire to take any lengthy time in discussing this matter at this period. The debate is about to close and I want to say just a few words in behalf of the report of the committee and make a suggestion or two and then I am willing that the matter shall be voted upon by the Convention or any action that can be taken that is parliamentary and proper.

We have had here today a great exhibition of the conservatism of the bar. Nearly every one of the arguments made by the gentlemen who are opposed to the report of the committee has as its basis this: "It always has been; it has lasted a thousand years or a hundred years; don't change it; just take it as it is." They all conclude with that same argument. They all hark back to it. That is the substance. Were we sent here to leave everything as it is?

Mr. WATSON: No, sir; we were sent here as "is-ers" and not as "has-beens."

Mr. PECK: We have been sent here to examine the foundations of the state which have existed so long to see if there is anything that needs improvement and to suggest those corrections and improvements to the people.

Now this committee thinks it has found in the matter of jury trials that difficulty has arisen out of this re-

quirement of unanimity. We have found it has been a great obstacle in the duties of courts in the administration of justice and we want to make a slight correction. We are not attacking jury trials. I will join with Judge Norris in any eulogium he can write on trial by jury. I am a firm believer in the right of trial by jury and believe that people would be crazy who would desire to give it up, for it is the protection of the people. Take any set of predatory gentlemen engaged in any nefarious scheme and what is it that they are most afraid of? Why they would rather meet the devil coming down the street than a jury at any time. That is my judgment about a jury.

So, we are not here trying to do any harm to the jury system but to improve it, to make it useful, to extend its application, to make the people more ready to apply to it. A man says "I can go to a jury and show my wrong and even if there should be one or two obstinate, bull-headed people who pull back against the traces, the majority will see the matter clearly and I can get my rights." And that is what we want. We want the jury and we want to apply to it the rules that apply among men in all relations of life in the determination of their controversies.

Now, they have cited cases here. There was a controversy about an ox, value \$50 or maybe \$100, five trials and the Lord knows what other proceedings, and all because of this requirement of unanimity. That case ought to have been tried and disposed of in an hour.

So we had a horse case. Two men quarreled over a little thing like that. No; it shall not be decided like ordinary affairs. A mere matter of dollars and cents, nobody's life or liberty or anything like that in danger, just someone's pocket book to a small extent, and yet we must have twelve men solemnly and finally agree upon the facts before any conclusion can be reached.

I submit that is not common sense, and it could not prevail if it had not come down to us with those ages of history behind it and under circumstances that brought it into existence which we do not now appreciate at all and the history of which is only partially known. Some of it has been stated, but a great deal is absolutely unknown. The hows and the whys or when the jury system originated nobody knows. The truth is we want to have a jury made responsive to the needs and necessities of this century. This is the twentieth century in which we live. We are not legislating for the fifteenth or the seventeenth century, but for the twentieth and possibly for centuries to come after us, certainly not for any behind us.

Mr. REDINGTON: In the trial of a jury case where nine jurors find the prisoner guilty and three find him innocent, does not that throw doubt upon that man's guilt?

Mr. PECK: I am defending the report of the committee and not the amendment. I have not spoken of the amendment at all. I am inclined to stick to the report of the committee. The committee stands for allowing a verdict by nine in civil cases, and I have not heard any argument against it based upon reason except "it always has been and always ought to be." That is the only argument against it that has been advanced.

Something has been said with reference to criminal trials and I will say a word about that. Considerable

Reform of Jury System.

has been said about the success of the criminal jury system in England. I wish some of you could go over there and see a criminal trial. I attended the assizes in an English city within the last six months and watched for a whole day the trial of minor criminal cases, and there were a great many of them disposed of. I should think there were twenty or thirty cases tried in that court in that day. We would regard it as a fabulous number in this country. But the jury had very little to do with it. The judge tried those cases that were really of fact much as we do in our police courts in this country. The judge did most of the talking. He commented on the testimony, on the behavior of the defendant. Sometimes he commended him and sometimes the reverse. And his comments were always more or less well founded; but they were far beyond what any court in this country would undertake to do or would dare to do. That is the reason why the criminal jurisprudence is successfully administered in England. It is because of the latitude the judge takes in instructing the jury, so that in every case I heard you knew what the verdict would be before the jury went out, and the going out and the coming in of the jury was a mere formality.

Mr. DWYER: Is it not a fact that in England the judge charges the jury in crown cases and that he discusses the testimony and practically directs the verdict?

Mr. PECK: He may not actually direct a verdict, but he says what is equivalent to it. He gives them his judgment about the weight of the evidence and he talks it over and says "If this had been proven it might have been well for the defendant, but since it was not, it is bad for him, and you should take that into consideration."

In nearly every case, as I say, you could foretell what the verdict would be after you heard the charge. It was a performance the like of which our people would not tolerate. The judge took to himself an amount of arbitrary power—and I do not mean that in a bad sense, because he evidently exercised his power with great care and discrimination, but nevertheless it was arbitrary and it was a kind of power that our people never expect to see and to which they would not submit. We want the whole thing submitted to a jury. That is the temper of the American people and as long as it remains that way and the jury are the judges of fact, I submit that in civil cases the jury should be permitted to return its verdict by a majority of three-fourths or something of that sort.

Now, I am not afraid to use the word verdict. The word verdict is not so everlastingly sacred as all that. My friend says that some courts have said that in order to have a verdict you must have a verdict of twelve men, but the number of the jury was unsettled for many years. There were verdicts long before the twelve men were ever brought out. The number has not always been the same, and as it has been changed heretofore, we now desire to make another change in it.

The form of this clearly expresses what is intended, but if the committee on Phraseology desires to make any change which will make it better English the Judiciary committee will be glad to have it to do so. We put it in as good English as we could to express our idea, which was to leave the way open to the legislature to put this into effect if it saw proper to do so. They cannot do it now as the constitution now stands. The general assembly

is everlastingly bound by the hard and fast rule and we wanted to open the door so that whenever the necessity arises the general assembly may act in such matters. We are not prescribing any rule. I do not believe in putting any hard and fast rule in any constitution, but I believe in leaving the door open so that changes can be made. That is all we are trying to do here, to leave the door open so that this reform can be enacted if the people want it.

Now, I want to congratulate the Convention on this debate. It is one that is worthy of being printed. There have been some speeches made here that will read as well as any I have ever seen. I thank you, and I hope the resolution of the committee will be adopted.

Mr. ELSON: I call for a vote on the amendment.

The CHAIRMAN: If there is no further debate desired we are ready for a vote. There are two methods of closing debate. One is by reaching the conclusion of the matter under consideration, and the other is the application of the previous question. This latter does not apply in the committee of the Whole. There is no method of closing debate in the committee of the Whole so long as any member desires to debate, unless the Convention itself has so directed. Are you ready now for a vote?

Mr. HARRIS, of Hamilton: I know it is a little bold for a layman to express any opinion on what comes out of the committee on Judiciary, but as it is the laymen in the state of Ohio who will finally pass upon the work of the Judiciary committee, as well as of all other committees, I think it might be interesting to give the Convention a point or two from the layman's standpoint.

I shall support the report of this committee, although I hope it will be amended to be five-sixths, not for all of the reasons that have been advanced this afternoon, but because to my mind it is symbolical of that movement which has made this Convention possible—in other words, the progressive movement throughout the state and country—and I believe that the spirit of that progressive movement is best represented when we say that it is the effort to shift some of the burden which now lies heavily upon the backs of the poor, or those less able to bear them, to those more able to bear them. I therefore advocate the spirit of the proposition advanced by the committee on Judiciary, because in my judgment the great bulk of the civil cases in our present complex civilization, in our present industrial life, is represented by the appeals from those who have been injured in different forms of industrial activity, especially by our public utilities. I believe that all of the benefit will rest upon the plaintiff, because the mere weight of the defendant's wealth is a distinct advantage to the defendant, and in this belief I do not mean the use of any corrupt means. It therefore occurs to me that the more we lighten the burden of the individual, which in nine cases out of ten now in our courts are suits of the individual against the corporation—simply because ninety per cent of our industrial life is represented by corporations.

Mr. NORRIS: May I interrupt the gentleman?

Mr. HARRIS, of Hamilton: Certainly.

Mr. NORRIS: I do not agree with the declaration of the gentleman that so large a portion of the litigation in our courts is between corporations—the interests—and the individuals. A great deal of the litigation in

Reform of Jury System.

our court, and some of the most important rights litigated in the court, are between individuals.

Mr. HARRIS, of Hamilton: Accepting the statement made, if the bulk of litigation in civil cases is not between individuals and corporations, at least a far greater percentage is between the individual and the corporation than was between the individual and corporation when the constitution under which we are living now was adopted. The principle remains the same. So that I say in this proposition there is a means of lightening the burden of the man least able to bear it. Even as between individuals, as has well been pointed out, it will expedite justice; and we all recognize that a delay of justice is often practically a denial of justice.

I acknowledge that I have been shocked—I may almost say that—when I listened this afternoon to some of the gentlemen almost flippantly weighing the community's inconvenience, the court's inconvenience, against the sacred rights of liberty, the sacred rights of life, the sacred rights of reputation, the latter affecting the wife and the children of the accused—I was amazed that any considerable number of people in the state of Ohio could really believe that the object of the safeguards thrown around the criminal law, the basis for which, if there is any reasonable doubt in the mind of the juror, it must be resolved in favor of the accused—that such a considerable number of the delegates to this Convention would be willing to throw aside all of those safeguards for the convenience of society or for the convenience of our courts. I would call the attention to those delegates who advocate a verdict by less than twelve in a criminal case to the Old Testament; that was not quite so progressive as we are, and yet three thousand years ago we have an illustration in the story of Sodom and Gomorrah where God said to Lot that he was about to destroy the city and yet would not destroy it if he could find so much as one hundred honest men, and upon Lot's crying out that he could not find half so many men, God finally said if he could find one honest man that the city should not be destroyed. It occurs to me that we can well take to heart the principle therein conveyed. If there be one juror of the twelve in a criminal case who has any doubt of the criminality of the accused, the accused should be given the benefit of that doubt. So that I have no faith in any proposition looking towards the lessening of the number of jurors that shall bring in a verdict in a criminal case, and the more remarkable is it to me when I find that some of the very ones advocating this change demand that before the supreme court of the state shall decide that a legislative enactment is unconstitutional all of the judges shall concur in their decision. It certainly seems to me that great as is a legislative enactment, it is hardly as great as human life.

Mr. JOHNSON, of Williams: I hope the report of the committee will be adopted without amendment. That committee discussed this matter thoroughly and eighteen members signed this report, and it seems to me this is one of the best propositions your Convention could adopt to show that it is progressive without doing harm to any class of people.

I take no part in the charges of corruption and that this would help that matter any. I do not know that it will, but we must submit this constitution to the people of Ohio, and the people of Williams county think in

civil cases it is asking too much to bring a man into court and say that he must have the opinion of twelve men before he can get his rights. This can do no harm if its insertion in the constitution will not hurt other parts of the constitution. It does not propose to change the criminal procedure from that provided in the present constitution. If it had, I dare say a majority of the committee would never have signed the report.

When they talk about society and the rights of the criminal and the citizen I am one of those who believe the citizen has some rights, and I believe it is the right of every man in Ohio or in America to have a judgment of his peers and a unanimous vote on his guilt. But in civil cases I see no reason why it should be unanimous. This simply allows the legislature to pass the law if it sees fit. I like the three-fourths, but they can make it five-sixths. I was in favor of two-thirds, but it is fixed at three-fourths and that seems to be a conservative number.

Now, it is suggested that this if passed would not be constitutional. If the legislature passes that law and it is declared unconstitutional, what harm has it done? Let us not be frightened from doing our duty by some bugaboo. Let us be like men, not afraid of the issue. I am ready to vote just the same to sustain that committee.

Mr. MAUCK: Inasmuch as there is no previous question in the committee of the Whole, I move that the committee rise and favorably report the proposal now before the committee of the Whole.

The CHAIRMAN: The motion is not in order because there are pending amendments which must first be acted upon.

Mr. LEETE: I move that the committee rise.

The motion was lost.

Mr. PECK: Now, we will have the vote on the amendments.

The CHAIRMAN: The secretary will read the amendments.

The SECRETARY: Mr. ROCKEL moves to amend Proposal No. 54 as follows: Strike out in line 6 the words, "in civil cases". Mr. WOODS moves to amend the amendment to Proposal No. 54 as follows: Substitute the following: In line 6, strike out "in civil cases". In line 7, strike out "three-fourths" and insert "five-sixths".

The CHAIRMAN: There are two methods of handling this matter. One is to perfect the original measure by amendments and another is to offer a substitute for the whole. I prefer the former method, but the general assembly has followed the latter method. The amendment of the gentleman from Medina [Mr. WOODS] is in the form of a substitute covering the same matter as the amendment of the gentleman from Clark [Mr. ROCKEL] and including other matters. We will put the question upon the substitute first, if there is no objection to following the method of the Ohio general assembly.

Mr. NYE: I would like to have the proposition read as it would stand if amended by the amendment we are about to vote on.

The CHAIRMAN: The secretary will so read it.

The SECRETARY: "Section 5. The right of trial by jury shall be inviolate; but the general assembly may authorize that a verdict may be rendered by the concurrence of not less than five-sixths of the jury."

Reform of Jury System.

The CHAIRMAN: The question is on the adoption of that amendment.

The vote being taken, the chairman declared the amendment of the delegate from Medina lost.

The CHAIRMAN: The question now recurs upon the adoption of the amendment of the gentleman from Clark [Mr. ROCKEL], and the secretary will read the section as it would stand if this amendment were adopted.

The SECRETARY: "Section 5. The right of trial by jury shall be inviolate; but the general assembly may authorize that a verdict may be rendered by the concurrence of not less than three-fourths of the jury."

The CHAIRMAN: You have heard how that will read if the amendment is adopted. The secretary will now read the amendment itself.

The SECRETARY: Mr. ROCKEL moves to amend Proposal No. 54 as follows: In line 6 strike out the words "in civil cases".

The CHAIRMAN: You have heard the amendments, and as many of you as are in favor of the adoption of the amendment offered by the gentleman from Clark [Mr. ROCKEL] will say aye, and the contrary no.

The amendment was lost.

Mr. JONES: Both of these amendments that we have considered lack the element of limitation on the class of criminal cases to which this proposal might apply, and I desire to introduce this amendment.

The secretary read the amendment as follows:

After the word "cases" in line 6 of said proposal add the following: "and in criminal cases other than homicide", so as to make said proposal read as follows: Article I, section 5. The right of trial by jury shall be inviolate; but the general assembly may authorize that in civil cases and in criminal cases other than homicide a verdict may be rendered by not less than three-fourths of the jury.

Mr. JONES: I want to speak just two minutes in support of this amendment. The purpose is to limit the power of the legislature to those cases which will not involve the life or limb of any citizen. It will take away the objection that is made by a great many to empowering the legislature to make this provision applicable to capital cases where it may be too late to make any correction of the wrong done. If it is limited to cases below homicide, there is always in addition to the reviewing power of the courts power to correct any erroneous verdict that may be rendered, by pardoning power, if it is discovered that any wrong has been done.

Mr. WINN: I shall not take more than a minute or two, and I shall consume that time in opposing this amendment. Perhaps it needs no word from me. I subscribed to the majority report. I agreed to that proposition notwithstanding that after a practice of thirty years and now looking back over that time, I cannot think of a single case that came under my observation or in which I was associated in which I believe there was any tampering with any juror. I am not unmindful of the fact, however, that in the large cities things are different.

In the jurisdiction where I practice law the man who

brings an action against a corporation has altogether the advantage. I appreciate that; I practice in those sort of cases, bring cases and try cases against railroad corporations, and I always appreciate the fact that I have the best of it with any jury before whom I am called upon to try a case. Those conditions do not prevail in the largest cities, and because they do not prevail there I subscribed to the majority report. But, gentleman, it is to me a monstrous thought that less than twelve men can deprive a man of his liberty. I could not subscribe to that and I verily believe that if that amendment should be incorporated into this proposal and it should be finally adopted and submitted to the people for ratification, practically all of the men who subscribed to the majority report would find themselves obliged to go out before the country and ask that our work be not ratified. I should find myself in that position, and I do hope, when we finally conclude our work, upon such matters as this especially I may be able when I go back home to go before my friends and constituents and say, "This is the best that we can do," and ask them to ratify it. But if this amendment should be incorporated into this proposal, I should feel obliged to go back to those who sent me here and say to them, "This is a monstrous proposition; vote it down."

The CHAIRMAN: The vote will be on the amendment of the gentleman from Fayette [Mr. JONES] which has just been read.

The amendment was lost.

Mr. PECK: I move that the committee of the Whole rise and report the report of the Judiciary committee to the Convention with the recommendation that Proposal No. 54 as reported by the committee be adopted.

The motion was carried.

Thereupon the committee of the Whole rose.

In Convention.

Vice President Fess resumed the chair.

Mr. LAMPSON (chairman of the committee of the Whole): I beg leave to report that the committee of the Whole Convention having had under consideration Proposal No. 54—Mr. Elson, has decided to rise and has directed its chairman to report said proposal to the Convention with the recommendation that said proposal do pass.

Mr. DOTY: Has the substitute proposal been read a second time?

The SECRETARY: It has.

Mr. PECK: I move that the report of the committee be adopted.

The motion was seconded.

Mr. PECK: The yeas and nays, please.

Mr. DOTY: The question arises, "Shall the proposal pass?" It requires no motion.

Mr. PECK: I would rather have it.

The VICE PRESIDENT: The committee of the Whole made its report, and we are acting upon its report.

Mr. HARBARGER: I would like the proposal read so that we can understand it thoroughly.

The secretary read the proposal as follows:

Reform of Jury System.

Proposal No. 54—Mr. Elson. To submit an amendment to article I, section 5, of the constitution—Relative to reform of the jury system.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Section 5. The right of trial by jury shall be inviolate; but the general assembly may authorize that in civil cases a verdict may be rendered by the concurrence of not less than three-fourths of the jury.

Mr. WORTHINGTON: I move that the Convention adjourn.

The motion was lost.

Mr. HARRIS, of Hamilton: I desire to offer an amendment.

The VICE PRESIDENT: The chair should state that to be parliamentary we should first vote whether we accept the report of the committee of the Whole.

The report of the committee of the Whole was accepted.

The VICE PRESIDENT: The proposition is now before the Convention for action.

Mr. WORTHINGTON: I offer an amendment.

The amendment was read by the secretary as follows:

Mr. Worthington moves to amend Substitute Proposal No. 54 as follows: Strike out the semicolon in line 5 and all that follows and substitute "except that in civil cases the general assembly may authorize the court to receive a finding signed by not less than three-fourths of the jury, which shall be accepted as a verdict."

Mr. WORTHINGTON: The form in which I present the amendment does not alter the effect of the report of the committee, but simply puts it in better English than it now is. It reaches the same end. I don't say that this amendment offered is in exactly the same words, but it is the substance of what is found in the constitutions of Kentucky and Montana. In those two states they require when a verdict is found by any less number than a whole jury that it shall be signed by the members of the jury agreeing to the verdict. In this state we find but two cases in which the jurors are required to sign in a body.

Mr. PECK: Should not such regulations as that be in the statutes rather than in the constitution?

Mr. WORTHINGTON: I think they can be put in the statutes, but I think they should also be in the constitution. I think in the matter of a jury trial that ought to be put in.

Mr. BROWN, of Highland: My understanding of your proposed amendment was that it permits the legislature to pass a law saying that the presiding judge may accept or reject the finding of less than all of the jurors—

Mr. WORTHINGTON: I struck that out.

Mr. BROWN, of Highland: Then it would be mandatory upon the judge after the law is passed to receive a verdict of nine?

Mr. WORTHINGTON: Yes; I wanted to make this amendment exactly like the report of the committee with the one exception that the jurors who concur in the find-

ing should sign it, so that it can be shown who were in favor of the verdict.

Mr. PETTIT: I move that the amendment of the gentleman from Hamilton [Mr. WORTHINGTON] be indefinitely postponed.

Mr. JONES: In order that we may have an opportunity to consider it better than is possible on a mere reading, I move that it be postponed until tomorrow morning.

The VICE PRESIDENT: The chair will not put any motion that has not been seconded. All of these motions fail for the want of a second. The motion before the house is the motion of the gentleman from Hamilton [Mr. WORTHINGTON].

Mr. WOODS: And on that I move the previous question.

The VICE PRESIDENT: The chair would ask the gentleman from Medina [Mr. WOODS] what his motion was.

Mr. WOODS: For the previous question.

The VICE PRESIDENT: Do ten of the delegates of the Convention unite in that motion?

More than ten so signified.

The main question was ordered.

Mr. PECK: I don't know about this "finding" business.

Mr. ELSON: Can I say how I intend to vote and have it recorded?

The VICE PRESIDENT: No, sir.

Mr. CORDES: I don't understand the meaning of that.

The VICE PRESIDENT: Well, we cannot give you any explanation of it now. The vote is upon the amendment of the delegate from Hamilton [Mr. WORTHINGTON].

Mr. CROSSER: Does that say "require" or authorize?

The SECRETARY: It reads "authorize".

Mr. ELSON: I want to read rule 26:

A request to be excused from voting, or an explanation of a vote shall not be in order, unless made before the Convention divides, or before the call of the yeas and nays is commenced. The member making such request, may make a brief oral statement of the reasons for making such request, and the question of excusing such member shall then be taken without further debate.

The VICE PRESIDENT: The previous question had been ordered and no debate or explanation is allowed.

Mr. ELSON: I call your attention to this language: "The member making such request, may make a brief oral statement of the reasons for making such request, and the question of excusing such member shall then be taken without further debate."

The VICE PRESIDENT: The chair will have to inform the delegate that the previous question has been ordered and all of that matter is out of order after the previous question has been moved and voted upon affirmatively.

Mr. ELSON: May I inquire what is the purpose of that rule?

Reform of Jury System—Reference of Proposals—Petitions and Memorials.

The VICE PRESIDENT: You could have done that before the previous question was ordered.

Mr. ANDERSON: Cannot a delegate be excused after the main question is ordered?

The VICE PRESIDENT: I think not.

A vote being taken on the amendment of the delegate from Hamilton [Mr. WORTHINGTON] the amendment was declared lost.

The VICE PRESIDENT: The motion now is upon the main proposal and the previous question holds over on this motion, and consequently there is no further debate. Are the yeas and nays demanded?

MANY DELEGATES: Yes.

The VICE PRESIDENT: I believe we have to have a call of the yeas and nays on this. Gentlemen, you are now voting upon the passage of the substitute proposed by the committee for Proposal No. 54 as read by the secretary. All in favor of the committee report will say aye and those contrary will say no when their names are called, and the secretary will call the roll.

The question being "Shall the proposal pass?" The yeas and nays were taken and resulted—yeas 93, nays 11, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Ashtabula,	Peters,
Antrim,	Harris, Hamilton,	Pettit,
Baum,	Harter, Huron,	Pierce,
Beatty, Wood,	Harter, Stark,	Read,
Beyer,	Henderson,	Redington,
Bowdle,	Hoffman,	Riley,
Brown, Highland,	Holtz,	Rockel,
Cassidy,	Johnson, Madison,	Roehm,
Collett,	Johnson, Williams,	Rorick,
Colton,	Jones,	Shaffer,
Crites,	Kehoe,	Shaw,
Crosser,	Keller,	Smith, Geauga,
Cunningham,	Knight,	Smith, Hamilton,
Davio,	Kramer,	Solether,
DeFrees,	Kunkel,	Stalter,
Donahay,	Lambert,	Stamm,
Doty,	Lampson,	Stewart,
Dunlap,	Leete,	Stillwell,
Dwyer,	Leslie,	Stokes,
Eby,	Longstreth,	Tallman,
Elson,	Ludey,	Tannehill,
Farnsworth,	Malin,	Tetlow,
Farrell,	Marshall,	Thomas,
Fess,	Mauck,	Ulmer,
FitzSimons,	McClelland,	Walker,
Fluke,	Miller, Crawford,	Watson,
Fox,	Miller, Fairfield,	Weybrecht,
Hahn,	Moore,	Winn,
Halenkamp,	Okey,	Wise,
Halfhill,	Partington,	Woods,
Harbarger,	Peck,	Worthington.

Those who voted in the negative are:

Brattain,	Kerr,	Nye,
Campbell,	King,	Price,
Earnhart,	Matthews,	Stevens.
Hursh,	Norris,	

So the proposal passed as follows:

Proposal No. 54—Mr. Elson:

To submit an amendment to article I, section 5, of the constitution.—Relative to the reform of the jury system.

Resolved by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE I.

SECTION 5. The right of trial by jury shall be inviolate; but the general assembly may authorize that in civil cases a verdict may be rendered by the concurrence of not less than three-fourths of a jury.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. DOTY: It will only take three of four minutes, and I move that the rules be suspended and that we proceed to the eighth order of business which is the reference of proposals on the calendar to committees.

The motion was carried.

REFERENCE TO COMMITTEES OF PROPOSALS.

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

Proposal No. 212—Mr. Johnson, of Williams. To the committee on Legislative and Executive Departments.

Proposal No. 213—Mr. Eby. To the committee on Education.

Proposal No. 214—Mr. Eby. To the committee on Method of Amending the Constitution.

Proposal No. 215—Mr. Woods. To the committee on Initiative and Referendum.

Proposal No. 216—Mr. Anderson. To the committee on Liquor Traffic.

Proposal No. 217—Mr. Hoffman. To the committee on Municipal Government.

Proposal No. 218—Mr. Worthington. To the committee on Legislative and Executive Departments.

Proposal No. 219—Mr. Mauck. To the committee on Method of Amending the Constitution.

Proposal No. 220—Mr. Knight. To the committee on Legislative and Executive Departments.

Proposal No. 221—Mr. Miller, of Fairfield. To the committee on Banks and Banking.

Proposal No. 222—Mr. Miller, of Fairfield. To the committee on Liquor Traffic.

Proposal No. 223—Mr. Elson. To the committee on Judiciary and Bill of Rights.

Proposal No. 224—Mr. Farrell. To the committee on Legislative and Executive Departments.

Proposal No. 225—Mr. Halfhill. To the committee on Judiciary and Bill of Rights.

PETITIONS AND MEMORIALS.

Mr. Bigelow presented the petitions of W. E. Berry, of Fulton county; of F. C. Hyres, of Muskingum county; of W. H. Lehr, of Tuscarawas county; George Schlegel, Jr., of Union county; of J. D. Yocum, of Oberlin; of Mrs. Ella Welch, of Columbus; of the W. C. T. U., of Magnolia; of Mrs. F. Dyer, of Columbus; of A. LeSourd; of J. M. Ebrite, of Bellefontaine; of the Methodist Episcopal church, of Doylestown; of C. S. Kilser, of Lorain; of Thos. H. Kohr, Ralph E. King and Paul H. Kohr, of Linden Heights; of the Glenwood M. E. Sunday school, of Columbus; of John J. Brady, of Oberlin; of I. S. Porter, of Oberlin; of nineteen pastors of protestant churches, of Canton; of Mt. Blanchard M. E. church, of Mt. Blanchard; of Florence Weissinger, of Kansas, O.; of the First M. E. church, of Barnesville;

Petitions and Memorials.

of the Buffalo Presbyterian church, of Cumberland; of D. A. Wood, of West Cairo; of the Belle Center M. E. church, of Belle Center; of G. D. Matcham, of Oberlin; of W. L. Hostetter, of Peebles; of Chalmer Boston, of Oberlin; of Church of Christ, of Ravenna; of William J. Horner, of Oberlin; of R. P. Jameson, of Oberlin; of J. H. Kellog, O. Liggett, F. M. Williams, of Oberlin; of Levi Minnich, of Greenville; of Lamar T. Beman, of Cleveland; of George B. Young, of Cleveland; of the M. E. church, of Reynoldsburg; of the Christian Sunday school; of Ludlow Falls, of West Second Ave. Presbyterian Sabbath school and church of Columbus; of Mrs. Kate V. Bailey, of Castania, of the Sunday school and church of the Brethren, of Potsdam; of Dr. F. G. Burnett, of Bellefontaine; of A. T. Bell of Fayette county; of Ed. Woods, of Carroll county; of H. W. Ward one hundred fifty-one other citizens of Jefferson county; of Solomon Goodman and nine hundred ninety other citizens of Cuyahoga county; of Carl Richard and one thousand eight hundred eighty-seven other citizens of Montgomery county; of John Weisman and fifty-seven other citizens of Meigs county; of Dan Parsons and sixty-nine other citizens of Brown county; of Fred Miraben and forty-one other citizens of Washington county; of A. R. Harrison and sixty-three other citizens of Wood county; of Wm. E. Welsh, and eighty-four other citizens of Champaign county; of John Collins and four hundred fifty-six other citizens of Clark county; of Ed. Alexander and one hundred thirty-nine other citizens of Miami county; of John Dehmer and one hundred fifteen other citizens of Seneca county; of R. M. Barr and one hundred twenty-three other citizens of Guernsey county; of C. E. Wilson and two hundred thirty-five other citizens of Fairfield county, of Robert Clark and fifty-six other citizens of Lorain county; of Chas. J. Stang and two hundred eleven other citizens of Erie county; of Henry Hawkins and fifteen other citizens of Trumbull county; of A. M. Hall and forty-three other citizens of Lawrence county; of Wilber F. Finch and forty-eight other citizens of Portage county; of John J. Schulte and forty-three other citizens of Mercer county; of C. B. Collins and four other citizens of Lawrence county; of Chas. M. Gill and one hundred twenty-three other citizens of Mahoning county; of Harry B. Bellard and thirty-three other citizens of Wayne county; of B. F. Murray and one hundred forty-eight other citizens of Darke county; of Clyde Lindsey and forty-five other citizens of Clermont county; of W. H. Gass and sixty-one other citizens of Hancock county; of W. D. Weltner and fifty-one other citizens of Hocking county; of W. M. Griffin and one hundred eighty-two other citizens of Huron county; of Henry James and one hundred eighty-nine other citizens of Athens county; of W. T. Myers and one hundred twenty other citizens of Auglaize county; of H. S. Keck and one hundred eighty other citizens of Knox county; of C. G. Joslin and eight other citizens of Logan county; of W. H. Witte and sixty-six other citizens of Ottawa county; of Ray Parker and twenty-six other citizens of Geauga county; of John Seidwitz and five other citizens of Belmont county; of A. L. Bertelle and three hundred five other citizens of Summit county; of R. Jones, of Licking county; of Fred Berngan and forty-two other citizens of Allen county; of Ralph R. Spencer and five hundred fifty-nine other

citizens of Lucas county; of Fred R. Meyer, of Delaware county; of M. E. Dunn and six other citizens of Franklin county; of Herbert Adams and eleven other citizens of Madison county; of Henry Malloy and nineteen other citizens of Carroll county; of Oliver Bope and five other citizens of Preble county; of Henry E. Eckstein, of Crawford county; of J. C. Walsh and ten other citizens of Columbiana county; of F. L. Campbell and eight other citizens of Ashtabula county; of Wm. Hughes and eight other citizens of Pike county; of C. B. Debrose and ten other citizens of Shelby county; of Geo. W. Lindsay and one hundred forty-seven other citizens of Pickaway county; of Fred Johnson of Butler county; of T. H. Kinney and other citizens of Sandusky county; of Fred Metz and other citizens of Coshocton county; of J. D. Carter of Hamilton county; relating to the passage of Proposal No. 4, introduced by Mr. King; which were referred to the committee on Liquor Traffic.

Mr. Bigelow presented the remonstrances of Julius Whitman and four hundred and thirty-eight other citizens of Stark county; of the Grace Reformed church, of Columbiana; of Men's Personal Work League, of Columbiana, of the Christian church, of Columbiana; of the First Presbyterian church, of Bellaire; of A. Overholt and other citizens of Columbiana, protesting against the submission of a mandatory unrestricted license clause by the Convention; which were referred to the committee on Liquor Traffic.

Mr. Redington presented the petitions of W. L. Austin and many other citizens; of C. A. Brown and many other citizens; of Charles E. Moody and many other citizens; of Adam Bienick and many other citizens; of George Goodman and many other citizens; of S. I. Rice and many other citizens; of George Urig and many other citizens; of J. V. Esch and many other citizens; of Cloyd L. Mastin and many other citizens; of John H. Fackens and many other citizens; all of Lorain county, asking for license law; which were referred to the committee on Liquor Traffic.

Mr. Rockel presented the petitions of W. H. Rankin and one hundred nineteen other citizens; of C. E. Johnson and six hundred other citizens; all of Clark county; asking for the passage of Proposal No. 4; which were referred to the committee on Liquor Traffic.

Mr. Rockel presented the remonstrances of G. B. Grimes; of L. E. Miler and many other citizens of Clark county, against unrestricted license of liquor; which were referred to the committee on Liquor Traffic.

Mr. Watson presented the remonstrance of the Buffalo Presbyterian church, of Cumberland, Guernsey county, protesting against a license clause in the new constitution; which was referred to the committee on Liquor Traffic.

Mr. Watson presented the resolution of H. P. Woodworth and other citizens of Guernsey county, relative to good roads; which was referred to the committee on Good Roads.

Mr. Watson presented the petition of E. J. Dye and other citizens of Muskingum county, relating to the manufacture, sale and distribution of cigarettes; which was referred to the committee of the Whole.

Mr. Kehoe presented the petition of Edward Linning and sixty-nine other citizens of Brown county, asking for

Petitions and Memorials.

the adoption of Proposal No. 4, without amendment; which was referred to the committee on Liquor Traffic.

Mr. Knight presented the remonstrance of the Neil Avenue Methodist Episcopal church, of Columbus, against licensing the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. King presented the petition of E. L. Ritter and two hundred fifty-nine other citizens of Erie county, asking for the adoption of Proposal No. 4; which was referred to the committee on Liquor Traffic.

Mr. Fackler presented the petition of the Men's Club of Epworth Memorial church, of Cleveland, relative to the traffic in intoxicating liquors; which was referred to the committee on Liquor Traffic.

Mr. Fackler presented the petitions of Wm. Weisheimer and one hundred sixty-four other citizens of Cuyahoga county; of Sam Greenburg and one hundred fifty-three other citizens of Cuyahoga; of W. B. Gongwer and two hundred seventy-two other citizens of Cuyahoga, asking for the passage of Proposal No. 4; which were referred to the committee on Liquor Traffic.

Mr. Farrell presented the petitions of J. W. Turk and seventy-six other citizens, of Thomas H. Martin and one hundred sixty-four other citizens of Cuyahoga county, asking for the licensing of the liquor traffic; which were referred to the committee on Liquor Traffic.

Mr. Fluke presented the petition of the Quarterly Conference of Ashland opposing the licensing of saloons; which was referred to the committee on Liquor Traffic.

Mr. Eby presented the petition of John Gans and one hundred fifty-seven other citizens of Preble county, asking for the licensing of the liquor traffic, and the passage of Proposal No. 4; which was referred to the committee on Liquor Traffic.

Mr. Pettit presented the petitions of R. M. Eckman and seventy-six other citizens of Cherry Fork, Adams county; of the M. E. church of Peebles; of W. E. Roberts and twenty-one other citizens of Seaman; against licensing the liquor traffic; which were referred to the committee on Liquor Traffic.

Mr. Peters presented the remonstrances of W. C. Morse and seven hundred other citizens of Franklin county against licensing the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. Marriott presented the petition of George Freshwater and one hundred thirty-nine other citizens of Delaware county asking the adoption of Proposal No. 4; which was referred to the committee on Liquor Traffic.

Mr. Miller, of Crawford, presented the petition of A. A. Scott and other citizens of Crawford county, favoring the adoption of Proposal No. 4; which was referred to the committee on Liquor Traffic.

Mr. Miller, of Crawford, presented the petition of the Rev. S. G. Dornblaser and other citizens of Crawford county, against licensing the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. Miller, of Fairfield, presented the petition of Columbus Equal Suffrage Association, asking for woman's suffrage; which was referred to the committee on Equal Suffrage and Elective Franchise.

Mr. Miller, of Fairfield, presented the petition of Howard McClenaghan and three hundred other citizens of

Fairfield county, protesting against unrestricted license; which was referred to the committee on Liquor Traffic.

Mr. Matthews presented the petition of Mrs. Ella Stephenson and four other citizens of Putnam county, asking for woman's suffrage; which was referred to the committee on Equal Suffrage and Elective Franchise.

Mr. Marriott presented the petition of the W. C. T. U. of Central Delaware, opposing licensing the liquor traffic, and asking for woman's suffrage; which was referred to the committee on Liquor Traffic.

Mr. Marriott presented the petition of the Radnor Baptist church of Radnor, asking for the prohibition of the cigarette traffic; which was referred to the committee of the Whole.

Mr. Matthews presented the petition of Joseph Kersting and other citizens of Putnam county, asking for the adoption of Proposal No. 4; which was referred to the committee on Liquor Traffic.

Mr. Miller, of Fairfield, presented the petition of Anthony Kreidler and one hundred thirty-eight other citizens of Fairfield county, asking for the adoption of Proposal No. 4; which was referred to the committee on Liquor Traffic.

Mr. Longstreth presented the petition of Geo. W. Nash and thirty-seven other citizens of Hocking county, asking for the adoption of Proposal No. 4; which was referred to the committee on Liquor Traffic.

Mr. Stilwell presented the petitions of Walter Klein; of W. P. Pendergast; of Louis J. Schmitt; of George Fritz; of F. T. Beer and one hundred eighty-two other citizens of Cuyahoga county, asking for the licensing of the liquor traffic; which were referred to the committee on Liquor Traffic.

Mr. Stewart presented the petition of John W. Schlaegel and one hundred seventy other citizens of Meigs county, asking for the licensing of the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. Taggart presented the petition of Hiram B. Swartz and forty other citizens of Wooster; of G. W. Bovard and one hundred eighty other citizens of Wooster; of Albert Trece and two hundred twenty-five other citizens of Wooster; of Peter Woods and three hundred other citizens of Wooster; protesting against the sale and licensing of intoxicating liquors; which were referred to the committee on Liquor Traffic.

Mr. Johnson, of Williams, presented the petition of Pulaski township Law and Order League, of Williams county, protesting against any hasty action on the liquor question; which was referred to the committee on Liquor Traffic.

Mr. Johnson, of Madison, presented the petitions of H. H. Johnston and numerous other citizens of Madison county; of Citton H. Stoll and one hundred forty-five other citizens of Madison county, protesting against the traffic in cigarettes; which were referred to the committee of the Whole.

Mr. Johnston, of Madison, presented the petition of the Madison county W. C. T. U. of Madison county, asking for woman's suffrage and opposition to liquor license; which was referred to the committee on Liquor Traffic.

Mr. Hahn presented the petition of one hundred eighty-seven other citizens of Cuyahoga county, in favor

Petitions and Memorials.

of licensing the liquor traffic, as contained in Proposal No. 4; which was referred to the committee on Liquor Traffic.

Mr. Antrim presented the petitions of the Rev. George B. Wiltsie and two hundred other citizens; of the Rev. E. Roberts and three hundred other citizens; of Henry Uhl and the congregation of the Presbyterian church, of Vendocia; of H. F. LaRue and six other superintendents and pastors of churches and Sunday schools of Van Wert county protesting against the licensing of the liquor traffic; which were referred to the committee on Liquor Traffic.

Mr. Farnsworth presented the petition of the Rev. Norman F. Nickerson and many other citizens of Lucas

county, urging submission of either state or restrictive prohibition; which was referred to the committee on Liquor Traffic.

Mr. Halfhill presented the petition of the First Brethren church of Lima; of the M. E. church, of Elida, protesting against the licensing of the liquor traffic; which were referred to the committee on Liquor Traffic.

Mr. DOTY: I move that we adjourn.

The VICE PRESIDENT: The chair thinks it is no arrogance to state that the state of Ohio should be congratulated on the order of business this afternoon. I think it has been a great day for this Convention. I will now put the motion to adjourn.

The motion was carried, and the Convention adjourned.