

Shortly before this Constitutional Convention, I had occasion to be associated with the Schowgurow case. In that case, the first trial resulted in a verdict of guilty, and, of course, that was overturned on account of the Buddhist angle in the case. The second trial in which I had some association was a eleven to one hung verdict for first degree murder at 2:30 in the morning. The jury was finding not guilty. The third time we had a three judge trial. We had given a man eighteen years. I point out to you there is a lot of difference between eighteen years and eternity.

THE CHAIRMAN: Delegate Henderson, will you take the floor and yield to a question?

DELEGATE HENDERSON: Yes, Mr. Chairman.

THE CHAIRMAN: Delegate Mentzer.

DELEGATE MENTZER: I am not sure what the verdict of less than five-sixths does with the fractions involved. Do you round off to the next higher number? For example, a jury of ten with eight and a third required. What happens there?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: What I had in mind was that perhaps the legislature would provide a six-man jury in the district court sitting there regularly and twelve-man juries in the upper court, and for five-sixths, ten would be enough for a verdict out of the twelve and the five would be enough out of the six.

I really did not contemplate that there would be any fractional problem, but I do not know that that would be difficult to determine anyway. Five-sixths is five-sixths and you would have to get a whole number, I assume, to get a verdict.

THE CHAIRMAN: For what purpose does Delegate Cardin rise?

DELEGATE CARDIN: A parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: State the inquiry.

DELEGATE CARDIN: Delegate Scanlan suggested a dividing of the question. Will that be decided upon by the Chair before we vote?

THE CHAIRMAN: The Chair rules that the question is not divisible.

DELEGATE CARDIN: Thank you.

THE CHAIRMAN: Any one who desires to may offer an amendment to the

amendment as to either portion of the amendment. As the amendment is presently drawn, the two portions could not stand alone and hence it would not be divisible. The Chair points out that Delegate Henderson has already drawn an amendment, which I assume he would intend to offer if this fails, providing for a jury of not more than twelve with a verdict of five-sixths, another amendment striking out all of lines 11 and 12. Delegates James and James Clark have an amendment to strike out the word "unanimous". The Chair would be inclined to put the amendments in that order if each of them in that order should fail.

At the present time, any delegate who desires to have submitted the question of five-sixths with the jury of twelve can offer an amendment to the amendment to make that change, or any delegate who desires to have submitted the question of the jury of six, or not less than six, but with a unanimous verdict can offer an appropriate amendment to accomplish that.

For what purpose does Churchill Murray arise?

DELEGATE E. C. MURRAY: In an effort to clarify the situation, sir.

The question of any jury of five or six condemning a man to death has not been brought up, and I do not think it has been the intention of anyone to bring this up.

The proposal to consider this matter in its entirety, by the Committee on Personal Rights, came from England. It arose from the discovery that in England they were using a verdict by, I think, either ten or eleven out of twelve jurors. I hope that the question can be divisible, because I would like to support that phase of it separately from the question of the lesser number of jurors. Also, the British are not using it in capital cases, I believe, even with the ten or eleven jurors of the twelve-man jury voting for conviction. I think it is excluded from capital cases.

THE CHAIRMAN: For what purpose does Delegate Johnson rise?

DELEGATE JOHNSON: Mr. Chairman, to ask Delegate Henderson whether or not he would accept an amendment to his amendment, and may I state my reason?

THE CHAIRMAN: You have to state the amendment first.

DELEGATE JOHNSON: I was wondering if Delegate Henderson would accept an amendment to his amendment so that