

of the Constitution of the United States a jury of twelve in a criminal case and no less has been interpreted by the Supreme Court for a good many years.

And that did not start there. It started back in the Magna Carta, in our Constitution, we carried in the Fifth Article of the present Bill of Rights the right to jury trial.

We have also provided in Article 21 of the present Declaration of Rights in 1867 that it should be an impartial jury, without whose unanimous consent he should not be found guilty.

That has been interpreted as meaning under the common law principle a jury of twelve. Why should be abandon it? Why should we enter into this field? I do not care what they do in Scotland or England or in Russia. I know that in the United States of America and in Maryland there are certain principles that I stand for and I will not back down from.

We heard eminent witnesses and every one of them with the exception of one was in favor of the idea that in criminal cases at least, the jury should be twelve, and the verdict should be unanimous. If we are going to protect the rights of the accused, if we are going to give people every fair protection before we convict them and put them in jail, then let us keep that twelve-man jury and a unanimous verdict.

I cannot see anything that would disrupt the Bar of Maryland and the people of this State more than to tell them their rights are not being enlarged, but shortened. I hope this amendment is soundly defeated.

THE CHAIRMAN: Any other discussion? Are you ready for the question?

Delegate Dulany.

DELEGATE DULANY: We are not placing in the constitution the requirement of a unanimous verdict. We are leaving that to the legislature.

One thing we are overlooking is the right of the defendant. Juries stay out for 12 or 14 hours or maybe a whole day, coming in two or three times to the judge for instructions. A jury which has been out for 12 or 14 hours has had some doubt.

Many times they will come up with acquittal. But they will not if one or two are holding out for conviction on a minor count.

I move the amendment be adopted.

THE CHAIRMAN: Delegate Willoner.

DELEGATE WILLONER: I would like to rise to explain the problems in Scotland and England. You have guilty, not guilty, and you have a third jury verdict which is "not proven."

It gives the stigma, but you cannot incarcerate. So the Scotland experience is not the same as ours. In England the experience was that they were getting 40 percent acquittal.

In Prince George's we get 90 percent convictions and the ten percent we lose, we ought to lose, and I mean that from the state's attorneys point of view.

I would say that this is such a fundamental right, I would want to quote only one thing from Jefferson where he wrote: "Were I called upon to decide whether the people had best be omitted in the legislative and judicial department, it is better to leave them out of the legislative. It is essential that they have some part in the execution of their laws." This is a horrible procedure. A crime can end a person's entire life. Three armed robbery convictions can get you 30 years, while a murder case may end up with a manslaughter case, which will give you a five-year sentence.

This is an individual right that no transient majority should be able to step up. It is proposed that a majority decide whether a man go free or not.

THE CHAIRMAN: Are you ready for the question? Before putting the question, the Chair desires to ask Delegate Henderson, do you now withdraw Amendment No. 9 which was passed over yesterday?

DELEGATE HENDERSON: Yes, I do.

THE CHAIRMAN: Amendment No. 9 is withdrawn.

The Clerk will ring the quorum bell.

The question arises on the adoption of Amendment No. 13 as modified. A Vote Aye is a vote for the Amendment; a vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote. There being 44 votes in the affirmative and 76 in the negative, the motion is lost and the amendment fails.

Delegate Henderson, do you now desire to offer your Amendment AG?