to be found in which it has ever been held as a doctrine of this State that the jury could not give a verdict in a criminal case always as they please. The fact is established that they have practically all the power which it is desirable that they should have. The language of the section is:

"In the trial of all criminal cases, the jury may be the judges of law as well as fact."

With regard to the change of the language, I will only say as a lawyer, that "may" in that connection, is just as imperative as "shall." I suppose every lawyer in the house will confirm that idea. In all legal proceedings, where there is nothing to show the contrary, these terms are considered as equivalent. I think the interests of the State, in its judicial department, especially in its criminal jurisdiction, will be promoted, mischiefs will be obviated, difficulties will be obviated, and in all respects, benefits will result from striking out the sixth section.

The amendment to substitute "shall" for "may" was adopted.

Mr. CHAMBERS moved to strike out the entire section.

Mr. MILLER. I agree with a great deal that has been said by the gentleman from Kent (Mr. Chambers) with reference to this provision contained in our present constitution, and sought to be incorporated in the one we are about to offer to the people for their sanction. The system of trial of criminal cases in this State has always been different from that in most of the northern States. A criminal is brought to the bar here; his counsel are employed; and the State's attorney represents the State. Upon questions of the admissibility of evidence, the judge decides; and that is the only thing upon which the judge in our State does decide.

Mr. CHAMBERS. Or ever did.

Mr. MILLER continued: But in most of the northern States, after the counsel have closed on both sides, the judge "sums up," as they call it, to the jury, and gives his views both of the evidence and of the law. Now under this provision of the constitution we may get rid perhaps of a good deal of difficulty. If the judges, with this restriction taken away, should undertake to charge the jury, and state to the jury what the law is in reference to the crime of which the accused stands charged, the accused would have the right to except to that charge, and to take it before the higher tribunals to see whether the court has correctly pronounced the law of the case or not. We have never had in this State, such cases brought to the court of appeals. Our criminal appeals are all reduced to error of the record itself, matters in the indictment, demurrers to the indictment, or something of that kind. I do not know but a case in which the judge has undertaken to charge the jury, and has given instructions to the jury to which the criminal has taken exception, might go up to the court of appeals. This provision has prevented that being done; and we have had no difficulty of that kind.

Mr. CHAMBERS. No exception lies but by statute; and the statute expresely says that exceptions shall lie in civil cases.

Mr. MILLER. I am perfectly aware of that; but I very much doubt whether it would not be the right of the criminal, under the existing statute, if the judge should undertake to give his views of the law to the jury, and should lay down the law wrongly, to take exception to it, and to bring it up to the court of appeals. The circuit judges may be mistaken with regard to their construction of the law as well as the lawyers who are arguing it for either side before the jury. If you give the judge the power to charge the jury upon the law, the lawyer upon either side differing as to the construction of the law, then I say that the criminal ought in all cases to have the right of appeal. He ought not, for his life or his liberty, to be left to the discretion and the charge of the judge without an appeal to the court of appeals. At present, in the argument before the jury, we have a right as lawyers defending, or as prosecutors prosecuting, to say that every construction of the law is say so, that the law means this and the law means that. It has been decided by the court of appeals that we can argue before the jury that a law is unconstitutional. That question is not beyond the power of the jury. Let a statute law be passed in regard to any offence, as it was passed in this town some years ago, prohibiting the selling or giving of spirituous or intoxicating liquors to a minor or person of color, or anything of that kind, and there are expressions in that law about which the lawyers may very well differ. I say then, in such a case as that, on the ground of mercy to the criminal, and the indulgence which the law allows in such a case as that, the jury should be the judges of the law as well as of the fact.

I know it has always been the practice in this State for the jury to render a general verdict. But let me put a case which frequently occurs. There is no earthly dispute about the facts; not the least in the world. The facts are proved by undisputed testimony, and no human being on either side would doubt them. The whole question is whether the law was intended to cover that state of facts. In such a case as that, this provision of the constitution interposes and says that that matter shall be decided by the jury and not by the court. The State has all the advantage which it needs in such a case as that. It has the closing argument in all criminal cases. The State's attorney can present his views of the law as well as of the facts to the jury in his closing argument, and review all that has been said by the counsel for the defence; so that the case comes fairly and squarely before the jury.