

TWELFTH DAY

MORNING SESSION.

WEDNESDAY, January 31, 1912.

The Convention met pursuant to adjournment, was called to order by the president, and opened with prayer by the member from Clermont [Mr. DUNN].

The journal of yesterday was read and approved.

REPORTS OF STANDING COMMITTEES.

Mr. PECK: I submit the report of the standing committee on Judiciary and Bill of Rights on Proposal No. 54.

The report was read as follows:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 54—Mr. Elson, having the same under consideration, reports it back with the following amendment, and recommends its passage when so amended.

Strike out all after the resolving clause and insert the following:

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.

The PRESIDENT: The question is on agreeing to the report of the committee.

Mr. PECK: Mr. President: I do not know whether this is the proper time for the discussion of this or not under the rules. It is perhaps fair to explain that this report is a unanimous report of the Judiciary committee, after a considerable length of time in the consideration of the various proposals that were made on the subject of jury trial. The subject has been very much discussed, as every one is aware, and about which there is a good deal of difference of opinion, but this proposal was agreed upon by all the members of the Judiciary committee.

Mr. NORRIS: May I interrupt you a moment? I think you have been misinformed as to its being a unanimous report.

Mr. PECK: I did not know of any opposition.

Mr. NORRIS: I did not agree to it and Mr. KING did not.

Mr. PECK: All the members present at the discussion agreed to it at the time, and since that it has been signed, as I thought, by all we could find. Mr. Norris was not here yesterday, and we could not reach him.

The reasons for the adoption of this are simple enough, it seems to me. The difficulties about the trial by jury have been great, and they have always been increased and intensified by the requirement of unanimity, a requirement peculiar in its nature and existing nowhere else in the relations of human life—this requirement of unanimity in order to reach a result. We are told by the historians that originally a jury was summoned from the neighborhood of the place where the crime or controversy arose, and that the cause was determined by the neighbors, some of whom might even have been wit-

nesses. They acted as witnesses in the jury room, and informed those who had not been witnesses. So they performed the double function of jurors and witnesses. They came to the jury room necessarily with preconceived ideas about the case, arrived at from their own observation and hearsay. In other words, the man was being tried by his neighbors. You can readily perceive when a man is tried by that sort of a jury, a requirement of unanimity is a safeguard. A man shall not be condemned unless twelve other neighbors unanimously agree upon it. In the course of time all that is changed. Now jurors are chosen from those who have no knowledge of the facts or circumstances of the case, and any one who has any preconceived opinion about it is carefully excluded. Jurors are required to form their opinions and arrive at their conclusions from the evidence received in open court and not elsewhere. So that the original reason for unanimity has long since ceased to operate.

In no other line of life, as I have before said, is there any requirement of unanimity. In this body we can change the constitution of the state of Ohio by one vote. The general assembly passes nearly all of its acts by a fair majority, and at most a requirement of three-fourths as the maximum. I know of no public body required to be unanimous in order to secure a right to proceed as they see fit, nor is it true in private life; corporate directors can dispose of millions by a majority of two-thirds or three-fourths vote. There is not really a case where unanimity is required. So that in coming to a conclusion about what are the rights in a case, after having heard the testimony, if a strong majority of the jury, as three-fourths would be, would arrive at a single conclusion, it seems to me right that they should declare what was the result of that trial.

There are at least two evils arising from this system. One is obvious to everybody—the failure to secure any verdict in a great many cases. I know of nothing more discouraging or disgusting to all concerned than a long strenuous trial and a disagreement of the jury by perhaps one or two men. The result is that everybody's labor and time have been wasted, and the money for the maintenance of that court has been wasted. Now, there is another evil that is not so apparent, but that is known to all practicing lawyers who have carefully investigated the matter—namely, that by reason of this requirement of unanimity the verdict of the jury is oftentimes modified to a degree which should not be. One or two obstinate men, by withholding their assent to agree with the majority of the jury, compel the jury either to disagree or to agree to a verdict which is of such a nature that it does not do fair and equal justice in the case. I know of such cases where a jury has returned a verdict upon an agreement which was ridiculously small—ridiculously inadequate for the damages plaintiff had received—and upon investigation it was almost invariably found that it had been due to the obstinacy of some one juror, who refused to assent to anything else.

These are the evils that come from unanimity. I

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understand that in one or two of the neighboring states the proposition here embodied has been tried and has worked well and without difficulty and has been received well by the people. The Judiciary committee therefore presents it to this body.

Mr. KING: Mr. President: If I understand the question the proposition is that it be submitted by agreement. I therefore move that the report of the committee be received and the proposal engrossed and set for a second reading at eleven o'clock a. m., Tuesday next.

Mr. LAMPSON: I second the motion, and in so doing beg to call the attention of the members to Rules 87 and 89 on page 38.

Mr. DOTY: I have no objection to the motion, except that—I have no objection to a special order, although it is not necessary.

Mr. KING: I know; but it ought to come up in regular order next Monday.

Mr. DOTY: I don't think we will reach it, and I will therefore move that we have it come up on Tuesday.

The PRESIDENT: We receive the report of the committee, engross it, and put it on the calendar for a second reading.

Mr. DOTY: The question is not receiving and agreeing to the report. I call for a division, because I would like to make a motion to reprint it if it is agreed to. The question ought to be a division, first voting upon the report of the committee itself.

Mr. HARRIS, of Ashtabula: As I understand the postponement yesterday was that the report be accepted, that the bill be printed, and go on the calendar, which is equivalent to its reaching a third reading when reached.

Mr. DOTY: The thing we did yesterday was the only thing to do. The report was handed in and received, with the understanding that we postpone the further reconsideration of that report until today, and it is now before us, and the question is now to adopt the report of the committee to amend the proposal, then the second reading comes.

Mr. HARRIS, of Ashtabula: Who made the proposal or proposition?

Mr. DOTY: I made the proposition so that we could have it in form.

Mr. SMITH, of Hamilton: Mr. President, I would like to inquire whether, according to the report on the two points, we have now authority to adopt the report?

The PRESIDENT: We have not.

Mr. DOTY: We have four chances at this.

Mr. WORTHINGTON: Mr. President: I would like to ask this: When would be the proper time to consider this proposal? I ask, that, Mr. President, because it seems to me it should be the conduct of this Convention, without any rule, to consider every proposal, no matter whether it is recommended unanimously or otherwise, in a committee of the Whole and before it reaches final passage.

Mr. LAMPSON: The proper time to come into committee of the Whole is when we reach the proposal for second reading. When we reach that proposal on second reading any member can arise and move that we go into a committee of the Whole.

Mr. DOTY: I move that the proposal as amended be printed in bill form.

The motion was agreed to.

The PRESIDENT: If there is no objection the proposal will be engrossed and placed on the calendar today.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 13—Mr. Riley, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 37—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 38—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 14—Mr. Riley, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 39—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 40—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 41—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 42—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No.

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45—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 46—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 99—Mr. Jones, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 102—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 103—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 104—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 105—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 106—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 107—Mr. Hahn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 115—Mr. Rockel, having had the same under

consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 121—Mr. Dunn, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 136—Mr. Walker, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. PECK: I submit the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 148—Mr. Solether, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

REFERENCE TO COMMITTEES OF PROPOSALS.

The following proposal on the calendar was read by its title and referred as follows:

Proposal No. 175—Mr. Brown, of Lucas. To the committee on Labor.

INTRODUCTION OF PROPOSALS.

The following proposals were introduced and read the first time:

Proposal No. 176—Mr. Riley. To submit an amendment to article XVI as section 11, of the constitution.—Relative to forest conservation and afforestation.

Proposal No. 177—Mr. Read. To submit an amendment to article III, sections 1, 2, and 17 (a) of the constitution.—Relative to lengthening terms of state officers and the addition of a superintendent of industrial affairs.

Proposal No. 178—Mr. Wise. To submit an amendment to article XV by the addition of section 10, of the constitution.—Relative to sale or giving away of cigarettes or cigarette paper.

Proposal No. 179—Mr. Okey. To submit an amendment to article X, section 4, of the constitution.—Relative to the term of township officers.

Proposal No. 180—Mr. Moore. To submit an amendment to article X, of the constitution.—Relative to county and township organizations.

Proposal No. 181—Mr. Stewart. To submit an amendment to article XII, section 2, of the constitution.—Relative to taxation by uniform rule; exemptions.

Proposal No. 182—Mr. Norris. Relative to the licensing of intoxicating liquors.

Proposal No. 183—Mr. Harris, of Hamilton. To submit an amendment to article VI, of the constitution.—Relative to education.

Proposal No. 184—Mr. Peck. To submit an amendment to article IV, sections 1, 2 and 6, of the constitu-

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tion.—Relative to the supreme and circuit courts—judicial.

Proposal No. 185—Mr. Watson. To submit an amendment to article II, section 1, of the constitution.—Legislative.

Proposal No. 186—Mr. Watson. To submit an amendment to article XV, section 9, of the constitution.—Relative to the liquor traffic.

Proposal No. 187—Mr. Watson. To submit an amendment to article XV of the constitution.—Relative to the manufacture, sale and distribution of cigarettes and cigarette wrappers.

Proposal No. 188—Mr. King. To submit an amendment to article II, section 10, of the constitution.—Relative to county officers.

Proposal No. 189—Mr. Hahn. Donations forbidden.

Proposal No. 190—Mr. Hahn. Relative to contract with employes releasing from liability.

Proposal No. 191—Mr. Hahn. Special legislation forbidden.

Proposal No. 192—Mr. Hahn. Divorce to be tried to a jury.

Proposal No. 193—Mr. Hahn. Relative to extra compensation forbidden.

Proposal No. 194—Mr. Hahn. Relative to profit on public money.

Proposal No. 195—Mr. Hahn. Relative to tax on foreign stocks and bonds.

Proposal No. 196—Mr. Hahn. Banks shall be collectors of one-quarter of one percent on their money deposits.

Proposals No. 197—Mr. Hahn. Relative to tax on chattels.

Proposal No. 198—Mr. Hahn. Bank directors shall be individually and jointly responsible for deposit when bank insolvent.

Proposal No. 199—Mr. Hahn. Contracts made on Sunday shall be valid.

Proposal No. 200—Mr. Hahn. Liberty of conscience does not excuse licentiousness.

Proposal No. 201—Mr. Hahn. Proof of publication to take no effect till court approves it.

Proposal No. 202—Mr. Hahn. Lobbying a crime.

Proposal No. 203—Mr. Hahn. Text-books for the public schools to be published by the state.

Proposal No. 204—Mr. Hahn. The Sabbath shall be a mere civic regulation.

Proposal No. 205—Mr. Hahn. Relative to short ballot.

Proposal No. 206—Mr. Fackler. To submit an amendment to article X, sections 1 and 2, of the constitution.—Relative to county and township officers.

Proposal No. 207—Mr. Fackler. To submit an amendment to article III, sections 1, 2 and 5, of the constitution.—Relative to state executive officials.

Proposal No. 208—Mr. Fackler. To submit an amendment to article VIII, section 12, of the constitution.—Relative to board of public works.

Proposal No. 209—Mr. Tetlow. To submit an amendment to article VIII, of the constitution.—Relative to protection and welfare of persons employed at public work.

MOTIONS AND RESOLUTIONS.

Mr. EBY: I offer a resolution.

The resolution was read as follows:

Resolution No. 53:

Resolved, That the president of this Convention extend to Ex-President Theodore Roosevelt an invitation to address this Convention at his earliest convenience.

The resolution was laid over under the rule.

Mr. LEETE: I offer a resolution.

The resolution was read as follows:

Resolution No. 54:

Resolved, That Nelson W. Evans, delegate from Scioto county, be and is hereby appointed historian and reference librarian of this Convention, to serve without compensation.

As such it shall be his duty to obtain and preserve all data in regard to this Convention and its members as would be desired in the future.

As reference librarian, it shall be his duty to obtain and furnish to the members of this Convention and its officers, all information they may require as to any subjects germane to their duties in the preparation of the constitution.

He shall be furnished with a clerk by the secretary who shall be a stenographer and when not engaged by him shall work for the Convention.

The resolution was laid over under the rule.

PETITIONS AND MEMORIALS.

Mr. Lampson presented the petition of the First Methodist Episcopal church, of Jefferson, against license of the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. Lampson presented the petition of the Ashtabula County Pomona Grange in opposition to the single tax on land; which was referred to the committee on Taxation.

Mr. Okey presented the petition of the M. P. Church and Sunday school of Renock, Noble county, protesting against the insertion of a license clause in the constitution and asking for the submission of a prohibition amendment to the constitution; which was referred to the committee on Liquor Traffic.

Mr. Stokes presented the petition of Mrs. Ruth Voris and other citizens of Dayton, protesting against woman's suffrage; which was referred to the committee on Equal Suffrage and Elective Franchise.

Mr. RILEY: I move that the vote be reconsidered whereby the report of the committee, recommending the indefinite postponement of Proposal No. 13, was agreed to.

ADDRESS OF PRESIDENT WILLIAM H. TAFT.

By unanimous consent the proceedings of the Convention were suspended. President Taft, accompanied by the committee appointed to escort him, appeared at the bar of the Convention and delivered the following address:

Mr. President and Gentlemen of the Convention: I am here only to thank you for your courtesy in inviting me to be here. I am not here to deliver an address on

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constitutions or to attempt in any serious way to aid you by suggestion as to what you ought to do. As a citizen of Ohio, I expect later to cast one vote by way of comment on what you have done, but until that time I shall save your time and avoid leading you into irrelevant matters by discussing the specific subjects before you.

I was thinking this morning that it would be very difficult for me to attempt to discharge the task which falls to your president and yourselves in framing up a new fundamental statute for the state. In the first place, I am not sure what kind of a law-school examination I could pass on the existing constitution, and one has to know something about that which is, before he recommends that which is to be. Of course, to most of us the constitution of the United States is the great model of fundamental instruments for complicated, free and popular government. It has been the wonder of political statesmen and philosophers, and the wonder grows as you study the simplicity, the clearness, and, I might add, the shortness of its provisions. It is not to be expected that a state constitution should be as short an instrument as that, because the details of state, county and municipal government are so many more than that required in defining the relations between the state and the general government. But I think every one will concede that the shorter the instrument, the simpler its provisions, the better its use as the fundamental instrument upon which to rear the structure of laws and statutes that are to form the basis of our community as law.

I come into Ohio with a great deal of pleasure, and into this Convention with a great deal of pleasure, to find that the gentleman whom I succeeded on the su-

perior court bench of Cincinnati, is governor; that one who has been on the bench before me is a member of your Convention, Judge Worthington, and that the head of your Judiciary committee was also a member of that court and associated with me years ago, Judge Peck. The truth is, when I consider the wealth of the product of that court in Hamilton county of politicians, and statesmen, the real lawyers—and I am not going to be invidious in pointing out which is which—it seems to me you might make, just by way of reminiscence, in your new constitution, a provision for the superior court of Cincinnati.

I wish for you, my friends and fellow citizens of Ohio, every success in the effort which you are making to create a satisfactory foundation of government. I am sure you bring to the work the energy, zeal and intelligence which will make it a success and in the discussion which will follow I have no doubt that, whether adopted or not, it will inure greatly to the benefit of the public for the reason that it will promote discussion, and even if the instrument you prepare is not adopted, it will doubtless suggest amendments and changes that ought to be made that will bring about the betterment of the law now needed.

In any event, you have my best wishes and you have my gratitude for doing me the honor of inviting me to be present and exchanging a greeting with you.

Mr. President, I thank you.

Mr. DOTY: I move that the Convention be adjourned in honor of the president of the United States.

The motion was carried.