

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, MACLAREN, JJ.A., CLUTE, J.), was delivered by

OSLER, J.A.:—In my opinion, there is no ground for allowing an appeal.

As to the first objection, I think the learned trial Judge was quite within his right in sending the jury back for further deliberation when, upon being polled after they had announced their verdict, one of them answered "not guilty," dissenting from the verdict as announced by the foreman.

The practice is properly stated in the *Encyclopædia of Pleading and Practice*, vol. 22, p. 937: "When the jury is polled, any juror may dissent from the verdict as announced, and when one or more of the jurors dissent therefrom, there can be no valid verdict. The jury may, however, be sent back for further deliberation, when they may, if all subsequently agree, render a verdict similar in all respects to the former finding," or, as I may add, quite different from it.

The question is one which does not often arise, and I have not succeeded in finding any discussion of it in the English works on Practice. I have, however, a distinct recollection of a case, in which I was engaged when at the bar, tried before the late Sir Adam Wilson, C.J., a very high authority on common law practice, in which the jury was twice polled, one juror dissenting on each occasion, and were twice sent back to reconsider their verdict, on which they finally agreed.

The practice is really only an application of the settled rule that until their verdict has been recorded, or they have been discharged as unable to agree, their connection with the case has not come to an end. Even though not polled, they may be sent back after having announced their verdict, if the trial Judge is not satisfied that they have given the case proper consideration, where they do not insist upon their verdict, as announced, being recorded: *Regina v. Meany*, 1 Leigh & Cave 213.

As to the second objection, after a careful consideration of the charge, I am quite satisfied that the trial Judge did not intimate or intend to intimate to the jury that the prisoner might have given evidence in his own behalf, and that an inference unfavourable to him might be drawn from the fact that he had not done so. The learned Judge merely told the jury of the presumption which might, under all the circumstances of the case, be drawn from the fact of his not having