this law unconstitutional, not on the grounds or cruel or unusual punishment, but as violating the 14th amendment, which says "that no State . . . . shall deny to any persons within its jurisdiction the equal protection of the laws." In this case the Court further declares, "The operation upon feeble-minded is in no sense in the nature of a penalty, and therefore whether it is an unusual and cruel punishment is not involved."

In *Smith v. Board of Examiners,* 85 N. J. Law 48, the Board of examiners created by act to authorize and provide for the sterilization of feeble-minded, epileptics, certain criminals and other defectives, ordered that the operation of salpingectomy be performed upon one Alice Smith, an epileptic inmate of a State institution. Although this order was reversed the Court made clear that it was not upon the grounds of cruel and unusual punishment but rather because the statute in question was based upon a classification that bore no reasonable relation to the object of such police regulations and hence violated the 14th amendment.

In *Davis v. Berry* (D. C.) 216 F. 413, an act required the performance of an operation on criminals who had been convicted of a felony. This act was within the prohibition of cruel and unusual punishments, but it in no way referred to feeble-minded persons. Similarly a like act in *Mickle v. Henrich* (D. C.) 262, F. 687, applying only to persons convicted of rape, and a like act in *State v. Feilen,* 70 Wash. 65, referring to criminals only, were both found to come under this prohibition. It is plainly apparent in these cases that the constitutional inhibition against cruel and unusual punishment has no applicaiton to the surgical treatment of feeble-minded persons. W. J. P.

State ex. rel. Neill v. Nutter, Supreme Court of Appeals of West Virginia, May 12, 1925.

TRIAL — VERDICT. — Verdict returned in correct form and signed by foreman is not affected by statement of juror upon poll that he agreed thereto to get the jury together.

Suit by the State on the relation of Clyde H. Neill for mandamus to be directed to Trebey Nutter, Special Judge of the Circuit Court of Marion County. The jury having agreed to a verdict in the jury room, returned it to the court in correct form and properly signed by the foreman. Upon being polled three of the jurors stated that the verdict

was agreed to only upon compromise and that it was not exactly their verdict. The court then had the jury to return to its room to further consider the verdict. After a while it returned to the court room and again delivered to the clerk a verdict signed by the foreman finding the defendant not guilty. Upon again being polled two of the jurors reiterated that the verdict was not their real opinion but that they had agreed to the verdict only to get the jury together. The court then overruled defendant's motion to accept and record the verdict and adjourned court to the following day. Upon return of the jury on the following day, the court of its own motion directed the jury to be polled on the verdict. On that poll ten jurors answered "yes" and two jurors answered "no." Thereupon the court refused to receive the verdict and discharged the jury. The defendant excepted and obtained from the court an alternative writ of mandamus, requiring the special judge to accept and record the verdict or show cause why he should not do so.

Held: Where the jury, having agreed to a verdict in the jury room, returned it to the court in correct form, and properly signed by the foreman, the finality of the verdict is not affected by the statement of a juror upon a poll of the jury that he had agreed to the verdict in the jury room merely "to get the jury together" when he further stated, "It is my verdict on a compromise."

The authorities are about equally divided on the law applicable to these facts, and cases may be found supporting either point of view. In *Frick v. Reynolds,* 6 Okla. 638, a very similar question of law was decided contra to the above case. Here, upon the polling of the jury one of the jurors answered that he consented to the verdict in order to prevent the hanging of the jury, but that he was not satisfied with it. It was held that it was erroneous to overrule a motion that the jury be returned to their room for further deliberations. Likewise in *Ostrander v. City of Lansing,* 111 Mich. 693, it was held that if a juror, upon the jury's being polled, makes a response which implies that the verdict does not embody the result of his own investigation and best judgment, the verdict should not be received. So held, where a juror, in answer to the question, "Is this your verdict?" responded, "Compromise verdict." The same question was again decided with like results in *Rothbauer v. The State,* 22 Wis. 468. In this case it was held error to receive (against objection) a verdict of guilty in a criminal action, where one of the jurors declares, upon the jury being

polled, that he assented to the verdict for the sake of an agreement, but does not regard it as correct.

Notwithstanding the above and many other decisions of like holding the best reason seems to be with the holding in the instant case. In *Profatt on Jury Trials,* Sec. 462, it is said, "Where some of the jury disagree to the verdict after it is announced, it will nevertheless be sustained if they subsequently agree to it." And again we find in 38 *Cyc.* 1875, "A verdict is not vitiated by the fact that a juror hesitated to agree to it, or where, in answer to the inquiry, he said that it is not his verdict but that he consented to it, and subsequently answers that it is his verdict, or says he consented to it under protest."

The court in the instant case holds that the statement of each reluctant juror, upon the second return of the jury into court, that the verdict was then his verdict on a compromise, made the verdict unanimous, and gave to it such finality that the trial court should have then and there received it and recorded it. The opinion in *Scholfield Gear and Pulley Co. v. Scholfield,* 71 Conn. 1, is particularly applicable to the findings in the present case. The court said, "Verdicts are often and properly the result of mutual concessions. Without something of this kind, twelve men can hardly be expected to come to a unanimous conclusion upon any computation of unliquidated damages in an action of tort. For the purpose of reaching an agreement jurors, while they cannot rightfully go contrary to their own convictions, pay great regard to the opinions of their fellows. If the verdict in the plaintiff's favor was reached by a compromise this, of itself, would be no reason for refusing to accept it."

Another case strongly in point is that of *McCoy v. Jordan,* 184 Mass. 575. Here the court held, "Where the jury, by their foreman, had signed the verdict, and it was affirmed, all the jurors assenting thereto, although one said that he did it under protest, the court properly refused to change the record and treat the result as a disagreement, although the language of a paper accompanying an affidavit of a protesting juror and his conduct at the time the jury was polled indicated that he dissented from the verdict."

In *Wyley v. Bull,* 41 Kan. 206, a like result was reached. After the jury had returned their verdict to the court they were polled and each juror with one exception answered that the verdict returned was his verdict, and that juror, a Mr. Chaplin, at first answered that he "consented to it under protest" and again he answered, "I did consent under protest." The court then said to the juror, "Mr. Chaplin, is this

your verdict?" And the juror answered, "It is, but I consented to it under protest." The court then recorded the verdict and discharged the jury. W. J. P.

EVIDENCE.

Werner v. Pope, 273 S. W. 92 (Ky. App., 1925).

EVIDENCE — JUDICIAL NOTICE — AUTOMOBILES — Plaintiff, driving an automobile, struck defendant at a crossing and injured him. A witness testified that plaintiff stopped within three or four feet after hitting defendant. Defendant excepted to the failure of the court to instruct the jury that it was plaintiff's duty to drive at a reasonable rate of speed. *Held,* such instruction was unnecessary, as there was no evidence tending to show excessive speed. The court took judicial notice of the fact, as a matter of common knowledge, that an automobile cannot ordinarily be operated at a street corner or elsewhere at a much lower rate of speed than such as will permit its being stopped within three or four feet. This illustrates the tendency of the courts to take judicial notice of many facts in the construction and operation of the automobile.

Courts have heretofore taken judicial notice of the fact that application of the brakes or shutting off the power are usual means of stopping an automobile, in determining the driver's duty under certain circumstances (*Waking v. Cincinnati I. & W. R. Co.,* 72 Ind. App. 401, 125 N. E. 799) of the fact that snow will gather on the windshield of an automobile being driven during a snowstorm, and that little progress would be made if it were attempted to keep the windshield entirely clear (*Dube v. Sevigne* [N. H.] 123 A. 894), of the fact that the driver of a Ford car is seated three or four feet to the rear of the radiator and front wheels, in determining whether plaintiff was guilty of contributory negligence in stopping with the front of his car on the railroad track, where he could not see the train approaching until within three or four feet of the track (*Wallen v. Mississippi River & B. T. Ry. Co.* (Mo. App.), 267 S. W. 12), of the fact that economy in gasoline consumption is largely influenced by the ability and experience of the chauffeur, the character of the road, the number and length of stops, etc., in an action for breach of a mileage warranty (*Fleming v. Gerlinger Motorcar Co. et al.,* 86 Ore. 195, 168 P. 289), of the fact that the occurrence of a blow-out in the tire of a running