

necessary that you should have a full scale jury in those cases.

At the present time, we know that there is a great waste of manpower and time because in the appeal of the case from the magistrate's level, the jurisdiction can be ousted, even before the case is heard by the prayer of the jury trial. This means that it goes, although everyone is ready to try it, to a higher court for trial. Also, if it is tried before the magistrate without a jury, by the mere election of a jury after the case is heard, and by the entry of an appeal, there can be a trial de novo. The whole thing is tried over again.

I think it would be most unfortunate if that condition was continued after we have set up on a full professional full-time basis the new district courts. I think they should be given the right to dispose of the cases right there instead of having them transferred in great numbers to the higher courts. To do that, it is necessary to have a jury. I might point out that twenty-nine states have authorized the use of six-man juries with great success and great convenience. That is particularly true in the states that have adopted the newest constitutions, for example, Alaska, and New Jersey. They both allow these courts at the lower level.

I think it is a highly desirable experiment. I do not think we should freeze this business of the conventional jury into the constitution, but allow this moderate leeway to the legislature.

I would like to say one other thing about the unanimous jury. It has been said that this is not a very large problem, that the number of cases where you have a hung jury is not very consequential. It may be only one or two per cent, but that is not the point. To my point, the fact that you require unanimity almost guarantees that you must have a compromise verdict, and you must satisfy everyone present. Now that may work both ways. You may have a man who is holding out for a small verdict against a majority. You may have a man who is holding out for a large one. You may have a man who wants an acquittal or one who wants a reversal. It simply violates all precepts of democracy.

You can imagine what kind of a constitution we would produce here if we require absolute unanimity in every decision, or what kind of a Supreme Court we would have if unanimity was required there in every decision. They simply would not be able to function, and it is surprising to me

that the jury system has functioned as well as it has.

There is no magic in the number twelve. I believe that in the beginning, it goes back to the early days when, if you could get twelve jurors to swear for you, you were released. It had nothing to do with a fact-finding jury. When you limit it to not less than six and not less than the five-sixths verdict, it seems to me that you remove some of the difficulties and meet all the objections to this form of relief.

I urge its adoption.

THE CHAIRMAN: Are there any questions of the sponsor of the amendment?

Delegate Bamberger.

DELEGATE BAMBERGER: Delegate Henderson, if this amendment is adopted, do you propose a similar amendment for section 7 with respect to juries in civil cases?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I have such an amendment prepared which would accomplish the same result by providing for five-sixths verdict as prescribed by law. The Commission, I might add, in section 7 has provided for a six-man jury, but limited to civil cases only. I think if you are going to have it in civil cases in the district court for example, there is no reason why you should not have it for criminal offenses as well.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Mr. Chairman, I would move to divide this question.

THE CHAIRMAN: Let's have the questions of the sponsor first. I will recognize you in time.

Delegate Gleason, do you have a question of the sponsor?

DELEGATE GLEASON: Yes.

Delegate Henderson, would you recommend that a capital case with a jury of six be permitted by the General Assembly?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: No, I would not recommend it and I do not think the legislature would ever provide for it. In the cases where the constitutions of other states have been amended, it has usually been limited to cases of less than felony. That is rather a flexible test, because some of our misdemeanor cases are more serious