

THE CHAIRMAN: The amendment is seconded by Delegate Kirkland.

The Chair recognizes Delegate Johnson to speak to the amendment.

DELEGATE JOHNSON: Mr. Chairman, ladies and gentlemen of the Committee of the Whole, personally I am not at all certain I can endorse a departure in the size of the jury in criminal and civil cases although I recognize there is a difference. What I am concerned about is, if we are going to the rather unusual provision of having civil cases consisting of as little as six members, I think that we should be very careful so as not to put the legislature in a position where they would be playing a numbers game with the number of jurors. It would seem to me that if we are going to experiment at six we should be careful to put in a provision so that juries in civil cases will either be six or twelve.

I see the likelihood of experimentation in the legislature with numbers of jurors between six and twelve, and rather than have that, inasmuch as we are writing a constitution, I think that we ought to set forth certain guidelines. It would seem to me that the correct constitutional language would be to set a minimum and a maximum without allowing for anything in between, and I recommend that the Committee of the Whole seriously consider this amendment to the section so that civil juries will either be six or twelve, as provided by law.

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

Delegate Schneider.

DELEGATE SCHNEIDER: Delegate Johnson, I do not understand what the magic is in six and twelve. I just cannot understand what would be wrong with seven, eight, nine, ten, eleven, and if we are going to leave this flexible for the legislature, why not do so? Why not put in an amendment that the legislature shall establish the size of the jury as they see fit and maybe a maximum and minimum on it.

THE CHAIRMAN: Delegate Johnson.

DELEGATE JOHNSON: My answer to that question is one of the reasons that I stated, that in endorsing the amendment, I do not think we should permit the legislature to become involved in any numbers game. I do not think that the constitution should be so flexible that we will be having juries in some areas of seven and eight, in others of ten, and in others seven. It seems to me that we ought to set a minimum and

a maximum and it should be one or the other, and I am greatly concerned about the fact that there will be juries of different sizes. It seems to me six will take of expediency, and twelve, of course, is a tie with tradition. I strongly believe that it should be one or the other.

THE CHAIRMAN: Are there any other questions of the sponsor? .

Delegate Schneider.

DELEGATE SCHNEIDER: Well, then, do you contemplate, Delegate Johnson, that some areas might have a jury of six and other areas in the State might have a jury of twelve? You said, I believe, that you thought that you were afraid if we were to leave it flexible we would have different sized juries throughout the State.

THE CHAIRMAN: Delegate Johnson.

DELEGATE JOHNSON: I am not so certain what the language of the Majority Report would create. I believe that the legislature would decide that certain cases would be decided by a jury of one size and certain cases would be decided by a jury of another size. I think we ought to set forth guidelines, and I think that six or twelve should be those guidelines. I think that the guidelines that we set forth will be uniform and they will be used throughout the State on a uniform basis but I do not think there should be juries regardless of the different kinds of cases to be six, seven, eight, nine, ten, eleven, and twelve.

THE CHAIRMAN: Any other questions of the sponsor of the amendment?

The Chair recognizes Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, ladies and gentlemen of the Committee, when the Committee on Personal Rights considered the matter of juries in civil cases, we then had before us a number of judges and trial lawyers. It was the unanimous opinion, except of one witness, that we should have a unanimous civil jury verdict. However, there was some question as to whether it would be necessary to have twelve jurors in every case, because there are practical considerations, particularly in some of the rural areas where it may be necessary or desirable to have smaller juries. It is also possible that the jurisdictional amount set by the legislature as the basis for a report to a jury trial, would place the matter in the jurisdictional area in which there would be the district courts. It is possible that there might be an opportunity for a jury trial in a district court