posals to the House.[5] It does not appear that the text of the proposed amendment or its meaning was debated during its passage.[6]

Composition and Functions of Civil Jury.—Traditionally, the Supreme Court has treated the Seventh Amendment as preserving the right of trial by jury in civil cases as it "existed under the English common law when the amendment was adopted."[7] The right was to "a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts and (except in acquittal of a criminal charge) to set aside their verdict if in his opinion it is against the law or the evidence."[8] Decision of the jury must be by unanimous verdict.[9] In *Colgrove v. Battin*,[10] however, the Court by a five-to-four vote held that rules adopted in a federal district court authorizing civil juries composed of six persons were permissible under the Seventh Amendment and congressional enactments. By the reference in the Amendment to the "common law," the Court thought, "the Framers of the Seventh Amendment were concerned with preserving the *right* of trial by jury in civil cases where it existed at common law, rather than the various incidents of trial by jury."[11]

The primary purpose of the Amendment is to preserve "the common law distinction between the province of the court and that of the jury, whereby, in the absence of express or implied consent to the contrary, issues of law are resolved by the court and issues of

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[5] 1 ANNALS OF CONGRESS 436 (1789). "In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate."

[6] It is simply noted in 1 ANNALS OF CONGRESS 760 (1789), that on August 18 the House "considered and adopted" the committee version: "In suits at common law, the right of trial by jury shall be preserved." On September 7, the SENATE JOURNAL states that this provision was adopted after insertion of "where the consideration exceeds twenty dollars." 2 B. SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 1150 (1971).

[7] Baltimore & Carolina Line v. Redman, 295 U.S. 654, 657 (1913); Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446–48 (1830).

[8] Capital Traction Co. v. Hof, 174 U.S. 1, 13 (1899).

[9] Maxwell v. Dow, 176 U.S. 581 (1900); American Publishing Co. v. Fisher, 166 U.S. 464 (1897); Springville v. Thomas, 166 U.S. 707 (1897).

[10] 413 U.S. 149 (1973). Justices Marshall and Stewart dissented on constitutional and statutory grounds, id. at 166, while Justices Douglas and Powell relied only on statutory grounds without reaching the constitutional issue. Id. at 165, 188.

[11] 413 U.S. at 155–56. The Court did not consider what number less than six, if any, would fail to satisfy the Amendment's requirements. "What is required for a 'jury' is a number large enough to facilitate group deliberation combined with a likelihood of obtaining a representative cross section of the community. . . . It is undoubtedly true that at some point the number becomes too small to accomplish these goals . . . " Id. at 160 n.16. Application of similar reasoning has led the Court to uphold elimination of the unanimity as well as the 12-person requirement for criminal trials. *See* Williams v. Florida, 399 U.S. 78 (1970) (jury size); Apodaca v. Oregon, 406 U.S. 404 (1972) (unanimity); and Sixth Amendment discussion, *supra,* "The Attributes of the Jury."