

Mr. JONES. Mr. Marquis, you may proceed.

Mr. MARQUIS. Thank you, Mr. Chairman.

The value of land condemned by TVA is presently determined by three-man commissions appointed by the U.S. district courts, subject, of course, to a right of appeal to the courts themselves. The question before the subcommittee is whether the TVA Act should be amended to provide instead for jury trials, or, in the alternative, for a system under which the courts would determine whether each particular hearing should be before a jury or a commission.

In our view, either of these alternatives would be inferior to the present system and would represent a step backward rather than forward.

Before discussing our reasons for this belief, there is a basic misconception which I should like to mention. A good deal of criticism of the commission system seems to me to stem from a widely held notion that a jury trial in this type of case is part of the American tradition and should therefore be preserved. This is contrary to historical fact. As the subcommittee knows, we inherited our concept of the jury trial as a part of the English common law; and when the seventh amendment to the Federal Constitution was adopted in 1791 as part of our Bill of Rights, it provided that "In suits at common law, where the value in controversy exceeds \$20, the right of trial by jury shall be preserved."

There are many types of suits which are not common law actions and in which there is accordingly no right to a jury trial—as, for example, suits in equity, suits in admiralty, probate cases, bankruptcy proceedings, workmen's compensation cases, tort suits against the United States under the Federal Tort Claims Act, and contract suits against the United States under the Tucker Act, to mention but some.

Condemnation actions, similarly, are not suits in which there was a right to a jury trial when the seventh amendment was adopted. As the Supreme Court specifically held in its 1897 decision in *Bauman v. Ross*, 167 U.S. 546:

By the Constitution of the United States, the estimate of the just compensation for property taken for the public use, under the right of eminent domain, is not required to be made by a jury; but may be entrusted by Congress to commissioners appointed by a court or by the executives, or to an inquest consisting of more or fewer men than an ordinary jury.

All this is not to say that we oppose jury trials generally. As I have already indicated, under existing law (28 U.S.C., 1346 and 2402) contract and tort actions against the United States are tried by the court without a jury. However, in a contract or tort suit against TVA, the parties are entitled to a jury trial on the same basis as if TVA were a private party. We think this is highly desirable. I point this out merely to emphasize that TVA has nothing against jury trials in appropriate types of cases. We oppose them in TVA condemnation suits because we think such suits are not an appropriate type of case for resolution by jury verdicts.

We are not alone in this belief. Congress must have had the same view in 1933 when it adopted section 25 of the TVA Act, providing for the present commission procedure. In 1951, the distinguished group of lawyers, judges, and legal scholars who comprised the Supreme Court's Advisory Committee on Rules for Civil Procedure came to the