

Lincoln v. Smith, 27 Vt. 328 (1855):

“We have no doubt, the “right of trial by jury” spoken of in the constitution, and which it is said “ought to be held sacred,” means a jury as at common law, which consists of twelve men, and that wherever a constitution guaranties “the right of trial by jury,” it is not competent for a legislature to reduce that number to six, or any less number than twelve; for the very theory of a trial by jury requires the unanimous consent of twelve men to the verdict.”

State v. Peterson, 41 Vt. 504 (1869).

The “word jury as used in the constitution means a 12 man common law jury.”

State v. Hirsch, 91 Vt 330 (1917).

“The jury referred to in these provisions is the common-law jury of 12.”

State v. Machia, 155 Vt. 192 (1990) (Dooley, J., Dissenting).

Over one hundred years ago, **this Court determined** that a jury, as used in our Constitution, means a common law jury of twelve persons. *State v. Peterson*, 41 Vt. 504 (1869). The primary issue in *Peterson* was whether certain provisions in the City of Burlington's charter were unconstitutional because they conferred final jurisdiction in criminal causes upon the police court where the accused was entitled to a jury of six persons, but where there was no right to a jury of more than six.

“**The Court unequivocally concluded** that in Vermont ‘[t]he word ‘*jury*,’ as used in the constitution, means a common law jury of twelve men.’ . . . We have never wavered from this position.”

Later refers to “**this Court's holding** in *Peterson* that a jury under the state constitution is composed of twelve members”.

Black’s Law Dictionary

Holding: “The legal principle to be drawn from the opinion (decision) of the court. Opposite of dictum.”

Dictum: “Statements or comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case.”

“It can be difficult to tell where a holding ends and dictum begins in some situations.”
Mooney v. Illinois Education Association 372 F.Supp.3d 690 (C.D. Ill. 2019).