Edmund Pendleton in the Virginia Convention, 20 June 1788

Mr. Chairman.—Before I enter upon the objections made to this part, I will observe, that I should suppose that if there were any person in this audience who had not read this Constitution, or who had not heard what has been said, and should have been told, that the trial by jury was intended to be taken away, he would be surprised to find on examination, that there was no exclusion of it in civil cases, and that it was expressly provided for in criminal cases. I never could see such intention, or any tendency towards it. I have not heard any arguments of that kind used in favor of the Constitution. If there were any words in it, which said, that trial by jury should not be used, it would be dangerous. I find it secured in criminal cases, and that the trial is to be had in the State where the crime shall have been committed. It is strongly insisted, that the privilege of challenging, or excepting to the jury is not secured. When the Constitution says, that the trial shall be by jury, does it not say, that every incident will go along with it?—I think the Honorable Gentleman [George Mason] was mistaken yesterday in his reasoning on the propriety of a jury from the vicinage. He supposed that a jury from the neighbourhood is had from this view,—that they should be acquainted with the personal character of the person accused. I thought it was with another view, that the jury should have some personal knowledge of the fact, and acquaintance with the witnesses, who will come from the neighbourhood. How is it understood in this State? Suppose a man who lives in Winchester, commits a crime at Norfolk, the jury to try him must come, not from Winchester, but from the neighbourhood of Norfolk. Trial by jury is secured by this system in criminal cases, as are all the incidental circumstances relative to it. The Honorable Gentleman yesterday made an objection to that clause which says, that the Judicial power shall be vested in one Supreme Court, and such Inferior Courts, as Congress may ordain and establish. He objects that there is an unlimited power of appointing Inferior Courts. I refer it to that Gentleman, whether it would have been proper to limit this power. Could those Gentlemen who framed that instrument, have extended their ideas to all the necessities of the United States, and see every case in which it would be necessary to have an inferior tribunal? By the regulations of Congress, they may be accommodated to public convenience and utility. We may expect that there will be an Inferior Court in each State—Each State will insist on it—and each for that reason will agree to it.—To shew the impropriety of fixing the number of Inferior Courts, suppose our Constitution had confined the Legislature to any particular number of inferior jurisdictions, there it would remain, nor could it be increased or diminished as circumstances would render it necessary. But as it is, the Legislature can by laws change it from time to time as circumstances will require. What would have been the consequences to the Western District, if the Legislature had been restrained in this particular? The emigrations to that country rendered it necessary to establish a jurisdiction there, equal in rank to the General Court in this part of the State. This was convenient to them, and could be no inconvenience to us. At the same time the Legislature did not lose sight of making every part of the society subject to the supreme tribunal. An appeal was allowed to the Court of Appeals here. This was necessary. Has it produced any inconvenience? I have not seen any appeal from that Court. Its organization has produced no inconvenience whatever. This proves that it is better to leave them unsettled, than fixed in the Constitution. With respect to the subjects of its jurisdiction, I consider them as being of a general, and not local nature, and therefore as proper subjects of a Federal Court. I shall not enter into an examination of each part, but make some reply to the observations of the Honorable Gentleman. His next objection was, to the two first clauses.—Cases arising under the Constitution, and laws made in pursuance thereof. Are you to refer these to the State Courts?

Must not the judicial powers extend to enforce the Federal laws, govern its own officers, and confine them to the line of their duty? Must it not protect them in the proper exercise of duty, against all opposition, whether from individuals or State laws?—No, say Gentlemen, because the Legislature may make oppressive laws, or partial Judges may give them a partial interpretation. This is carrying suspicion to an extreme, which tends to prove there should be no Legislature or Judiciary at all. The fair inference is, that oppressive laws will not be warranted by the Constitution; nor attempted by our Representatives, who are selected for their ability and integrity; and that honest independent Judges will never admit an oppressive construction.

But then we are alarmed with the idea of its being a consolidated Government. It is so, say Gentlemen, in the Executive and Legislative, and must be so in the Judiciary.—I never conceived it to be a consolidated Government, so as to involve the interests of all America. Of the two objects of judicial cognizance, one is general and national, and the other local. The former is given to the general judiciary, and the latter left to the local tribunals. They act in co-operation to secure our liberty. For the sake of œconomy, the appointment of these Courts, might be in the State Courts. I rely on an honest interpretation from independent Judges. An honest man would not serve otherwise, because it would be to serve a dishonest purpose. To give execution to proper laws, in a proper manner, is their peculiar province. There is no inconsistency, impropriety, or danger in giving the State Judges the Federal cognizance. Every Gentleman who beholds my situation—my infirmity, and various other considerations, will hardly suppose I carry my view to an accumulation of power. Ever since I had any power, I was more anxious to discharge my duty, than to increase my power.

The impossibility of calling a sovereign State before the jurisdiction of another sovereign State, shews the propriety and necessity of vesting this tribunal with the decision of controversies to which a State shall be a party.

But the principal objection of that Honorable Gentleman [George Mason] was, that jurisdiction was given it in disputes between citizens of different States. I think in general those decisions might be left to the State tribunals; especially as citizens of one State, are declared to be citizens of all. I think it will in general be so left by the regulations of Congress. But may no case happen in which it may be proper to give the Federal Courts jurisdiction in such a dispute? Suppose a bond given by a citizen of Rhode-Island, to one of our citizens. The regulations of that State being unfavourable to the claims of the people of the other States, if he is obliged to go to Rhode-Island to recover it, he will be obliged to accept payment of one-third, or less, of his money. He cannot sue in the Supreme Court: But he may sue in the Federal Inferior Court; and on judgment to be paid one for ten, he may get justice by appeal. Is it an eligible situation? Is it just that a man should run the risk of losing nine-tenths of his claim? Ought he not to be able to carry it to that Court where unworthy principles do not prevail? Paper money and tender laws may be passed in other States, in opposition to the Federal principle, and restriction of this Constitution, and will need jurisdiction in the Federal Judiciary to stop its pernicious effects.

Where is the danger in the case put, of malice producing an assignment of a bond to a citizen of a neighbouring State—Maryland? I have before supposed, that there would be an Inferior Federal Court in every State. Now, this citizen of Maryland, to whom this bond is assigned, cannot sue out a process from the Supreme Federal Court to carry his debtor thither. He cannot carry him to

Maryland. He must sue him in the Inferior Federal Court in Virginia. It can only go further by appeal. The creditor cannot appeal. He gets a judgment. An appeal can be had only on application of the defendant, who thus gains a privilege instead of an injury; so that the observation of the Honorable Gentleman [George Mason] is not well founded. It was said by the Honorable Gentleman [Patrick Henry] to day, that no regulation that Congress could make, could prevent from applying to common law cases, matters of law and fact. In the construction of general words of this sort, they will apply concurrently to different purposes. We give them that distributive interpretation, and liberal explication, which will not make them mischievous: And if this can be done by a Court, surely it can by a Legislature. When it appears that the interpretation made by Legislative bodies in carrying acts into execution, is thus liberal and distributive, there is no danger here. The Honorable Gentleman [George Mason] was mistaken when he supposed that I said, in cases where the competency of evidence is questioned, the fact was to be changed in the Superior Court. I said, the fact was not at all to be affected. I described how the Superior Court was to proceed, and when it settled that point, if another trial was necessary, they sent the cause back, and then it was to be tried again in the Inferior Court.

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009. Original source: Ratification by the States, Volume X: Virginia, No. 3