

## **One of the Middling-Interest, *Massachusetts Centinel*, 28 November 1787**

The *trial by jury*, in civil cases, is also said not to be protected by the new government. It is true, the convention have not said that trial by jury in civil cases is indispensable as they have in criminal cases; if they had so said it would have been a very great absurdity; for there is no one point in which the states more differ than in this, though there is one circumstance in which they all agree, viz. in deciding some cases of property without any jury at all. In Massachusetts the penalty of bonds is reduced by the judges to the principal and interest, mentioned in the conditions of those bonds, without the equitable interference of a jury;—and judgments are rendered in default cases at the clerk’s offices without either judge or jury in thousands of instances—though in some States after default [is] made, a jury are by law obliged to ascertain the damages. If people would reflect, that out of three or four hundred actions at a court not more than ten are decided by jury, they would not be anxious to have it expressed in a bill of rights, that *all* civil causes should be tried by jury: And if it were to be expressed *what* civil causes should be tried by jury, it might take a volume of laws instead of an article of rights. The legislature, no doubt, will make some general regulations in this matter, which will suit the greater number of states—and if those regulations should not suit the ancient usage of any *particular state*, still the advantages would not be important, when we remember that the federal court are to decide upon no causes whatever which are now triable in any one state, unless it be causes which may arise between the citizens of different states, which are so rare, as that they make up but a very small part of the publick business—and even causes of this kind, if found inconvenient to the citizens, may be excepted, in whole or in part, from continental jurisdiction, as appears by the latter part of the 2d section of the 3d article in the federal government.

But some will ask, why is even this left to the inclinations of Congress, who *may* authorize the judicial to bring a citizen from one end of the continent to the other, to answer to an action between citizens of different states? The answer is, that all legislatures must be trusted with something—to suppose they will so form the judicial departments merely to oppress, without a possibility of serving avarice, ambition or any known human motive, is to suppose that men will be so disinterested as to act against their own existence, and from no given cause that can be described. Our own state constitution declares that the legislature shall erect judicatories for the trial of all causes in the Commonwealth, but does not declare how many, nor what sort, nor when they shall sit: Because this would be making the law, which is the business of the General Court, and not the business of the makers of the constitution.

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