

The Dissent of the Minority of the Convention, *Pennsylvania Packet*, 18 December 1787

Not to enlarge upon the loss of the invaluable right of trial by an unbiased jury, so dear to every friend of liberty, the monstrous expense and inconveniences of the mode of proceeding to be adopted are such as will prove intolerable to the people of this country. The lengthy proceedings of the civil law courts in the chancery of England, and in the courts of Scotland and France, are such that few men of moderate fortune can endure the expense of; the poor man must therefore submit to the wealthy. Length of purse will too often prevail against right and justice. For instance, we are told by the learned Judge Blackstone, that a question only on the property of an ox, of the value of three guineas, originating under the civil law proceedings in Scotland, after many interlocutory orders and sentences below, was carried at length from the court of sessions, the highest court in that part of Great Britain, by way of *appeal* to the House of Lords, where the question of law and fact was finally determined. He adds, that no pique of spirit could in the court of king's bench or common pleas at Westminster have given continuance to such a cause for a tenth-part of the time, nor have cost a twentieth-part of the expense. Yet the costs in the courts of king's bench and common pleas in England are infinitely greater than those which the people of this country have ever experienced. We abhor the idea of losing the transcendent privilege of trial by jury, with the loss of which, it is remarked by the same learned author, that in Sweden, the liberties of the commons were extinguished by an aristocratic senate; and *trial by jury* and the liberty of the people went out together. At the same time we regret the intolerable delay, the enormous expenses and infinite vexation to which the people of this country will be exposed from the voluminous proceedings of the courts of civil law, and especially from the appellate jurisdiction, by means of which a man may be drawn from the utmost boundaries of this extensive country to the seat of the supreme court of the nation to contend, perhaps with a wealthy and powerful adversary. The consequence of this establishment will be an absolute confirmation of the power of aristocratical influence in the courts of justice; for the common people will not be able to contend or struggle against it.

Trial by jury in criminal cases may also be excluded by declaring that the libeler, for instance, shall be liable to an action of debt for a specified sum, thus evading the common law prosecution by indictment and trial by jury. And the common course of proceeding against a ship for breach of revenue laws by information (which will be classed among civil causes) will at the civil law be within the resort of a court, where no jury intervenes. Besides, the benefit of jury trial, in cases of a criminal nature, which cannot be evaded, will be rendered of little value, by calling the accused to answer far from home; there being no provision that the trial be by a jury of the neighborhood or country. Thus an inhabitant of Pittsburgh, on a charge of crime committed on the banks of the Ohio, may be obliged to defend himself at the side of the Delaware, and so *vice versa*. To conclude this head, we observe that the judges of the courts of Congress would not be independent, as they are not debarred from holding other offices during

the pleasure of the president and senate, and as they may derive their support in part from fees alterable by the legislature.

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