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Foreign Spectator XX

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REMARKS on the Amendments to the Federal Constitution, proposed by the Conventions of Massachusetts, New-Hampshire, New-York, Virginia, South and North-Carolina, with the minorities of Pennsylvania and Maryland, by a FOREIGN SPECTATOR.

NUMBER XX.

Various proposals are made to modify the proceedings of the federal courts. The minority of Pennsylvania stipulates, *that in controversies respecting property, and in suits between man and man, trial by jury shall remain as heretofore, as well in the federal courts, as in those of the several states*, 2d am. The institution of trial by jury, in civil cases, is very different in the several states, both in the mode and extent. In Connecticut,^(a) the common law courts have admiralty, and, to a certain extent, equity jurisdiction: in cases of importance, their general assembly is the only court of chancery. In Georgia, there are none but common law courts, and an appeal, of course, lies from the verdict of one jury to another, which is called a special jury, and for which a particular mode of appointment is prescribed.^(b)—In Pennsylvania, the supreme courts and the several courts of common pleas have some powers of a court of chancery.^(c) In New-Jersey, the courts of common law have cognizance of those causes which, in New-York, are determinable in the courts of admiralty and of probates. In the four eastern states, it is customary to appeal from one jury to another, 'till two verdicts out of three are on one side; but I do not exactly know the extent and mode of this peculiarity.^(d)

The condition, *heretofore*, in the above amendment, cannot then be applied to the continent, except it means that all matters of federal jurisdiction shall be determined, in every state, in the same manner as the like causes of state jurisdiction are. But this would certainly create an absurd and pernicious confusion, a mutilation of the whole judicial system. Again, if it relates to Pennsylvania, no state, however respectable, can presume to set up its own institution as a model for the whole empire. *The conventions of New-Hampshire and Massachusetts only desire, that in civil actions, between citizens of different states, every issue of fact arising in actions of common law, shall be tried by a jury, if the parties, or either of them, request it*—8th am. The different boundaries of equity jurisdiction would render this clause ambiguous. The same causes might, as matters of equity, be referred to the court of chancery in one state, and in another be deemed actions at common law, because determinable in a court at common law which has the usual powers of a court of chancery. Besides, this eventual introduction of juries, in cases of equity, would not be proper, nor generally agreeable.

The minority of Maryland, request, *that in all actions on debts or contracts, and in all other controversies respecting property, of which the inferior federal courts have jurisdiction, the trial of facts shall be by jury, if required by either party; and that it be expressly declared, that the state courts, in such cases, have a concurrent jurisdiction with the federal courts, with an appeal from either, only as to matter of law, to the supreme federal court, if the matter in dispute be of the value of _____ dollars*—3d am. This comprehends matters of equity jurisdiction, prize causes and other objects of admiralty courts, and actions in which a foreign state, or its citizens, may be parties. The first often requires such long, deliberate, and critical investigations, as cannot be required from a promiscuous body of men, who, though sensible and honest, have not the habits of accurate reflection and nice judgment, and who are impatient of returning to their occupations. The latter demand a competent knowledge of the laws and usages of nations, and must not be estimated by the *lex loci*. It is indeed the proper business of a jury to try matters of fact, but legal consequences are frequently so complicated with fact, as not to admit of a sufficient distinction.

The several parts of this amendment would, by their combined operation, nearly annihilate all federal jurisdiction in controversies respecting property. Suppose that a citizen of Pennsylvania, or a subject of France brings an action against a person in Rhode-Island. The defendant would request a jury, and thus bring the cause into some court of that state. From this it cannot be moved by appeal to the supreme federal court, except the value be of _____ dollars. Even in this case matter of fact cannot be revised; which however in the ordinary actions is generally the principal object of dispute. Let us reflect whether the United States can with consistency thus give up the rights of their own people, and of foreign subjects to the exclusive jurisdiction of single states. If any one of the states impairs by law the obligation of contracts, will those juries go in open contradiction to such law, even suppose them untainted by the spirit of their legislature.

The conventions of Virginia and North-Carolina grant *the supreme court appellate jurisdiction, both as to law and fact in cases of equity, and of admiralty and maritime jurisdiction; but in other cases as to matters of law only*, 14th and 15th ams. resp. They allow no inferior federal courts, but those of admiralty, as before is observed, and give the original cognizance of other matters to the state courts, to wit, *cases arising under treaties, or controversies to which the United States shall be a party, and those between parties claiming lands under the grants of different states*. (When a state is a party in any of these, they are however originally determinable in the supreme court. They are also excluded from all federal jurisdiction, if the cause of action has originated before the ratification of the new constitution, with some exceptions: same am.) What remains of those three classes after these limitations, is amenable from the state courts to the supreme court by appeal as to matter of law only, except in cases of equity, when appeal both as to law and fact is deemed preferable.

That person must be blind or unfeeling, who can assert that any precise constitutional modification would have fitted so many different opinions. The constitution has therefore wisely drawn the capital lines, leaving the rest to the national representatives. “The judicial power shall be vested in one supreme court, and such inferior courts, as the Congress may from time to time ordain and establish.” They may, and no doubt will ordain trial by jury in all civil cases that require it. After enumerating the objects of the judicial power, original jurisdiction is given to

the supreme court in certain cases; and in all the others, “appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make:” 3d art. 1st. and 2d. sect. Exceptions and regulations so unlimited, are certainly adequate to modify the appeal in every variation of affairs.

- (a) *Constitution of Connecticut.*
- (b) *Ditto of Georgia, 36th and 40th pars.*
- (c) *Ditto of Pennsylvania, sec. 24th.*
- (d) *Appeal of course.* Federalist, vol. 2, page 336.

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