

by a landlord to recover possession of real property from a tenant allegedly behind on rent, the other in a suit for damages for alleged racial discrimination in the rental of housing in violation of federal law. In the former case, the Court reasoned that its Seventh Amendment precedents “require[d] trial by jury in actions unheard of at common law, provided that the action involves rights and remedies of the sort traditionally enforced in an action at law, rather than in an action at equity or admiralty.”²⁹ The statutory cause of action, the Court found, had several counterparts in the common law, all of which involved a right to trial by jury. In the latter case, the plaintiff had argued that the Amendment was inapplicable to new causes of action created by congressional action, but the Court disagreed. “The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law.”³⁰

Omission of provision for a jury has been upheld in a number of other cases on the ground that the suit in question was not a suit at common law within the meaning of the Amendment, or that the issues raised were not peculiarly legal in their nature.³¹ Where

recovered in an action at law. *Clark v. Wooster*, 119 U.S. 322, 325 (1886); *Pease v. Rathbun-Jones Eng. Co.*, 243 U.S. 273, 279 (1917). *But see Dairy Queen v. Wood*, 369 U.S. 469 (1962) (legal claims must be tried before equitable ones).

²⁹ *Pernell v. Southall Realty Co.*, 416 U.S. 363 (1974).

³⁰ *Curtis v. Loether*, 415 U.S. 189, 194 (1974). “A damage action under the statute sounds basically in tort—the statute merely defines a new legal duty and authorizes the court to compensate a plaintiff for the injury caused by the defendants’ wrongful breach. . . . [T]his cause of action is analogous to a number of tort actions recognized at common law.” *Id.* at 195. *See also* *Chauffeurs, Teamsters and Helpers Local 391 v. Terry*, 494 U.S. 558 (1990) (suit against union for back pay for breach of duty of fair representation is a suit for compensatory damages, hence plaintiff is entitled to a jury trial); *Wooddell v. International Bhd. of Electrical Workers Local 71*, 502 U.S. 93 (1991) (similar suit against union for money damages entitles union member to jury trial; a claim for injunctive relief was incidental to the damages claim); *Feltner v. Columbia Pictures Television*, 523 U.S. 340 (1998) (jury trial required for copyright action with close analogue at common law, even though the relief sought is not actual damages but statutory damages based on what is “just”).

³¹ Among such actions or issues were, *e.g.*, (1) enforcement of claims against the United States, *McElrath v. United States*, 102 U.S. 426, 440 (1880); *see also* *Galloway v. United States*, 319 U.S. 372, 388 (1943); (2) suit under a territorial statute authorizing a special nonjury tribunal to hear claims against a municipality having no legal obligation but based on moral obligation only, *Guthrie Nat’l Bank v. Guthrie*, 173 U.S. 528, 534 (1899); *see also* *United States v. Realty Co.*, 163 U.S. 427, 439 (1896); *New Orleans v. Clark*, 95 U.S. 644, 653 (1877); (3) cancellation of a naturalization certificate for fraud, *Luria v. United States*, 231 U.S. 9, 27 (1913); (4) reversal of an order to deport an alien, *Gee Wah Lee v. United States*, 25 F.2d 107 (5th Cir. 1928), cert. denied, 277 U.S. 608 (1928); (5) damages for patent infringement, *Filer & Stowell Co. v. Diamond Iron Works*, 270 F. 489 (2d Cir. 1921), cert. denied, 256 U.S. 691 (1921); (6) reversal of an award under the Longshoremen’s and Harbor Workers’ Compensation Act, *Crowell v. Benson*, 285 U.S. 22, 45 (1932); (7) reversal of a decision of customs appraisers on the value of imports, *Auffmordt v.*