fact are to be determined by the jury under appropriate instructions by the court."[12] But it "does not exact the retention of old forms of procedure"; nor does it "prohibit the introduction of new methods of ascertaining what facts are in issue" or new rules of evidence.[13] Those matters that were tried by a jury in England in 1791 are to be so tried today and those matters, such as matters that fall under equity, and admiralty and maritime jurisprudence, that were tried by the judge in England in 1791 are to be so tried today,[14] and when new rights and remedies are created "the right of action should be analogized to its historical counterpart, at law or in equity, for the purpose of determining whether there is a right of jury trial," unless Congress has expressly prescribed the mode of trial.[15]

Courts in Which the Guarantee Applies.—The Amendment governs only courts that sit under the authority of the United States,[16] including courts in the territories[17] and the District of Columbia,[18] and does not apply generally to state courts.[19] But when a state court is enforcing a federally created right, of which the right to trial by jury is a substantial part, the state may not eliminate trial by jury as to one or more elements.[20] Ordinarily, a federal court enforcing a state-created right will follow its own rules with regard to the allocation of functions between judge and jury, a rule the Court based on the "interests" of the federal court system, eschewing reliance on the Seventh Amendment but noting its influence.[21] Where

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[12] Baltimore & Carolina Line v. Redman, 295 U.S. 654, 657 (1935); Walker v. New Mexico & So. Pac. R.R., 165 U.S. 593, 596 (1897); Gasoline Products Co. v. Champlin Ref. Co., 283 U.S. 494, 497–99 (1931); Dimick v. Schiedt, 293 U.S. 474, 476, 485–86 (1935).

[13] Gasoline Products Co. v. Champlin Ref. Co., 283 U.S. 494, 498 (1931); *Ex parte* Peterson, 253 U.S. 300, 309 (1920).

[14] Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446–47 (1830); Slocum v. New York Life Ins. Co., 228 U.S. 364, 377–78 (1913); Baltimore & Carolina Line v. Redman, 295 U.S. 654, 657 (1935); Dimick v. Schiedt, 293 U.S. 474, 476 (1935). *But see* Ross v. Bernhard, 396 U.S. 531 (1970), which may foreshadow a new analysis.

[15] Luria v. United States, 231 U.S. 9, 27–28 (1913).

[16] Pearson v. Yewdall, 95 U.S. 294, 296 (1877); Edwards v. Elliott, 88 U.S. (21 Wall.) 532, 557 (1874); The Justices v. Murray, 76 U.S. (9 Wall.) 274, 277 (1870); Walker v. Sauvinet, 92 U.S. 90 (1876); St. Louis & K.C. Land Co. v. Kansas City, 241 U.S. 419 (1916).

[17] Webster v. Reid, 52 U.S. (11 How.) 437, 460 (1851); Kennon v. Gilmer, 131 U.S. 22, 28 (1889).

[18] Capital Traction Co. v. Hof, 174 U.S. 1, 5 (1899).

[19] Minneapolis & St. Louis R.R. v. Bombolis, 241 U.S. 211 (1916). *See also* Melancon v. McKeithen, 345 F. Supp. 105 (E.D. La.) (three-judge court), *aff'd per curiam*, 409 U.S. 943 (1972); Alexander v. Virginia, 413 U.S. 836 (1973).

[20] Dice v. Akron, C. & Y. R.R., 342 U.S. 359 (1952). Four dissenters contended that the ruling was contrary to the unanimous decision in *Bombolis*.

[21] Byrd v. Blue Ridge Rural Elec. Coop., 356 U.S. 525 (1958) (citing Herron v. Southern Pacific Co., 283 U.S. 91 (1931)).