STORY, J., Opinion of the Court

SUPREME COURT OF THE UNITED STATES

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14 U.S. 304

Martin v. Hunter's Lessee

ERROR TO THE COURT OF APPEALS OF THE STATE OF VIRGINIA

Argued: --- Decided:

STORY, J., delivered the opinion of the Court.

This is a writ of error from the Court of Appeals of Virginia founded upon the refusal of that Court to obey the mandate of this Court requiring the judgment rendered in this very cause, at February Term, 1813, to be carried into due execution. The following is the judgment of the Court of Appeals rendered on the mandate:

The Court is unanimously of opinion, that the appellate power of the Supreme Court of the United States does not extend to this Court, under a sound construction of the Constitution of the United States; that so much of the 25th section of the act of Congress to establish the judicial courts of the United States, as extends the appellate jurisdiction of the Supreme Court to this Court, is not in pursuance of the Constitution of the **[p324]** United States; that the writ of error in this cause was improvidently allowed under the authority of that act; that the proceedings thereon in the Supreme Court were *coram non judice* in relation to this Court, and that obedience to its mandate be declined by the Court.

The questions involved in this judgment are of great importance and delicacy. Perhaps it is not too much to affirm that, upon their right decision rest some of the most solid principles which have hitherto been supposed to sustain and protect the Constitution itself. The great respectability, too, of the Court whose decisions we are called upon to review, and the entire deference which we entertain for the learning and ability of that Court, add much to the difficulty of the task which has so unwelcomely fallen upon us. It is, however, a source of consolation, that we have had the assistance of most able and learned arguments to aid our inquiries; and that the opinion which is now to be pronounced has been weighed with every solicitude to come to a correct result, and matured after solemn deliberation.

Before proceeding to the principal questions, it may not be unfit to dispose of some preliminary considerations which have grown out of the arguments at the bar.

The Constitution of the United States was ordained and established not by the States in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by "the people of the United States." There can be no doubt that it was competent to the people to invest the general government **[p325]** with all the powers which they might deem proper and necessary, to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be that the people had a right to prohibit to the States the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact, to make the powers of the State governments, in given cases, subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The Constitution was not, therefore, necessarily carved out of existing State sovereignties, nor a surrender of powers already existing in State institutions, for the powers of the States depend upon their own Constitutions, and the people of every State had the right to modify and restrain them according to their own views of the policy or principle. On the other hand, it is perfectly clear that the sovereign powers vested in the State governments by their respective Constitutions remained unaltered and unimpaired except so far as they were granted to the Government of the United States.

These deductions do not rest upon general reasoning, plain and obvious as they seem to be. They have been positively recognised by one of the articles in amendment of the Constitution, which declares that

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. **[p326]**

The government, then, of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication. On the other hand, this instrument, like every other grant, is to have a reasonable construction, according to the import of its terms, and where a power is expressly given in general terms, it is not to be restrained to particular cases unless that construction grow out of the context expressly or by necessary implication. The words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged.

The Constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter, and restrictions and specifications which at the present might seem salutary might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature from time to **[p327]** time to adopt its own means to effectuate legitimate objects and to mould and model the exercise of its powers as its own wisdom and the public interests, should require.

With these principles in view, principles in respect to which no difference of opinion ought to be indulged, let us now proceed to the interpretation of the Constitution so far as regards the great points in controversy.

The third article of the Constitution is that which must principally attract our attention. The 1st. section declares,

The judicial power of the United States shall be vested in one Supreme Court, and in such other inferior Courts as the Congress may, from time to time, ordain and establish.

The 2d section declares, that

The judicial power shall extend to all cases in law or equity, arising under this Constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under the grants of different States; and between a State or the citizens thereof, and foreign States, citizens, or subjects.

It then proceeds to declare, that

in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. **[p328]** In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations, as the Congress shall make.

Such is the language of the article creating and defining the judicial power of the United States. It is the voice of the whole American people solemnly declared, in establishing one great department of that Government which was, in many respects, national, and in all, supreme. It is a part of the very same instrument which was to act not merely upon individuals, but upon States, and to deprive them altogether of the exercise of some powers of sovereignty and to restrain and regulate them in the exercise of others.

Let this article be carefully weighed and considered. The language of the article throughout is manifestly designed to be mandatory upon the Legislature. Its obligatory force is so imperative, that Congress could not, without a violation of its duty, have refused to carry it into operation. The judicial power of the United States shall be vested (not may be vested) in one Supreme Court, and in such inferior Courts as Congress may, from time to time, ordain and establish. Could Congress have lawfully refused to create a Supreme Court, or to vest in it the constitutional jurisdiction?

The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive, for their services, a compensation which shall not be diminished during their continuance in office.

Could Congress create or limit any other tenure of **[p329]** the judicial office? Could they refuse to pay at stated times the stipulated salary, or diminish it during the continuance in office? But one answer can be given to these questions: it must be in the negative. The object of the Constitution was to establish three great departments of Government -- the legislative, the executive, and the judicial departments. The first was to pass laws, the second to approve and execute them, and the third to expound and enforce them. Without the latter, it would be impossible to carry into effect some of the express provisions of the Constitution. How, otherwise, could crimes against the United States be tried and punished? How could causes between two States be heard and determined? The judicial power must, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose that, under the sanction of the Constitution, they might defeat the Constitution itself, a construction which would lead to such a result cannot be sound.

The same expression, "shall be vested," occurs in other parts of the Constitution in defining the powers of the other coordinate branches of the Government. The first article declares that "all legislative powers herein granted shall be vested in a Congress of the United States." Will it be contended that the legislative power is not absolutely vested? that the words merely refer to some future act, and mean only that the legislative power may hereafter be vested? The second article declares that "the **[p330]** executive power shall be vested in a President of the United States of America." Could Congress vest it in any other person, or is it to await their good pleasure whether it is to vest at all? It is apparent that such a construction, in either case, would be utterly inadmissible. Why, then, is it entitled to a better support in reference to the judicial department?

If, then, it is a duty of Congress to vest the judicial power of the United States, it is a duty to vest the whole judicial power. The language, if imperative as to one part, is imperative as to all. If it were otherwise, this anomaly would exist, that Congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the Constitution, and thereby defeat the jurisdiction as to all, for the Constitution has not singled out any class on which Congress are bound to act in preference to others.

The next consideration is as to the Courts in which the judicial power shall be vested. It is manifest that a Supreme Court must be established; but whether it be equally obligatory to establish inferior Courts is a question of some difficulty. If Congress may lawfully omit to establish inferior Courts, it might follow that, in some of the enumerated cases, the judicial power could nowhere exist. The Supreme Court can have original jurisdiction in two classes of cases only, *viz.,* in cases affecting ambassadors, other public ministers and consuls, and in cases in which a State is a party. Congress cannot vest any portion of the judicial power of the United States except in Courts ordained and established by **[p331]** itself, and if, in any of the cases enumerated in the Constitution, the State courts did not then possess jurisdiction, the appellate jurisdiction of the Supreme Court (admitting that it could act on State courts) could not reach those cases, and, consequently, the injunction of the Constitution that the judicial power "shall be vested," would be disobeyed. It would seem therefore to follow that Congress are bound to create some inferior Courts in which to vest all that jurisdiction which, under the Constitution, is exclusively vested in the United States, and of which the Supreme Court cannot take original cognizance. They might establish one or more inferior Courts; they might parcel out the

jurisdiction among such Courts, from time to time, at their own pleasure. But the whole judicial power of the United States should be at all times vested, either in an original or appellate form, in some Courts created under its authority.

This construction will be fortified by an attentive examination of the second section of the third article. The words are "the judicial power shall extend," &c. Much minute and elaborate criticism has been employed upon these words. It has been argued that they are equivalent to the words "may extend," and that "extend" means to widen to new cases not before within the scope of the power. For the reason which have been already stated, we are of opinion that the words are used in an imperative sense. They import an absolute grant of judicial power. They cannot have a relative signification applicable to powers already granted, for the American people **[p332]** had not made any previous grant. The Constitution was for a new Government, organized with new substantive powers, and not a mere supplementary charter to a Government already existing. The Confederation was a compact between States, and its structure and powers were wholly unlike those of the National Government. The Constitution was an act of the people of the United States to supersede the Confederation, and not to be ingrafted on it, as a stock through which it was to receive life and nourishment.

If, indeed, the relative signification could be fixed upon the term "extend," it could not (as we shall hereafter see) subserve the purposes of the argument in support of which it has been adduced. This imperative sense of the words "shall extend" is strengthened by the context. It is declared that, "in all cases affecting ambassadors, &c., that the Supreme Court shall have original jurisdiction." Could Congress withhold original jurisdiction in these cases from the Supreme Court? The clause proceeds --

in all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The very exception here shows that the framers of the Constitution used the words in an imperative sense. What necessity could there exist for this exception if the preceding words were not used in that sense? Without such exception, Congress would, by the preceding words, have possessed a complete power to regulate the appellate jurisdiction, if the language were **[p333]** only equivalent to the words "may have" appellate jurisdiction. It is apparent, then, that the exception was intended as a limitation upon the preceding words, to enable Congress to regulate and restrain the appellate power, as the public interests might, from time to time, require.

Other clauses in the Constitution might be brought in aid of this construction, but a minute examination of them cannot be necessary, and would occupy too much time. It will be found that whenever a particular object is to be effected, the language of the Constitution is always imperative, and cannot be disregarded without violating the first principles of public duty. On the other hand, the legislative powers are given in language which implies discretion, as, from the nature of legislative power, such a discretion must ever be exercised.

It being, then, established that the language of this clause is imperative, the next question is as to the cases to which it shall apply. The answer is found in the Constitution itself. The judicial power shall extend to all the cases enumerated in the Constitution. As the mode is not limited, it

may extend to all such cases, in any form, in which judicial power may be exercised. It may therefore extend to them in the shape of original or appellate jurisdiction, or both, for there is nothing in the nature of the cases which binds to the exercise of the one in preference to the other.

In what cases (if any) is this judicial power exclusive, or exclusive at the election of Congress? It will be observed that there are two classes of cases enumerated **[p334]** in the Constitution between which a distinction seems to be drawn. The first class includes cases arising under the Constitution, laws, and treaties of the United States, cases affecting ambassadors, other public ministers and consuls, and cases of admiralty and maritime jurisdiction. In this class, the expression is, and that the judicial power shall extend to all cases; but in the subsequent part of the clause which embraces all the other cases of national cognizance, and forms the second class, the word "all" is dropped, seemingly *ex industria.* Here the judicial authority is to extend to controversies (not to all controversies) to which the United States shall be a party, &c. From this difference of phraseology, perhaps, a difference of constitutional intention may, with propriety, be inferred. It is hardly to be presumed that the variation in the language could have been accidental. It must have been the result of some determinate reason, and it is not very difficult to find a reason sufficient to support the apparent change of intention. In respect to the first class, it may well have been the intention of the framers of the Constitution imperatively to extend the judicial power either in an original or appellate form to all cases, and in the latter class to leave it to Congress to qualify the jurisdiction, original or appellate, in such manner as public policy might dictate.

The vital importance of all the cases enumerated in the first class to the national sovereignty might warrant such a distinction. In the first place, as to cases arriving under the Constitution, laws, and treaties of the United States. Here the State courts **[p335]** could not ordinarily possess a direct jurisdiction. The jurisdiction over such cases could not exist in the State courts previous to the adoption of the Constitution, and it could not afterwards be directly conferred on them, for the Constitution expressly requires the judicial power to be vested in courts ordained and established by the United States. This class of cases would embrace civil as well as criminal jurisdiction, and affect not only our internal policy, but our foreign relations. It would therefore be perilous to restrain it in any manner whatsoever, inasmuch as it might hazard the national safety. The same remarks may be urged as to cases affecting ambassadors, other public ministers, and consuls, who are emphatically placed under the guardianship of the law of nations, and as to cases of admiralty and maritime jurisdiction, the admiralty jurisdiction embraces all questions of prize and salvage, in the correct adjudication of which foreign nations are deeply interested; it embraces also maritime torts, contracts, and offences, in which the principles of the law and comity of nations often form an essential inquiry. All these cases, then, enter into the national policy, affect the national rights, and may compromit the national sovereignty. The original or appellate jurisdiction ought not therefore to be restrained, but should be commensurate with the mischiefs intended to be remedied, and, of course, should extend to all cases whatsoever.

A different policy might well be adopted in reference to the second class of cases, for although it might be fit that the judicial power should extend **[p336]** to all controversies to which the United States should be a party, yet this power night not have been imperatively given, least it should

imply a right to take cognizance of original suits brought against the United States as defendants in their own Courts. It might not have been deemed proper to submit the sovereignty of the United States, against their own will to judicial cognizance, either to enforce rights or to prevent wrongs; and as to the other cases of the second class, they might well be left to be exercised under the exceptions and regulations which Congress might, in their wisdom, choose to apply. It is also worthy of remark that Congress seem, in a good degree, in the establishment of the present judicial system, to have adopted this distinction. In the first class of cases, the jurisdiction is not limited except by the subject matter; in the second, it is made materially to depend upon the value in controversy.

We do not, however, profess to place any implicit reliance upon the distinction which has here been stated and endeavoured to be illustrated. It has the rather been brought into view in deference to the legislative opinion, which has so long acted upon, and enforced this distinction. But there is, certainly, vast weight in the argument which has been urged that the Constitution is imperative upon Congress to vest all the judicial power of the United States, in the shape of original jurisdiction, in the Supreme and inferior courts created under its own authority. At all events, whether the one construction or the other prevail, it is manifest that the judicial power of the **[p337]** United States is unavoidably, in some cases, exclusive of all State authority, and in all others, may be made so at the election of Congress. No part of the criminal jurisdiction of the United States can, consistently with the Constitution, be delegated to State tribunals. The admiralty and maritime jurisdiction is of the same exclusive cognizance, and it can only be in those cases where, previous to the Constitution, State tribunals possessed jurisdiction independent of national authority that they can now constitutionally exercise a concurrent jurisdiction. Congress, throughout the Judicial Act, and particularly in the 9th, 11th, and 13th sections, have legislated upon the supposition that, in all the cases to which the judicial powers of the United States extended, they might rightfully vest exclusive jurisdiction in their own Courts.

But even admitting that the language of the Constitution is not mandatory, and that Congress may constitutionally omit to vest the judicial power in Courts of the United States, it cannot be denied that, when it is vested, it may be exercised to the utmost constitutional extent.

This leads us to the consideration of the great question as to the nature and extent of the appellate jurisdiction of the United States. We have already seen that appellate jurisdiction is given by the Constitution to the Supreme Court in all cases where it has not original jurisdiction, subject, however, to such exceptions and regulations as Congress may prescribe. It is therefore capable of embracing every case enumerated in the Constitution which is not exclusively to be decided by way of original **[p338]** jurisdiction. But the exercise of appellate jurisdiction is far from being limited by the terms of the Constitution to the Supreme Court. There can be no doubt that Congress may create a succession of inferior tribunals, in each of which it may vest appellate as well as original jurisdiction. The judicial power is delegated by the Constitution in the most general terms, and may therefore be exercised by Congress under every variety of form of appellate or original jurisdiction. And as there is nothing in the Constitution which restrains or limits this power, it must therefore, in all other cases, subsist in the utmost latitude of which, in its own nature, it is susceptible.

As, then, by the terms of the Constitution, the appellate jurisdiction is not limited as to the Supreme Court, and as to this Court it may be exercised in all other cases than those of which it has original cognizance, what is there to restrain its exercise over State tribunals in the enumerated cases? The appellate power is not limited by the terms of the third article to any particular Courts. The words are, "the judicial power (which includes appellate power) shall extend to all cases," &c., and "in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction." It is the case, then, and not the court, that gives the jurisdiction. If the judicial power extends to the case, it will be in vain to search in the letter of the Constitution for any qualification as to the tribunal where it depends. It is incumbent, then, upon those who assert such a qualification to show its existence by necessary implication. If the **[p339]** text be clear and distinct, no restriction upon its plain and obvious import ought to be admitted, unless the inference be irresistible.

If the Constitution meant to limit the appellate jurisdiction to cases pending in the Courts of the United States, it would necessarily follow that the jurisdiction of these Courts would, in all the cases enumerated in the Constitution, be exclusive of State tribunals. How otherwise could the jurisdiction extend to all cases arising under the Constitution, laws, and treaties of the United States, or to all cases of admiralty and maritime jurisdiction? If some of these cases might be entertained by State tribunals, and no appellate jurisdiction as to them should exist, then the appellate power would not extend to all, but to some, cases. If State tribunals might exercise concurrent jurisdiction over all or some of the other classes of cases in the Constitution without control, then the appellate jurisdiction of the United States might, as to such cases, have no real existence, contrary to the manifest intent of the Constitution. Under such circumstances, to give effect to the judicial power, it must be construed to be exclusive, and this not only when the *casus foederis* should arise directly, but when it should arise incidentally in cases pending in State courts. This construction would abridge the jurisdiction of such Court far more than has been ever contemplated in any act of Congress.

On the other hand, if, as has been contended, a discretion be vested in Congress to establish or not to establish inferior Courts, at their own pleasure, and **[p340]** Congress should not establish such Courts, the appellate jurisdiction of the Supreme Court would have nothing to act upon unless it could act upon cases pending in the State courts. Under such circumstances it must be held that the appellate power would extend to State courts, for the Constitution is peremptory that it shall extend to certain enumerated cases, which cases could exist in no other Courts. Any other construction, upon this supposition, would involve this strange contradiction that a discretionary power vested in Congress, and which they might rightfully omit to exercise, would defeat the absolute injunctions of the Constitution in relation to the whole appellate power.

But it is plain that the framers of the Constitution did contemplate that cases within the judicial cognizance of the United States not only might, but would, arise in the State courts in the exercise of their ordinary jurisdiction. With this view, the sixth article declares, that

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

It is obvious that this obligation is imperative upon the State judges in their official, and not merely in their private, capacities. From the very nature of their judicial duties, they would be called upon to pronounce the law applicable to the case in judgment. They were not to decide merely **[p341]** according to the laws or Constitution of the State, but according to the Constitution, laws and treaties of the United States -- "the supreme law of the land."

A moment's consideration will show us the necessity and propriety of this provision in cases where the jurisdiction of the State courts is unquestionable. Suppose a contract for the payment of money is made between citizens of the same State, and performance thereof is sought in the courts of that State; no person can doubt that the jurisdiction completely and exclusively attaches, in the first instance, to such courts. Suppose at the trial the defendant sets up in his defence a tender under a State law making paper money a good tender, or a State law impairing the obligation of such contract, which law, if binding, would defeat the suit. The Constitution of the United States has declared that no State shall make any thing but gold or silver coin a tender in payment of debts, or pass a law impairing the obligation of contracts. If Congress shall not have passed a law providing for the removal of such a suit to the courts of the United States, must not the State court proceed to hear and determine it? Can a mere plea in defence be, of itself, a bar to further proceedings, so as to prohibit an inquiry into its truth or legal propriety when no other tribunal exists to whom judicial cognizance of such cases is confided? Suppose an indictment for a crime in a State court, and the defendant should allege in his defence that the crime was created by an *ex post facto* act of the State, must not the State court, in the exercise of a jurisdiction which has already rightfully attached, have a **[p342]** right to pronounce on the validity and sufficiency of the defence? It would be extremely difficult, upon any legal principles, to give a negative answer to these inquiries. Innumerable instances of the same sort might be stated in illustration of the position, and unless the State courts could sustain jurisdiction in such cases, this clause of the sixth article would be without meaning or effect, and public mischiefs of a most enormous magnitude would inevitably ensue.

It must therefore be conceded that the Constitution not only contemplated, but meant to provide for, cases within the scope of the judicial power of the United States which might yet depend before State tribunals. It was foreseen that, in the exercise of their ordinary jurisdiction, State courts would incidentally take cognizance of cases arising under the Constitution, the laws, and treaties of the United States. Yet to all these cases the judicial power, by the very terms of the Constitution, is to extend. It cannot extend by original jurisdiction if that was already rightfully and exclusively attached in the State courts, which (as has been already shown) may occur; it must therefore extend by appellate jurisdiction, or not at all. It would seem to follow that the appellate power of the United States must, in such cases, extend to State tribunals; and if in such cases, there is no reason why it should not equally attach upon all others within the purview of the Constitution.

It has been argued that such an appellate jurisdiction over State courts is inconsistent with the genius **[p343]** of our Governments, and the spirit of the Constitution. That the latter was never designed to act upon State sovereignties, but only upon the people, and that, if the power exists, it will materially impair the sovereignty of the States, and the independence of their courts. We cannot yield to the force of this reasoning; it assumes principles which we cannot admit, and draws conclusions to which we do not yield our assent.

It is a mistake that the Constitution was not designed to operate upon States in their corporate capacities. It is crowded with provisions which restrain or annul the sovereignty of the States in some of the highest branches of their prerogatives. The tenth section of the first article contains a long list of disabilities and prohibitions imposed upon the States. Surely, when such essential portions of State sovereignty are taken away or prohibited to be exercised, it cannot be correctly asserted that the Constitution does not act upon the States. The language of the Constitution is also imperative upon the States as to the performance of many duties. It is imperative upon the State legislatures to make laws prescribing the time, places, and manner of holding elections for senators and representatives, and for electors of President and Vice-President. And in these as well as some other cases, Congress have a right to revise, amend, or supersede the laws which may be passed by State legislatures. When therefore the States are stripped of some of the highest attributes of sovereignty, and the same are given to the United States; when the legislatures of the States are, in some **[p344]** respects, under the control of Congress, and in every case are, under the Constitution, bound by the paramount authority of the United States, it is certainly difficult to support the argument that the appellate power over the decisions of State courts is contrary to the genius of our institutions. The courts of the United States can, without question, revise the proceedings of the executive and legislative authorities of the States, and if they are found to be contrary to the Constitution, may declare them to be of no legal validity. Surely the exercise of the same right over judicial tribunals is not a higher or more dangerous act of sovereign power.

Nor can such a right be deemed to impair the independence of State judges. It is assuming the very ground in controversy to assert that they possess an absolute independence of the United States. In respect to the powers granted to the United States, they are not independent; they are expressly bound to obedience by the letter of the Constitution, and if they should unintentionally transcend their authority or misconstrue the Constitution, there is no more reason for giving their judgments an absolute and irresistible force than for giving it to the acts of the other coordinate departments of State sovereignty.

The argument urged from the possibility of the abuse of the revising power is equally unsatisfactory. It is always a doubtful course to argue against the use or existence of a power from the possibility of its abuse. It is still more difficult by such an argument to ingraft upon a general power a restriction **[p345]** which is not to be found in the terms in which it is given. From the very nature of things, the absolute right of decision, in the last resort, must rest somewhere -- wherever it may be vested, it is susceptible of abuse. In all questions of jurisdiction, the inferior or appellate court must pronounce the final judgment; and common sense, as well as legal reasoning, has conferred it upon the latter.

It has been further argued against the existence of this appellate power that it would form a novelty in our judicial institutions. This is certainly a mistake. I n the Articles of Confederation, an instrument framed with infinitely more deference to State rights and State jealousies, a power was given to Congress to establish "courts for revising and determining, finally, appeals in all cases of captures." It is remarkable that no power was given to entertain original jurisdiction in such cases, and consequently the appellate power (although not so expressed in terms) was altogether to be exercised in revising the decisions of State tribunals. This was, undoubtedly, so far a surrender of State sovereignty, but it never was supposed to be a power fraught with public

danger or destructive of the independence of State judges. On the contrary, it was supposed to be a power indispensable to the public safety, inasmuch as our national rights might otherwise be compromitted and our national peace been dangered. Under the present Constitution, the prize jurisdiction is confined to the courts of the United States, and a power to revise the decisions of State courts, if they should assert jurisdiction over prize causes, cannot be less **[p346]** important or less useful than it was under the Confederation.

In this connexion, we are led again to the construction of the words of the Constitution, "the judicial power shall extend," &c. If, as has been contended at the bar, the term "extend" have a relative signification, and mean to widen an existing power, it will then follow, that, as the confederation gave an appellate power over State tribunals, the Constitution enlarged or widened that appellate power to all the other cases in which jurisdiction is given to the Courts of the United States. It is not presumed that the learned counsel would choose to adopt such a conclusion.

It is further argued that no great public mischief can result from a construction which shall limit the appellate power of the United States to cases in their own Courts, first because State judges are bound by an oath to support the Constitution of the United States, and must be presumed to be men of learning and integrity, and secondly because Congress must have an unquestionable right to remove all cases within the scope of the judicial power from the State courts to the courts of the United States at any time before final judgment, though not after final judgment. As to the first reason -- admitting that the judges of the State courts are, and always will be, of as much learning, integrity, and wisdom as those of the courts of the United States (which we very cheerfully admit), it does not aid the argument. It is manifest that the Constitution has proceeded upon a theory of its own, and given or withheld **[p347]** powers according to the judgment of the American people, by whom it was adopted. We can only construe its powers, and cannot inquire into the policy or principles which induced the grant of them. The Constitution has presumed (whether rightly or wrongly we do not inquire) that State attachments, State prejudices, State jealousies, and State interests might sometimes obstruct or control, or be supposed to obstruct or control, the regular administration of justice. Hence, in controversies between States, between citizens of different States, between citizens claiming grants under different States, between a State and its citizens, or foreigners, and between citizens and foreigners, it enables the parties, under the authority of Congress, to have the controversies heard, tried, and determined before the national tribunals. No other reason than that which has been stated can be assigned why some, at least, of those cases should not have been left to the cognizance of the State courts. In respect to the other enumerated cases -- the cases arising under the Constitution, laws, and treaties of the United States, cases affecting ambassadors and other public ministers, and cases of admiralty and maritime jurisdiction -- reasons of a higher and more extensive nature, touching the safety, peace, and sovereignty of the nation, might well justify a grant of exclusive jurisdiction.

This is not all. A motive of another kind, perfectly compatible with the most sincere respect for State tribunals, might induce the grant of appellate power over their decisions. That motive is the importance, and even necessity, of uniformity of decisions **[p348]** throughout the whole United States upon all subjects within the purview of the Constitution. Judges of equal learning and integrity in different States might differently interpret a statute or a treaty of the United States, or even the Constitution itself; if there were no revising authority to control these jarring and

discordant judgments and harmonize them into uniformity, the laws, the treaties, and the Constitution of the United States would be different in different States, and might perhaps never have precisely the same construction, obligation, or efficacy in any two States. The public mischiefs that would attend such a State of things would be truly deplorable, and it cannot be believed that they could have escaped the enlightened convention which formed the Constitution. What, indeed, might then have been only prophecy has now become fact, and the appellate jurisdiction must continue to be the only adequate remedy for such evils.

There is an additional consideration, which is entitled to great weight. The Constitution of the United States was designed for the common and equal benefit of all the people of the United States. The judicial power was granted for the same benign and salutary purposes. It was not to be exercised exclusively for the benefit of parties who might be plaintiffs, and would elect the national forum, but also for the protection of defendants who might be entitled to try their rights, or assert their privileges, before the same forum. Yet, if the construction contended for be correct, it will follow that, as the plaintiff may always elect the State court, the defendant **[p349]** may be deprived of all the security which the Constitution intended in aid of his rights. Such a State of things can in no respect be considered as giving equal rights. To obviate this difficulty, we are referred to the power which it is admitted Congress possess to remove suits from State courts to the national Courts, and this forms the second ground upon which the argument we are considering has been attempted to be sustained.

This power of removal is not to be found in express terms in any part of the Constitution; if it be given, it is only given by implication, as a power necessary and proper to carry into effect some express power. The power of removal is certainly not, in strictness of language; it presupposes an exercise of original jurisdiction to have attached elsewhere. The existence of this power of removal is familiar in courts acting according to the course of the common law in criminal as well as civil cases, and it is exercised before as well as after judgment. But this is always deemed in both cases an exercise of appellate, and not of original, jurisdiction. If, then, the right of removal be included in the appellate jurisdiction, it is only because it is one mode of exercising that power, and as Congress is not limited by the Constitution to any particular mode or time of exercising it, it may authorize a removal either before or after judgment. The time, the process, and the manner must be subject to its absolute legislative control. A writ of error is indeed but a process which removes the record of one court to the possession of another court, **[p350]** and enables the latter to inspect the proceedings, and give such judgment as its own opinion of the law and justice of the case may warrant. There is nothing in the nature of the process which forbids it from being applied by the legislature to interlocutory as well as final judgments. And if the right of removal from State courts exist before judgment, because it is included in the appellate power, it must for the same reason exist after judgment. And if the appellate power by the Constitution does not include cases pending in State courts, the right of removal, which is but a mode of exercising that power, cannot be applied to them. Precisely the same objections therefore exist as to the right of removal before judgment as after, and both must stand or fall together. Nor, indeed, would the force of the arguments on either side materially vary if the right of removal were an exercise of original jurisdiction. It would equally trench upon the jurisdiction and independence of State tribunals.

The remedy, too, of removal of suits would be utterly inadequate to the purposes of the Constitution if it could act only on the parties, and not upon the State courts. In respect to criminal prosecutions, the difficulty seems admitted to be insurmountable; and in respect to civil suits, there would, in many cases, be rights without corresponding remedies. If State courts should deny the constitutionality of the authority to remove suits from their cognizance, in what manner could they be compelled to relinquish the jurisdiction? In respect to criminal cases, there would at once be an end of all control, and the **[p351]** state decisions would be paramount to the Constitution; and though, in civil suits, the courts of the United States might act upon the parties, yet the State courts might act in the same way, and this conflict of jurisdictions would not only jeopardise private rights, but bring into imminent peril the public interests.

On the whole, the Court are of opinion that the appellate power of the United States does extend to cases pending in the State courts, and that the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases by a writ of error, is supported by the letter and spirit of the Constitution. We find no clause in that instrument which limits this power, and we dare not interpose a limitation where the people have not been disposed to create one.

Strong as this conclusion stands upon the general language of the Constitution, it may still derive support from other sources. It is an historical fact that this exposition of the Constitution, extending its appellate power to State courts, was, previous to its adoption, uniformly and publicly avowed by its friends and admitted by its enemies as the basis of their respective reasonings, both in and out of the State conventions. It is an historical fact that, at the time when the Judiciary Act was submitted to the deliberations of the first Congress, composed, as it was, not only of men of great learning and ability but of men who had acted a principal part in framing, supporting, or opposing that Constitution, the same exposition was explicitly declared and admitted by the friends and by the opponents of that system. It **[p352]** is an historical fact that the Supreme Court of the United States have, from time to time, sustained this appellate jurisdiction in a great variety of cases brought from the tribunals of many of the most important States in the Union, and that no State tribunal has ever breathed a judicial doubt on the subject, or declined to obey the mandate of the Supreme Court until the present occasion. This weight of contemporaneous exposition by all parties, this acquiescence of enlightened State courts, and these judicial decisions of the Supreme Court through so long a period do, as we think, place the doctrine upon a foundation of authority which cannot be shaken without delivering over the subject to perpetual and irremediable doubts.

The next question which has been argued is whether the case at bar be within the purview of the 25th section of the Judiciary Act, so that this Court may rightfully sustain the present writ of error. This section, stripped of passages unimportant in this inquiry, enacts, in substance, that a final judgment or decree in any suit in the highest court of law or equity of a State, where is drawn in question the validity of a treaty or statute of, or an authority excised under, the United States, and the decision is against their validity, or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws, of the United States, and the decision is in favour of such their validity, or of the Constitution, or of a treaty or statute of, or commission held under, the United **[p353]** States, and the decision is against the title, right, privilege, or exemption specially set up

or claimed by either party under such clause of the said Constitution, treaty, statute, or commission, may be reexamined and reversed or affirmed in the Supreme Court of the United States upon a writ of error in the same manner, and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a Circuit Court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision, as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears upon the face of the record, and immediately respects the before-mentioned question of validity or construction of the said Constitution, treaties, statutes, commissions, or authorities in dispute.

That the present writ of error is founded upon a judgment of the Court below which drew in question and denied the validity of a statute of the United States is incontrovertible, for it is apparent upon the face of the record. That this judgment is final upon the rights of the parties is equally true, for if well founded, the former judgment of that court was of conclusive authority, and the former judgment of this Court utterly void. The decision was therefore equivalent to a perpetual stay of proceedings upon **[p354]** the mandate, and a perpetual denial of all the rights acquired under it. The case, then, falls directly within the terms of the Act. It is a final judgment in a suit in a State court denying the validity of a statute of the United States, and unless a distinction can be made between proceedings under a mandate and proceedings in an original suit, a writ of error is the proper remedy to revise that judgment. In our opinion, no legal distinction exists between the cases.

In causes remanded to the Circuit Courts, if the mandate be not correctly executed, a writ of error or appeal has always been supposed to be a proper remedy, and has been recognized as such in the former decisions of this Court. The statute gives the same effect to writs of error from the judgments of State courts as of the Circuit Courts, and in its terms provides for proceedings where the same cause may be a second time brought up on writ of error before the Supreme Court. There is no limitation or description of the cases to which the second writ of error may be applied, and it ought therefore to be coextensive with the cases which fall within the mischiefs of the statute. It will hardly be denied that this cause stands in that predicament; and if so, then the appellate jurisdiction of this Court has rightfully attached.

But it is contended, that the former judgment of this Court was rendered upon a case not within the purview of this section of the Judicial Act, and that, as it was pronounced by an incompetent jurisdiction, it was utterly void, and cannot be a sufficient foundation **[p355]** to sustain any subsequent proceedings. To this argument several answers may be given. In the first place, it is not admitted that, upon this writ of error, the former record is before us. The error now assigned is not in the former proceedings, but in the judgment rendered upon the mandate issued after the former judgment. The question now litigated is not upon the construction of a treaty, but upon the constitutionality of a statute of the United States, which is clearly within our jurisdiction. In the next place, in ordinary cases a second writ of error has never been supposed to draw in question the propriety of the first judgment, and it is difficult to perceive how such a proceeding could be sustained upon principle. A final judgment of this Court is supposed to be conclusive upon the rights which it decides, and no statute has provided any process by which this Court can

revise its own judgments. In several cases which have been formerly adjudged in this Court, the same point was argued by counsel, and expressly overruled. It was solemnly held that a final judgment of this Court was conclusive upon the parties, and could not be reexamined.

In this case, however, from motives of a public nature, we are entirely willing to wave all objections and to go back and reexamine the question of jurisdiction as it stood upon the record formerly in judgment. We have great confidence that our jurisdiction will, on a careful examination, stand confirmed as well upon principle as authority. It will be recollected that the action was an ejectment for a parcel of land in the Northern Neck, formerly belonging to **[p356]** Lord Fairfax. The original plaintiff claimed the land under a patent granted to him by the State of Virginia in 1789, under a title supposed to be vested in that State by escheat or forfeiture. The original defendant claimed the land as devisee under the will of Lord Fairfax. The parties agreed to a special statement of facts in the nature of a special verdict, upon which the District Court of Winchester, in 1793, gave a general judgment for the defendant, which judgment was afterwards reversed in 1810 by the Court of Appeals, and a general judgment was rendered for the plaintiff; and from this last judgment a writ of error was brought to the Supreme Court. The statement of facts contained a regular deduction of the title of Lord Fairfax until his death, in 1781, and also the title of his devisee. It also contained a regular deduction of the title of the plaintiff, under the State of Virginia, and further referred to the treaty of peace of 1783, and to the acts of Virginia respecting the lands of Lord Fairfax, and the supposed escheat or forfeiture thereof, as component parts of the case. No facts disconnected with the titles thus set up by the parties were alleged on either side. It is apparent from this summary explanation that the title thus set up by the plaintiff might be open to other objections; but the title of the defendant was perfect and complete if it was protected by the treaty of 1783. If therefore this Court had authority to examine into the whole record, and to decide upon the legal validity of the title of the defendant, as well as its application to the treaty of peace, it would be a case within the express purview **[p357]** of the 25th section of the Act, for there was nothing in the record upon which the Court below could have decided but upon the title as connected with the treaty; and if the title was otherwise good, its sufficiency must have depended altogether upon its protection under the treaty. Under such circumstances it was strictly a suit where was drawn in question the construction of a treaty, and the decision was against the title specially set up or claimed by the defendant. It would fall, then, within the very terms of the Act.

The objection urged at the bar is that this Court cannot inquire into the title, but simply into the correctness of the construction put upon the treaty by the Court of Appeals, and that their judgment is not reexaminable here unless it appear on the face of the record that some construction was put upon the treaty. If therefore that court might have decided the case upon the invalidity of the title (and, *non constat,* that they did not) independent of the treaty, there is an end of the appellate jurisdiction of this Court. In support of this objection, much stress is laid upon the last clause of the section, which declares that no other cause shall be regarded as a ground of reversal than such as appears on the face of the record and immediately respects the construction of the treaty, &c., in dispute.

If this be the true construction of the section, it will be wholly inadequate for the purposes which it professes to have in view, and may be evaded at pleasure. But we see no reason for adopting this narrow construction; and there are the strongest **[p358]** reasons against it founded upon the

words as well as the intent of the legislature. What is the case for which the body of the section provides a remedy by writ of error? The answer must be in the words of the section, a suit where is drawn in question the construction of a treaty, and the decision is against the title set up by the party. It is therefore the decision against the title set up with reference to the treaty, and not the mere abstract construction of the treaty itself, upon which the statute intends to found the appellate jurisdiction. How, indeed, can it be possible to decide whether a title be within the protection of a treaty until it is ascertained what that title is, and whether it have a legal validity? From the very necessity of the case, there must be a preliminary inquiry into the existence and structure of the title before the Court can construe the treaty in reference to that title. If the Court below should decide, that the title was bad, and therefore not protected by the treaty, must not this Court have a power to decide the title to be good, and therefore protected by the treaty? Is not the treaty, in both instances, equally construed, and the title of the party, in reference to the treaty, equally ascertained and decided? Nor does the clause relied on in the objection impugn this construction. It requires that the error upon which the Appellate Court is to decide shall appear on the face of the record, and immediately respect the questions before mentioned in the section. One of the questions is as to the construction of a treaty upon a title specially set up by a party, and every error that immediately respects **[p359]** that question must, of course, be within the cognizance, of the Court. The title set up in this case is apparent upon the face of the record, and immediately respects the decision of that question; any error therefore in respect to that title must be reexaminable, or the case could never be presented to the Court.

The restraining clause was manifestly intended for a very different purpose. It was foreseen that the parties might claim under various titles, and might assert various defences altogether independent of each other. The Court might admit or reject evidence applicable to one particular title, and not to all, and, in such cases, it was the intention of Congress to limit what would otherwise have unquestionably attached to the Court, the right of revising all the points involved in the cause. It therefore restrains this right to such errors as respect the questions specified in the section; and, in this view, it has an appropriate sense, consistent with the preceding clauses. We are therefore satisfied that, upon principle, the case was rightfully before us, and if the point were perfectly new, we should not hesitate to assert the jurisdiction.

But the point has been already decided by this Court upon solemn argument. In *Smith v. The State of Maryland,* 6 Cranch 286, precisely the same objection was taken by counsel, and overruled by the unanimous opinion of the Court. That case was, in some respects, stronger than the present; for the court below decided expressly that the party had no title, and therefore the treaty could not operate **[p360]** upon it. This Court entered into an examination of that question, and, being of the same opinion, affirmed the judgment. There cannot, then, be an authority which could more completely govern the present question.

It has been asserted at the bar that, in point of fact, the Court of Appeals did not decide either upon the treaty or the title apparent upon the record, but upon a compromise made under an act of the legislature of Virginia. If it be true (as we are informed) that this was a private act, to take effect only upon a certain condition, *viz.,* the execution of a deed of release of certain lands, which was matter *in pais,* it is somewhat difficult to understand how the Court could take judicial cognizance of the act or of the performance of the condition, unless spread upon the record. At all events, we are bound to consider that the Court did decide upon the facts actually

before them. The treaty of peace was not necessary to have been stated, for it was the supreme law of the land, of which all Courts must take notice. And at the time of the decision in the Court of Appeals and in this Court, another treaty had intervened, which attached itself to the title in controversy and, of course, must have been the supreme law to govern the decision if it should be found applicable to the case. It was in this view that this Court did not deem it necessary to rest its former decision upon the treaty of peace, believing that the title of the defendant was, at all events, perfect under the treaty of 1794. **[p361]**

The remaining questions respect more the practice than the principles of this Court. The forms of process and the modes of proceeding in the exercise of jurisdiction are, with few exceptions, left by the Legislature to be regulated and changed as this Court may, in its discretion, deem expedient. By a rule of this Court, the return of a copy of a record of the proper court, under the seal of that court, annexed to the writ of error, is declared to be "a sufficient compliance with the mandate of the writ." The record in this case is duly certified by the clerk of the Court of Appeals and annexed to the writ of error. The objection therefore which has been urged to the sufficiency of the return cannot prevail.

Another objection is that it does not appear that the judge who granted the writ of error did, upon issuing the citation, take the bond required by the 22d section of the Judiciary Act.

We consider that provision as merely directory to the judge; and that an omission does not avoid the writ of error. If any party be prejudiced by the omission, this Court can grant him summary relief by imposing such terms on the other party as, under all the circumstances, may be legal and proper. But there is nothing in the record by which we can judicially know whether a bond has been taken or not, for the statute does not require the bond to be returned to this Court, and it might with equal propriety be lodged in the Court below, who would ordinarily execute the judgment to be rendered on the writ. And the presumption of law is, until the contrary **[p362]** appears, that every judge who signs a citation has obeyed the injunctions of the Act.

We have thus gone over all the principal questions in the cause, and we deliver our judgment with entire confidence that it is consistent with the Constitution and laws of the land.

We have not thought it incumbent on us to give any opinion upon the question, whether this Court have authority to issue a writ of mandamus to the Court of Appeals to enforce the former judgments, as we do not think it necessarily involved in the decision of this cause.

It is the opinion of the whole Court that the judgment of the Court of Appeals of Virginia, rendered on the mandate in this cause, be reversed, and the judgment of the District Court, held at Winchester, be, and the same is hereby, affirmed.