Crowell Vs. Randell

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Appellant : Crowell

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Crowell v. Randell

35 U.S. (10 Pet.) 368

ERROR TO THE SUPERIOR COURT

OF THE STATE OF DELAWARE

SYLLABUS

The twenty-fifth section of the Judiciary Act of 1780 confers appellate jurisdiction in the Supreme Court from final judgments and decrees in any suit in the highest court of law or equity of a state in which a decision in the suit could be had in three

classes of cases: first, where is drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision is against their validity; secondly, 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 favor of such, their validity; thirdly, where is drawn in question the construction of any clause of the Constitution or of a treaty or statute of or commission held under the United 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. The section then goes on to provide that 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 questions of validity or construction of the said Constitution, treaties, statutes, commissions, or authorities in dispute.

In the interpretation of this section of the act of 1789, it has been uniformly held that to give this Court appellate jurisdiction, two things should have occurred and be apparent in the record: first that someone of the questions stated in the section did arise in the court below, and secondly that a decision was actually made thereon by the same court in the manner required by the section. If both of these do not appear on the record, the appellate jurisdiction fails. It is not sufficient to show that such a question might have occurred, or such a decision might have been made in the court below. It must be demonstrable that they did exist, and were made.

It has been decided that it is not indispensable that it should appear on the record in *totidem verbis* or by direct add positive statement, that the question was made and the decision given by the court below on the very point, but that it is sufficient if it is clear from the facts stated, by just and necessary inference, that the question was made and that the court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question as indispensable to that judgment.

A review of the cases of *Owings v. Norwood's Lessee,* 5 Cranch 344, 2 Cond. 275; *Smith v. State of Maryland,* 6 Cranch 281, 2 Cond. 377; *Martin v. Hunter's Lessee,* 1 Wheat. 304, 3 Cond. 575; *Inglee v. Coolidge,* 2 Wheat. 363, 4 Cond. 155; *Miller v. Nicholls,* 4 Wheat. 311, 17 U. S. 315 , 4 Cond. 465; *Williams v. Norris,* 12 Wheat. 117, 25 U. S. 124 , 6 Cond. 462; *Hickie v. Starke,* 1 Pet. 98; *Willson v.*

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Black Bird Creek Marsh Association, 2 Pet. 245, 27 U. S. 250 ; *Satterlee v. Mathewson,* 2 Pet. 380; *Harris v. Dennie,* 3 Pet. 292, 28 U. S. 302 ; *Craig v. State of Missouri,* 4 Pet. 410; *Fisher v. Cockerel,* 5 Pet. 256; *New Orleans v. De Armas,* 9 Pet. 224.

In order to bring a case for a writ of error or an appeal to the Supreme Court from a court of the highest jurisdiction of any of the states within the twenty-fifth section of the Judiciary Act, it must appear on the face of the record 1st, that some one of the questions stated in that section did arise in the state court; 2d, that the question was decided by the state court, as required in the same section; 3d, that it is not necessary that the question should appear on the record to have been raised, and the decision made in direct and positive terms, *ipsissimis verbis,* but that it is sufficient if it appears by clear and necessary intendment that the question must have been raised and must have been decided in order to have induced the judgments; 4th, that it is not sufficient to show that a question might have arisen or been applicable to the case unless it is farther shown on the record that it did arise and was applied by the state court to the case.

In 1829, John Randell, Junior, the defendant in error, instituted an action of covenant against the Chesapeake & Delaware Canal Company, in the Superior Court of the State of Delaware, on certain articles of agreement entered into between him and the defendants relative to the making of a canal to unite the waters of the River Delaware with those of the Chesapeake Bay, and to pass through the States of Delaware and Maryland. The Chesapeake & Delaware Canal Company were incorporated by laws passed by the States of Pennsylvania,

Delaware and Maryland, and the board of directors of the company was established in the City of Philadelphia.

The declaration alleged sundry breaches of covenant on the part of the defendants, and after various pleadings and demurrers, and issues of fact, judgment was rendered for the plaintiff on some of the demurrers, and an inquisition of damages awarded. The parties went to trial on some of the issues of fact, which were found for the plaintiff, and on 26 January, 1834, the jury found a verdict for the plaintiff for $229,535.79, upon which a judgment was entered by the court.

Upon this judgment, the plaintiff, on 6 June, 1834, issued a writ of attachment, under the laws of the State of Delaware, for the collection of part of the amount of the same, and of the costs, which was served on Thomas P. Crowell as the garnishee of the Chesapeake & Delaware Canal Company. The same proceedings took place in the case of Richard Shoemaker.

The defendants respectively appeared, and pleaded that they had

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no goods or effects, rights or credits of the company in their hands at the time of the attachments, or at any time after. The cases came on for trial on these pleas and issues, according to the laws of Delaware, and the parties agreed to a statement of facts.

In the suit against Thomas P. Crowell, the agreed facts were as follows:

"John Randell, Jr., recovered a verdict of a jury in the said court against the said company, on 25 January, 1834, and then and there obtained judgment in the said court against the said company for damages and costs of suit, amounting together to the sum of $229,535.79. The pleadings, record and proceedings in the said suit, from the declaration to the judgment inclusive, are referred to, and form a part of this case."

"A writ of attachment was issued upon said judgment for the collection of the damages and costs aforesaid, on 6 June, A.D. 1834, returnable to the November term of the same year. The said writ was served upon the said Thomas P. Crowell in the county aforesaid at the Delaware tide lock, who was summoned by the Sheriff of Newcastle County as garnishee of the Chesapeake & Delaware Canal Company, on 15 June, 1834. At the same time, the said Thomas P. Crowell was arrested by virtue of the above mentioned capias, being No. 34 to November term of said court, A.D. 1834, at which time and place the said defendant (the said Thomas P. Crowell, to-wit) having appeared and given bail, and being put to plead at the election of the said plaintiff under the said act of assembly, pleaded that he had no goods, chattels, rights, credits or effects of the said the Chesapeake & Delaware Canal Company in his hands, custody, or possession at the time of the attachment laid or at any time after. On this plea the plaintiff hath joined issue, and this is the question now submitted to the court for its decision."

"On 28 January, A.D. 1834, a resolution was passed by the board of directors of the Chesapeake & Delaware Canal Company in the following words -- that is to say: "

"Resolved, that hereafter no tolls be collected on the line of the canal on any vessel, cargo or other article passing through the canal, until the said vessel, cargo or other article on which the said tolls may be levied or charged, shall have entered the basin at the western end of the canal, excepting only such vessels, cargo or other article as may not pass through the canal to the said basin. "

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"This resolution has never been printed by the said company, nor hath any notice whatever thereof been given to the said John Randell, Jr., until this time. It is admitted that the said resolution was adopted for the purpose of preventing the said John Randell, Jr., from attaching the tolls of the said company by virtue of the said judgment, or otherwise availing himself of the jurisdiction of the courts of the State of Delaware, for the collection of his said judgment."

"The defendant at the time of the service of the said writ of attachment and capias upon him was, hath ever since been, and still continues to be the master of the schooner Hiram, the said schooner being in his hands and possession during that time as the master of the same, and owner of the said schooner. The said vessel passed through the Chesapeake & Delaware canal, with a cargo from Philadelphia to Richmond, on 16 June, A.D. 1834. The amount of tolls on the several cargoes of the said schooner demanded for passage through the said canal between 16 June, and the return day of the said writ, was $96.28 cents, lawful money of the United States of America, and was paid in the City of Philadelphia, to S. Griffiths Fisher, an officer appointed by the said president and directors of the said the Chesapeake & Delaware Canal Company, to receive and collect tolls at their office in the City of Philadelphia, by a certain Joseph Hand, the freighter of the said schooner; after service of said attachment and capias, and after the said vessel had passed through the canal as aforesaid, but before the return of the said writs."

"The said attachment and capias were served upon the said defendant in Newcastle county, at the time of his offering to pass through the said canal at the Delaware tide lock, with the said vessel and cargo, and previous to the vessel passing through the same, to-wit, on 15 June, A.D. 1834. The said tide lock was, when the said canal was opened for navigation on 17 October, A.D. 1829, established by the president and directors of the said company, as a place for the receipt of tolls in the said canal; and a collector of tolls has always been appointed to reside at that place; and a certain John Willson was, at the time of issuing said attachment, and has ever since been such collector at said tide lock."

"The printed paper hereunto annexed, marked with the letter A,

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is a true copy of the regulations to be observed by vessels navigating the Chesapeake & Delaware canal, adopted by the board of directors of the said company, with the rates of toll for navigating the said canal, the same having been signed by the president and secretary of the said company, and published by order of the president and directors thereof, and it is agreed shall be taken as a

part of the case, except so far as they had been altered by the resolution of 28 January above set forth."

[The material regulations in the paper A, established 4 February, 1833, were the following:

1. No vessel shall enter the canal without first coming to anchor or making fast to the piers at least one hundred feet from the outer locks.

2. Masters of vessels shall, before entering the first lock, present to the collector a manifest of cargo, so arranged as to enable him readily to calculate their tolls. And in order to guard against frauds, the collectors are authorized to require the cargo to be landed for examination, if they shall see cause to suspect the correctness of the manifest.

5. The tolls shall always be paid at the first lock passed by a vessel, and upon payment thereof, the master shall receive a pass bill, on which shall be noted the amount of tolls paid, and the precise time of entering.

7. If any vessel shall pass through the canal without fully and honestly paying the prescribed tolls, either of the collectors is authorized by law

"to seize such vessel, wherever found, and sell the same at auction for ready money; which, so far as is necessary, shall be applied towards paying said tolls, and all expenses of seizure and sale."

And to enforce the penalties.

21. The officers and agents of the company are fully authorized by law to enforce obedience to the foregoing regulations; and they are required so to do.

22. No person is allowed to interfere with the agents or officers of the company in the performance of their duties on the canal. Should reasonable ground of complaint occur against such officers or agents, either by unnecessary delays or improper conduct, it will be immediately redressed, on information being lodged at either of the offices of the company.]

"It is further agreed, that the sloop Robert and James, the defendant being then and there the master, and having the direction

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thereof, passed through the Chesapeake & Delaware canal with a cargo from Port Deposit to Philadelphia, on 18 June, 1834, and three several times afterwards, to-wit, on 26 June, 1834, on 16 October, 1834, and on 5 November, 1834, between that day and the return day of the said writ of attachment. Copies of the pass bills given to the said defendant on these occasions, were annexed."

"The amount of tolls on the several cargoes of the said sloop, demanded for passage through the said canal by the Chesapeake & Delaware Canal Company at their lock at the western end of the canal in the State of Maryland and there paid by the said Thomas P. Crowell, master of the said sloop, between the said 18 June and the return day of said writ, was $74.44 cents lawful money of the United States of America."

"The acts of the Legislatures of Delaware, Maryland, and Pennsylvania relative to the said the Chesapeake & Delaware Canal, and the several supplements thereto are referred to, and made part of this statement of facts."

"It is agreed that in many cases since the resolution of 28 January, 1834, above set forth, tolls for the passage of vessels and their cargoes through the Chesapeake & Delaware Canal, from the eastern end of said canal, in the State of Delaware, to the western end thereof, in the State of Maryland, were received by some agent appointed by the president and directors of the said company, at their office, in the City of Philadelphia, and were paid by the owners or captains, or by the agents of said owners or captains, to the officers or agents of said president and directors of said company at said office."

"It is further agreed, that independently of the tolls so attached, and all other tolls of the said company attached by the said John Randell, Jr., a sufficient amount of tolls was always left in their hands, not attached, to repair and keep in order the said canal, their locks, and other works necessary thereto, and to keep the same

navigable; also to defray the expenses of the collection of tolls, including the salaries of all their officers."

"It is further agreed, that the said canal, the construction of which was commenced on 15 April, 1824, was completed and open for navigation on 17 October, 1829."

"It also further agreed that previous to the rendition of the judgment above named, obtained by John Randell, Jr., against the said

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canal company, that the tolls were collected in the canal at the respective toll houses located at Delaware city and Chesapeake City, from the captains and masters of vessels passing through the said canal, but the counsel for the said defendant protests that said captains and masters were not personally liable to the said company for the said tolls so paid by them. If upon the foregoing statement of facts the court shall be of the opinion that John Randell, Jr., the above named plaintiff, is entitled to judgment against the defendant as garnishee of the said the Chesapeake & Delaware Canal Company, upon the plea of *nulla bona,* then judgment to be rendered for the said plaintiff for the sum of $96.28, and if the court should be of the opinion that the said John Randell, Jr., is not entitled to judgment against the said defendant, on the aforesaid statement of facts, the judgment to be entered for the said defendant."

The following extracts from the laws of Maryland and Delaware were made part of the case:

Extract from Delaware law, passed February, 1832.

"Be it enacted, that in case any master, shipper or agent shall fraudulently present to the collector of tolls, or other agent of the canal company, a false manifest or account of cargo of any vessel or boat about passing through the canal, or give a false statement of the tolls thereon, or otherwise attempt to defraud in the said tolls, on conviction thereof before any justice of the peace for Newcastle County, he or they so convicted, after paying to the canal company the toll due, and the

cost of ascertaining the same, shall forfeit and pay double the amount of tolls so charged, on which the fraud had been attempted; one moiety of said forfeiture shall inure to the person giving information and prosecuting the offense to conviction, the other moiety to inure to the State of Delaware."

Extract from Maryland law, passed December, 1831.

"Be it enacted, &c.;, that if any master or agent of any vessel or boat shall fraudulently present to the collector of tolls, or any other agent of the Chesapeake & Delaware Canal Company, a false manifest or account of cargo of any vessel or boat about passing through the canal, or give a false statement of the toll thereon, or otherwise attempt to defraud in the said tolls, on conviction thereof before any justice of the peace of this state, he shall incur the penalty of twenty dollars, to be recovered before some justice of the peace as small debts are recovered, one-half to the informer giving information

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and prosecuting the offender to conviction, and the other half to the state."

On this agreed statement the case was certified to the court of errors and appeals for argument and decision; and in October, 1835, the court decided that the defendant had goods and chattels, effects and credits, &c.;, of the company in his hands, at the time of the attachment laid in his hands, and before the return thereof, amounting to $95, and judgment was rendered in favor of the plaintiff.

The record and proceedings were remanded to the Superior Court of the State of Delaware, and the defendants prosecuted this writ of error.

The case of Richard Shoemaker differs from that of Thomas P. Crowell only in this, that in his case it was necessary for the court to decide, in order to render judgment for the plaintiff, that the voluntary payment of toll by the master of a vessel to a person appointed by the directors of the company to receive said toll in Philadelphia was, under the facts stated in this case, a fraud on the attachment laws of the State of Delaware and on the jurisdiction of its courts; and especially

fraudulent, and therefore void, as against a judgment creditor of the company seeking satisfaction of his debt in that state, according to the attachment laws thereof, and the court so decided.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is a writ of error to the Superior Court of the State of Delaware, to revise the judgment of the court of errors and appeals of the said state; the record of which judgment had been remanded to the superior court of the same state.

A motion has been made to dismiss the suit for want of jurisdiction upon the ground that there is nothing apparent upon the record to bring the case within the revising power of this Court under the twenty-fifth section of the Judiciary Act of 1789, ch. 20. That section confers appellate jurisdiction in this Court from final judgments and decrees in any suit in the highest court of law or equity of a state in which a decision in the suit could be had in three classes of cases: first, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; secondly, 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 favor of such their validity; thirdly, where is drawn in question the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under the United 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

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or commission. The section then goes on to provide that 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 beforementioned questions of validity or construction of the said Constitution,

treaties, statutes, commissions or authorities in dispute.

In the interpretation of this section of the act of 1789, it has been uniformly held, that to give this Court appellate jurisdiction two things should have occurred and be apparent in the record: first, that someone of the questions stated in the section did arise in the court below, and secondly that a decision was actually made thereon by the same court, in the manner required by the section. If both of these do not appear on the record, the appellate jurisdiction fails. It is not sufficient to show that such a question might have occurred, or such a decision might have been made in the court below. It must be demonstrable that they did exist, and were made. The principal, perhaps the only, important difficulty which has ever been felt by the Court has been in ascertaining in particular cases whether these matters (the question and decision) were apparent on the record. And here the doctrine of the Court has been that it is not indispensable that it should appear on the record, *in totidem verbis,* or by direct and positive statement, that the question was made and the decision given by the court below on the very point, but that it is sufficient, if it is clear, from the facts stated, by just and necessary inference, that the question was made, and that the court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question as indispensable to that judgment.

Although this has been the course of the decisions in this Court as to the extent and exercise of its appellate jurisdiction over the judgments and decrees of state courts, yet it is apparent from the arguments on the present occasion as well as from those which have been addressed to us on several other late occasions that a different impression exists at the bar and that it has been supposed that a much wider latitude of interpretation of the twenty-fifth section of the Judiciary Act of 1789 has been adopted by the court. To correct, at least as far as in us lies, this mistaken notion, we shall now proceed to review the various decisions which have heretofore been made on this subject.

The earliest case is *Owings v. Norwood's Lessee,* 5 Cranch 344.

In that case it clearly appeared, that the construction of a treaty was before the state court, and that it was decided that the right of the party was not protected by the treaty. This Court affirmed the decision of the state court. The next case was *Smith v. Maryland,* 6 Cranch. 281. In that case it was contended that the court had no jurisdiction, because the cause turned exclusively upon the confiscation laws of Maryland, and that no question relative to the construction of the treaty of peace, did or could occur. But upon the facts stated on the record, the only title asserted by the original plaintiffs was founded on the confiscation acts of Maryland, and the only title set up by the original defendant was for a British alien, protected by the treaty of peace. If that title was so protected, then the plaintiffs were not entitled to the relief sought by the bill; if otherwise, then the plaintiffs were entitled to a decree. The state court decided that the plaintiffs were so entitled, and therefore necessarily decided against the treaty as a protection. The jurisdiction was maintained by this Court upon this posture of the facts, and the decision of the state court was afterwards affirmed. But the court said that in order to decide upon the main question, it was indispensable to ascertain what the nature of the title was, to which the treaty was sought to be applied.

The next case was *Martin v. Hunter's Lessee,* 1 Wheat. 305, 14 U. S. 355 . There, the original case came before the Court upon an agreed statement of facts, upon which the state court gave judgment against the original defendant. That judgment was upon a writ of error reversed by this Court, and when the cause came afterwards before this Court upon a second writ of error, the objection was taken that the original case was not within the twenty-fifth section of the Judiciary Act. Upon this occasion the Court, after stating the material facts in the agreed case, said

"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 in error [against which the state court had decided] 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 of the twenty-fifth 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

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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 defendants. It would then fall within the very terms of the act."

The next case was *Inglee v. Coolidge,* 2 Wheat. 363, 4 Cond. 155, where a motion was made to dismiss the writ of error upon the ground that there was nothing apparent upon the record which brought the case within the appellate jurisdiction of this Court under the twenty-fifth section of the act of 1789. The Court was of this opinion, and accordingly dismissed the writ of error.

The next case was *Miller v. Nicholls,* 4 Wheat. 311, 17 U. S. 315 , 4 Cond. 465. Mr. Chief Justice Marshall, in delivering the opinion of the Court, said:

"It does not appear from the record that either the constitutionality of the law of Pennsylvania or any act of Congress was drawn in question. It would not be required that the record should in terms state a misconstruction of an act of Congress or that an act of Congress was drawn in question. It would have been sufficient to give this Court jurisdiction of the cause that the record should show that an act of Congress was applicable to the case. This is not shown by the record."

The language used in this last sentence has been often cited as if it imported that if an act of Congress was shown to be applicable to the case, although it was not in fact applied by the decision of the state court, it would sustain the appellate jurisdiction of this Court. That was certainly not the understanding of the Chief Justice or of the Court. The case of *Miller v. Nicholls* was decided in the state court upon an agreed statement of facts by which it appeared that Nicholls was a

debtor both to the United States and to the State of Pennsylvania, and the question raised was whether the United States, or the State of Pennsylvania was entitled to certain money of Nicholls, then in court, as the creditor of Nicholls. The United States claimed it in virtue of the priority given by the act of 3 March, 1797, ch. 74. But it did not appear in the statement of facts that Nicholls was then in a state of insolvency, and if he was not then the priority of the United States did not attach -- or in other words, the act of Congress was not applicable to it. It is to this state of the facts that the language of the Chief Justice was addressed. He added, "had the fact of insolvency appeared upon the record, that would have enabled

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this Court to revise the judgment of the Supreme Court of Pennsylvania." And why, it may be asked? Because upon the statement of facts, the state court must, under these circumstances, have misconstrued the act of Congress or disregarded it, for otherwise they would not have given the judgment which was sought to be revised.

That this is the true explanation of this case does not admit of controversy. In the very next case, *Williams v. Norris,* 12 Wheat. 117, 25 U. S. 124 , 6 Cond. 462, where this very expression in *Miller v. Nicholls* was relied on in argument to establish the position that it is sufficient to give the Court jurisdiction that the record should showed that an act of Congress was applicable to the case, the Chief Justice gave the very explanation of it which is now insisted on, and added

"Had the record shown that this was a case of insolvency, so that an act of Congress applied to it, that act must have been misconstrued or its obligation denied, when the court decreed the money to Pennsylvania, and the Court was of opinion that the act could not be evaded by the omission to refer to it in the judgment or to spread it on the record."

In the case of *Williams v. Norris,* this Court dismissed the writ of error because it was not stated on the record that the constitutionality of the act of Tennessee set up in that case was drawn in question. In *Fisher v. Cockerill,* 5 Pet. 258, the case

of *Miller v. Nicholls* was again cited and commented on by The Chief Justice, and the same explanation of the decision was recognized and enforced, and, because the facts did not appear on the record, which would bring the case within the terms of the twenty-fifth section of the act of 1789, the writ of error in *Fisher v. Cockerill,* was also dismissed.

But to proceed with the other cases in their chronological order, the next case was *Hickie v. Starke,* 1 Pet. 98. There, a motion was made to dismiss the writ of error for the want of jurisdiction. Mr. Chief Justice Marshall, in delivering the opinion of the Court dismissing the writ of error, said:

"In the construction of that section [the twenty-fifth], the Court has never required that the treaty or act of Congress under which the party claims who brings the final judgment of a state court into review before this Court should have been pleaded specially or spread on the record. But it has always been deemed essential to the exercise of jurisdiction in such a case that the record should show a complete title under the

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treaty or act of Congress, and that the judgment of the court is in violation of that treaty."

The next case was *Willson v. Black Bird Creek Marsh Company,* 2 Pet. 245, 27 U. S. 250 . In that case, THE CHIEF JUSTICE, in delivering the opinion of the Court sustaining the jurisdiction, said:

"We think it impossible to doubt that the constitutionality of the act [of Delaware] was the question and the only question, which could have been discussed in the state court. That question must have been discussed and decided. This Court has repeatedly decided in favor of its jurisdiction in such a case. *Martin v. Hunter's Lessee, Miller v. Nicholls,* and *Williams v. Norris,* are expressly in point. They establish as far as precedents can establish anything that it is not necessary to state in terms on the record that the Constitution or a law of the United States was drawn in question. It is sufficient to bring the case within the provisions of the

twenty-fifth section of the Judicial Act if the record shows that the Constitution or a law or a treaty of the United States must have been misconstrued or the decision could not have been made, or, as in this case, that the constitutionality of a state law was questioned and the decision was in favor of the party claiming under such law."

The next case was *Satterlee v. Mathewson,* 2 Pet. 380, 27 U. S. 410 , where Mr. Justice Washington, in delivering the opinion of the Court sustaining the jurisdiction, after citing prior cases, said:

"If it sufficiently appears from the record itself that the repugnancy of a statute of a state to the Constitution of the United States was drawn into question or that that question was applicable to the case, this Court has jurisdiction of the cause under the section of the act referred to, although the record should not in terms state a misconstruction of the Constitution of the United States or that the repugnancy of the statute of the state to any part of that Constitution was drawn into question."

But he immediately adds as explanatory of his remarks, and to correct their generality:

"Now it is manifest from this record not only that the constitutionality of the statute of 8 April, 1826 was drawn into question and was applicable to the case, but that it was so applied by the judge and formed the basis of his opinion to the jury that they should find in favor of the plaintiff if in other respects she was entitled to a verdict. It is equally manifest that the right of the plaintiff to recover in that action depended on that statute."

The next case was *Harris v. Dennie,* 8 Pet. 292, 33 U. S. 302 ,

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where the Court, in answer to the objection of a want of jurisdiction, because it did not appear upon the record that any question within the twenty-fifth section arose in the state court upon the special verdict, said:

"It has been often decided in this Court that it is not necessary that it should appear in terms upon the record that any such question was made. It is sufficient if, from the facts stated, such a question must have arisen and the judgment of the state court would not have been what it is if there had not been a misconstruction of some act of Congress or a decision against the validity of the right, title, privilege, or exemption set up under it."

The next case was *Craig v. State of Missouri,* 4 Pet. 410, in which Mr. Chief Justice Marshall, in affirming the jurisdiction of the Court, said:

"To give jurisdiction to this Court, it must appear in the record: 1. that the validity of a statute of the State of Missouri was drawn in question on the ground of its being repugnant to the Constitution of the United States; 2. that the decision was in favor of its validity."

And again:

"There has been a perfect uniformity in the construction given by this Court of the twenty-fifth section of the Judicial Act. That construction is that it is not necessary to state in terms in the record that the Constitution or a treaty or law of the United States has been drawn in question or the validity of a state law on the ground of its repugnance to the Constitution. It is sufficient if the record shows that the Constitution or a treaty or law of the United States might have been construed, or that the constitutionality of a state law must have been questioned, and the decision has been in favor of the party claiming under such law."

In *Fisher v. Cockerill,* 5 Pet. 255, the cases of *Harris v. Dennie* and *Craig v. State of Missouri* were reviewed and the doctrine stated therein confirmed, and Mr. Chief Justice Marshall, after that review, added:

"We say, with confidence that this Court has never taken jurisdiction unless the case, as stated in the record, was brought within the provisions of the twenty-fifth section of the Judicial Act."

In *Davis v. Packard,* 6 Pet. 41, 31 U. S. 48 ; MR. JUSTICE THOMPSON said:

"It has also been settled that in order to give jurisdiction to this Court under the twenty-fifth section of the Judiciary Act, it is not necessary that the record should state in terms that an act of Congress was in point of fact drawn in question. It is sufficient if it appears from the record that an act of Congress was applicable to the

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case and was misconstrued, or the decision in the state court was against the privilege or exemption specially set up under such statute."

In *New Orleans v. De Armas,* 9 Pet. 224, where the suit was dismissed for want of jurisdiction, The Chief Justice, in delivering the opinion of the Court, said:

"We can inquire only whether the record shows that the Constitution or a treaty or a law of the United States has been violated by the decision of the state court. To sustain the jurisdiction of the court in the case now under consideration, it must be shown that the title set up by the City of New Orleans is protected by the treaty ceding Louisiana to the United States, or by some act of Congress applicable to that title."

These are all the cases, it is believed, in which the construction of the twenty-fifth section of the Judiciary Act has been made matter of controversy, and they extend over a period of more than twenty-five years. They exhibit an uniformity of interpretation of that section which has never been broken in upon. They establish, so far as a course of decision can establish, the propositions already stated in the early part of this opinion. The period seems now to have arrived in which the Court should, upon a full review of all the cases, with a view to close, if possible, all future controversy on the point, reaffirm the interpretation which they have constantly maintained. It is that to bring a case within the twenty-fifth section of the Judiciary Act, it must appear upon the face of the record 1st, that some one of the questions stated in that section did arise in the state court; 2d, that the question was decided by the state court, as required in the same section.; 3d, that it is not necessary that the question should appear on the record to have been raised, and

the decision made in direct and positive terms, *ipsissimis verbis,* but that it is sufficient if it appears by clear and necessary intendment that the question must have been raised and must have been decided in order to have induced the judgment; 4th, that it is not sufficient to show that a question might have arisen or been applicable to the case unless it is farther shown on the record that it did arise and was applied by the state court to the case.

If with these principles in view we examine the record before us, it is very clear that this Court has no appellate jurisdiction. No question appears to be raised or decision made by the state court within the purview of the twenty-fifth section. The statement of

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facts upon which the judgment against the garnishee (the plaintiff in error) was given presents no question as to the constitutionality of the laws of Delaware relative to garnishees and no right set up by the Chesapeake & Delaware Canal Company under their charters which has been infringed in violation of the Constitution of the United States. So far as we can perceive from the record, the judgment had no reference to any constitutional question whatsoever, but proceeded upon general principles of law applicable to cases of garnishment. If indeed we were compelled to draw any conclusion, it would be that the judgment proceeded upon the ground stated at the bar, that the payment of the tolls for which the plaintiff was held liable as garnishee was a meditated fraud upon the garnishee laws of Delaware and a violation of the charters and by-laws of the company. But it is unnecessary for us to draw any such conclusion, since there is a total absence from the record of any question and decision which would give this Court jurisdiction.

The judgment of the court is that the suit must be dismissed for want of jurisdiction.