AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 6: Secession, Civil War, and Reconstruction – Constitutional Authority and Judicial Power

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Murdock v. City of Memphis, 87 U.S. 590 (1875)

As part of the effort to enforce the newly ratified Fourteenth Amendment, Congress in 1867 gave the federal courts additional powers over the writ of habeas corpus and expanded the appellate jurisdiction of the Supreme Court over cases that originated in the state courts. Lawyers soon began to argue that when the Supreme Court heard these cases, the justices were not limited to answering the specific federal question that sparked the appeal, but rather could consider every legal question that might be relevant to resolving the merits of the original suit – that the U.S. Supreme Court could correct all legal errors made by the inferior court once it had jurisdiction over the case, even if those errors involved only questions of state law. The Judiciary Act of 1789 specifically prohibited the federal courts from reviewing interpretations of state law, but the statute of 1867 left out that prohibition when giving the federal courts the new appellate powers. Did Congress by implication mean for the Court to now exercise the appellate power that had been prohibited in 1789, and did the legislature have the constitutional authority to give the federal courts such a power? Did the U.S. Supreme Court obtain jurisdiction over cases as such, or only over federal legal questions that cases might involve? The Court was asked to resolve this question in a case involving a land dispute originally decided by the Tennessee state supreme court. In a 6–3 decision, the Court ruled that Congress had not meant to grant federal jurisdiction over the whole case but only over the federal questions raised by the case.

Why would it matter whether the U.S. Supreme Court had jurisdiction over the whole case? Are federal interests adequately protected if state courts are given full control over state-law questions in cases involving federal questions? Could Congress give the U.S. Supreme Court jurisdiction over the whole case and all the legal questions raised by a case, or did the Constitution limit the Court to resolving" federal questions"? When Congress repeals and replaces an old statutory provision with a new one that is almost, but not quite, identical to the old text, how should the Court interpret the differences in language? How should the Court interpret the omission of a clause from the earlier statutory provision? Is the answer different depending on the context? Under what conditions should the Court insist that Congress be explicit about the content of a rule it means to adopt, and under what conditions can the Court rely on the implications of the language of the statute?

JUSTICE MILLER delivered the opinion of the Court.

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What were the precise motives which induced the omission of this clause it is impossible to ascertain with any degree of satisfaction. In a legislative body like Congress, it is reasonable to suppose that among those who considered this matter at all, there were varying reasons for consenting to the change. . . . But if Congress, or the framers of the bill, had a clear purpose to enact affirmatively that the court should consider the class of errors which that clause forbid, nothing hindered that they should say so in positive terms; and in reversing the policy of the government from its foundation in one of the most important subjects on which that body could act, it is reasonably to be expected that Congress would use plain, unmistakable language in giving expression to such intention.

There is, therefore, no sufficient reason for holding that Congress, by repealing or omitting this restrictive clause, intended to enact affirmatively the thing which that clause had prohibited.

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There are two principal methods known to English jurisprudence, and to the jurisprudence of the Federal courts, by which cases may be removed from an inferior to an appellate court for review. These are the writ of error and the appeal. . . . The appeal . . . does bring up the whole case for re-examination on all the merits, whether of law or fact, and for consideration on these, as though no decree had ever been rendered. The writ of error is used to bring up for review all other cases, and when thus brought here the cases are not open for re-examination on their whole merits, but every controverted question of fact is excluded from consideration, and only such errors as this court can see that the inferior court committed, and not all of these, can be the subject of this court's corrective power.

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It is, therefore, too obvious to need comment, that this statute was designed to bring equity suits to this court from the State courts by writ of error, as well as law cases, and that it was not intended that they should be re-examined in the same manner as if brought here from a court of the United States, in the sense of the proposition we are considering.

. . . . It requires but slight examination of the reports of the decisions or familiarity with the practice of this court, to know that it does not examine into or decide all the errors, or matter assigned for error, of the most of the cases before them. . . .

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. . . . It is consistent with this extreme caution to suppose that Congress intended, when those cases came here, that this court should not only examine those questions, but all others found in the record? -- questions of common law, of State statutes, of controverted facts, and conflicting evidence. Or is it the more reasonable inference that Congress intended that the case should be brought here that those questions might be decided and finally decided by the court established by the Constitution of the Union, and the court which has always been supposed to be not only the most appropriate but the only proper tribunal for their final decision? No such reason nor any necessity exists for the decision by this court of other questions in those cases. The jurisdiction has been exercised for nearly a century without serious inconvenience to the due administration of justice. The State courts are the appropriate tribunals, as this court has repeatedly held, for the decision of questions arising under their local law, whether statutory or otherwise. And it is not lightly to be presumed that Congress acted upon a principle which implies a distrust of their integrity or of their ability to construe those laws correctly.

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The whole argument we are combating, however, goes upon the assumption that when it is found that the record shows that one of the questions mentioned has been decided against the claim of the plaintiff in error, this court has jurisdiction, and that jurisdiction extends to the whole case. If it extends to the whole case then the court must re-examine the whole case, and if it re-examines it must decide the whole case. It is difficult to escape the logic of the argument if the first premise be conceded. But it is here the error lies. We are of opinion that upon a fair construction of the whole language of the section the jurisdiction conferred is limited to the decision of the questions mentioned in the statute, and, as a necessary consequence of this, to the exercise of such powers as may be necessary to cause the judgment in that decision to be respected.

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It is not difficult to discover what the purpose of Congress in the passage of this law was. In a vast number of cases the rights of the people of the Union, as they are administered in the courts of the States, must depend upon the construction which those courts gave to the Constitution, treaties, and laws of the United States. The highest courts of the States were sufficiently numerous, even in 1789, to cause it to be feared that, with the purest motives, this construction given in different courts would be various and conflicting. It was desirable, however, that whatever conflict of opinion might exist in those courts on

other subjects, the rights which depended on the Federal laws should be the same everywhere, and that their construction should be uniform. This could only be done by conferring upon the Supreme Court of the United States -- the appellate tribunal established by the Constitution -- the right to decide these questions finally and in a manner which would be conclusive on all other courts, State or National. This was the first purpose of the statute, and it does not require that, in a case involving a variety of questions, any other should be decided than those described in the act.

Secondly. It was no doubt the purpose of Congress to secure to every litigant whose rights depended on any question of Federal law that that question should be decided for him by the highest Federal tribunal if he desired it, when the decisions of the State courts were against him on that question. That rights of this character, guaranteed to him by the Constitution and laws of the Union, should not be left to the exclusive and final control of the State courts.

There may be some plausibility in the argument that these rights cannot be protected in all cases unless the Supreme Court has final control of the whole case. But the experience of eighty-five years of the administration of the law under the opposite theory would seem to be a satisfactory answer to the argument. It is not to be presumed that the State courts, where the rule is clearly laid down to them on the Federal question, and its influence on the case fully seen, will disregard or overlook it, and this is all that the rights of the party claiming under it require. . . . It cannot, therefore, be maintained that it is in any case necessary for the security of the rights claimed under the Constitution, laws, or treaties of the United States that the Supreme Court should examine and decide other questions not of a Federal character.

And we are of opinion that the act of 1867 does not confer such a jurisdiction.

This renders unnecessary a decision of the question whether, if Congress had conferred such authority, the act would have been constitutional. . . .

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We have already laid down the rule that we are not authorized to examine these other questions [involving state law] for the purpose of deciding whether the State court ruled correctly on them or not. We are of opinion that on these subjects not embraced in the class of questions stated in the statute, we must receive the decision of the State courts as conclusive.

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If [the federal question] was erroneously decided against plaintiff in error, then this court must further inquire, whether there is any other matter or issue adjudged by the State court, which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case, the judgment must be affirmed without inquiring into the soundness of the decision on such other matter of issue.

But if it be found that the issue raised by the question of Federal law is of such controlling character that its correct decision is necessary to any final judgment in the case, or that there has been no decision by the State court of any other matter or issue which is sufficient to maintain the judgment of that court without regard to the Federal question, then this court will reverse the judgment of the State court, and will either render such judgment here as the State court should have rendered, or remand the case to that court, as the circumstances of the case may require.

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Affirmed.

JUSTCE CLIFFORD, joined by JUSTICE SWAYNE, dissenting.

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Where the Federal question is rightly decided the judgment of the State court may be affirmed, upon the ground that the jurisdiction does not attach to the other questions involved in the merits of the controversy; but where the Federal question is erroneously decided the whole merits must be decided by

this court, else the new law, which it is admitted repeals the twenty-fifth section of the Judiciary Act, is without meaning, operation, or effect, except to repeal the prior law.

Sufficient proof of the fact that the new law was not intended to be without meaning and effective operation is found in the fact that the provision in the old law which restricts the right of the plaintiff in error or appellant to assign for error any matter except such as respects one of the Federal questions enumerated in the twenty-fifth section of the Judiciary Act, is wholly omitted in the new law.

JUSTICE BRADLEY, dissenting.

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I cannot concur in the conclusion that we can only decide the Federal question raised by the record. If we have jurisdiction at all, in my judgment we have jurisdiction of the case, and not merely of a question in it. The act of 1867, and the twenty-fifth section of the Judiciary Act both provide that a final judgment or decree in any suit in the highest court of a State, where is drawn in question certain things relating to the Constitution or laws of the United States, or to rights or immunities claimed under the United States, and the decision is adverse to such Constitution, laws, or rights, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error. Had the original act stopped here there could have been no difficulty. This act derives its authority and is intended to carry into effect, at least in part, that clause of the Constitution which declares that the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made under their authority -- not to all questions, but to all cases. This word "cases," in the residue of the section, has frequently been held to mean suits, actions, embracing the whole cases, not mere questions in them; and that is undoubtedly the true construction. The Constitution, therefore, would have authorized a revision by the judiciary of the United States of all cases decided in State courts in which questions of United States law of Federal rights are necessarily involved. Congress in carrying out that clause could have so ordained. And the law referred to, had it stopped at the point to which I have quoted it above, would clearly have been understood as so ordaining. But the twenty-fifth section of the Judiciary Act went on to declare that in such cases no other error should be assigned or regarded as a ground of reversal than such as immediately respected the question referred to as the ground of jurisdiction. It having been early decided that Congress had power to regulate the exercise of the appellate jurisdiction of the Supreme Court, the court has always considered itself bound by this restriction, and as authorized to reverse judgments of State courts only for errors in deciding the Federal questions involved therein.

Now, Congress, in the act of 1867, when revising the twenty-fifth section of the Judiciary Act, whilst following the general frame and modes of expression of that section, omitted the clause above referred to, which restricted the court to a consideration of the Federal questions. This omission cannot be regarded as having no meaning. The clause by its presence in the original act meant something, and effected something. It had the effect of restricting the consideration of the court to a certain class of questions as a ground of reversal, which restriction would not have existed without it. The omission of the clause, according to a well-settled rule of construction, must necessarily have the effect of removing the restriction which it effected in the old law.

In my judgment, therefore, if the court had jurisdiction of the case, it was bound to consider not only the Federal question raised by the record, but the whole case. . . .