

15. *What effect is given to the public acts, records and judicial proceedings of every State in every other State?*—260.

In pursuance of the Constitution, Congress, by the act of May 26th, 1790, provided the mode by which records and judicial proceedings should be authenticated, and then declared that they should have such faith and credit given to them in every court within the United States, as they had by law or usage in the courts of the State from whence the records were taken. Under this act it has been decided* that if a judgment, duly authenticated, had, in the State court from whence it was taken, the faith and credit of the highest nature, viz., record evidence, it must have the same faith and credit in every other court. A judgment is, therefore, conclusive in every other State, if a court of the particular State where it was rendered would hold it conclusive.†

16. *What power have Congress over the militia?*—262.

Congress have authority to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; and to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress. The President of the United States is to be the commander of the militia, when called into actual service.

17. *To whom does it belong to judge when the exigency arises in*

* *Mills v. Duryee*, 7 Cranch's R., 481.

† But the defendant must have had due notice to appear, or be subject to the jurisdiction of the court, or, if a foreigner or non-resident, he must have actually appeared to the suit, or the judgment of another State will not be deemed of any validity. The notice must be such as the State giving it is competent to direct; mere knowledge of the pendency of the suit is not sufficient. The doctrine in *Mill v. Duryee* (7 Cranch, 481) is to be taken with the qualification, that in all instances the jurisdiction of the court rendering the judgment may be inquired into, and the plea of *nil debet* will allow the defendant to show that the court had no jurisdiction over his person. The court must have had jurisdiction, not only of the cause, but of the parties, and in that case the judgment is final and conclusive.

which the President has authority, under the Constitution, to call forth the militia?—265.

The Supreme Court has decided and settled* that it belongs exclusively to the President to judge when the exigency arises, in which he has authority under the Constitution to call forth the militia, and that his discretion is conclusive upon all other persons.

18. *When are militia, called into the service of the United States, not to be considered as national militia?*—266.

The Supreme Court decided† that the militia, when called into the service of the United States, were not to be considered as being in that service, or in the character of national militia, until they were mustered at the place of rendezvous, and that until then, the State retained a right, concurrent with the government of the United States, to punish their delinquency.

19. *Has the authority of Congress to appropriate public moneys for internal improvements been brought under judicial consideration?*—267.

The point has been much discussed on public occasions, and between the legislative and executive branches of the government; but it has never been brought under judicial consideration.

LECTURE XIII.

OF THE PRESIDENT.

1. *In whom is the executive power of the United States vested?*—271.

It is ordained by the Constitution that the executive power shall be vested in a President.‡

* *Martin v. Mott*, 12 Wheat. R., 19.

† *Houston v. Moore*, 5 Wheat. R., 1.

‡ The executive branch of the government of the United States is organized under

2. *What personal qualifications must the President possess?*—273.

The Constitution requires that he shall be a natural-born citizen of the United States, or a citizen at the time of the adoption of the Constitution, and that he shall have attained the age of thirty-five years, and shall have been fourteen years a resident within the United States.

3. *In what manner is the President elected?*—275.

The Constitution has referred the election of a President to a small body of electors, appointed in each State under the direction of the Legislature, and has declared that Congress may determine the time of choosing the electors, and the day on which they shall vote, and that the day of election shall be the same in every State. And Congress has directed that the electors be appointed in each State within thirty-four days of the day of election. The number of electors in each State is directed by the Constitution to be equal to the whole number of senators and representatives which the State is entitled to send to Congress. These electors meet in their respective States, at a place appointed by the Legislature thereof, on the first Wednesday in December, in every fourth year succeeding the last election, and vote by ballot for President and Vice-President. They name in their ballots the person voted for as President, and, in distinct ballots, the person voted for as Vice-President; and they make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they sign, and certify, and transmit, sealed, to the seat of government of the United States, directed to the President of the Senate. The votes must be delivered to the President of the Senate before the first Wednesday of January next ensuing the day of election. The President of the Senate, on the second Wednesday of February succeeding every meeting of the electors, in the presence of both Houses of Congress, opens all the certificates, and the votes are then to be counted.

seven Departments, viz., the State Department, the Treasury Department, the War Department, the Navy Department, the Post Office Department, the Department of the Interior; at the head of each of which there is a Secretary; the Department of Justice, at the head of which is the Attorney-General. The said officers are appointed by the President, by and with the advice and consent of the Senate, but subject to removal by the President alone.

The President of the Senate counts the votes.* The person having the greatest number of votes of the electors for President, is President, if such number be a majority of the whole number of electors appointed; but if no person have such majority, then, from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation of each State having one vote. A quorum for this purpose consists of a member or members from two thirds of the States, and a majority of all the States is necessary to a choice. The person having the greatest number of votes as Vice-President, is Vice-President, if such number be a majority of the whole number of the electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President.

If the House of Representatives do not make a choice of President, when the right of choice devolves upon them, before the fourth day of March next following, then the Vice-President acts as President, as in the case of the death or constitutional disability of the President. A quorum for the purpose of electing a Vice-President consists of two thirds of the whole number of senators, and a majority of the whole number is necessary to a choice, and no person constitutionally ineligible to the office of President is eligible to that of Vice-President.

4. *For how many years is the President elected to office?*—278, 280.

The President and Vice-President both hold office for a

* In determining the result of the election for President in 1841, it was declared, by joint resolution of the two Houses of Congress, that one person be appointed teller on the part of the Senate, and two on the part of the House of Representatives, who were, in the presence of the two Houses, to make a list of the votes as they should be declared, and the result declared to the President of the Senate, who was to be the presiding officer, and to announce to both Houses the state of the vote and the persons elected. The Vice-President, in that case, broke the seals of the envelopes of the votes, and delivered the same over to the tellers to be counted. The tellers having read, counted, and made duplicate lists of the votes, they were delivered over to the Vice-President and read, and he then declared the result and dissolved the joint meeting of the two Houses.

term of four years, and it is provided by act of Congress that this term shall in all cases commence on the fourth day of March next succeeding the day on which the votes shall have been given. The President is reëligible for successive terms, but in practice no President has ever consented to be a candidate for a third election, and this seems to have established by usage, and in accordance with public opinion, a limitation to his capacity of continuance in office.

5. *Does the Vice-President ever act as President?*—278.

Yes; in case of removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the office, the same devolve on the Vice-President; and except in cases in which the President is enabled to re-assume the office, the Vice-President acts as President during the remainder of the term for which the President was elected. Congress are authorized to provide for the case of removal, death, inability or resignation of both President and Vice-President, declaring who should then act as President; and the person so designated is to act until the disability be removed, or a President shall be elected, and who is in that case to be elected on the first Wednesday of the ensuing December, if time will admit of it, and if not, then on the same day in the ensuing year. In pursuance of this constitutional provision, Congress, in the year 1792, enacted that in case of vacancy in the office both of President and Vice-President, the President of the Senate *pro tem.*, and in case there should be no President of the Senate, then the Speaker of the House of Representatives for the time being, should act as President until the vacancy was supplied.

6. *Is the President a salaried officer?*—281.

Yes; the Constitution declares that he shall, at stated times, receive for his services a compensation that shall neither be increased nor diminished, during the period for which he shall have been elected; and that he shall not receive, within that time, any other emolument from the United States, or any of them.

7. *What are the powers of the President?*—282-288.

He is commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into actual service of the Union. The President has also power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. He has also the power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur. The President is the efficient power in the appointment of the officers of the government. He is to nominate, and, with the advice and consent of the Senate, to appoint ambassadors, or public ministers and consuls, the judges of the Supreme Court, and all other officers whose appointments are not otherwise provided for in the Constitution; but Congress may vest the appointment of inferior officers in the President alone, in the courts of law, or in the heads of Departments. The remaining duties of the President consist in giving information to Congress of the state of the Union, and in recommending to their consideration such measures as he shall judge necessary or expedient. He is to convene both Houses of Congress, or either of them, on extraordinary occasions, and he may adjourn them in case of disagreement. He is to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. He is to receive ambassadors and other public ministers (and this includes the power to dismiss them), to commission all the officers of the United States, and to take care that the laws be faithfully executed.

8. *How may the President be removed from office?*—289.

By impeachment. The President, Vice-President, and all civil officers of the United States, may be impeached by the House of Representatives, for treason, bribery, and other high crimes and misdemeanors, and, upon conviction by the Senate, removed from office.

LECTURE XIV.

OF THE JUDICIARY DEPARTMENT.

1. *What power interferes more visibly and uniformly, than any other part of government, with all the interesting concerns of social life?*—290.

The judiciary power. Personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice.

2. *Where has the Constitution vested the judicial power of the United States?*—290.

In one Supreme Court, and in such inferior courts as Congress may from time to time ordain.

3. *Had Congress any discretion in this matter?*—290.

No: they were bound to vest the whole judicial power, in an original or appellate form, in the courts mentioned and contemplated in the Constitution, and to provide courts inferior to the Supreme Court, in which the judicial power, unabsorbed by the Supreme Court, might be placed. The judicial power of the United States is, in point of origin and title, equal to the other powers of the government, and is as exclusively vested in the courts created by or in pursuance of the Constitution, as the legislative power is vested in Congress, or the executive in the President.

4. *For how long a term do the judges hold office?*—292.

The judges, both of the supreme and inferior courts, hold office during good behavior; and they are, at stated times, to receive for their services a compensation which shall not be diminished during their continuance in office.*

* By the Constitutions of Massachusetts, Delaware and Florida, judges of the Supreme Courts hold office during good behavior. By the Constitution of 1874, the Supreme Court judges of Pennsylvania hold office for twenty-one years, and are ineligible to re-election; those of Illinois, by the Constitution of 1870, for nine; and those of Louisiana, by the Constitution of 1868, for eight. In New Hampshire and Connecticut, they hold office during good behavior, or until seventy

5. *What is the extent of the judicial power?*—295, 296.

The judicial power is coextensive with the power of legislation. It extends to all cases in law and equity arising under the Constitution, the laws and treaties of the Union; to all cases

years of age. The Supreme Court judges hold office for eight years in Tennessee, Arkansas, Michigan, Kentucky and North Carolina. In Virginia, West Virginia and Georgia, the term is fixed at twelve years. It is fifteen in Maryland; seven in Maine; nine in Texas and Mississippi; six in Missouri, South Carolina, New Jersey, Indiana and Iowa; and five in Ohio. In Vermont, they are annually elected. By the Constitution of Rhode Island, adopted in 1842, the judges of the Supreme Court are elected by the legislature, and hold till their places are declared vacant, by a resolution passed by a majority of all the members elected to each House. By the new Constitutions of Kentucky, Ohio, Iowa, Illinois, North Carolina, Indiana, Missouri, Tennessee, Michigan, West Virginia, Maryland and Pennsylvania, the judiciary is now elective. In all the other States (until recently) the judges of the higher courts of law and equity were appointed either by the Governor and Council, or the Governor and Senate—as in Maine, Massachusetts, New Hampshire, New Jersey, Florida, Georgia, Arkansas and Louisiana.

The Constitution of New York of 1846, as amended in 1869, ordained that there should be a Court of Appeals, composed of a chief judge and six associate judges, to be elected by the electors of the State for a term of fourteen years. A Supreme Court was established, having general jurisdiction in law and equity. The State was divided into eight judicial Districts, each of which was to have four justices of the Supreme Court; in the first District there were to be five justices. They are to be chosen by the electors of their respective districts for the term of fourteen years. Four judicial Departments are established, in each of which there is to be a General Term of the Supreme Court, consisting of a presiding justice and not more than three justices. Any justice of the Supreme Court may hold special terms and circuit courts, and may preside in courts of oyer and terminer, in any county. No person shall hold the office of justice or judge of any court longer than until and including the last day of December next after he shall be seventy years of age. The judges of the Court of Appeals, and the justices of the Supreme Court, shall not hold any other office or public trust. All votes for any of them for any other than a judicial office, given by the legislature or the people, shall be void. Such judges and justices may be removed by concurrent resolution of both Houses of the legislature, if two-thirds of all the members elected to each House concur therein. Such judges and justices shall receive a compensation, to be established by law, which shall not be diminished during their official terms. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office.

The Governor may, whenever in his judgment the public good shall require it, appoint extraordinary general terms, Circuit Courts, and special terms of the Supreme Court and courts of oyer and terminer, and he shall designate the time and place the same shall be held, and name the justice who shall hold the extraordinary circuit or special term, or preside in such court of oyer and terminer.

affecting ambassadors, or 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 ; to controversies between a State, when plaintiff, and the citizens of another State, or foreign citizens or subjects ; to controversies between citizens of different States ; and between citizens of the same State, claiming lands under grants of different States ; and between a State, or citizens thereof, and foreign States, and between citizens and foreigners. The judicial department of the United States is, in the last resort, the final expositor of the Constitution as to all questions of a judicial nature.*

6. *What amendment was made in regard to the judicial power in 1794 ?—297.*

It was declared by the amendment that the judicial power of the United States should not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State. The inhibition applies only to citizens or subjects, and does not extend to suits by a State, or foreign States or powers. They retain the capacity to sue a State as it was originally granted by the Constitution ; and the Supreme Court has original jurisdiction in the case of suits by a foreign State against one of the members of the Union.

7. *Of how many judges does the Supreme Court consist ?—298.*

Of one chief justice, and eight associate justices, any five of whom make a quorum ; and it holds one term annually, at the seat of government, commencing on the first Monday in December, and continued at discretion.

8. *In what cases has the Supreme Court exclusive jurisdiction ?—298.*

In all controversies of a civil nature, where a State is a party, except between a State as *defendant* and its citizens ; and except, also, between a State as *defendant* and citizens of other States, or aliens, in which cases it has no jurisdiction ; but in all

* 1 Story's Commentaries on the Constitution, 344-382.

these cases where a State is *plaintiff*, it has original but not exclusive jurisdiction. It has also, exclusively, all such jurisdiction of suits, or proceedings against ambassadors, or other public ministers, or their domestics or servants, as a court of law can have or exercise, consistently with the law of nations ; an original, but not exclusive* jurisdiction, of all suits brought by ambassadors or other public ministers, or in which a consul or vice-consul shall be a party. The Supreme Court was clothed by the Constitution "with appellate jurisdiction, both as to law and fact, with such exceptions and regulations as Congress should make."

9. *In what cases has the Supreme Court appellate jurisdiction ?—299.*

By the judiciary act of 1789, appeals lie to this court from the Circuit Courts, and the courts of the several States. Final judgments and decrees, in civil actions and suits in equity, in the Circuit Courts of the United States, whether brought by original process, or removed there from the State courts, or by appeal from the District Courts, in cases where the matter in dispute exceeds two thousand dollars, exclusive of costs, may be reëxamined, by writ of error, and reversed or affirmed, by the Supreme Court. And by act of Congress of May 31, 1844, the Supreme Court has appellate jurisdiction in revenue cases, without regard to the sum in dispute, provided the judgment appealed from was rendered in a Circuit Court of the United States. Final judgments and decrees in the Circuit Courts, in cases of admiralty and maritime jurisdiction, and of prize or no prize, where the matter in dispute exceeds two thousand dollars, exclusive of costs, may be reviewed on appeal in the Supreme Court.

So, also, a final judgment or decree, in any suit in the highest court of law or equity of a State, may be brought up on error in point of law to the Supreme Court of the United States, provided the validity of a treaty or statute of, or authority exercised under the United States was drawn in question in the State Court, and the decision was against that validity ; or pro-

* See more at large on this point, the case of *United States v. Ortega*, 11 Wheaton, 467, and cases there cited.

vided the validity of any State authority was drawn in question, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of its validity ; or provided the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under the United States was drawn in question, and the decision was against the title, right, privilege or exemption, specially claimed under the authority of the Union.

10. *What other powers has the Supreme Court?*—300.

It has a superintending authority over the inferior courts, and has power to issue writs of prohibition and mandamus to them in certain cases ; to grant writs of *ne exeat* and of injunction ; to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided by statute, which may be necessary to the exercise of its proper jurisdiction, and agreeable to the principles and usages of that generally recognized and long-established law which forms the substratum of the laws of every State.

11. *In what cases have the Circuit Courts original jurisdiction?*—302, 303.

They have original cognizance, concurrent with the State courts, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds five hundred dollars, exclusive of costs, and the United States are plaintiffs, or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State. They have likewise exclusive cognizance, except in certain cases, of all crimes and offenses cognizable under the laws of the United States, exceeding the degree of ordinary misdemeanors, and of them they have concurrent jurisdiction with the District Courts. They have, also, original jurisdiction in equity and at law of all suits arising under the revenue laws of the United States, or under any law of the United States relative to copyrights and patent rights growing out of inventions and discoveries, and to protect such rights by injunction. The jurisdiction in the case of copyrights applies, without regard to the character of the parties, or the amount in dispute.

12. *In what cases have the Circuit Courts appellate jurisdiction*—302, 303.

From all final decrees and judgments in the District Courts, where the matter in dispute, exclusive of costs, exceeds fifty dollars. If the remedy be on final decrees in the District Courts, in cases of admiralty and maritime jurisdiction, and the matter in dispute exceeds three hundred dollars, it is by appeal ; and it on final judgments in civil cases, it is by writ of error. And it any suit be commenced in a State court against an alien, or by a citizen of the State in which the suit is brought against a citizen of another State, or against a citizen of the same State claiming lands under a grant from another State, and the matter in dispute exceeds five hundred dollars, exclusive of costs, the defendant, on giving security, may remove the cause to the next Circuit Court.

13. *In what cases have the District Courts jurisdiction?*—304.

They have, exclusive of the State courts, cognizance of all the lesser crimes and offenses cognizable under the authority of the United States, and committed within their respective districts, or upon the high seas, and which are punishable by fine not exceeding one hundred dollars, by imprisonment not exceeding six months, or when corporal punishment, not exceeding thirty stripes, is to be inflicted. They have also exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under impost, navigation, or trade laws of the United States, where the seizures are made upon the high seas, or on waters within their districts navigable from the sea with vessels of ten or more tons burden ; and also of all seizures made under the laws of the United States ; and also of all suits for penalties and forfeitures incurred under these laws. They have also cognizance, concurrent with the Circuit Courts and State Courts, of causes where an alien sues for a tort committed in violation of the law of nations, or a treaty of the United States ; and of all suits at common law, in which the United States are plaintiffs, and the matter in dispute amounts, exclusive of costs, to two hundred dollars. They have jurisdiction, likewise, exclusive of the courts of the several States, of all

suits against consuls or vice-consuls, except for offenses above the magnitude which has been mentioned. And by act of Congress of August 8th, 1846, they, in common with the Circuit Courts, have jurisdiction as justices of the peace against offenders against the United States. They have also cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of its coasts; and to repeal patents unduly obtained.

14. *What authority have the Superior Courts of the several Territories?*—305.

In those Territories in which there is no District Court established, they have the enlarged authority of the Circuit Courts, subject to revision by writ of error, and appeal to the Supreme Court. The district and territorial judges are required to reside within their respective jurisdictions, and no federal judge can act as counsel, or be engaged in the practice of the law.

LECTURE XV.

OF THE ORIGINAL AND APPELLATE JURISDICTION OF THE SUPREME COURT.

1. *Whence does the United States government derive its powers, and what is the degree of subordination under which the State governments are constitutionally placed?*—313, 314.

From the Constitution of the United States, which is an instrument containing the grant of specific powers; and the government of the Union can not claim any powers beyond those contained in the grant, and which have been given either expressly or by necessary implication. All the powers vested in the State governments, or remaining with the people of the several States, prior to the establishment of the Constitution of the United States, continue unaltered and unimpaired, except so far as they have been granted to the United States. Every act of Congress, and every act of the Legislatures of the States, and

every part of the Constitution of any State, which is repugnant to the Constitution of the United States, is necessarily void; and the determination of the Supreme Court of the United States, in every such case, is final and conclusive.

2. *To what cases does the original jurisdiction of the Supreme Court of the United States extend?*—314, 315.

It is confined to those cases which affect ambassadors, other public ministers and consuls, and to those in which a State is a party. Congress has no power to extend this jurisdiction, and it has been made a question whether it is exclusive as well as original.

3. *What is meant by final judgments or decrees of State Courts from which an appeal lies to the Supreme Court of the United States?*—316.

The word "final," in the judiciary act of 1789, is understood to apply to all judgments and decrees which determine the particular cause; and it is not to be confined to those judgments and decrees which are so final as to terminate all further or renewed litigation, in a new suit on the same right.

4. *Was the right of the Supreme Court of the United States to reverse a judgment of the highest court in a State, reversing the judgment of a subordinate State court, ever brought in question?*—316-321.

Yes: but the Supreme Court decided that the appellate power of the United States did extend to cases pending in the State courts, and that the section of the judiciary act, giving the appellate right in specified cases by writ of error, was supported by the letter and spirit of the Constitution.

5. *In what cases has the Supreme Court of the United States authority to issue a writ of mandamus to the State courts?*—321-323.

It seems to be the better opinion that it has power to issue a mandamus when necessary to enforce its appellate jurisdiction, but that it has no such power in cases not arising under such jurisdiction, and when not required in the exercise of its original jurisdiction.

6. *What is the rule laid down by the Supreme Court, on the sub-*