jurisdictional purposes, as if it were the body of the corporators who were citizens of the same State.

This view was strongly stated by Chief Justice Marshall in the case of *Bank of the United States v. Deveaux*,[1] in which, referring to the case of *Mayor, etc. v. Wood*,[2] the judges declared they could look beyond the corporation name and notice the individual. It was decided that on a question of jurisdiction in a suit by the corporation, they could look to the character of the persons composing it. This leading case was followed by others, in which it was held that the court would presume that the corporators were all citizens of the State which created the corporation, and in a later case it was held that this presumption was one which the court would not permit to be rebutted. The cases are referred to in a note.[3] In *Muller v. Dows*[4] the court said that a corporation was in fact not a citizen at all, but, as representing those who were, the jurisdictional question was within the reason of the provision of the Constitution. The conclusiveness of the presumption was first declared in *Railroad Co. v. Letson*.[5] This was followed in *Rundle v. Canal Co.*[6] and *Northern Ind. R. R. Co. v. Michigan Central R. R. Co.*[7] Though this view was opposed in the court and there was strong and persistent dissent, it may now be regarded as settled in favor of the jurisdiction, which presumes a corporation to be a citizen of the State which created it, despite the fact that all of its corporators may not be. It may be added that, where the corporation is a municipal corporation, this principle is properly conclusive, because all its inhabitants are citizens of the State of which the municipality was a part, and so as to eleemosynary corporations.

[1] 5 Cr. 61.

[2] 12 Mod. 669.

[3] Marshall v. B. & O. R. R. Co., 16 How. 316; Ohio & Miss. R. R. v. Wheeler, 1 Black, 286; Railroad Co. v. Whitton, 13 Wall. 270; Louisville R. R. v. Letson, 2 How. 497; Robertson v. Cease, 97 U. S. 646: Kansas Pacific R. R. Co. v. Atchison, T. & S. F. R. R. Co., 112 id. 414. See also Railway v. Arnaud, 16 L. J. (N. S.) C. L. 50.

[4] 94 U. S. 44.

[5] 2 How. 497.

[6] 14 How. 30.

[7] 15 How. 233.

We are justified in saying that while as an original question the rule treating a corporation as a citizen of the State which created it, as the result of the conclusive presumption above referred to, seems to stretch the meaning of the Constitution beyond its legitimate meaning according to its letter, yet, as it accords with the spirit of the Constitution, the rule may be regarded as not an injurious construction of the jurisdictional power of the United States court, and therefore as one that may be readily acquiesced in.

There is involved in the question just considered this additional rule: Under this clause jurisdiction over controversies between a State and citizens of another State was given. The force of the preposition "between" has been held to require that all the plaintiffs must be citizens of different States from all the defendants, and that if any plaintiff be a citizen of the same State with any defendant it is not a suit between citizens of different States, but *quoad* these parties between citizens of the same State. Hence the necessity of the conclusive presumption made in the cases of corporations as to the citizenship of their corporators. As we shall see more distinctly hereafter, the Supreme Court has held that the jurisdiction of the United States courts is a limited one, and that therefore, in every case, it must appear on the record itself that the Federal jurisdiction attaches. Hence it is a rule of practice in the Federal courts for the pleadings of the plaintiff to show that all of the plaintiffs are citizens of different States from all the defendants, and if this does not appear the declaration or bill is demurrable; and even where not demurred to, the court will look into the proceedings, even in an appellate court, and refuse to give judgment or decree where the record does not show the jurisdiction. In other words, they hold that, without this jurisdiction appearing on the record, the suit is *coram non judice*.[1]

[1] Ohio & Miss. R. R. v. Wheeler, 1 Black, 286; Robertson v. Cease, 97 U. S. 649; Cameron v. Hodges, 127 id. 322.

§ 378. In the case of *Scott v. Sanford*[1] it was decided that a negro, no matter where he resided, was not a citizen of the United States, capable of suing in a United States court; but now, by the fourteenth amendment to the Constitution, members of the negro race are citizens of the United States and of the State wherein they reside. So that citizenship being established, the question of the residence of the party is the main question,[2] and it must be the status of the party at the commencement of the suit.[3] But as Congress has the right to establish and ordain the inferior courts, it has also the power to define their jurisdiction, so that the act of Congress provides that no assignee of a chose in action, whatever his citizenship, can sue in a United States court, unless suit could have been brought in that court had no assignment been made.[4] Though the Constitution has defined the limits of the judicial power, it has not prescribed, but has left to Congress to prescribe, the amount of the jurisdiction which shall be vested in the courts.[5]

As already said, the citizenship, to get jurisdiction of the parties plaintiff and defendant, must be expressly averred, or the facts which constitute it must be set forth.[6] This will suffice upon all of the clauses which relate to the parties being citizens of different States; and as to what is a State, as a party, within the meaning of the Constitution, it means a State of the Union. One of these clauses is peculiar and requires a word of explanation. The Federal jurisdiction extends to cases between citizens of the same State claiming lands under grants of different States. The decision of such cases, where the power of different States to convey title was involved, is for reasons already stated proper to be left to the jurisdiction of a court having no connection with either State, but established under the Constitution of the United States. Cases of this kind have occurred and are within this jurisdiction, wherever the parties claim under grants made by the different States.[1]

[1] 19 How. 393.
[2] Curtis' Commentaries, sec. 73.
[3] Connelly v. Taylor, 2 Pet. 556; Gassies v. Ballou, 6 id. 761; Shelton v. Tiffin, 6 How. 163.
[4] Sheldon v. Sill, 8 How. 441.
[5] Turner v. Bank, 4 Wall. 10; McIntyre v. Wood, 7 Cr. 506; Kendall v. United States, 12 Pet. 616; Cary v. Peters, 3 How. 245.
[6] Cases *supra*.

The last clause to be noticed gives jurisdiction "to controversies between a State, or the citizens thereof, and foreign States, citizens, or subjects."[2] The eleventh amendment, as we have seen, excludes from the operation of this clause all suits at law or in equity commenced or prosecuted against one of the United States by citizens of another State, or subjects of any foreign State. So that while as against a State as defendant no suit can be brought by a citizen of another State, or citizens or subjects of any foreign State, the original clause remains unchanged as to a suit brought against a State by a foreign State. As to this it would seem that the foreign State may sue a State of the Union in the United States court. In any suit brought, however, by a foreign citizen or subject against citizens of any State, the alien has the right to sue, whether he sue in his own capacity or as trustee, if he have a substantive interest as trustee;[3] and if the nominal plaintiff, although a citizen, sue for the use of a citizen, the case is within the jurisdiction.[4] A foreign corporation is an alien for the purposes of suit.[5] The opposite party must be a citizen, and the alienage of the plaintiff and citizenship of the defendant must appear from the record.[6] A mere declaration of intent to become a citizen, as it does not make him a citizen, leaves him in the condition of alienage, and he may sue under this clause a citizen of a State.[7]

§ 379. The next clause has already been referred to, but further comment is necessary. While this clause gives the

[1] Town of Pawlet v. Clark, 9 Cr. 292; Colson v. Lewis, 2 Wheat. 277.
[2] Chappedelaine v. De Chenaux, 4 Cr. 306; Browne v. Strode, 5 id. 303.
[3] Chappedelaine v. De Chenaux, *supra*.
[4] Browne v. Strode, *supra*.
[5] Society, etc. v. New Haven, 8 Wheat. 464; Commercial & Vicksburg Bank v. Slocomb, 14 Pet. 60.
[6] Jackson v. Twentyman, 2 Pet. 136.
[7] Beard v. Federy, 3 Wall. 478; Jones v. McMasters, 20 How. 8; Lanfear v. Hensley, 4 Wall. 209; Semple v. Hagar, id. 436.

Supreme Court original jurisdiction in cases of ambassadors, and those to which a State is a party, the question has arisen: Is this original jurisdiction which is conferred on the Supreme Court exclusive, or may it be conferred on the inferior courts which Congress may establish? Some diversity of decisions has occurred upon this question. In *United States v. Ravara*[1] the jurisdiction of the inferior court was sustained. The contrary has been intimated by the Supreme Court in several cases,[2] but the late decisions already referred to of *Bors v. Preston*[3] and *Ames v. Kansas*,[4] and the cases cited therein, settled this question against the exclusiveness of the original jurisdiction. It is clear that Congress can confer on the Supreme Court no other original jurisdiction than the Constitution has vested in it,[5] but it may confer upon inferior courts a concurrent jurisdiction with the Supreme Court as to the cases in which it has original jurisdiction, and then confer on the Supreme Court the appellate jurisdiction from the judgment of the inferior courts in such cases. But it must be observed that such appellate jurisdiction in those cases does not arise from the nature of the parties, but from the nature of the case — from the subject-matter of litigation. The clause then provides: "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." This appellate jurisdiction of the Supreme Court then embraces all other subjects of jurisdiction set forth in the first clause of this second section, except those in which, as already seen, it has original jurisdiction.

An interesting question, already referred to, may now be considered further. Does the appellate jurisdiction of the Supreme Court reach to judgments of the State courts as well

[1] 2 Dall. 297; Story on the Constitution, 1699, and Kent's Com., lecture 15.

[2] Marbury v. Madison, 1 Cr. 137; Martin v. Hunter, 1 Wheat. 337; Osborne v. Bank, 9 id. 420.

[3] 111 U. S. 252.

[4] 111 U. S. 449.

[5] Marbury v. Madison, 1 Cr. 137.

as to those of the inferior United States courts? The reasoning of the Supreme Court in the leading cases of *Martin v. Hunter*, *supra*, and in *Cohens v. Virginia*,[1] is very strong to show that, unless the appellate jurisdiction extended to the judgments of the State courts, it would become necessary, where the State court had jurisdiction of a case within the judicial powers given by the Constitution to the United States courts, to remove the cases at once from the State courts into the United States courts for trial. In the language of the court in the case of *Martin v. Hunter*,[2] *supra*, this would be the case "not only when the *casus fœderis* should arise directly, but when it should arise incidentally, in cases pending in State courts." It is obvious that such a construction would necessitate a great abridgment of State jurisdiction in the primary stages of the litigation, and a need for a constant removal from the State to the Federal courts, even in the midst of a trial, when the Federal question first emerged. Congress, therefore, has the discretion to prescribe the jurisdiction of the inferior Federal courts, and it was thought best to leave a large concurrent jurisdiction to the State and Federal courts in many cases, and to bring to final review by the Supreme Court the judgments of the State courts in cases within the legitimate jurisdiction of the Federal judiciary. It has been already stated[3] that this appellate jurisdiction from the judgments of State courts was vigorously contested in the case of *Hunter v. Martin*,[4] but for eighty years the contest has ceased, and the appellate jurisdiction of the Supreme Court to the judgments of State courts has been acquiesced in universally; and it is best that it should be so, rather than to make necessary the exercise of the power, which unquestionably existed, to remove the case from the State court to the inferior Federal court, in order that an appeal from the judgment of the Federal court to the Supreme Court might insure a final decision by the

[1] 6 Wheat. 264.

[2] 1 Wheat. 339.

[3] *Ante*, § 367.

[4] 4 Munford, 1 (Va.).

latter upon all questions of Federal jurisdiction. In some way it is obvious that this final resort to the Supreme Court on all questions of Federal jurisdiction should be secured in order to a uniformity of operation of the laws of the United States and treaties made under their authority in all of the States of the Union.

Under the terms of this important section, Congress may establish courts inferior to the Supreme Court and give exclusive jurisdiction to these courts in some of the cases of Federal jurisdiction therein mentioned; *e. g.*, if it would be proper, give this exclusive jurisdiction in all cases to which the United States is a party, and in cases of prize, in some of which the Constitution itself requires that the jurisdiction should be exclusive.[1] So it has been said by the Supreme Court in the case of *United States v. Bevans*,[2] that Congress might give the Federal courts jurisdiction of crimes committed on a public man-of-war of the United States.

§ 380. Another question has arisen: Can Congress vest in the State courts any part of the judicial power of the United States? This has been intimated by the *Federalist*.[3] In *Martin v. Hunter*, *supra*, it was denied,[4] and this would seem to be the better opinion. It is true, the State courts having had jurisdiction, prior to the adoption of the Constitution, of a large number of cases which are within the Federal jurisdiction under the Constitution, may still continue to exercise that jurisdiction; but that is very different from the Congress having power to vest in the State courts any part of the jurisdiction which the Constitution has vested in the Federal judiciary. It is true that the State courts may enforce, by judicial action, rights secured to a party under the Constitution and laws of the United States. According to this, it has been held that a State court may administer

[1] Martin v. Hunter, *supra;* Cohens v. Virginia, *supra;* Story's Commentaries, sec. 1748; 1 Kent, lecture 18; 1 Tucker's Blackstone, Appen., 181, 183; Georgia v. Madrazo, 1 Pet. 128; Houston v. Moore, 5 Wheat. 25, 69. See also Federalist, No. LXXXII.

[2] 3 Wheat. 336.

[3] Federalist, Nos. XLV, LXXXI.

[4] Houston v. Moore, 5 Wheat. 68.

the naturalization laws as well as the Federal courts,[1] and this has been done in other cases.[2] Can either State or Federal court interfere with the other in the exercise of their respective jurisdiction? It has been held with great consistency that these two systems of courts are independent and complete within their respective spheres, and that neither can intrude upon the action of the other. By an act of Congress in 1793, the United States courts are forbidden to enjoin proceedings in the State courts.[3]

On the other hand, the State court and State cannot interfere with the proceedings and judgments of the United States courts.[4] The cases herewith cited are, however, cases where the State and Federal courts have concurrent jurisdiction; but where the State court is proceeding in a matter as to which a Federal court has exclusive or paramount jurisdiction, it is otherwise. Thus, in an admiralty proceeding, a monition may issue to a party proceeding in a State court to present his claim in the admiralty court in order to a complete remedy, *in rem*, between all the parties.[5] And where a valid order of removal of a case from a State court to a Federal court is made, and the State court still proceeds, it has been said that an injunction will issue from the Federal court to the State court;[6] but the better rule has been established that the vindication of the rightful jurisdiction of the Federal court, under the order of removal, will be left to an appeal from both courts to the Supreme Court, where the judgment of a State court, if the order of removal is valid,

[1] Rumpf v. Commonwealth, 6 Casey, 475.

[2] Claflin v. Houseman, 93 U. S. 136; United States v. Jones, 109 id. 513; Ex parte McNeil, 13 Wall. 236; Illinois v. Delafield, 8 Paige, 527; Delafield v. Illinois, 2 Hill, 159; Teal v. Felton, 12 How. 292.

[3] Ex parte Dorr, 3 How. 103; Taylor v. Carryl, 20 id. 596; Leroux v. Hudson, 109 U. S. 469; Haines v. Carpenter, 91 id. 254; Dial v. Reynolds, 96 id. 340; Watson v. Jones, 13 Wall. 679; Peck v. Jenness, 7 How. 612.

[4] McKim v. Voorhies, 7 Cr. 279; United States v. Peters, 5 id. 115; United States v. Wilson, 8 Wheat. 253; Wayman v. Southard, 10 id. 21; Bank of United States v. Halstead, 10 id. 51.

[5] Steamship Co. v. Manufacturing Co., 109 U. S. 578.

[6] French v. Hay, 22 Wall. 250.

will be wholly reversed, and the judgment of the Federal court in such cases will be affirmed; or where the order of removal is invalid the Supreme Court will reverse its action.[1]

So the United States courts, sitting in bankruptcy, may enjoin a State court from impairing the right of the assignee in bankruptcy or distributing the assets of the bankrupt by its order.[2] But in such a case as this it will not interfere with the rightful jurisdiction of the State court as to liens upon the bankrupt's estate prior to the bankrupt proceedings.[3] In cases, therefore, of concurrent and co-ordinate jurisdiction, the court first having possession must be allowed to proceed without interference by its concurrent rival.[4]

§ 381. Some other points may be considered. When the United States courts take jurisdiction of a case on account of the character of the parties thereto, they administer the laws of the State as the State courts would do; they recognize the common law and the statute law of the State and the decisions of the State courts, on its own Constitution and laws, on questions as to land or other property. As to these they hold the State courts to be the final arbiters for the interpretation of its laws in their application to controversies concerning property contracts and torts; for the Federal courts have not jurisdiction of such cases on account of subject-matter, but only incidentally on account of subject-matter, because of the character of the parties. It would destroy the uniformity of the operation of State laws if Federal courts departed from the precedence of State courts in their own decisions.[5] If the State decisions are at variance, the United States court will follow the last-settled adjudication of the highest State

[1] Railroad Co. v. Whitton, 13 Wall. 270; Removal Cases, 100 U. S. 457.
[2] Ex parte Christy, 3 How. 292.
[3] Peck v. Jenness, 7 How. 612.
[4] Riggs v. Johnson Co., 6 Wall. 166; French v. Hay, 22 id. 250; Akerly v. Vilas, 15 Wis. 401.
[5] Wheaton v. Peters, 8 Pet. 591; Livingston v. Moss, 7 id. 469; Railroad v. Railroad Co., 20 Wall. 137; Townsend v. Todd, 91 U. S. 452; Elmwood v. Marcy, 92 id. 259; Railroad Co. v. Georgia, 98 id. 359; Walker v. Harbor Commissioners, 17 Wall. 648; Shelby v. Guy, 11 Wheat. 361; Bucher v. Cheshire R. R. Co., 125 U. S. 555.

court;[1] and this is in accordance with the provision of the statute of the United States,[2] which in terms provides: "The laws of the several States, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decisions in trials at common law in the courts of the United States in cases where they apply." But this rule and this statute will not apply where the State decision is on a question of which, by the Constitution of the United States, the Federal judiciary has the final decision.[3] Nor will it apply to questions not regulated by statute, but of general law, such as the law of negotiable paper, insurance, and the like. These questions depend on principles of general law, and not on local statutes.[4] Nor does it apply where the State statute is in the nature of a contract and the State law undertakes to impair its validity. Such a case, as we shall see, is a case arising under the Constitution of the United States, which forbids a State to impair the obligation of a contract.[5] In *Bucher v. Cheshire R. R. Co.*, *supra*, the court said that the statute of the United States applied to trials at common law, but that the rule did not apply to cases in admiralty or in equity, nor to criminal offenses against the United States; but the decision of its highest court, as to the Constitution and statutes of a State, was regarded as part of the Constitution and statute of the State and binding upon the courts of the United States.[6] In the case of *Burgess v. Seligman*[7] the whole sub-

[1] Green v. Neal, 6 Pet. 291; Suydam v. Williamson, 24 How. 427; Fairfield v. Gallatin, 100 U. S. 47.
[2] R. S., sec. 721.
[3] State Bank v. Knoop, 16 How. 369; Jefferson Branch Bank v. Skelly, 1 Black, 436.
[4] Chicago v. Robbins, 2 Black, 418; Boyce v. Tabb, 18 Wall. 546; Venice v. Murdock, 92 U. S. 494.
[5] Gelpcke v. Dubuque, 1 Wall. 175; Olcott v. Supervisors, 16 id. 678; Kring v. Missouri, 107 U. S. 221; Virginia Coupon Cases, 114 id. 269; McGahey v. Virginia, 135 id. 662.
[6] Leffingwell v. Warren, 2 Black, 599; Luther v. Borden, 7 How. 1; Post v. Supervisors, 105 U. S. 667. And that it also applies to rules of evidence, see Ex parte Fisk, 113 U. S. 713.
[7] 107 U. S. 20.

ject has been ably reviewed, and in the case of *Railroad Co. v. Putnam* it was held that the power of a court of the United States in charging a jury was not restrained by the State statute forbidding judges to express an opinion on the facts, citing *Nudd v. Burrows;*[1] and in *Peters v. Bain*[2] the Supreme Court accepted the construction given to a Virginia statute by the highest court of that State as controlling its decision. In that case the decision of Waite, C. J., in the circuit court of the United States, and the opinion of Chief Justice Fuller fully sustain the propositions stated. In all these cases the Federal courts differ from the decisions of the State courts as to subjects clearly within State jurisdiction, and *e contra* State courts differ from those of the United States as to those in the Federal jurisdiction. This is according to well-recognized rules of judicial comity.

§ 382. Can a State court take jurisdiction of a case for enforcing a right arising under the Constitution of the United States or a law of the United States? The English courts enforce in the domestic forum a right arising under foreign law.[3] The forum of trial will regard the foreign law in its decision of the case.[4] The Constitution and the laws of the United States are the laws of each State; hence, unless the Constitution of the United States or a law of Congress excludes the jurisdiction of a State court, in a case of a right arising under the Constitution or law of the United States, the State court, as it had jurisdiction before, can still exercise it.[5] There is another form of the same question: Can a State court take jurisdiction of a case arising under local law, when the defense justifies under the Constitution or law of the United States; *e. g.:* Can a citizen sue a Federal officer for trespass when he justifies under the Constitution or law of Congress?

[1] 91 U. S. 426.
[2] 133 U. S. 670.
[3] Mostyn v. Fabrigas, Cowper, 161.
[4] Buron v. Denman, 6 Exch. 166.
[5] Federalist, No. LXXXII; Claflin v. Houseman, 93 U. S. 136; F. & M. Bank v. Bank, 92 id. 29; Ex parte McNeil, 13 Wall. 236; The Moses Taylor, 4 id. 429; Eyster v. Gaff, 91 U. S. 591; Bors v. Preston, 111 id. 282; Ames v. Kansas, Id. 449; United States v. Jones, 109 id. 513.

There is no good reason against this jurisdiction of a State court, unless the Constitution or law of the United States gives exclusive jurisdiction to the United States court. It is true, as we have seen, that this exclusive jurisdiction may be given to the United States court by a removal of the case from the State to the United States court, but unless so removed the State court will have jurisdiction.[1] This principle applies to the case of a suit against a military officer of the United States who justifies under the articles of war;[2] but where the United States officer holds property under process from the United States court, suit cannot be brought against the officer in the State court, for its judgment, if against the officer, would virtually oust the Federal court of the custody of the property through its officer.[3] And this principle of non-interference by comity is extended by the United States court to a State court in case a similar controversy arise.[4] In both classes of cases the rule is that the court which first obtained jurisdiction by service of process will not be interfered with by the other by injunction, *habeas corpus*, or other interference with its jurisdiction. The exercise of its jurisdiction thus first obtained will be free from interference until final judgment or execution.[5]

All cases, however, where the cause of action or the defense to an action was based on the Constitution of the United States, or a law of Congress or treaties made under the authority of the United States, will be subject to an appeal from the final judgment of the highest State court to the Supreme Court of the United States. From what has been already said, it will be apparent, therefore, that the power vested in the Supreme Court of the United States to take cog-

[1] Slocum v. Maybury, 3 Wheat. 1; Gelston v. Hoyt, 3 id. 247; Teal v. Felton, 12 How. 284; Buck v. Colbath, 13 Wall. 334; Hagan v. Lucas, 10 Pet. 400; Peck v. Jenness, 7 How. 624; Day v. Gallup, 2 Wall. 97.
[2] Wise v. Withers, 3 Cr. 337; Wilkes v. Dinsman, 7 How. 89; s. c., 12 id. 404; Dynes v. Hoover, 20 id. 65.
[3] Home v. Freeman, 20 How. 583; Buck v. Colbath, *supra;* Ames v. Kansas, 111 U. S. 449.
[4] Diggs v. Wolcott, 4 Cr. 179; Peck v. Jenness, 7 How. 624.
[5] Rio Grande R. R. Co. v. Gomila, 132 U. S. 478.

nizance of appeals from the decision of the Supreme Court of a State, upon questions arising under the Constitution, laws or treaties of the United States, will amply protect these from violation by the decisions of State courts and give uniformity to the decisions in all the States in respect to them under the final judgment of the Supreme Court of the United States.

§ **383.** This appellate power, given to the Supreme Court, from the decisions of the inferior courts of the United States, as well as from the decision of the highest appellate court of a State, covers the whole range of subjects which by the second section of this article are embraced within the judicial power of the United States. In the second clause and second section, after stating the cases already referred to in which the Supreme Court shall have original jurisdiction, the clause gives appellate jurisdiction to the Supreme Court, both as to law and fact, with such exceptions and under such regulations as the Congress shall make. The language, "both as to law and fact," gave rise to apprehensions when the Constitution was under consideration by the people of the different States, to which the *Federalist*[1] refers, and in which Mr. Hamilton expressed the opinion that it would not give the power to the Supreme Court to re-examine facts decided by the juries in the inferior courts; but he insisted that it applied only to those cases, as in equity and in admiralty, where jury trials did not exist, and where the facts decided by the court would be embodied in the record which came to the appellate tribunal. The question, however, was not left to this reasonable view of the distinguished writer, but was made the subject of the seventh article of amendment proposed in the first Congress under the Constitution, and subsequently ratified by the States. That article reads as follows: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United

[1] No. LXXXI.

States, than according to the rules of the common law." This important amendment preserved the integrity of jury trial, so as to avoid the criticism which had been made upon the original Constitution, and excluded the re-examination by the Supreme Court of any fact, tried by a jury, otherwise than according to the rules of the common law. Those rules allow a motion for a new trial to the court itself, and would necessarily involve a re-examination by the appellate tribunal of the judgment of the court upon that motion, either in granting or refusing a new trial by jury.

The third clause of this second section reads thus: "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." This trial by jury, in all criminal cases except impeachment, is but a re-enactment of the thirty-ninth article of King John's Magna Carta, in the year 1215. The eulogium of Blackstone,[1] of De Lolme,[2] and of Mr. Justice Story,[3] on this provision, may be referred to without being quoted. It will be seen, however, that it provides that the trial shall be held within the State where the crime is committed, etc. Much uneasiness was manifested at the time of the adoption of the Constitution, which caused the adoption of the fifth and sixth articles of amendment, on which comment has already been made in a former part of this work, and need not be repeated here.

The power of Congress is largely discretionary as to the distribution of jurisdiction between the inferior courts which they may from time to time ordain and establish. In a work on the Constitution it is hardly necessary to go into an analysis of the acts of Congress which have distributed the jurisdiction of the United States among the several

[1] 3 Blackstone's Commentaries, 378–381.

[2] Book 1, ch. 13; Book 2, ch. 16.

[3] Story's Constitution, secs. 1773, 1774.