

JOHN MARSHALL
COMPLETE
CONSTITUTIONAL DECISIONS

Edited with
Annotations Historical,
Critical and Legal

by
John M. Dillon

Illustrated with portrait and facsimiles

William S. Hein & Co., Inc.
Buffalo, New York
2003

Library of Congress Cataloging-in-Publication Data

Marshall, John, 1755-1835.

John Marshall, complete constitutional decisions / edited with annotations historical, critical, and legal by John M. Dillon.

p. cm.

Originally published: Chicago : Callaghan & Co., 1903.

Includes index.

ISBN 1-57588-771-1

1. Constitutional law--United States--Cases. I. Title: John Marshall. II. Dillon, John M., of the New York Bar. III. Title.

KF213.M3D5 2003

342.73--dc21

2003047847

This acid-free reprint was digitally archived under the strict quality control guidelines established by William S. Hein & Co., Inc.'s "Preservation Program" This program was established to preserve the integrity of legal classics for future generations of legal researchers.

This paper meets the requirements of
ANSI/NISO Z39.48-1992 (Permanence of Paper).



Printed in the United States of America.

JOHN MARSHALL

COMPLETE CONSTITUTIONAL DECISIONS

Edited with

ANNOTATIONS HISTORICAL,
CRITICAL AND LEGAL

By

JOHN M. DILLON

Of the New York Bar

ILLUSTRATED WITH PORTRAIT AND FAC-SIMILES

CHICAGO
CALLAGHAN & COMPANY
1903

COPYRIGHT, 1903,
BY
CALLAGHAN AND COMPANY.

STATE JOURNAL PRINTING COMPANY,
PRINTERS AND STEREOTYPERS,
MADISON, WIS.

PREFACE.

An eminent philosophic historian and statesman, whose lamented death occurred while this volume was passing through the press, has the following pregnant observations which are distinctly applicable to our Constitution, to our national experience, and to the permanent and increasing value of Chief Justice Marshall's constitutional labors. "An appetite for organic change," says Lecky,¹ "is one of the worst diseases that can affect a nation. All real progress, all sound national development, must grow out of a stable, persistent national character, deeply influenced by custom and precedent and old traditional reverence, habitually aiming at the removal of practical evils and the attainment of practical advantages, rather than speculative change. Institutions, like trees, can never attain their maturity or produce their proper fruits if their roots are perpetually tampered with. In no single point is the American Constitution more incontestably superior to our own than in the provisions by which it has so effectually barred the path of organic change that the appetite for such change has almost passed away."

¹ Democracy and Liberty, I, 153, 154.

The Constitution of the United States is the only political bond of union of the American Republic. John Marshall is the master-builder of the Constitution. By universal consent his work in this respect stands unrivaled and supreme. Conclusive proof of this, if proof were necessary, is found in the Centennial Celebration throughout the United States in 1901 of Marshall's appointment as Chief Justice of the Supreme Court. The record of this unique and extraordinary event is comprised in three commemorative volumes¹ which are referred to throughout the following work as the "Marshall Memorial."

The present volume contains in full every decision on constitutional points of Chief Justice Marshall. With the additions of the Thirteenth to Fifteenth Amendments, which grew out of the Civil War of 1861-1865, the Constitution of to-day is the Constitution of Marshall's time, and it means to-day just what Marshall's decisions authoritatively declared and established it to mean. The settled judgment of the world is that this Constitution is the most remarkable political document ever fashioned by the mind of man. No thorough knowledge of it is possible without a careful study of

¹John Marshall, Life, Character and Judicial Services, as Portrayed in the Centenary and Memorial Addresses and Proceedings throughout the United States on Marshall Day, 1901, and in the classic orations of Binney, Story, Phelps, Waite and Rawle. Compiled and Edited with an Introduction by John F. Dillon. Illustrated with Portraits and Fac-simile; in Three Volumes, 1903.

Marshall's decisions. This may seem to be a strong expression, but it is absolutely true. To all persons, therefore, lay or professional, who feel an interest in the science of law, of jurisprudence or of government, and in the workings of republican institutions for over a century on a theater of more than imperial extent and grandeur and on the largest scale ever exhibited to mankind, the opinions here published have an intrinsic importance distinctively and exclusively their own.

Of few works can it truly be affirmed that they are equally adapted to popular and professional use. But this is undeniably true of Chief Justice Marshall's constitutional judgments. Many of the greatest and most luminous of his constitutional opinions contain scarcely a reference to adjudged cases or to the authority of precedents, for there were none, and the conclusions reached do not depend upon technical learning or discussions. They may be fully understood by any intelligent person. As Dr. Johnson would have phrased it, each decision is a colossus hewn from a rock, not figures carved on cherry stones; and on reading these opinions one has the satisfaction of seeing each successive stroke of the Titan which gradually evolved the massive and original work that he beholds.

In order that the volume may be more useful, a statement of the exact points decided has been prefixed to each case. Mr. Justice Curtis, one of the ablest judges

who ever held a place on the Supreme Bench of the United States, edited the Decisions of the Supreme Court. He appreciated the vital distinction between the points decided by the court and the arguments in support of the decision, and he embodied the points decided in head-notes, which are remarkable for their accuracy and conciseness and which have the added value of containing just what this learned and careful judge regarded as the precise propositions actually determined by the court. Mr. Justice Curtis's head-notes have, by the courtesy of Messrs. Little, Brown & Co., been adopted by the Editor, and they appear at the head of each of the Supreme Court opinions here published. To insure accuracy these opinions have been carefully compared with the original official reports.

It so happens that nearly every one of the great cases decided by Chief Justice Marshall has an interesting contemporaneous and subsequent history of its own, which forms an appropriate background and setting to the case. In the light of this history the opinion of the Chief Justice will be better understood and read with greater interest. This history together with such observations historical, general or critical as seemed proper precedes each case. The annotations at the foot of each opinion indicate how far the case itself has been subsequently referred to or applied; and thus this volume is intended to exhibit the present state of Constitutional Law on all

the great and essential provisions of the Constitution which were dealt with by Chief Justice Marshall.

Marshall's constitutional labors were the subject of orations and addresses on Marshall Day at the National Capital and in thirty-seven States and Territories, in which the opinions of Marshall are examined and reviewed by eminent judges, lawyers, statesmen and scholars. The present is therefore a companion volume to the "Marshall Memorial;" and among other features of interest or convenience it contains in the notes references to the "Marshall Memorial" in which will be found whatever was said on Marshall Day concerning the constitutional opinions of the great Chief Justice.

The Editor desires to express his obligation to the Honorable John F. Dillon, who edited the Marshall Memorial Volumes, for the prefatory notes to the opinions here given; for the other notes and editorial work the present Editor is responsible. He also gratefully acknowledges valuable assistance from his friend Mr. George S. Clay in the preparation and issue of this volume.

J. M. D.

New York, *December, 1903.*

TABLE OF CASES AND CONTENTS.

WILLIAM MARBURY v. JAMES MADISON:	
Power and duty of the courts to declare acts of Congress in conflict with the Constitution void.....	1
UNITED STATES v. FISHER AND OTHERS, ASSIGNEES OF BLIGHT, A BANKRUPT:	
Congress may constitutionally give the United States a preference in bankruptcy over other creditors.....	42
HEPBURN AND DUNDAS v. ELLZEY:	
The District of Columbia is not a State within the meaning of the Constitution.....	48
EX PARTE BOLLMAN AND SWARTWOUT:	
The American law of treason.....	51
UNITED STATES v. AARON BURR:	
The American law of treason.....	82
BANK OF THE UNITED STATES v. DEVEAUX AND OTHERS:	
Federal jurisdiction over corporations.....	166
UNITED STATES v. JUDGE PETERS:	
Sanctity and force of judgments of the Federal courts—Their inviolability by the States.....	180
FLETCHER v. PECK:	
The Constitution of the United States forbids a State from impairing its own contracts or grants of property by subsequent legislation....	194
UNITED STATES v. BEVANS:	
The admiralty and maritime jurisdiction of the Federal courts under the Constitution and the Crimes Act of 1790..	218
STURGES v. CROWNINSHIELD:	
Respective constitutional powers of the General and State governments as to bankrupt and insolvent laws—The authority of the States is subject to the contract-clause of the Federal Constitution.....	226

M'CULLOCH v. STATE OF MARYLAND AND OTHERS:
National and State sovereignty—Congress has the constitutional power to charter a bank as a fiscal agency of the General Government—The States have no power to tax its operations or franchises without the consent of Congress . . . 252

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD:
Constitutional sanctity of contracts—Their inviolability by the States 299

LOUGHBOROUGH v. BLAKE:
Constitutional power of Congress to levy direct taxes throughout the United States 339

OWINGS v. SPEED AND OTHERS:
Date when Constitution took effect—Contract-clause not retroactive 352

COHENS v. STATE OF VIRGINIA:
Constitutional supremacy of the Supreme Court over judgments of State courts denying Federal rights 357

GIBBONS v. OGDEN:
The national supremacy over foreign and interstate commerce 421

OSBORN v. BANK OF UNITED STATES:
State laws taxing the franchises or functions of Federal instrumentalities unconstitutional—The enforcement of such laws may be enjoined by the Federal courts 463

BANK OF UNITED STATES v. PLANTERS' BANK:
Constitutional scope of Federal judicial power over corporations in which a State is interested 512

BROWN v. MARYLAND:
Paramount power of Congress to regulate commerce—The States cannot tax commerce nor require an importer to take a license and pay a revenue license fee therefor before he can sell the imported article in the original package . . . 520

OGDEN v. SAUNDERS:
Constitutional validity of State insolvent and bankrupt laws 549

AMERICAN INSURANCE COMPANY v. CANTER:
The United States has the constitutional power to acquire territory by conquest or treaty, and Congress, subject to the Constitution, may provide for the government of such territory during the territorial condition 536

WESTON v. CITY OF CHARLESTON:

The States have no power to tax United States bonds or stocks 604

CRAIG v. STATE OF MISSOURI:

The issue by a State of paper money on the credit of the State is the emission of "bills of credit," and violates the Constitution of the United States..... 617

PROVIDENCE BANK v. BILLINGS AND PITTMAN:

Taxation by a State of corporations chartered by it, where there is no express contract for exemption from taxation, does not violate the contract-clause of the Federal Constitution 644

CHEROKEE NATION v. GEORGIA:

Constitutional relation between the General Government, the several States of the Union, and the Indian tribes — National authority supreme — Jurisdiction of the Supreme Court..... 655

WORCESTER v. GEORGIA:

The National authority over Indian tribes as against the States is supreme and exclusive..... 680

BARRON v. BALTIMORE:

The fifth amendment of the Constitution as to the power of eminent domain applies only to the United States and has no application to the several States..... 724

BRIG WILSON v. UNITED STATES:

The power of Congress to regulate commerce extends as well to navigation and vessels as to cargoes..... 736

UNITED STATES v. MAURICE AND OTHERS:

Respective powers of Congress and the President as to the creation and appointment to offices of the United States... 741

CHRONOLOGICAL DATA 748

LIST OF CHIEF JUSTICES OF THE UNITED STATES..... 750

LIST OF ASSOCIATE JUSTICES OF THE UNITED STATES..... 751

LIST OF ATTORNEYS-GENERAL OF THE UNITED STATES 752

LIST OF REPORTERS OF THE SUPREME COURT 752

AUTHORS AND WORKS CITED IN THIS VOLUME 753

CASES CITED IN THIS VOLUME 756

INDEX TO THIS VOLUME 763

INDEX.

- Accessory** (see BURR, AARON; TREASON) —
guilt of principal in treason must be established before, can be
tried, 120, 147, 148, 149.
- Adams, Henry** —
opinions as to Burr's expedition, 157.
- Adams, John** —
reference to, 1, 2, 5.
- Adams, John Quincy** —
counsel in *Fletcher v. Peck*, 197, note 1.
- Admiralty Jurisdiction** —
see *American Ins. Co. v. Canter*, 586-603.
of the Federal courts under Constitution and Crimes Act of
1790, 218.
- Agents, State** —
see STATE AGENTS.
- Agents of the United States** —
see UNITED STATES AGENTS.
- Ambassadors** —
jurisdiction in cases affecting, 387.
- Amendments of Constitution** (see CONSTITUTION) —
the Fifth and Fourteenth, are complementary, 726.
the Eighth — accused must be informed of nature of accusa-
tion, 143.
the Eleventh — objection to jurisdiction in *Osborn v. The Bank*,
under, 488.
considered in *Osborn v. The Bank*, 491, 492.
whether provisions of, extend to cases where a State is not a
party on the record, 492.
simply restrains the construction which might otherwise be
given to the Constitution, 515.
history of adoption of, 396 *et seq.*
object of, 398, 399.

Amendments of Constitution — Continued.

- to what suits it extends, 397, 492.
- applies to suits by individuals upon demands against States, 397.
- wording of, 186, 396.
- considered in *United States v. Peters*, 180-193.
 - Osborn v. Bank*, 468.
 - also same case, 475, 488, 491, 492, 511.
 - Bank of United States v. Planters' Bank*, 514, 519.
- the Fifth — considered in *Barron v. Baltimore*, 724-734.
- the Fourteenth — construction of, 167.
 - Guthrie's lectures on, 464, note, 2, 734.
 - took effect in 1868, 725.
 - called the New Charter of American Liberty, 726.
- the Tenth — word "expressly" omitted from, 264.

American Insurance Company v. Canter (*re* acquisition of territory by United States), 586-603.

- prefatory note, 586-589.
- opinion, 591-601.
- notes, 601-603.
- statement of facts, 590, 591.

American Law of Treason, 51.

- see LEVYING WAR; TREASON.

Appellate Jurisdiction —

- see JURISDICTION; SUPREME COURT OF UNITED STATES.

Appellate Power of Supreme Court —

- over judgments of State tribunals, why essential, 404.

Appendix, 735.**Appointments to Office —**

- clauses of the Constitution affecting President's power of, 6, 741, 744, 745.
- nomination by President completely voluntary, 6.
- appointment by President is also voluntary, 6.
- commission by President, 6, 7.
- distinction between, and commission stated, 7.
- necessary steps to complete, 8.
- steps must be strictly pursued, 10.
- signature of President completes, 9.
- why delivery of commission not essential to completion of, 11, 12.
- acceptance of, not necessary to give validity, 14.
- commission bears date from time of, 14.

Assemblage—

procuring of, 145.

of men in force necessary to constitute fact of levying war, 108, 109, 117, 118. (See BURR; LEVYING WAR; TREASON.)

Attorney and Counsel—

Osborn *v.* Bank, 474.

Attorneys-General of the United States—

list of, see APPENDIX, 752.

Auction, Sales by, 536.**Authors and Works Cited—**

see APPENDIX, 753.

Baldwin, Henry, Justice—

referred to, 621, note 1, 646, note 1, 667, note 1, 684, note 1, 727 note 1.

Bank of the United States—

a public corporation, 500.

distinction between public and private character of, 501, 502.

relation of, with government, does not resemble that of contractors, 507.

see OSBORN *v.* BANK, 468.

Bank of United States *v.* Dandridge—

case of, referred to, 179, note 2.

Bank of United States *v.* Deveaux (*re* Federal jurisdiction over corporations)—

case of, 166-179.

opinion, 170-178.

prefatory note, 166-168.

facts in, 168-170.

cited in Osborn *v.* Bank, 478.

referred to, 514, note 1.

Bank of United States *v.* Planters' Bank of Georgia (*re* Federal judicial power over corporations)—

case of, 512-519.

opinion in, 513-518.

notes, 518, 519.

referred to, 192, 469, 476.

Bankrupt Laws (see CONSTITUTION)—

insolvent laws a branch of, 241.

effect of contract-clause of Constitution, 226.

examples distinguishing between bankrupt and insolvent laws, 234, 235.

- Bankruptcy Clause of the Constitution** (art. 1, sec. 8)—
 reference to, 226.
 wording of, 231.
 exclusive power of Congress, 233.
- Barbour, Mr.**—
 counsel in *Cohens v. Virginia*, 366, note 1.
- Barron v. Mayor and City of Baltimore** (*re eminent domain*)—
 case of, 724-734.
 prefatory note, 724-726.
 opinion, 728-733.
 note, 733, 734.
 referred to, 233, note 1.
- Bell, Justice**—
 referred to, 302.
- Benton, Thomas H.**—
 counsel in *Craig v. Missouri*, 621, note 1.
 quoted in reference to the Indians, 664.
 reference to, 638, note 1.
- Bills of Credit**—
 first emitted in Massachusetts, 634.
 reference to, 244.
 defined, 630, 631.
 history of, 631, 635.
 no State shall emit, 244, 617, 630.
 meaning of, first determined in *Craig v. Missouri*, 617.
- Binney, Horace**—
 counsel in *Bank v. Deveaux*, 169, note 2.
- Blackstone**—
 definition of *mandamus*, 22.
 on levying war, 87, 102, 103.
 referred to, 15, 18, 23, 59, 60.
 definition of "suit," 398.
 "law," 571, 572.
- Blennerhassett's Island**—
 reference to, 128.
 Burr not at, when overt act of treason was committed, 120, 130,
 134.
- Bollman and Swartwout** (*re treason*), 51-81.
 notes, 79-81.
 opinion in, 56-79.
 facts in the case of, 54, 55.

Bollman and Swartwout—*Continued.*

- prefatory note, 51-53.
- distinguished from Burr's Case, 106.
- opinion in, critically examined, 107 *et seq.*
- opinion further considered, 110, 113 *et seq.*, 145.
- reference to, 82, 90, 91, 158.

Bollman, Erick—

- author of "Paragraphs on Banks," 80.
- history after trial, 80.

Botts, Benjamin—

- counsel for Burr, 52, 83, note 1.

Brig Wilson v. United States (*re commerce*)—

- appendix, 735-740.
- prefatory note, 736.
- opinion, 737-740.
- how the case arose, 740.
- reference to, 735.

Brown et al. v. State of Maryland (*re foreign commerce*)—

- case of, 520-548.
- prefatory note, 520-525.
- opinion in, 526-544.
- notes in, 545-548.
- sole question in, 527.
- reference to, 463, note 2, 687.

Burr, Aaron (see LEVYING WAR; TREASON)—

- scheme of expedition against Mexico by, 70, 73, 74, 157.
- takes part in his own defense, 53.
- plan of operations by, 73.
- not present at Blennerhassett's Island, 120, 130, 134.
- no rights waived by, 150.
- reference to, 54, 70, 72, 73, 74, 75, 76, 77, 111, 120, 146, 157.
- life of, by Parton, reference to, 52, note 1.

Burr—Trial of, for Treason—

- minent counsel in, 52, 53.
- Bollman and Swartwout's Case distinguished from, 106.
- reference to, 51, 52, 53, 80, 81.

Cases Cited—

- see APPENDIX, 756-761.

Charter—

- see DARTMOUTH COLLEGE CASE.

- Charter of United States Bank** —
a law of the United States, 483, 518.
- Chase, Salmon P., Chief Justice** —
reference to, in *Legal Tender Cases*, 207, note 1.
- Chase, Samuel, Justice** —
reference to, 3, note 3, 55, note 1, 110, 161, 169, note 2, 182, note 1,
197, note 1, 350.
opinion of, in *Fries' Case*, 69, 104, 105, 159, 160, 161.
impeachment of, 161.
- Cherokee Nation v. State of Georgia** (*re* Indians), 655-679.
prefatory note, 655-666.
opinion, 666-675.
note, 675-679.
reference to, 216, 680.
- Chester, Elisha W.** —
counsel in *Worcester v. Georgia*, 684, note 1.
- Chronological Data relating to Marshall** —
see APPENDIX, 748, 749.
- Circuit Court** —
jurisdiction of, 49, 170, 518.
clause in patent law authorizing suits in, referred to, 486.
- Citizens** (see *HEPBURN AND DUNDAS v. ELLZEY*, 48-50) —
composing corporations, see CORPORATIONS.
- Clay, Henry** —
counsel in *Osborn v. The Bank*, 477, note.
Bank v. Planters' Bank, 476, 513, note 1.
Ogden v. Saunders, 550.
referred to, 470.
- Coasting Trade** —
act regulating, examined, 452 *et seq.*
- Cockburn, Chief Justice** —
reference to charge in *Tichborne Case*, 53.
- Cohens v. State of Virginia** (*re* constitutional supremacy of
Supreme Court) —
case of, 357-420.
prefatory note, 357-365.
opinion in the case, 366-418.
notes to, 419, 420.
agreed statement of facts, 367.
reference to, 299.

Coke, Lord —

- on writ of error, 399.
- definition of levying war by, 86, 96, 124.
- concerning corporations, 174.
- referred to, 174.

Commerce Clause (see CONGRESS) —

- meaning of the word "commerce," 432.
- navigation included in commerce, 433, 440, 735.
- paramount power of Congress to regulate commerce, 520.
- origin and reasons for, 540.
- extent of power to regulate, 436 *et seq.*, 540, 541, 738.
- and other clauses of the Constitution limit State's power of taxation, 543.

Commission (see APPOINTMENTS TO OFFICE) —

- affixing seal to, completes it, 9.
- transmission of, a convenience, not a law, 12.
- bears date from time of appointment, 14.
- to withhold, a violation of a vested legal right, 15.

Confederation —

- see *United States v. Peters*, 180-193.

Congress —

- act of, repugnant to the Constitution is void, 2, 31.
- when act of, and the Constitution are in conflict the latter must govern, 2.
- original jurisdiction cannot be conferred on the Supreme Court by act of, 2, 390.
- priority of payment of the United States may be given by, 42.
- jurisdiction of Circuit Courts under an act of, 49, 170.
- requisitions of, habitually disregarded under the Confederation, 379.
- exclusive right of, to legislate for the district embracing the seat of government (sec. 8, art. I), 413.
- not a local Legislature, 415, 416.
- acts of, with respect to forts, arsenals, etc.; illustration of legislation under exclusive and limited power, 415.
- a State cannot regulate commerce while Congress is regulating it, 442.
- may control State laws so far as may be necessary for the regulation of commerce, 447.
- act of, regulating commerce applies to all vessels however propelled, 460.

Congress — *Continued.*

- act of, authorizing officers of United States to sue in Federal courts, reference to, 485.
- incorporating a bank no resemblance to the general naturalization law, 486.
- incorporating a bank, clause in, enabling bank to sue in United States courts is constitutional, 487.
- of 1822, 1823, considered in *American Ins. Co. v. Canter*, 594-597.
- gives jurisdiction in *Worcester Case*, 692, 693.
- duty of court in construing, 506.
- in connection with *American Ins. Co. v. Canter* (acts of 1822, 1823), 594 *et seq.*
- in determining extent of power, courts will look to the objects for which it is given, 432.
- exceptions from power of mark its extent, 433.
- to regulate commerce comprehends every species of commercial intercourse between foreign nations and United States, 436.
- power to erect light-houses, 450.
- to incorporate a bank, 252, 259, 281, 501, 502.
- to levy direct taxes, 252, 339.
- to provide for the government of territory, 586.
- to regulate commerce, etc., 432, 436.
- creating a corporation distinguished from power of levying war, 268.
- extent with respect to commerce among the States, 436 *et seq.*
- to regulate commerce vested absolutely in Congress, 439, 540.
- excluded from the States, 440.
- to regulate commerce comprehends navigation within the limits of every State, 433, 440, 736.
- to regulate commerce extends as well to navigation and vessels as to cargoes, 736.
- to impose embargoes included in that to regulate commerce, 434.
- paramount power of Congress to regulate commerce, 520.
- to impose duties is a branch of taxing power, 443.
- to lay and collect taxes is co-extensive with power to lay and collect duties, imposts, etc., 343.
- to levy direct taxes, 252, 339.
- to impose direct tax on District of Columbia, 340, 341, 346, 347.
- to legislate exclusively carries with it certain other powers. 417.

Congress — *Continued.*

- power, on subject of bankruptcies, 226, 231.
- with respect to importation of slaves, 448.
- to borrow money, 612.
- respective powers of Congress and the President as to the creation and appointment to offices, 741.
- to establish post-offices and post-roads, 274.
- to create a corporation distinguished from power to levy war, 268.

Constitution —

- essential theory and purpose of a written, 33.
- deals in generals, not in details, 172, 264.
- The Federalist on, 45, 46, and note 1. (See CONSTITUTION OF THE UNITED STATES.)

Constitution of the United States (see CONGRESS; STATES) —

- condition of States prior to adoption of, 232.
- rules of construction of, 327, 528-530, 673, 746.
- cases arising under, and laws of the United States are cognizable in courts of the Union whoever may be the parties, 374.
- political situation of States before and after formation of, 430.
- strict construction of powers granted by, disapproved, 430.
- constitutional meaning of word "State," 49, 50.
- District of Columbia not a "State" under sec. 2, art. 3, of the, 48 *et seq.*
- word "bank" or "incorporation" not found in, 252.
- people acted upon in convention, 261.
- impossible for, to enumerate its powers, 172, 264.
- when act of Congress is in conflict with, latter must govern, 2.
- an act of Congress repugnant to, is not law, 2, 31.
- date when. took effect, 352, 354.
- how and when, began to operate, 354.
- extent of judicial power of United States defined in, 369, 479, 668.
- the supreme law of the land, 373.
- supreme power to make or unmake, resides only in the whole body of the people, 381.
- question whether a law is repugnant to, a delicate one, 198.
- contracts under, construed, 209.
- grants under, construed, 209.
- object of, to form a more perfect union, 406.
- the Federalist a very full commentary on, 408.
- the Judiciary Act is a contemporaneous exposition of, 409.

Constitution of the United States — Continued.

- supremacy of, and laws and treaties made in pursuance of it, 452.
- strict and narrow construction, disapproved, 275, 430, 462.
- where case involves construction, Federal courts have jurisdiction, 405, 482.
- supremacy of Supreme Court over judgments of State courts denying Federal rights, 357.
- constitutional power to give a preference to the United States over other creditors in bankruptcy, 42.
- bankrupt and insolvent laws under the contract-clause of the, 226.
- constitutional validity of State insolvent and bankrupt laws, 549.
- of laws of Ohio, taxing Bank of United States, 500, 508.
- constitutionality of clause authorizing bank to sue in Federal courts, 479.
- Federal courts under, 218.
- admiralty and maritime jurisdiction of, 218.
- the Fifth Amendment as to power of eminent domain applies only to the United States, 724-734.
 - why not applicable to the States, 728, 729, 731, 733, 734.
- Eleventh Amendment simply restrains construction which might otherwise be given to, 515.
- forbids a State from impairing its own contracts or grants of property by subsequent legislation, 194, 226, 299, 332.
- sanctity of contracts; their inviolability by the States, 226, 251, 299, 581.
- construction of the contract-clause of, 246.
- "necessary and proper" clause, construction of, 43, 44, 45, 46, 222, 269-273, 275, 278.
- well known canon of construction as laid down in *M'Culloch v. Maryland*, 46, 278.
- reference to Justice Johnson's opinion in *Anderson v. Dunn* concerning "necessary and proper" clause, 46.
- clause in act of incorporation enabling bank to sue in United States courts is consistent with, 487.
- scope of Federal judicial power over corporations in which a State is interested, 512.
- power of Congress to levy direct taxes throughout the United States, 339.
- clauses of, considered in *Brown v. Maryland*, 527.
- act of Maryland in *Brown v. Maryland*, repugnant to, 539.
- clauses of, considered in *Sturges v. Crowninshield*, 231.
- clauses affecting power of appointment by President, 6, 741, 744, 745.

Constitution of the United States — Continued.

- clauses of, considered in *Cherokee Nation v. Georgia*, 668, 671, 672.
- clause of, defining treason quoted, 51.
- power of United States to acquire territory by conquest or treaty, 586.
- the issue by a State of paper money on credit of the State is emission of "bills of credit" and violates, 617.
- constitutional relation between the General Government, the several States of the Union and the Indian tribes; national authority supreme; jurisdiction of Supreme Court, 655.
- Indian tribe not a foreign State in the sense of, 666, 674.
- amendments of, see AMENDMENTS OF CONSTITUTION.

Construction (see CONSTITUTION) —

- rules of, 327, 528, 529, 530, 673, 746.
- narrow, disapproved, 275, 430, 462.

Contracts (see CONSTITUTION OF THE UNITED STATES) —

- distinction between obligation of and remedy to enforce, 240, 241, 574, 579.
- difference between implied and written, 564.
- days of grace an implied contract, 564.
- laws act upon, do not enter into them, 565.
- antiquity of, 568.
- why binding, 567.
- subject of, under control of society, 571.
- how far may the law act upon the obligation of, 571.
- rights and remedies, 579.
- society has no effect on right to make, 570.
- constitutional sanctity of, 209, 226, 299, 549.
 - Dartmouth College Case*, 299-338.
 - Ogden v. Saunders*, 549-585.
 - Sturges v. Crowninshield*, 226-251.
- contracting parties, rights of, 569.
- grant implies contract on part of grantor not to reassert the title granted, 203.
- definition of, 208, 556.
- various kinds of, 208, 209, 564 *et seq.*
- grant, an executed, 209.
- under the Constitution construed, 209.
- obligation of, 237.
- what will impair it? 237, 332.
- future acquisitions of property liable for, 238.

Contract-clause of the Constitution—

reference to, 194, 208 and note 1, 210, 212 and note 1, 245, 246.
not retroactive, 352.

Corporation—

Supreme Court has jurisdiction in proper cases between a corporation and an individual, 173.

American ideas concerning, derived from English books, 174.

Lord Coke on, 174.

defined, 318.

object of, 319, 320.

Federal jurisdiction over, 166.

M'Culloch v. Maryland, 252-298, 501, 502.

Trustees of Dartmouth College v. Woodward, 299-333.

Cohens v. Virginia, 357-420.

Osborn v. Bank, 468, 501, 502.

composed of citizens, are considered as citizens by the Legislature, 177.

power of creating, distinguished from power of levying war, 268.

Bank of the United States is a public, 500.

Courts—

non-judicial duties cannot be imposed upon, 26.

jurisdiction of, how regulated, 56.

Courts of the Union (see FEDERAL COURTS)—

cases arising under the Constitution cognizable by, 374.

supreme power of, necessary to welfare of the Union, 377.

State Legislatures cannot annul judgments of, 183.

Covenant—

Fletcher v. Peck, 194, 217.

Craig v. State of Missouri (re bills of credit), 617-643.

prefatory note, 617-619.

opinion, 621-639.

notes, 639-643.

referred to, 244, note 3.

Credit—

see **BILLS OF CREDIT.**

Crimes Act of 1790—

see **ADMIRALTY.**

Criminal Procedure—

see **BOLLMAN AND SWARTWOUT, 51-81.**

Cruger, Henry N.—

counsel in *Weston v. Charleston*, 606, note 1.

- Curtis, B. R., Justice** —
 digest of decisions of the Supreme Court of the United States
 by, see PREFACE, *ante*, v, vi.
- Cushing, William, Justice** —
 reference to, 3, note 3, 43, note 1, 55, note 1, 182, note 1, 197,
 note 1.
- Dacres, Lord** —
 case of, reference to, 126.
- Daggett, Mr.** —
 counsel in *Sturges v. Crowninshield*, 231, note 1.
- Dallas, George M.** —
 counsel in *United States v. Fisher*, 43, note 1.
 counsel for Fries, 159, 160.
 reference to, 159, 160.
- Dartmouth College v. Woodward** (*re sanctity of contracts*) —
 case of, 299-338.
 prefatory note, 299-305.
 opinion in, 303-335.
 notes to, 336-338.
 history of college, 314 *et seq.*
 legal history of the case, 302 *et seq.*
 widespread interest in, 328.
 reference to, 210, note 2, 217, 252, 644.
- Dartmouth, Earl of** —
 reference to, 314.
- Delivery of Commission** —
 why not essential to completion of appointment, 11, 12.
 reference to Jefferson's contention concerning, 11, note 1.
- Dillon, John F.** —
 letter of, quoted, 53.
 comments on subpoena *duces tecum* by, 161 *et seq.*
 letter of Justice Shiras to, concerning subpoena *duces tecum*, 163,
 164.
- District of Columbia** (see CONGRESS) —
 not a "State" under the Constitution, see *Hepburn and Dundas*
v. Ellzey, 48-50.
 reference to, 345, 346.
 Congress has right to impose a tax upon, 340, 341, 346, 347.
- Duces Tecum** —
 see SUBPENA.

- Duty on Tonnage**—
see TONNAGE, DUTY ON.
- Duvall, Gabriel, Justice**—
reference to, 219, note 1; 231, note 1; 258, note 1; 304, 307, note 1;
341, note 1; 353, note 1; 366, note 1; 428, note 1; 476, note 1; 513,
note 1; 526, note 1; 550, note 1; 591, note 1; 606, note 1; 621, note
1; 646, note 1; 667, note 1; 684, note 1; 727, note 1.
- East, Reports of**—
reference to, concerning treason, 122.
concerning principal and accessory, 150.
reference to, 135, 139, 142, 565.
- Eaton, General**—
deposition of, in *Bollman and Swartwout* referred to, 70.
- Eleemosynary Corporations**—
all, are of same general character, 327.
beneficent influence of, 328, 329.
- Eleemosynary Institution**—
distinction drawn between, and a civil institution, 313, 320.
Dartmouth College an, 322, 323.
- Eleventh Amendment**—
see AMENDMENTS TO CONSTITUTION.
- Embargoes, Power to Impose**—
see CONGRESS.
- Emmet, Robert**—
counsel in *Gibbons v. Ogden*, 428, note 1.
- Equity**—
Osborn v. Bank, power to issue injunctions, 468.
- Error, Writ of**—
see WRIT OF ERROR.
- Exemption**—
of bank of United States from State control implied, 505.
illustrations of implied, 506.
- Ex Post Facto Law**—
defined, 211.
definition of, by Marshall commented upon by Kent, 211, note 1.
first brought in direct discussion in *Fletcher v. Peck*, 212, note 1.
- Extra-judicial**—
Marshall's decision as respects treason in *Bollman and Swartwout*
declared to be, 80.
explanation of above by Marshall, 90.

- Fairfax, Lord**—
reference to, 362.
- Federal Courts** (see SUPREME COURT OF THE UNITED STATES)—
supervising power of, 377, 410.
have jurisdiction where Constitution and laws of the United States are to be construed, 405, 482.
acts of Congress authorizing officers of United States to sue in, reference to, 485.
sanctity and force of judgments of; their inviolability by the States, 180.
admiralty and maritime jurisdiction, under the Constitution and Crimes Act of 1790, 218.
distinction between original and appellate jurisdiction of, 384-391, 481 *et seq.*
- Federal Jurisdiction over Corporations**—
see *Bank v. Deveaux*, 166.
see also, *Osborn v. The Bank*, 468-511; *Bank of United States v. Planters' Bank*, 512-519.
- Federal Jurisdiction in Admiralty and Maritime Cases**—
see ADMIRALTY; CONSTITUTION.
- Federalist, The**—
commentary on the Constitution, 408.
on extent of judicial power, 408.
“necessary and proper” clause commented on in, 45, 46 and note 1.
- Fletcher v. Peck** (*re* impairment of contracts)—
case of, 194-217.
facts in the case, 195, 196.
opinion in, 197-216.
notes to, 216, 217.
referred to, 652.
- Florida**—
relation of, to the United States, 592, 593.
- Foreign State**—
see STATE.
- Foster, Judge**—
reference to treatise on treason by, 99, 100.
reference to, 101, 102, 121, 122.
reference to, concerning levying war, 86, 87.
quoted, 125, 126, 127.
concerning principal and accessory, 150.

- Fraud** —
rights of third parties in suit to set aside conveyance for, 204.
- Fries, John** —
trial of for treason, reference to, 103, 158.
Judge Chase's opinion in, quoted from, 69, 104, 105, 159, 160, 161.
history of, 158 *et seq.*
- Gage, Governor** —
reference to proclamation of, 702.
- Georgia** —
statute of, in Worcester's Case, 692 *et seq.*
why void, 720.
colonial charter of, outlined, 698.
- Gibbons v. Ogden** (*re* national supremacy over foreign and interstate commerce) —
case of, 421-467.
prefatory note, 421-427.
opinion in, 428-463.
note in, 463-467.
references to, 299, 520, 547, 692, 693.
- Government of the Union** (see CONGRESS; CONSTITUTION) —
is a government of the people, 262.
characteristic distinction between, and those of the States, 373.
government can exercise only those powers granted to it, 262.
is supreme, 263, 264.
judicial power of, must be co-extensive with the legislative, 376.
must contain within itself the means of securing the execution of its own laws, 379.
taxing power essential to the existence of, 649.
- Grace, Days of** —
an implied contract, 564.
origin of, 564.
- Grant** —
see CONTRACTS.
- Griffin, Cyrus, Judge** —
sat with Marshall in trial of Burr, 51, 82, note 1.
- Habeas Corpus, Writ of** —
defined, 54, note 1.
power to issue, how given, 56.
various writs of, defined, 59, 60, 61.
see Bollman and Swartwout, 51-81.
a generic term, 58.

- Haggard, Mr.—**
counsel in *Providence Bank v. Billings*, 646, note 1.
- Haines, Mr.—**
counsel in *Ogden v. Saunders*, 550.
- Hale, Sir Matthew —**
concerning principal and accessory, 150.
reference to 86, 87, 112, 137, 138, 139, 142, 150.
on levying war, 97, 98, 99, 112.
concerning treason, 102, 122.
dicta of, 135, 136.
quoted, 125, 126, 127.
- Hamilton, Alexander —**
“necessary and proper” clause of the Constitution commented upon by, 45, 46.
- Hammond, Charles —**
counsel in *Osborn v. The Bank*, 477, note.
- Hardin, B.—**
counsel in *Owings v. Speed*, 353, note 1.
- Harper, R. G.—**
counsel for Samuel Swartwout, 55, note 1.
counsel in *Fletcher v. Peck*, 197, note 1.
in *United States v. Fisher*, 43, note 1.
in *Bank v. Deveaux*, 169, note 2.
in *Bank of United States v. Planters’ Bank*, 513, note 1.
- Hawkins —**
on levying war, 98, 99.
concerning treason, 122.
reference to, 128.
- Hay, George —**
counsel for United States in Burr trial, 52, 83, note 1.
- Hayne, Robert Y.—**
counsel in *Weston v. Charleston*, 606, note 1.
- Hepburn and Dundas v. Ellzey (re meaning of “State”), 48–50.**
opinion in, 49, 50.
note, 50.
- Holmes, John —**
counsel in *Dartmouth College Case*, 304, 307, note 1.
- Holston —**
treaty of, 688, 711.

Hopewell—

treaty of, 688, 706, 710.

Hopkinson, Joseph—

counsel in *Sturges v. Crowninshield*, 231, note 1.
 in *Dartmouth College Case*, 304, 307, note 1.
 in *M'Culloch v. Maryland*, 252, 258, note 1.
 referred to, 256, note.

Hunter, Mr.—

counsel in *Sturges v. Crowninshield*, 231, note 1.

Impairment of Contracts by State Legislation—

see CONTRACTS.

Imposts—

meaning of, 528, 529.

Incorporeal—

creature may have corporeal qualities, 175.

Indian Tribes—

relation of, to United States, 655 *et seq.*
Worcester v. Georgia, 680-723.
Cherokee Nation v. Georgia, 655-679.
 domestic, dependent nations, 670.
 relation of, to the United States is unique, 667, 669.
 treaties with, 688, 703, 704, 706, 710, 711, 713.
 construction of treaties with, in *Worcester's Case*, 692.
 historical review of, in America, 694 *et seq.*
 Congress anxious to conciliate the, 703.
 Cherokee Indians took part of British in Revolution, 705.

Ingersoll, Mr.—

counsel in case of *Bank v. Deveaux*, 169, note 2.
 in *United States v. Fisher*, 43, note 1.

Insolvent Laws (see BANKRUPT LAWS)—

act on future event, 558.
 of many States discharge person of debtor, but leave obligation
 to pay in force, 243.
 a branch of the bankrupt system, 241.

Inspection Laws—

act upon the subject before it becomes an article of foreign or
 interstate commerce, 445.

Insular Cases—

references to, 339, 349, 588, 589.

Interest—

Osborn *v.* Bank, 463.

Interpretation—

see CONSTRUCTION.

Interstate Commerce—

see COMMERCE; CONGRESS.

Iredell, Justice—

referred to, 69, 153, 159.

on levying war, 103, 109.

Jackson, President—

attitude in *Cherokee Nation v. Georgia* and *Worcester v. Georgia*, see those cases.

referred to, 294, 472.

Johnson, Reverdy—

counsel in *Brown v. Maryland*, 526, note 1.

Johnson, William, Justice—

reference to, 43, note 1; 55, note 1; 169, note 2; 182, note 1; 197, note 1; 219, note 1; 231, note 1; 258, note 1; 307, note 1; 341, note 1; 353, note 1; 366, note 1; 428, note 1; 476, note 1; 513, note 1; 526, note 1; 530, note 1; 591, note 1; 606, note 1; 621, note 1; 646, note 1; 667, note 1; 684, note 1.

reference to opinion of, in *Anderson v. Dunn*, 46.

reference to separate opinion by, in *Gibbons v. Ogden*, 428, note 1.

Jones, Walter—

counsel in *Bollman and Swartwout*, 55, note 1.

in *M'Culloch v. Maryland*, 252, 253, note 1.

in *Bank v. Deveaux*, 169, note 2.

in *Loughborough v. Blake*, 341, note 1.

in *Ogden v. Saunders*, 551.

in *Providence Bank v. Billings*, 646, note 1.

Judgment, Final—

defined, 607.

Judicial Power (see FEDERAL COURTS; SUPREME COURT OF THE UNITED STATES)—

how far vested in Supreme Court, 28, 29.

extent of, defined in the Constitution, 369, 479.

extent of, of the Union, 382, 395.

of government, must be co-extensive with the legislative, 376.

the Federalist on extent of, 408.

in relation to territorial courts, 600.

Judiciary Act (September 24, 1789) —

- thirteenth section of, is inoperative so far as it attempts to confer power of Supreme Court to issue *mandamus* in cases of original jurisdiction, 2; *Marbury v. Madison*, 1-41.
- reference to conflict which brought about amendment of, 4, note 1.
- jurisdiction of Circuit Courts under, 170.
- effect of writ of error under, 400.
- a contemporaneous exposition of the Constitution, 409.
- jurisdiction given by, 412, 655, 662, 666, 667, 692.
- twenty-fifth section of, reference to, 358, 359, 365, 413, 419, 485, 605, 606, 607, 622, 627, 628, 684, 691, 692.
- a limitation on jurisdiction, 517.
- wording of eleventh section of, 517.
- effect of writ of error under, 400.
- fourteenth section of, 54, 57.
- eleventh section of, 166.
- references to, 168, 357, 358, 359, 362, 363, 365, 413, 419, 485, 605, 606, 607, 687.
- Kent on twenty-fifth section of, 419.
- power to revise judgments is under twenty-fifth section of, 606.
- meaning of foreign State under, 666.

Jurisdiction (see CONGRESS; SUPREME COURT) —

- where Constitution and laws of the United States are to be construed the Federal courts have, 394, 405, 482.
- objections to, in *Osborn v. The Bank*, under Eleventh Amendment, 488.
- in cases between citizens claiming lands under grants of different States, 493.
- other cases considered in regard to, 494 *et seq.*
- suits by Postmaster-General, 497.
- where, depends upon the party, it is the party named in the record, 498.
- of various courts defined in *American Ins. Co. v. Canter*, 595 *et seq.*
- in *Bank of United States v. Planters' Bank of Georgia*, 512-519.
- in *Cherokee Nation v. Georgia*, 655-679.
- in *Craig v. State of Missouri*, 617.
- how gained in *Craig v. State of Missouri*, 622.
- Weston v. City of Charleston*, 604-616.
- of Supreme Court in *Cherokee Nation v. Georgia*, 655, 666 *et seq.*
- act of Congress gives, in *Worcester's Case*, 692, 693.
- why Supreme Court has, in *Marbury v. Madison*, 29, 385, 390.
- of courts, how regulated, 56.

Jurisdiction — Continued.

- of a State defined, 220.
- location, not offense, a guide to, in admiralty cases, 221.
- where jurisdiction depends on character of parties, 370.
- where jurisdiction depends on character of cause, 370.
- mere circumstance that a State is a party gives, to the Supreme Court, 375.
- distinction between original and appellate, of the Federal courts, 384-391, 481 *et seq.*
- jurisdiction in cases affecting ambassadors, suits in prize courts by foreign consuls, etc., 388, 406.
- action of convention which framed the Constitution with respect to appellate, 407.
- Judiciary Act gave jurisdiction in Cohens' case, 412.
- of United States courts in cases depending on general principles of law, 480.

Keeling —

- reference to, 139, 142.

Key, Francis Scott —

- counsel for Bollman and Swartwout, 55, note 1.
- for Olmstead *et al.*, 182, note 1.

Key, P. B. —

- counsel in case of *Bank v. Deveaux*, 169, note 2.

Law —

- Blackstone's definition of, 571, 572.

Laws —

- difference in principle between laws which act on past and those which act on future contracts, 554, 565.
- attempt to distinguish between general and particular laws, 561, 562.

Lee, Charles —

- reference to, 48, note 1, 55, 65.
- counsel for Erick Bollman, 55, note 1.
- for Burr, 52, 83, note 1.

Lee, E. J. —

- reference to, 48, note 1.

Legal Tender Cases —

- "necessary and proper" clause construed in, 46.

Legare, Hugh S. —

- counsel in *Weston v. Charleston*, 606, note 1.

Legislative Power—

judicial power of government must be co-extensive with, 376.

Legislature—

question of corruption of, cannot be brought up collaterally,
200, 202.

cannot annul judgments of United States courts, 183.

acts of State Legislature must yield to laws of Congress, 451.

Levying War (see BURR, AARON; TREASON)—

opinions of elementary writers on, 95 *et seq.*

Justice Iredell on, 103, 109, 110.

Justice Chase on, 104, 105, 110.

Justice Peters on, 104.

Justice Paterson on, 103, 104, 109, 110.

force essential to, held by all the United States judges, 109, 110,
117, 118.

why assemblage in force necessary to constitute, 117, 118.

indictment for, must specify overt act, 120.

to be judged by jury with aid of court, 154.

power of creating a corporation distinguished from the power
of, 263.

term, not for the first time applied to treason by Constitution, 85.

same sense as in 25 Edward III., 85.

Coke's definition of, incomplete, 86.

Foster's definition of, 86, 87.

Hale on, 97, 98, 99, 112.

Hawkins on, 98, 99.

Blackstone unsatisfactory on this subject, 87.

what is, 93.

what necessary to complete crime of, 63.

actual violence not necessary to constitute, 93, 94, 101.

treason against the United States shall consist only in, 84.

Lewis, William—

counsel for Fries, reference to, 159, 160.

for Olmstead *et al.*, 182, note 1.

in United States *v.* Fisher, 43, note 1.

Limitations on State Sovereignty, 239, 374, 730, 731.**Limitations, Statutes of—**

relate to remedies, 247.

Livingston, Brockholst, Justice—

reference to, 55, note 1; 169, note 2; 182, note 1; 197, note 1; 219,
note 1; 231, note 1; 258, note 1; 307, note 1; 341, note 1; 353,
note 1; 366, note 1.

Livingston, Edward—

counsel in *Ogden v. Saunders*, 551.

Loss—

see INJURY.

Loughborough v. Blake (re taxes)—

case of, 339-351.

prefatory note, 339, 340.

opinion in, 341-349.

notes on, 349-351.

reference to, 588, note 1.

McCaleb, W. F.—

opinion of, as to Burr's expedition, 157.

Mc'ulloch v. Maryland (re National and State sovereignty)—

case of, 252-298.

prefatory note, 252-257.

opinion in, 258-292.

notes to, 292-298.

eminent counsel in case of, 252.

referred to, 46, 169, note 1, 300, 471, 469, 472, 501, 502, 508, 511, 520,

544, 547, 604, 644, 645, note, 651, 683, 686, 687.

affirmed in *Weston v. Charleston*, 610, 611, 614.

Osborn v. The Bank, distinguished, 652.

McKenney, James H., Clerk United States Supreme Court—

reference to, 633.

McLean, John, Justice,—

referred to, 631, note 1; 646, note 1; 667, note 1; 684, note 1; 727,

note 1.

McMillan v. McNeill—

case of, reference to, 248, 249.

MacRae, Alex.—

counsel for United States in Burr trial, 52, 83, note 1.

Madison, James—

"necessary and proper" clause commented upon by, 45.

reference to Wirt's letter to, 663.

reference to, 1, 23, 364.

Magna Charta—

thirty-ninth article of, referred to, 724.

Mandamus, Writ of—

what it is, 3, note 2.

Congress cannot confer original jurisdiction on Supreme Court

to issue, 2, 390.

Mandamus, Writ of— *Continued.*

- thirteenth section of Judiciary Act is inoperative as far as it attempts to confer power on Supreme Court to issue, 2.
- Blackstone's definition of, 22.
- Lord Mansfield states where, may be used, 22.
- propriety of issuing, depends upon nature of thing to be done, 25.
- peremptory, issued in *United States v. Peters*, 180-193.

Mansfield, Lord—

- cases stated by, where *mandamus* may be used, 22.
- referred to, 23, 175.

Marbury v. Madison—

- notes to, 37-41.
- reported in full, 1-37.
- opinion, 4-37.
- decision of Marshall in, the substantial foundation of our constitutional law, 300.
- facts in the case, 2, 3.
- questions stated, 5.
- doctrine in, not a novel one, 27.
- power of Supreme Court to issue a *mandamus* in, 28.
- Parsons, Kent and Choate's comments on, 37, 38.
- dicta* in, referred to, 390.
- reference to, 64, 299 and note 1, 300, 385, 390, 473, 682, 747.

Marbury, William—

- reference to 1, 2, 3, 4, 5, 21, 22.

Maritime Jurisdiction of Federal Courts—

- see ADMIRALTY.

Marshall, John (see CHRONOLOGICAL DATA)—

- nominated by John Adams as Chief Justice on January 20, 1801, 1.
- confirmed unanimously by Senate January 27, 1801, 1.
- commissioned on the 31st of January, 1801, 1.
- letter to President Adams on taking seat on the Supreme Court bench, 1.
- "necessary and proper" clause construed by, 43, 44, 46, 278.
- Judge Dillon's note on the technical learning of, 53.
- decision of, as respects treason in *Bollman and Swartwout* declared to be extra-judicial, 80.
- explanation of, concerning the above, 80, 90.
- opinion of, in *M'Culloch v. Maryland* praised, 256.
- courage of, 658.

Marshall, John — Continued.

Story on depth and tenderness of feeling of, 681, note 1.
 Miss Martineau's description of, 682, note 1.
 reference to letter of, to Mr. Peters, 683.

Martin, Luther —

counsel for Bollman and Swartwout, 55, note 1.
 for Burr, 52, 83, note 1.
 in *Fletcher v. Peck*, 197, note 1.
 in *M'Culloch v. Maryland*, 252, 253, note 1.

Martineau, Miss Harriet —

Story's letter to, 682, note 2.
 description of court scene, 682, note 1.

Maryland, Act of —

repugnant to Constitution in *Brown v. Maryland*, 539.
 imposing tax on Bank of the United States, unconstitutional,
 292.

Maryland Bank Case —

see *M'CULLOCH v. MARYLAND*.

Maryland, State —

contention of, in *M'Culloch v. Maryland*, 284.

Mason, Jeremiah —

referred to, 302.

Meredith, Jonathan —

counsel in *Brown v. Maryland*, 526, note 1.

"Midnight Judges" —

reference to, 4, note 1.

Mitchell's Case —

application of, to Burr's Case, 133.
 reference to Judge Paterson's opinion in, 131-133, 159, 160, 350.

Moore, Alfred, Justice —

reference to, 3, note 3.

Moyer, Mr. —

counsel in *Barron v. Baltimore*, 727, note 2.

National and State Sovereignty —

see *STATE SOVEREIGNTY*.

National Authority Supreme, 655.**National Supremacy over Foreign and Interstate Commerce,
421.**

- “Necessary and Proper” Clause of the Constitution —**
 construction of, 43, 44, 45, 46, 222, 269, 270, 275, 278.
 reference to Justice Johnson’s opinion in *Anderson v. Dunn*, concerning, 46.
 the Federalist on, 45, 46, and note 1.
 canon of construction by Marshall of this clause in *M’Culloch v. Maryland*, reference to, 46, 278.
 followed and applied in the *Legal-Tender* and *Slaughter-House Cases*, 46, and note 2.
 Hamilton and Madison commented upon, 45, 46.
- New Hampshire, Acts of —**
 validity of, in *Dartmouth College Case*, examined, 332, 335.
 in *Dartmouth College Case*, repugnant to the Constitution, 335.
- Nomination by President —**
 see APPOINTMENTS TO OFFICE.
- Oakley, Thomas J. —**
 counsel in case of *Gibbons v. Ogden*, 428, note 1.
- Offices —**
 see APPOINTMENTS TO OFFICE.
- Ogden, D. B. —**
 counsel in *Sturges v. Crowninshield*, 231, note 1.
 in *Cohens v. State of Virginia*, 366, note 1.
 in *Ogden v. Saunders*, 550, 551.
 in *American Ins. Co. v. Canter*, 591, note 1.
- Ogden v. Saunders (re State bankrupt and insolvent laws), 549–585.**
 prefatory note, 549–551.
 dissenting opinion in, 551–584.
 notes in, 584, 585.
 referred to, 227, 228, 229, 238, note 1, 356.
- Olmstead, Gideon —**
 see UNITED STATES v. JUDGE PETERS.
- Original Jurisdiction —**
 see JURISDICTION; SUPREME COURT OF THE UNITED STATES.
- Original-package Doctrine, 536.**
- Osborn et al. v. The Bank of the United States (re limitation of State taxing power) —**
 case of, 468, 511.
 prefatory note, 468, 477.
 opinion on jurisdiction, 477, 487.

- Osborn et al. v. The Bank of the United States** — *Continued.*
 opinion on merits, 488, 510.
 notes, 511.
 decision in *M'Culloch v. Maryland*, adhered to in, 508.
 referred to, 169, note 1, 512, 604, 644, 645, note, 651, 653.
M'Culloch v. Maryland distinguished, 652.
- Overt Act in Treason** (see LEVYING WAR; TREASON) —
 character of, 92.
 must be proved, 123
 reference to, 120.
 must be charged in the indictment, 151.
 if not proved no corroborative testimony admissible, 154
 two witnesses to same, necessary to convict of treason, 51, 68.
- Owings v. Speed** (*re* when Constitution took effect) —
 case of, 352-356.
 the facts in the case, 353, 354.
 opinion, 353-355.
 note, 356.
- Paterson, William, Justice** —
 reference to, 3, note 3, 43, note 1, 69.
 on levying war, 103, 104, 109.
 opinion of, in *Mitchell's Case*, 131, 133, 159, 160.
- Peters, Richard, Judge** —
 on levying war, 104.
 reference to, in *Fries trial*, 159, 160.
- Peters, Richard Jr.** —
 letter from Marshall to, 633.
- Pinkney, William** —
 Story's letter concerning, 255, 256, note.
 counsel in *Cohens v. State of Virginia*, 366, note 1.
 in *M'Culloch v. Maryland*, 252, 258, note 1.
- Plumer, Governor** —
 reference to, 304.
- Police Power** —
 see POWER, POLICE.
- Postmaster-General** —
 suits by, 497.
- Post-offices** —
 power of Congress to establish, 274.

Post-roads —

power of Congress to establish, 274.

Power —

no difference between, to prohibit sale of article and power to prohibit introduction of article into country, 531.

questions of, do not depend on the degree to which it may be exercised, 531.

when taxing power of State on imports commences, 533.

Power, Police —

of the States, 537.

to import implies power to sell, 542.

Power to Tax —

is the power to destroy, 254, 283, 287, 501, 502, 644, 648.

to borrow money conferred by people on their government, 612.

Power of United States —

to act upon State agents and property in their hands, 489.

Presence, Constructive, in Treason —

see LEVYING WAR; TREASON.

President —

power of appointment to office by, under sec. 2, art. 2, of the Constitution, 6, 741, 744, 745.

clauses of Constitution affecting the power of appointment by, 6, 741.

nomination by, see APPOINTMENTS TO OFFICE.

commission by, see APPOINTMENTS TO OFFICE.

appointment by, see APPOINTMENTS TO OFFICE.

signature of, completes appointment, 9.

distinction made where power of removal is given to, and where it is not, 14.

Principal —

in felonies, guilt of must be established before accessory can be tried, 120, 147, 148, 149.

Priority of Payment of the United States —

see UNITED STATES *v.* FISHER, 42-47.

Prohibitions —

two classes of — absolute and modified, 555.

Providence Bank v. Billings (re taxation of corporations by the States) —

case of, 644-654.

prefatory note, 644, 645.

Providence Bank v. Billings — *Continued.*

statement of facts, 646.
 opinion, 646-654.
 note, 654.
 referred to, 604.

Public Lands of the Several States —

Fletcher v. Peck, 194-217.

Randolph, Edmund —

counsel for Burr, 52, 83, note 1.

"Regulate" —

the term implies full power over the thing to be regulated, 450.

Remedy, Legal —

see RIGHT, LEGAL.

Removal —

President's power of, see PRESIDENT.

Richardson, Chief Justice —

referred to, 302.

Right, Legal —

where there is a legal right there is a legal remedy, 15, 16, 21.
 vested rights under a contract law cannot be divested by repeal
 of said law, 207.

Rodney, Cæsar A. —

counsel in *Bollman and Swartwout Case*, 55, note 1.
 for United States against Burr, 52, 83, note 1.
 for *Olmstead et al.*, 182, note 1.

Sales by Auction —

see AUCTION, SALES BY.

Sampson, Mr. —

counsel in *Ogden v. Saunders*, 551.

Scott, Mr. —

counsel in *Barron v. Baltimore*, 727, note 2.

Sergeant, John —

counsel in *United States v. Peters*, 182, note 1.
United States v. Planters' Bank, 513, note 1.
Cherokee Nation v. Georgia, 667, note 1.
Worcester v. Georgia, 680, 684, note 1.

referred to, 660, 665 and note 2, 680.

Justice Story's letter to his wife concerning argument of, in
Cherokee Case, 680, note 2.

Sheffey, Mr. —

counsel in *Craig v. Missouri*, 621, note 1.

Shiras, George, Jr., Justice —

letter to Judge Dillon concerning subpoena *duces tecum*, 163, 164.

Smith, Jeremiah —

referred to, 302, 305.

Smyth, Mr. —

counsel in *Cohens v. Virginia*, 366, note 1.

Speake, Mary —

case of, reference to, 87, 88.

State —

controversy between a State and citizens of another State, 494.
 constitutional scope of Federal judicial power over corporations
 in which a State is interested, 512.

Planters' Bank of Georgia is not the *State* of Georgia, 515.

when taxing power over imports commences, 533.

State Legislature (see LEGISLATURE) —

issue of paper money on credit of State is emission of "bills of
 credit," and violates the Constitution of United States, 617.

taxation by a State of State corporations, 644.

States (see CONGRESS; CONSTITUTION) —

cannot emit bills of credit, 244, 617, 630.

consent to be sued may be given by a general law, 372.

not in the power of a State to destroy Constitution, 381.

cannot impair the obligation of contracts, 245.

cannot regulate commerce while Congress is regulating it, 442.

cannot tax the franchises or functions of Federal instrumental-
 ities, 468.

District of Columbia not a State under the Constitution, 48-50.

constitutional meaning of word, 49, 50.

Indian tribe not a foreign, 656, 666, 674.

cannot tax commerce, 520.

a close and firm union essential to liberty and happiness of the
 people, 372.

limitations on the sovereignty of, 374.

power to regulate commerce excluded from the, 440.

duty on tonnage excluded from the, 444.

jurisdiction in cases between citizens claiming lands under
 grants from different, 493.

controversies between citizens of different, 497.

States — Continued.

- power of all, to destroy the Union, 380.
- not in the power of a single State, 381.
- why, restrained from imposing duties on imports, 530.
- police power of, 537.
- condition of, prior to the adoption of the Federal Constitution, 232.
- have no power to tax United States bonds or stocks, 604.
- if the right of the States is not taken away by grant of power to Congress it cannot be extinguished, 236.
- what the States may do and limitations set upon them, 239, 374, 730, 731.
- characteristic distinction between the government of the Union and those of the, 373.
- inviolability of Federal judgments by the, 180.
- authority of the States regarding bankrupt and insolvent laws subject to contract-clause of the Constitution, 226.
- the Constitution of the United States forbids a State from impairing its own contracts or grants of property by subsequent legislation, 194.
- National and State sovereignty, 252.
- constitutional supremacy of Supreme Court over judgments of, denying Federal rights, 357.
- constitutional validity of State insolvent and bankrupt laws, 549.

State Agents —

- power of United States to act upon, and property in their hands, 489.

Steamboat Case —

- see GIBBONS v. OGDEN.

Story, Joseph, Justice —

- letter to Miss Martineau, 692, note 1.
- letter to his wife concerning the arguments in the Cherokee Case, 680, note 2.
- sentiments in regard to the Cherokee and Worcester cases, 680, note 2, 681, note 1.
- letter of Prof. Ticknor regarding these cases, 681, 692.
- on Marshall's depth and tenderness of feeling, 681, note 1.
- reference to letter of, to Chancellor Kent concerning Marshall's early decisions, 179.
- counsel in *Fletcher v. Peck*, 197, note 1.
- his opinion in *Martin v. Hunter's Lessee* referred to, 364, 365.

Story, Joseph, Justice — *Continued.*

- dissents in case of *Briscoe v. Bank of Kentucky*, 619, note 1.
- reference to, 219, note 1; 231, note 1; 258, note 1; 304, 307, note 1; 341, note 1; 353, note 1; 366, note 1; 423, note 1; 476, note 1; 526, note 1; 513, note 1; 550, note 1; 591, note 1; 606, note 1; 621, note 1; 646, note 1; 667, note 1; 684, note 1; 727, note 1.
- letter of, concerning *Pinkney*, 255, 256, note.

Stuart, Mr. —

- reference to speech of, at Mobile, 700, 701.

Sturges v. Crowninshield (*re* bankrupt and insolvent laws), 226-251.

- prefatory note, 226-229.
- statement of case, 230.
- opinion in, 231-243.
- notes on, 243-251.
- Ogden v. Saunders* distinguished from, 552, 553, 573.
- referred to, 252, 356, 549, 584, 734.

Subpœna Duces Tecum in Burr Trial —

- Judge Dillon's comments concerning, 161 *et seq.*
- Justice Shiras's comments concerning, 163, 164.

Suit —

- definition of, 398, 607.

Supreme Court of the United States (see CONGRESS; CONSTITUTION; JURISDICTION; MANDAMUS) —

- Congress cannot confer original jurisdiction on, 2, 390.
- power to issue *mandamus* in *Marbury v. Madison*, 28; in *United States v. Peters*, 189.
- judicial power vested in, by Constitution of the United States, 28, 29.
- jurisdiction in cases between a corporation and an individual, 173.
- constitutional supremacy of, over judgments of State courts denying Federal rights, 357.
- jurisdiction in different cases and under various circumstances, 384-394, 488 *et seq.*, 655, 666.
- exclusive jurisdiction of, ultimately to construe Constitution and laws of United States, 394, 405, 432.
- Constitution defines the jurisdiction of, 386 *et seq.*
- jurisdiction of, as regards relation of Indian tribes toward United States, 655, 666.
- list of Chief Justices, Associate Justices and Reporters of, 750-752.

Swartwout, Samuel —

history of, after trial, 80. (See BOLLMAN AND SWARTWOUT.)

Taney, Roger B., Chief Justice —

counsel in *Brown v. Maryland*, 526, note 1.

afterwards approved decision of Supreme Court, 522, 523.

counsel in *Barron v. Baltimore*, 727, note 2.

Tassels, Corn —

case of, 660, 664.

Tax and Taxation (see CONGRESS; CONSTITUTIONAL LAW; STATES).

Congress has authority to impose a direct tax on District of Columbia, 340, 341, 346, 347.

forcible resistance to collection of direct, 103, 104, 105, 349.

distinction between, on article and tax on person, 543.

power to tax is power to destroy, 254, 283, 287, 501, 502, 644, 648.

States have no power to tax United States bonds or stocks, 604.

power of taxation bears no analogy to power to regulate commerce, 440.

Bank of United States protected from State taxation, why, 503.

exemption from, must be express, 650.

commerce and other clauses limit States' power of, 543.

attempt to limit power of, a delicate and difficult duty, 610.

taxation by a State of State corporations, 644.

power of taxation operates on all, 650.

power essential to existence of government, 649.

Territorial Court —

how constituted, 592.

judicial power in relation to, 600.

cannot be depository of any part of judicial power conferred by the Constitution, 600.

Territory —

power to acquire, by conquest or treaty, 586.

power of Congress to provide for government thereof during territorial condition, 586.

Testimony (see OVERT ACT; TREASON) —

what kind necessary to support indictment for treason, 146.

corroborative, not admissible if overt act not proved, 154.

Thompson, Smith, Justice —

reference to, 423, note 1; 476, note 1; 513, note 1; 526, note 1; 550,

note 1; 591, note 1; 606, note 1; 621, note 1; 646, note 1; 667,

note 1; 684, note 1; 727, note 1.

Todd, Thomas, Justice —

reference to, 197, note 1; 219, note 1; 231, note 1; 258, note 1; 304, 307, note 1; 341, note 1; 353, note 1; 366, note 1; 428, note 1; 476, note 1; 513, note 1.

Tonnage, Duty on —

a part of the power of Congress to impose taxes, 443.

Traitors —

who are, definition, 92.

Treason (see BURR, AARON; LEVYING WAR) —

as defined in section 3, article 3, of the Constitution, 51.

what constitutes, 66, 67, 82.

see BOLLMAN AND SWARTWOUT, 58-81.

what necessary to convict of, 51, 68.

against the United States consists only in levying war, 66, 84.

Judge Tucker on origin of, reference to, 88.

reference to Foster's treatise on, 99, 100.

American law of, 51, 92, 95, 120, 151, 159.

Treaties —

various, with the Indians, 688, 703, 704, 706, 710, 711, 713.

Treaty of Holston —

reference to, 688, 711, 713.

Treaty of Hopewell —

reference to, 688, 706, 710.

Tremaine, Reports of —

case of Mary Speake charged with treason found in, 87.

Trimble, Robert, Justice —

reference to, 526, note 1; 550, note 1; 591, note 1.

Trustees of Dartmouth College v. Woodward —

see DARTMOUTH COLLEGE *v.* WOODWARD.

Union, Government of the —

distinction made between, and those of the States, 373.

is a government of the people, 262.

United States (see CONGRESS; CONSTITUTION; STATES) —

treaties with Cherokee Indians, 688, 703, 704, 706, 710, 711, 713.

construction of treaties with Cherokee Indians, 692.

United States, form a single nation for most important purposes, 403.

the States are constituent parts of the, 403.

writs of error, may issue in suit by the, 401.

- United States Agents** —
power to protect, 490.
- United States v. Aaron Burr** (*re* treason), 82, 165.
prefatory note, 82.
opinion, 82-156.
note, 157-165.
- United States v. Bevens** (*re* admiralty), 218-225.
facts in the case, 218, 219.
opinion, 219-225.
notes to, 225.
- United States v. Fisher** (*re* bankruptcy), 42-47.
prefatory note, 42, 43.
opinion, 43, 44.
“necessary and proper” clause construed in, 43, 44.
note, 44-47.
- United States v. Maurice** —
prefatory note, 741.
statement of facts, 741.
opinion, 741-747.
note, 747.
reference to, 735.
- United States v. Mitchell** (treason) —
see MITCHELL'S CASE.
- United States v. Judge Peters** (*re* sanctity of Federal judgments), 180-193.
statement of facts, 181, 182.
how the case arose, 184, 185.
opinion, 182-189.
notes, 189-193.
- United States v. Vigol** (treason) —
see VIGOL, PHILLIP, CASE OF.
- United States Courts** (see FEDERAL COURTS; SUPREME COURT) —
supreme power of the, necessary to welfare of the Union, 183, 377, 378.
cases arising under the Constitution cognizable by, 374.
- Usury, Laws Against** —
reference to, 247, 573.
- Vattel** —
quoted, 719.

Vaughan's Case—

reference to, 95, 102, 122.

Vigol, Phillip (treason)—

case of, reference to, 159, 349, 350.

War—

see LEVYING WAR; TREASON.

Warrant and Commitment—

see BOLLMAN AND SWARTWOUT, 51-81.

Washington, Bushrod, Justice—

reference to, 3, note 3; 43, note 1; 55, note 1; 169, note 2; 182, note 1; 197, note 1; 219, note 1; 231, note 1; 258, note 1; 304, 307, note 1; 341, note 1; 353, note 1; 366, note 1; 428, note 1; 476, note 1; 513, note 1; 526, note 1; 550, note 1; 591, note 1; 606, note 1; 727, note 1.

Webster, Daniel—

counsel in *United States v. Bevens*, 219, note 1.
M'Culloch v. Maryland, 252, 253, note 1.
Dartmouth College Case, 304, 307, note 1.
Gibbons v. Ogden, 428, note 1.
Bank of United States v. Planters' Bank, 513, note 1.
Ogden v. Saunders, 550, 551.
American Ins. Co. v. Canter, 591, note 1.
referred to, 256, note; 302, 304, 425, note 1; 472.

Weston v. City of Charleston (re taxing power of the States), 604-616.

prefatory note, 604, 605.
statement of facts, 605.
opinion, 605-614.
notes, 615, 616.
reference to, 644, note 3.

Wheaton, Henry—

counsel for *United States in Bevens' Case*, 219, note 1.
in *Ogden v. Saunders*, 550, 551.

Wheeler, Eleazer—

founder of *Dartmouth College*, 315.
most of trustees of *Dartmouth College* named by, 331.

Whipple, Mr.—

counsel in *American Ins. Co. v. Canter*, 591, note 1.
in *Providence Bank v. Billings*, 646, note 1.

- Whitaker, Rev. Nathaniel**—
reference to, 314.
- White, Mr.**—
letter of Story to, 255, 256.
- Wickham, John**—
counsel for Burr, 52, 83, note 1.
- Wilkinson, General**—
reference to, 54, 70, 72, 73, 75, 76, 110.
- Wilson, James**—
works of, quoted from, 80, 153.
- Wirt, William**—
counsel for United States in Burr trial, 52, 83, note 1.
for United States in Bevans' Case, 219, note 1.
in Dartmouth College Case, 304, 307, note 1.
in Loughborough *v.* Blake, 341, note 1.
in *M'Culloch v. Maryland*, 252, 258, note 1.
in *Gibbons v. Ogden*, 428, note 1.
in *Ogden v. Saunders*, 551.
in *Brown v. Maryland*, 526, note 1.
in *Cherokee Nation v. Georgia*, 667, note 1.
in *Worcester v. Georgia*, 680, 684, note 1.
referred to, 256, note; 660, 661, 663, 665 and note 2.
reference to letter of, to President Madison concerning the Indians, 603.
Story's letter to his wife concerning argument of, in Cherokee Case, 680, note 2.
- Woodbury, Justice**—
referred to, 302.
- Worcester v. State of Georgia** (*re* Indians), 680-723.
prefatory note, 680-683.
opinion, 685-722.
note, 722.
reference to, 658, note 1, 677.
- Writ of Error**—
definition of, 399, 400.
effect of, under the Judiciary Act, 400.
issued for various purposes, 401, 402.