U.S. Supreme Court

Rhode Island v. Massachusetts, 37 U.S. 12 Pet. 657 657 (1838)

Rhode Island v. Massachusetts

37 U.S. (12 Pet.) 657

ORIGINAL

Syllabus

The Supreme Court has jurisdiction of a bill filed by the State of Rhode Island against the State of Massachusetts to ascertain and establish the northern boundary between the states, that the rights of sovereignty and jurisdiction be restored and confirmed to the plaintiffs and they be quieted in the enjoyment thereof and their title, and for other and further relief.

Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit -- to adjudicate or exercise any judicial power over them. An objection to jurisdiction on the ground of exemption from the process of the court in which the suit is brought or the manner in which a defendant is brought into it is waived by appearance and pleading to issue, but when the objection goes to the power of the court over the parties or the subject matter, the defendant need not, for he cannot give the plaintiff a better writ, or bill.

The Supreme Court is one of limited and special original jurisdiction. Its action must be confined to the particular cases, controversies, and parties over which the Constitution and laws have authorized it to act; any proceeding without the limits prescribed is *coram non judice,* and its action a nullity.

And whether the want or excess of power is objected by a party or is apparent to the Court, it must surcease its action or proceed extrajudicially.

The several states of the United States, in their highest sovereign capacity, in the convention of the people thereof, on whom, by the Revolution, the prerogative of the Crown and the transcendent power of Parliament devolved in a plenitude unimpaired by any act and controllable by no authority, adopted the Constitution, by which they respectively made to the United States a grant of judicial power over controversies between two or more states. By the Constitution, it was ordained that this judicial power, in cases where a state was a party, should be exercised by the Supreme Court as one of original jurisdiction. The states waived their exemption from judicial power as sovereigns by original and inherent right by their own grant of its exercise over themselves in such cases, but which they would not grant to any inferior tribunal. By this grant, this Court has acquired jurisdiction over the parties in this cause by their own consent and delegated authority, as their agent for executing the judicial power of the United States in the cases specified.

Massachusetts has appeared, submitted to the process in her legislative capacity, and plead in bar of the plaintiffs action certain matters on which the judgment of the Court is asked. All doubts as to jurisdiction over the parties are thus at rest, as well by the grant of power by the people as the submission of the legislature to the process, and calling on the Court to exercise its jurisdiction on the case presented by the bill, plea, and answer.

Although the Constitution does not in terms extend the judicial power to all controversies between two or more states, yet it in terms excludes none, whatever may be their nature or subject.

This Court, in construing the Constitution as to the grants of powers to the United

States and the restrictions upon the states, has ever held that an exception of any particular case presupposes that those which are not excepted are embraced within the grant or prohibition, and has laid it down as a general rule that where no exception is made in terms, none will be made by mere implication or construction.

In the construction of the Constitution, we must look to the history of the times and examine the state of things existing when it was framed and adopted to ascertain the old law, the mischief, and the remedy.

The boundary established and fixed by compact between nations becomes conclusive upon all the subjects and citizens thereof and binds their rights, and is to be treated to all intents and purposes as the true real boundary. The construction of such compact is a judicial question.

There can be but two tribunals under the Constitution who can act on the boundaries of states, the legislative or the judicial power; the former is limited in express terms to assent or dissent where a compact or agreement is referred to them by the states, and as the latter can be exercised only by this Court when a state is a party, the power is here or it cannot exist.

This Court exists by a direct grant from the people of their judicial power; it is exercised by their authority, as their agent, selected by themselves for the purposes specified. The people of the states, as they respectively become parties to the Constitution, gave to the judicial power of the United States jurisdiction over themselves, controversies between states, between citizens of the same or different states claiming lands under their conflicting grants within disputed territory.

No court acts differently in deciding on boundary between states than on lines between separate tracts of land. If there is uncertainty where the line is, if there is a confusion of boundaries by the nature of interlocking grants, the obliteration of marks, the intermixing of possession under different proprietors, the effects of accident, fraud, or time, or other kindred causes, it is a case appropriate to equity. An issue at law is directed, a commission of boundary awarded, or, if the court is satisfied without either, the decree what and where the boundary of a farm, a manor, province, or a state is and shall be.

There is neither the authority of law or reason for the position that boundary between nations or states is, in its nature, any more a political question than any other subject on which they may contend. None can be settled without war or treaty, which is by political power; but under the old and new confederacy, they could and can be settled by a court constituted by themselves as their own substitutes, authorized to do that for states, which states alone could do before.

It has been contended that this Court cannot proceed in this cause without some process and rule of decision prescribed appropriate to the case; but no question on process can arise on these pleadings; none is now necessary, as the defendant has appeared and plead, which plea in itself makes the first point in the cause, without any additional proceeding; that is whether the plea shall be allowed, if sufficient in law, to bar the complaint, or be overruled as not being a bar in law, though true in fact.

This Court cannot presume that any state which holds prerogative rights for the good of its citizens, and by the Constitution has agreed that those of any other state shall enjoy rights, privileges, and immunities in each as its own do, would either do wrong or deny right to a sister state or its citizens, or refuse to submit

to those decrees of this Court, rendered pursuant to its own delegated authority; when in a monarchy, its fundamental law declares that such decree executes itself.

In the case of *Olmstead*, this Court expressed its opinion that if state legislatures may annul the judgments of the courts of the United States and the rights thereby acquired, the Constitution becomes a solemn mockery and the nation is deprived of the means of enforcing its laws by its own tribunal. So fatal a result must be deprecated by all, and the people of every state must feel a deep interest in resisting principles so destructive of the Union and in averting consequences so fatal to themselves.

On 16 March, 1832, the State of Rhode Island, by its solicitor, filed a bill against the State of Massachusetts for the settlement of the boundary between the two states and moved for a subpoena to be issued according to the practice of the court in similar cases.

This motion was held under advisement until the following term, and a subpoena was awarded and issued on 2 March, 1833.

This subpoena was returned with service on 30 July, 1833, and on 18 January, 1834, the appearance of Mr. Webster was entered for the defendants; and, on his motion, the cause was continued with leave to plea, answer, or demur.

On 12 January, 1835, a plea and answer was filed by Mr. Webster, and on 22 February, 1836, by agreement of counsel, it was ordered by the Court that the complainant file a replication to the answer of the defendant within six months from the last day of January term, 1836, or that the cause shall stand dismissed. The complainant filed a replication on 18 August, 1836, and at the same time a

"notice of intention to move the Court for leave to withdraw the replication upon the ground that the rule requiring the same was agreed to and entered into by mistake."

The bill filed by the complainants set forth the original charter granted on the third day of November, 1621, by King James the First to the council at Plymouth for planting, ruling, ordering and governing New England in America, describing the limits and boundaries of the territory so granted. The grant or conveyance to the council at Plymouth, of 19 March, 1628, to Sir Henry Rosewell and others of a certain tract of land described in the same, as

"all that part of New England, in America, aforesaid, which lies and extends between a great river there, commonly called Monomack, alias Merrimac, and a certain other river, there called Charles River, being in the bottom of a certain Bay, there commonly called Massachusetts, alias Mattachusetts, alias Massatusetts, Bay, and also all and

singular those lands and hereditaments whatsoever lying within the space of three English miles on the south part of the said Charles River, or of any or every part thereof, and also all and singular the lands and hereditaments whatsoever lying and being within the space of three English miles to the southward of the southernmost part of the said Bay, called Massachusetts, alias Mattachusetts, alias Massatusetts Bay, and also all those lands and hereditaments whatsoever which lie and be within the space of three English miles to the northward of the said river, called Monomack, alias Merrimac, or to the northward of any and every part thereof, and all lands and hereditaments whatsoever lying within the limits aforesaid, north and south in latitude and breadth, and in length and longitude of and within all the breadth aforesaid, throughout the main lands there, from the Atlantic and western sea and ocean on the east part, to the South sea on the west part."

The letters patent of confirmation and grant of Charles the First, of 4 March, 1629, to Sir Henry Rosewell and others, for the lands included in the charter of James the First, and the deed of the council at Plymouth, to them by the name of "The Governor and Company of Mattachusetts Bay in New England," incorporated by the said letters patent.

The bill further stated that on 7 June, 1635, the council established at Plymouth for planting a colony and governing New England in America, yielded up and surrendered the charter of James the First, to Charles the First, which surrender was duly and in form accepted. That after the granting of the letters patent before set forth and prior to the granting of the letters patent afterwards set forth in the bill to the colony of Rhode Island and Providence Plantations, the tract of land comprised within the limits of the State of Rhode Island and Providence Plantations had been colonized and settled with a considerable population by emigration, principally from England and the colony of the Massachusetts Bay, and that the persons who had so colonized and settled the same were seized and possessed by purchase and consent of the Indian natives, of certain lands, islands, rivers, harbors and roads, within said tract. That on 8 July, 1663, King Charles the Second, by letters patent, granted a charter of incorporation to William Brenton, John Coddington and others, by the name of "The governor and Company of the English Colony of Rhode Island and Providence Plantations in New England, in America," and granted and conferred to the corporation by the letters patent

"all that part of

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our dominions in New England, in America, containing the Nahantick and Nanhygansett, alias Narragansett Bay, and countries and parts adjacent, bounded on the west or westerly to the middle or channel of a river there, commonly called and known by the name of Pawcatuck, alias Paweawtuck, River, and so along the said river as the greater or middle stream thereof reacheth or lies up into the north country, northward unto the head thereof, and from thence, by a straight line drawn due north, until it meets with the south line of the Massachusetts Colony, and on the north or northerly by the aforesaid south or southerly line of the Massachusetts Colony or plantation, and extending towards the east or eastwardly three English miles, to the east and northeast of the most eastern and northeastern parts of the aforesaid Narragansett Bay, as the said bay lieth or extendeth itself from the ocean on the south or southwardly unto the mouth of the river which runneth towards the Town of Providence, and from thence along the eastwardly side or bank of the said river (higher called by the name of Seacunck River) up to the falls called Patuckett Falls, being the most westwardly line of Plymouth Colony, and so from the said falls in a straight line due north until it meet with the aforesaid line of the Massachusetts Colony, and bounded on the south by the ocean. And in particular the lands belonging to the Town of Providence, Pawtuxet, Warwick, Nisquammacock, alias Pawcatuck, and the rest upon the mainland in the tract aforesaid, together with Rhode Island, Block Island, and all the rest of the islands and banks in the Narragansett Bay, and bordering upon the coast of the tract aforesaid (Fisher Island only excepted), together with all firm lands, soils, grounds, havens, ports, rivers, waters, fishings, mines royal, and all other mines, minerals, precious stones, quarries, woods, wood grounds, rocks, slates, and all and singular other commodities, jurisdictions, royalties, privileges, franchises, preeminences, and hereditaments whatsoever within the said tract, bounds, lands, and islands aforesaid or to them or any of them, belonging or in anywise appertaining."

The bill proceeds to state the canceling and vacating of the charter to "The Governor and Company of Massachusetts Bay in New England" on a *scire facias*, and afterwards the regrant of the same territory, with other territories known by the name of the Colony of Massachusetts Bay and Colony of New Plymouth, the Province of Maine, &c., by King William and Queen Mary, on 7

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October, 1691. The description of the territory then granted, so far as the same is important in this case, was the following:

"All that part of New England in America lying and extending from the great river commonly called Monomack, alias Merrimack, on the north part, and from three miles northward of the said river to the Atlantic or western sea or ocean on the south part, and all the lands and hereditaments whatsoever lying within the limits aforesaid, and extending as far as the outermost points or promontories of land called Cape Cod and Cape Malabar, north and south, and in latitude, breadth, and in length and longitude of and within all the breadth and compass aforesaid, throughout the main land there, from the said Atlantic or western sea and ocean on the east part, towards the South Sea, or westward, as far as our colonies of Rhode Island, Connecticut, and the Narragansett

country. And also all that part and portion of mainland beginning at the entrance of Piscataway Harbor, and so to pass up the same into the River of Newichwannock, and through the same into the furthest head thereof, and from thence northwestward till one hundred and twenty miles be finished, and from Piscataway Harbor mouth aforesaid northeastward along the sea coast to Sagadehock, and from the period of one hundred and twenty miles aforesaid to cross overland to the one hundred and twenty miles before reckoned up into the land from Piscataway Harbor, through Newichwannock River, and also the north half of the Isles of Shoals, together with the Isles of Capawock and Nantuckett, near Cape Cod aforesaid, and also the lands and hereditaments lying and being in the country or territory commonly called Accada or Nova Scotia, and all those lands and hereditaments lying and extending between the said country or territory of Nova Scotia and the said River of Sagadehock, or any part thereof."

The bill states that the Province of Massachusetts and the colony of Rhode Island and Providence Plantations, thus established, continued under the charters and letters patent until July 4, 1776, when with their sister colonies they became independent states. The bill alleges the dividing boundary line, under the letters patent and charter to the Colony of Rhode Island and Providence Plantations and Massachusetts, to have been "a line drawn east and west three English miles south of the river called Charles River, or of any or every part thereof." That for some years after the granting of the charter to Rhode Island, the lands included in the colony adjoining Massachusetts, remained wild and uncultivated, and were of little value;

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that previous to 1709, the inhabitants of Rhode Island entered on parts of the land and made improvements, and that the said northern boundary line never having been settled, defined or established, disputes and controversies arose between the inhabitants of the Province of the Massachusetts Bay and of the Colony of Rhode Island and Providence Plantations, and between the governments of the said province and colony in relation to the boundary of said colony.

The bill proceeds to state that in consequence of various disputes and controversies about the boundary between the two colonies, numerous efforts were made to adjust and settle the same, all of which, as the bill alleges, were not productive of a satisfactory result to the Colony of Rhode Island and Providence Plantations and to the State of Rhode Island, afterwards established.

These are particularly set forth in the bill, and the proceedings of the Legislatures of Rhode Island and Massachusetts are given at large in the same, with the operations of the commissioners appointed and acting under the authority thereof. After stating the efforts made by the two states, both whilst colonies and after they became independent states, for the determination of the line, up to 1791, alleged to have been abortive and without success, the bill proceeds to state

"That on or about the year of our Lord one thousand seven hundred and nine, other commissioners were appointed by the said State of Rhode Island and Providence Plantations and the said State of Massachusetts for the purpose of ascertaining and settling the said northern line of the said State of Rhode Island and Providence Plantations; that the said last mentioned commissioners respectively continued such commissioners until the year of our Lord one thousand seven hundred and eighteen; and that the said last mentioned commissioners had several meetings, but were never

able to agree upon and settle, and never did agree upon and settle, the said northern line of the said State of Rhode Island and Providence Plantations."

The bill asserts the right of Rhode Island to the territory in dispute; that Massachusetts is in possession of the same and exercises and asserts sovereignty and jurisdiction over the same under the pretenses that the same was included in the grants or charters from the Crown of England, under the mistaken belief that the line, three miles south of Charles River (a station having been fixed by Nathaniel Woodword and Solomon Saffrey as the point three miles south of Charles River), actually runs where Massachusetts has assumed it to run, and alleging that the line, as it is claimed and has always been

claimed by Massachusetts, was settled and adjusted by the commissioners acting under the authority of the parties respectively.

The bill proceeds to show the errors of proceedings of the commissioners acting for the two colonies, and states

"That no mark, stake or monument at that time existed by which the place in which said Woodword and Saffrey were so as aforesaid alleged to have set up a stake could then be ascertained. That the persons who executed, witnessed and consented to the said pretended agreement did not, nor did any or either of them, go to any place where said stake was alleged to have been set up, nor did they or any or either of them make any survey or cause any survey to be made or run any line or lines or cause any line or lines to be run or take any other means to ascertain at what place, if any, the said stake was set up by said Woodword and Saffrey, nor whether the place in which the said stake was alleged as aforesaid to have been set up by the said Woodword and Saffrey was in fact three English miles, and no more, south of the river called Charles River, or of any or every part thereof, nor whether the said line, alleged in said pretended agreement to have been run by the said Woodword and Saffrey, was ever in fact run by said Woodword and Saffrey, nor whether said pretended line was the true and proper boundary line between the said Province of the Massachusetts Bay on the north and the said Colony of Rhode Island and Providence Plantations on the south, U.S. according to the true intent and meaning of the grants contained in the respective charters or letters patent aforesaid."

The bill asserts that the line designated and run under the agreements has always been resisted by Rhode Island while a colony and since she became a sovereign state, and that no other boundary than that asserted in the bill between Rhode Island and Massachusetts than that defined, granted and established in and by the respective charters and letters patent aforesaid hereinbefore set forth, according to the true and fair construction thereof, has ever been consented to or admitted to be the true boundary line by the complainants, either while she continued under the royal government or since she became an independent and sovereign state. The proceedings of Massachusetts are alleged to

"interfere with and prevent the exercise of that jurisdiction and sovereignty which, by the law of the land and the Constitution of the Union, she is entitled to exercise over the whole tract of land

mentioned and described in the charter or letters patent granted to the said Colony of Rhode Island and Providence

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Plantations and hereinbefore set forth, and over the citizens and inhabitants thereof, according to her claim in this her bill made."

The bill asks that inasmuch as the complainants have no satisfactory relief on the common law side of the court, "especially as the controversy concerns questions of jurisdiction and sovereignty," that the Commonwealth of Massachusetts answer the matters set forth in the bill, and that

"the northern boundary line between the complainants and the State of Massachusetts may, by the order and decree of this Honorable Court, be ascertained and established, and that the rights of jurisdiction and sovereignty of the complainants to the whole tract of land, with the appurtenances mentioned, described, and granted in and by the said charter or letters patent to the said Colony of Rhode Island and Providence Plantations, hereinbefore set forth, and running on the north, an east and west line drawn three miles south of the waters of said Charles River or of any or every part thereof, may be restored and confirmed to the complainants and the complainants may be quieted in the full and free enjoyment of her jurisdiction and sovereignty over the same, and the title, jurisdiction and sovereignty of the said State of Rhode Island and Providence Plantations over the same be confirmed and established by the decree of the Court, and that the complainants may have such other and further relief in the premises, as to 'the' Court shall seem meet and consistent with equity and good conscience."

"The Plea and Answer of the Commonwealth of Massachusetts to the bill of complaint of the State of Rhode Island" alleges that in 1642, for the purpose of ascertaining the true southern boundary line of Massachusetts, a station or monument was erected and fixed at a point south of Charles River, taken and believed to be on the true and real boundary line of the Colony of Massachusetts, which monument became and has ever since been well known and notorious, and then was and ever since has been called Woodword and Saffrey's Station, on Wrentham Plains, and after the fixing of said station, and after running of the line aforesaid, and after the granting of the charter of Rhode Island, and while all the territory north of said station and line was claimed, held, and possessed, and jurisdiction over the same exercised and enjoyed by Massachusetts as parcel of her own territory, about the year 1709, dispute and controversy having arisen between the two governments respecting the said boundary line,

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persons were appointed by the government of Rhode Island and by the government of Massachusetts to settle the misunderstanding about the line between the colonies, and what the persons appointed should agree upon should be forever after taken and deemed to be the stated lines and bounds, so as the agreement be drawn up in writing, and indented, under their hands and seals, within six months as aforesaid.

That afterwards, on 19 January, 1710, the commissioners appointed by the colonies met and entered into an "agreement of the partition line betwixt the Colony of Massachusetts and the Colony of Rhode Island" by which it was declared:

"That the stake set up by Nathaniel Woodword and Solomon Saffrey, skillful approved artists, in the year of our Lord one thousand six hundred and forty-two, and since that often renewed, in the latitude of forty-one degrees and fifty-five minutes, being three English miles distant southward from the southernmost part of the river called Charles River, agreeable to the letters patent for the Massachusetts Province, be accompted and allowed, on both sides, the commencement of the line between the Massachusetts and the Colony of Rhode Island, and to be continued betwixt the said two governments in such manner as that, after it has proceeded between the said two governments, it may pass over Connecticut River at or near Bissell's house, as is deciphered in the plan and tract of that line by Nathaniel Woodword and Solomon Saffrey."

By this agreement, on a presumption that there had been error in setting up the station, certain surveys had been made within the line of Massachusetts thus ascertained, it stipulated that there should

"be and remain unto the said Town of Providence and inhabitants of the government of Rhode Island and Providence Plantations a certain tract of land of one mile in breadth, to the northward of the said line of Woodword and Saffrey, as before described and platted, beginning from the great River of Pautucket, and so to proceed at the north side of the said patent line, of equal breadth, until it come to the place where Providence west line cuts the said patent line, supposed to contain five thousand acres, be the same more or less, the soil whereof shall be and remain to the Town of Providence, or others, according to the disposition thereof to be made by the government of Rhode Island aforesaid. Nevertheless to continue and remain within the jurisdiction and government of her Majesty's Province of the Massachusetts Bay, anything in this agreement to the contrary thereof, or seemingly so, notwithstanding. "

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The agreement contained other provisions for the preservation of the line, and for the ascertaining the surveys made by the inhabitants of Providence within the same, so that they might proceed with the settlement and improvement thereof.

This agreement was executed under the hands and seals of the commissioners and was witnessed by persons on the part of the two colonies.

The plea and answer alleges that the whole of the real and true merits of the complainants' supposed cause of action were fully heard, tried, and determined by the judgment and agreement of the commissioners, that the same was a full settlement of all the matters in controversy and was made in good faith, and the station so fixed and established, became matter of common notoriety, and the line capable of being always known and ascertained.

The answer and plea further states that afterwards, on or about June 18, 1717, to complete the settling and running the line between the two governments, the General Assembly of

Massachusetts passed an order appointing commissioners to meet commissioners to be appointed by Rhode Island to run the line, according to the agreement of January 19, 1710. Certain other proceedings on the part of Massachusetts took place preparatory to the proceedings of the commissioners, and on 17 June, 1717, the General Assembly of the Colony of Rhode Island and Providence Plantations passed an act appointing commissioners on the part of Rhode Island for the final settlement of the boundary line with the commissioners named and appointed by Massachusetts. On or about 22 of October, 1718, the commissioners met and then made an agreement which was signed, sealed, executed, and delivered by them by which it was stipulated and declared:

"That the stake set up by Nathaniel Woodword and Solomon Saffrey in the year one thousand six hundred and forty-two upon Wrentham Plain, be the station or commencement to begin the line which shall divide between the two governments aforesaid, from which said stake the dividing line shall run, so as it may (at Connecticut River) be two miles and a half to the southward of a due west line, allowing the variation of the compass to be nine degrees, which said line shall forever be and remain to be the dividing line and boundary between the said governments, any former difference, controversy, claim, demand, or challenge whatsoever notwithstanding."

And on the twenty-ninth day of the said October last aforesaid, the General Assembly of the said Colony of

Rhode Island and Providence Plantations accepted the agreement of the said commissioners and caused the same to be duly recorded, and thereby ratified and confirmed the same.

The answer avers that all this was done in good faith and with a full and equal knowledge of all the circumstances by the respective parties and that the same has never been annulled, rescinded, or abandoned, and the last agreement was in pursuance of the agreement of 1709. Afterwards, on 14 May, 1719, the commissioners on the part of Massachusetts and Rhode Island signed a report, return, and statement of their proceedings under the designation of

"The Subscribers, being of the committee appointed and empowered by the governments of the Province of Massachusetts Bay and the Colony of Rhode Island and Providence Plantations, for settling the east and west line between the said governments,"

stating that they had met at the stake of Nathaniel Woodword and Solomon Saffrey on Wrentham Plain, and had run the line, placing heaps of stones and marking trees to designate the same.

The defendant further alleges

"That the said report, return, or statement was afterwards -- that is to say on or about 16 June in the year of our Lord one thousand seven hundred and nineteen, approved by the General Assembly of the said Colony of Rhode Island and Providence Plantations,"

and the defendant alleges that from the date of the said agreements to the present time the said Commonwealth of Massachusetts has possessed and enjoyed all the territory and exercised jurisdiction over the same north of the said line, as prescribed in the said agreements of October, 1718, without hindrance or molestation, and the said defendant avers that both the points of beginning agreed upon by said parties to said agreement, *viz.*, the stake or station set up by the said Woodword and Saffrey, and the line run therefrom to Connecticut River, then were, ever since have been, and still are well known and notorious; that the whole boundary line fixed on by said agreement is precise, definite, and certain, and that the said defendant has occupied and exercised jurisdiction and enjoyed all rights of sovereignty according to the same from the date thereof to the present time.

The defendant pleads the agreement of 19 January, 1710, and the agreement in pursuance and confirmation thereof of 22 October, 1717, and unmolested possession under the same from their date in bar of the whole bill of the complainants, and prays judgment accordingly.

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The answer and plea further aver that the agreements stated were made and entered into with full knowledge of all the circumstances in both parties; that the same were a valid and effectual settlement of the matters in controversy and were made and entered into without fraud or misrepresentation, and the station settled there has been notorious, and the line run therefrom has always been known and its marks and memorials capable of being discerned and renewed.

Mr. Webster, of counsel for the State of Massachusetts, moved to dismiss the bill filed by the State of Rhode Island on the ground that the court had no jurisdiction of the cause.

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MR. JUSTICE BALDWIN delivered the opinion of the Court:

At the January term of this Court, 1832, the plaintiff filed a bill in equity presenting a case arising under the various charters from the Crown of England to the Plymouth Company in 1621; to Massachusetts in 1629; to Rhode Island in 1663; the new charter to Massachusetts in 1691; together with sundry intermediate proceedings of the council of Plymouth, the result of which was to vest in the Colony of Massachusetts and the King all the rights of propriety and government previously granted to that company as a political corporation. The bill also set out the repeal of the original charter of Massachusetts on a *scire facias* in the Court of Chancery in England, the grant by the Crown and acceptance by the Colony of a new charter subsequent to the charter to Rhode Island.

All these acts are specially and at large set out in the bill, but need not in this stage of the cause be referred to by the Court in detail. They present the claim of the plaintiff to the territory in controversy between the two states in virtue of these charters, according to the boundaries therein described.

Independently of the claim under the charter of 1663, the plaintiff asserts a previous right in virtue of grants from the Indians and settlements made under a title thus acquired, and also asserts that under both titles, the inhabitants of Rhode Island made settlements on the lands immediately south of the boundary between the two colonies as now asserted, which settlements were so made and continued from the time of the purchase from the Indians before, under the charter, and afterwards, though the line was not defined and disputed.

The bill then proceeds to state the existence of controversies between the two colonies at a very early period, to settle which commissioners

were appointed by each colony in 1709, and at various other periods down to 1809, and sets forth the proceedings of the commissioners of the colonies before the Revolution and the states afterwards down to 1818.

For the present purposes of this case it is necessary to refer only to one subject matter of these proceedings during this whole period, which is presented in the bill in the same aspect throughout; that subject is the agreement of 1709, and 1718, and the acts done pursuant thereto, which are recited at large in the bill. It then states the agreement of the commissioners of the two colonies, that a line should be run and marked as their boundary, which was done; a survey made and returned, together with all the proceedings to the legislatures of the respective colonies, accepted by Massachusetts, but as the bill avers, not accepted and ratified by Rhode Island. This is the line now claimed by Massachusetts, and whether the charter line or that is the true line of right and boundary between the two states is the only point in controversy in this case.

The bill avers that this line was agreed on in consequence of a representation by the Massachusetts' commissioners to those of Rhode Island, that in 1642, Woodword and Saffrey has ascertained the point three miles south of Charles River which, by the charters of both colonies, was to form their common boundary by line to run east and west therefrom. That Woodword and Saffrey had set up a stake at that point on Wrentham Plains as the true southern boundary of Massachusetts. That the Rhode Island commissioners, confiding in such representation, believing that such point had been truly ascertained, and that such stake was no more than three miles from Charles River, south, entered into and made the agreement of 1710-1711, which was executed by the commissioners on both sides.

In the agreement is this clause:

"That the stake set up by Woodword and Saffrey, approved artists, in 1642, and since that often renewed, in lat. 41  55' N., being three English miles south of Charles River, in its southernmost part, agreeably to the letters patent to Massachusetts, be accounted and allowed as the commencement of the line between the colonies, and continued between them as deciphered in the plan of Woodword and Saffrey, on record in the Massachusetts government."

It is then averred in the bill that no mark stake or monument then existed (1710-11) by which the place at which Woodword and Saffrey were alleged to have set up the stake could be ascertained; that

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none of the parties to the agreement went to such place; that no survey was made, no line run, or any means taken to ascertain where it was; whether it was three miles or more from Charles River; whether Woodword and Saffrey ever run the line, or whether it was the true boundary line between the colonies, according to their respective charters. That Massachusetts took wrongful possession of the territory in question, in which Rhode Island never acquiesced and to which she never agreed, but continued to assert her claim from the time of the agreement to the filing of the bill, to all the territory embraced in her charter, and sovereignty and jurisdiction within and over it, as claimed in the bill. The bill denies that any line was ever run by Woodword and Saffrey in 1642; avers that the agreements of 1710-1711, which adopted it, were unfair, inequitable, executed under a misrepresentation and mistake as to material facts; that the line is not run according to the charters of the colonies; that it is more than seven miles south of the southernmost part of Charles River; that the agreement was made without the assent of the King; that Massachusetts has continued to hold wrongful possession of the disputed territory, and prevents the exercise of the rightful jurisdiction and sovereignty of Rhode Island therein. The prayer of the bill is to ascertain and establish the northern boundary between the states, that the rights of sovereignty and jurisdiction be restored and confirmed to the plaintiffs, and they be quieted in the enjoyment thereof, and their title, and for other and further relief.

On the service of this bill on the Governor and Attorney General of Massachusetts agreeably to a rule of this Court, the legislature passed a resolution authorizing the appearance of the state to the suit and the employment of counsel by the governor to defend the rights of the state. In obedience to this resolution the governor, after reciting it, appointed counsel under the seal of the state to appear and make defense either by objecting to the jurisdiction of this Court or by plea, answer, or otherwise, at his discretion, as he should judge most proper.

Under this authority, an appearance was entered, and at January term, a plea in bar of the plaintiff's bill was filed in which it was averred that in 1642, a station or monument was erected and fixed at a point believed to be on the true southern boundary line of Massachusetts, and a line continued therefrom to the Connecticut River westwardly, which station or monument was well known, notorious, and has ever since been called Woodword and Saffrey's

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Station on Wrentham Plains. It then sets up the agreement of 1709 and subsequent proceedings at large; avers that the whole merits of plaintiff's case, as set forth in the bill, were fully heard, tried, and determined in the hearing and by the judgment of the Rhode Island commissioners; that the agreement was fair, legal, and binding between the parties; that it was a valid and effectual settlement of the matter in controversy, without cover, fraud, or misrepresentation, with a full and equal knowledge of all circumstances by both parties. That such agreement is still in full force, no way waived, abandoned, or relinquished, and that the defendant has held, possessed, occupied, and

enjoyed the land, propriety, and jurisdiction according to the well known and easily discovered station of Woodword and Saffrey and the line run by them therefrom, from the date of the agreement to the present time, without hindrance or molestation.

The plea then sets forth the subsequent agreement of the two colonies, in 1717 and 1718, touching their boundaries and a running and marking thereof by their respective commissioners, appointed for the purpose of finally settling the controversy, who in 1718 agreed that the stake of Woodword and Saffrey, should be the point from which the dividing line should be run and be forever the boundary between the two governments, notwithstanding any former controversy or claim. That this agreement was recorded, ratified, and confirmed by the General Assembly of Rhode Island; that no false representation was made to their commissioners; that the agreement was concluded fairly, in good faith, with full and equal knowledge by the respective parties, has never been annulled, rescinded or abandoned, and was in pursuance and completion of the agreement of 1709. The report of the commissioners is then set out, stating that in 1719 they run and marked a line west, 2° south from the stake of Woodword and Saffrey, at which they met, as the boundary, which report was approved by Rhode Island in the same year. The plea then makes the same averment as to these proceedings of 1717, 1718, and 1719 as it did in relation to those of 1709, 1710, and 1711; pleads both agreements and unmolested possession by the defendant, from their respective dates to the present time, as a bar to the whole bill and against any other or further relief therein; prays the judgment of the Court whether the defendant shall make any further answer to the bill, and to be dismissed.

Then the defendant, not waiving but relying on his plea, by way

of answer and in support of the plea as a bar to the bill, avers that both agreements were a valid and effectual settlement of the whole matter of controversy in the case, as is insisted on in the plea.

To this plea a replication was put in, but afterwards withdrawn and notice given that the cause would be put down for hearing on the plea; the cause was continued at the last term; the plaintiff gave notice that he should at this term move to amend the bill, and the case is now before us for consideration on a motion by the defendant to dismiss the bill for want of jurisdiction in the cause.

However late this objection has been made or may be made in any cause in an inferior or appellate court of the United States, it must be considered and decided before any court can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction. Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; the question is whether on the case before a court, their action is judicial or extrajudicial, with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action, by hearing and determining it. 31 U. S. 6 Pet. 709; 4 Russell 415; 28 U. S. 3 Pet. 203-207.

A motion to dismiss a cause pending in the courts of the United States, is not analogous to a plea to the jurisdiction of a court of common law or equity in England; there, the superior courts have a general jurisdiction over all persons within the realm, and all causes of action between them. It depends on the subject matter, whether the jurisdiction shall be exercised by a court of law or equity, but that court, to which it appropriately belongs, can act judicially upon the party and the subject of the suit, unless it shall be made apparent to the court that the judicial determination of the case has been withdrawn from the court of general jurisdiction, to an inferior and limited one. It is a necessary presumption that the court of general jurisdiction can act upon the given case, when nothing appears to the contrary; hence has arisen the rule that the party claiming an exemption from its process, must set out the reasons by a special plea in abatement, and show that some interior court of law or equity has the exclusive cognizance of the case; otherwise the superior court must proceed, in virtue of its general

jurisdiction.

The rule prevails both at law and in equity. 1 Ves.Sr. 204; 2 Ves.Sr. 307; Mit. 183. A motion to dismiss therefore cannot be entertained, as it does not and cannot disclose a case of exception, and if a plea in abatement is put in, it must not only make out the exception, but point to the particular court to which the case belongs. A plaintiff in law or equity is not to be driven from court to court by such pleas; if a defendant seeks to quash a writ or dismiss a bill for such cause, he must give the plaintiff a better one, and shall never put in a second plea to the jurisdiction of that court, to which he has driven the plaintiff by his plea. 1 Ves.Sr. 203.

There are other classes of cases where the objection to the jurisdiction is of a different nature, as on a bill in chancery; that the subject matter is cognizable only by the King in council, and not by any judicial power, 1 Ves.Sr. 445, or that the parties, defendant, cannot be brought before any municipal court on account of their sovereign character and the nature of the controversy, as 1 Ves.Sr. 371, 387; 2 Ves.Jr. 56, 60, or in the very common cases which present the question whether the cause properly belongs to a court of law or equity. To such cases, a plea in abatement would not be applicable, because the plaintiff could not sue in an inferior court; the objection goes to a denial of any jurisdiction of a municipal court in one class of cases and to the jurisdiction of any court of equity or of law in the other, on which last the court decides according to their legal discretion. An objection to jurisdiction on the ground of exemption from the process of the court in which the suit is brought or the manner in which a defendant is brought into it is waived by appearance and pleading to issue. 35 U. S. 10 Pet. 473; *Toland v. Sprague*, 12 Pet. 300, but when the objections goes to the power of the court over the parties or the subject matter, the defendant need not, for he cannot, give the plaintiff a better writ or bill. Where no inferior court can have jurisdiction of a case in law or enquiry, the ground of the objection is not taken by plea in abatement, as an exception of the given case, from the otherwise general jurisdiction of the court; appearance does not cure the defect of judicial power, and it may be relied on by plea, answer, demurrer, or at the trial or hearing unless it goes to the manner of bringing the defendant into court, which is waived by submission to the process.

As a denial of jurisdiction over the subject matter of a suit between parties within the realm over which and whom the court has power to act cannot be successful in an English court of general jurisdiction,

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a motion like the present could not be sustained consistently with the principles of its constitution. But as this Court is one of limited and special original jurisdiction, its action must be confined to the particular cases, controversies, and parties over which the Constitution and laws have authorized it to act; any proceeding without the limits prescribed is *coram non judice,* and its action a nullity. 35 U. S. 10 Pet. 474; *S.P.* 4 Russ. 415. And whether the want or excess of power is objected by a party or is apparent to the court, it must surcease its action, or proceed extrajudicially.

Before we can proceed in this cause, we must therefore inquire whether we can hear and determine the matters in controversy between the parties, who are two states of this Union, sovereign within their respective boundaries, save that portion of power which they have granted to the federal government and foreign to each other for all but federal purposes. So they have been considered by this Court through a long series of years and cases to the present term, during which, in the case of *Bank of the United States v. Daniels,* this Court has declared this to be a fundamental principle of the Constitution, and so we shall consider it in deciding on the present motion. 27 U. S. 2 Pet. 590-591.

Those states, in their highest sovereign capacity in the convention of the people thereof, on whom by the Revolution the prerogative of the Crown and the transcendant power of Parliament devolved in a plenitude unimpaired by any act and controllable by no authority, 21 U. S. 8 Wheat. 584, 21 U. S. 588, adopted the Constitution, by which they respectively made to the United States a grant of judicial power over controversies between two or more states. By the Constitution it was ordained that this judicial power, in cases where a state was a party, should be exercised by this Court as one of original jurisdiction. The states waived their exemption from judicial power, 19 U. S. 6 Wheat. 378, 19 U. S. 380, as sovereigns by original and inherent right, by their own grant of its exercise over themselves in such cases, but which they would not grant to any inferior tribunal. By this grant, this Court has acquired jurisdiction over the parties in this cause by their own consent and delegated authority, as their agent for executing the judicial power of the United States in the cases specified. Massachusetts has appeared, submitted to the process in her legislative capacity, and plead in bar of the plaintiff's action, certain matters on which the judgment of the Court is asked;

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all doubts as to jurisdiction over the parties are thus at rest, as well by the grant of power by the people as the submission of the legislature to the process, and calling on the Court to exercise its jurisdiction on the case presented by the bill, plea, and answer.

Our next inquiry will be whether we have jurisdiction of the subject matters of the suit to hear and determine them.

That it is a controversy between two states cannot be denied, and though the Constitution does not in terms extend the judicial power to all controversies between two or more states, yet it in terms excludes none, whatever may be their nature or subject. It is therefore a question of construction whether the controversy in the present case is within the grant of judicial power. The solution of this question must necessarily depend on the words of the Constitution; the meaning and intention of the convention which framed and proposed it for adoption and ratification to the conventions of the people of and in the several states, together with a reference to such sources of judicial information as are resorted to by all courts in construing statutes, and to which this Court has always resorted in construing the Constitution. It was necessarily left to the legislative power to organize the Supreme Court, to define its powers consistently with the Constitution, as to its original jurisdiction, and to distribute the residue of the judicial power between this and the inferior courts, which it was bound to ordain and establish, defining their respective powers, whether original or appellate, by which and how it should be exercised. In obedience to the injunction of the Constitution, Congress exercised their power, so far as they thought it necessary and proper, under the seventeenth clause of the eighth section, first article, for carrying into execution the powers vested by the Constitution in the judicial as well as all other departments and officers of the government of the United States. 16 U. S. 3 Wheat. 389. No department could organize itself; the Constitution provided for the organization of the legislative power and the mode of its exercise, but it delineated only the great outlines of the judicial power; 14 U. S. 1 Wheat. 326; 17 U. S. 4 Wheat. 407, leaving the details to Congress, in which was vested, by express delegation, the power to pass all laws necessary and proper for carrying into execution all powers except their own. The distribution and appropriate exercise of the judicial power must therefore be made by laws passed by Congress, and cannot be assumed by any other department, else, the power being concurrent in the legislative and judicial departments, a conflict between them would be probable if not unavoidable under a Constitution of government

which made it the duty of the judicial power to decide all cases in law or equity arising under it, or laws passed, and treaties made by its authority.

By the Judiciary Act of 1789, the judicial system of the United States was organized, the powers of the different courts defined, brought into action, and the manner of their exercise regulated. The 13th section provided

"That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a state is a party, except between a state and its citizens and except also between a state and citizens of other states or aliens, in which latter case it shall have original, but not exclusive jurisdiction."

1 Story's Laws 59.

The power of Congress to make this provision for carrying into execution the judicial power in such cases has never been, and we think cannot be questioned, and taken in connection with the Constitution, presents the great question in this cause which is one of construction appropriate to judicial power and exclusively of judicial cognizance till the legislative power acts again upon

it. *Vide* 28 U. S. 3 Pet. 203. In deciding whether the present case is embraced or excluded by the Constitution and Judiciary Act and whether it is a case of lawful original cognizance by this Court, it is the exercise of jurisdiction, for it must be in the legal discretion of the Court to retain or dismiss the bill of the plaintiffs. Act as we may feel it our duty to do, there is no appeal from our judgment, save to the amending power of the Constitution, which can annul not only its judgments, but the Court itself. So that the true question is necessarily whether we will so exercise our jurisdiction as to give a judgment on the merits of the case as presented by the parties, who are capable of suing and being sued in this Court, in law or equity, according to the nature of the case and controversy between the respective states.

This Court, in construing the Constitution as to the grants of powers to the United States and the restrictions upon the states, has ever held that an exception of any particular case presupposes that those which are not excepted are embraced within the grant or prohibition, and have laid it down as a general rule that where no exception is made in terms, none will be made by mere implication or construction. 19 U. S. 6 Wheat. 378; 21 U. S. 8 Wheat. 489-490; 25 U. S. 12Wheat. 438; 22 U. S. 9 Wheat. 206-207, 22 U. S. 216.

Then the only question is whether this case comes within the rule, or presents an exception,

according to the principles of construction adopted and acted on by this Court in cases involving the exposition of the Constitution and laws of the United States, which are construed as other instruments granting power or property. 25 U. S. 12 Wheat. 437; 31 U. S. 6 Pet. 738, 31 U. S. 740. That some degree of implication must be given to words is a proposition of universal adoption; implication is but another term for meaning and intention apparent in the writing on judicial inspection; "the evident consequence," 1 Bl.Com. 250, "or some necessary consequence resulting from the law," 2 Ves.Sr. 351, or the words of an instrument in the construction of which the words, the subject, the context, the intention of the person using them are all to be taken into view. 17 U. S. 4 Wheat. 415; 31 U. S. 6 Pet. 739, 31 U. S. 741. Such is the sense in which the common expression is used in the books, "express words or necessary implication," such as arise on the words, taken in connection with other sources of construction, but not by conjecture, supposition, or mere reasoning on the meaning or intention of the writing. All rules would be subverted if mere extraneous matter should have the effect of interpreting a supreme law differently from its obvious or necessarily to be implied sense; *vide* 22 U. S. 9 Wheat. 188, so apparent as to overrule the words used, 19 U. S. 6 Wheat. 380. "Controversies between two or more states," "all controversies of a civil nature, where a state is a party," are broad comprehensive terms, by no obvious meaning or necessary implication excluding those which relate to the title, boundary, jurisdiction, or sovereignty of a state. 19 U. S. 6Wheat. 378.

The Judiciary Act makes certain exceptions, which apply only to cases of private persons and cannot embrace a case of state against state; established rules forbid the extension of the exception to such cases if they are of a civil nature. What then are "controversies of a civil nature" between state and state or more than two states?

We must presume that Congress did not mean to exclude from our jurisdiction those controversies the decision of which the states had confided to the judicial power, and are bound to give to the Constitution and laws such a meaning as will make them harmonize unless there is an apparent or fairly to be implied conflict between their respective provisions. In the construction of the Constitution, we must look to the history of the times and examine the state of things existing when it was framed and adopted, 25 U. S. 12 Wheat. 354; 19 U. S. 6 Wheat. 416; 29 U. S. 4 Pet. 431-432, to ascertain the old law, the mischief, and the remedy. It is a part of the public history of the United

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States of which we cannot be judicially ignorant that at the adoption of the Constitution, there were existing controversies between eleven states respecting their boundaries, which arose under their respective charters and had continued from the first settlement of the colonies. New Hampshire and New York contended for the territory which is now Vermont until the people of the latter assumed by their own power the position of a state and settled the controversy by taking to themselves the disputed territory as the rightful sovereign thereof. Massachusetts and Rhode Island are now before us; Connecticut claimed part of New York and Pennsylvania. She submitted to the decree of the Council of Trenton, acting pursuant to the authority of the confederation, which decided that Connecticut had not the jurisdiction, but she claimed the right of soil till 1800. New Jersey had a controversy with New York, which was before this Court in 1832, and one yet subsists between New Jersey and Delaware. Maryland and Virginia were contending about boundaries in 1835, when a suit was pending in this Court, and the dispute is yet an open one. Virginia and North Carolina contended for boundary till 1802, and the remaining states, South Carolina and Georgia, settled their boundary in the April preceding the meeting of the general convention which framed and proposed the Constitution. 1 Laws U.S. 466.

With the full knowledge that there were at its adoption not only existing controversies between two states singly, but between one state and two others, we find the words of the Constitution applicable to this state of things, "controversies between two or more states." It is not known that there were any such controversies then existing other than those which relate to boundary, and it would be a most forced construction to hold that these were excluded from judicial cognizance and that it was to be confined to controversies to arise prospectively on other subjects. This becomes the more apparent when we consider the context and those parts of the Constitution which bear directly on the boundaries of states, by which it is evident that there remained no power in the contending states to settle a controverted boundary between themselves as states competent to act by their own authority on the subject matter, or in any department of the government, if it was not in this.

By the first clause of the tenth section of the first article of the Constitution, there was a positive prohibition against any state's entering into "any treaty, alliance, or confederation." No power under the

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government could make such an act valid or dispense with the constitutional prohibition. In the next clause is a prohibition against any state's entering

"into any agreement or compact with another state or with a foreign power, without the consent of Congress, or engaging in war unless actually invaded or in imminent danger admitting of no delay."

By this surrender of the power, which before the adoption of the Constitution was vested in every state, of settling these contested boundaries as in the plenitude of their sovereignty they might, they could settle them neither by war, or in peace, by treaty, compact or agreement without the permission of the new legislative power which the states brought into existence by their respective and several grants in conventions of the people. If Congress consented, then the states were in this respect restored to their original inherent sovereignty, such consent being the sole limitation imposed by the Constitution, when given, left the states as they were before, as held by this Court in *Poole v. Fleeger,* 11 Pet. 209, whereby their compacts became of binding force and finally settled the boundary between them, operating with the same effect as a treaty between sovereign powers. That is that the boundaries so established and fixed by compact between nations become conclusive upon all the subjects and citizens thereof and bind their rights, and are to be treated to all intents and purposes as the true real boundaries. 36 U. S. 11 Pet. 209; *S.P.* 1 Ves.Sr. 448-449; 25 U. S. 12 Wheat. 534. The construction of such compact is a judicial question, and was so considered by this Court in *Lessee of Sims v. Irvine,* 3 Dall. 425-454, and in *Marlatt v. Silk & McDonald,* 11 Pet. 2, 36 U. S. 18; *Barton v. Williams,* 3 Wheat. 529-533.

In looking to the practical construction of this clause of the Constitution relating to agreements and compacts by the states, in submitting those which relate to boundaries to Congress for its consent, its giving its consent, and the action of this Court upon them, it is most manifest that by universal consent and action, the words "agreement" and "compact," are construed to include those which relate to boundary; yet that word "boundary" is not used. No one has ever imagined that compacts of boundary were excluded because not expressly named; on the contrary, they are held by the states, Congress, and this Court to be included by necessary implication, the evident consequence resulting from their known object, subject matter, the context, and historical reference to the state of the times and country. No such exception has been thought of, as it would

render the clause a perfect nullity for all practical purposes, especially the one evidently intended by the Constitution in giving to Congress the power of dissenting to such compacts. Not to prevent the states from settling their own boundaries so far as merely affected their relations to each other, but to guard against the derangement of their federal relations with the other states of the Union and the federal government, which might be injuriously affected if the contracting states might act upon their boundaries at their pleasure.

Every reason which has led to this construction applies with equal force to the clause granting to the judicial power jurisdiction over controversies between states as to that clause which relates to compacts and agreements. We cannot make an exception of controversies relating to boundaries without applying the same rule to compacts for settling them, nor refuse to include them within

one general term when they have uniformly been included in another. Controversies about boundary are more serious in their consequences upon the contending states and their relations to the Union and governments than compacts and agreements. If the Constitution has given to no department the power to settle them, they must remain interminable, and as the large and powerful states can take possession to the extent of their claim, and the small and weak ones must acquiesce and submit to physical power, the possession of the large state must consequently be peaceable and uninterrupted; prescription will be asserted, and whatever may be the right and justice of the controversy, there can be no remedy though just rights may be violated. Bound hand and foot by the prohibitions of the Constitution, a complaining state can neither treat, agree, or fight with its adversary without the consent of Congress; a resort to the judicial power is the only means left for legally adjusting or persuading a state which has possession of disputed territory to enter into an agreement or compact relating to a controverted boundary. Few if any will be made when it is left to the pleasure of the state in possession, but when it is known that some tribunal can decide on the right, it is most probable that controversies will be settled by compact.

There can be but two tribunals under the Constitution who can act on the boundaries of states -- the legislative or the judicial power; the former is limited in express terms to assent or dissent, where a compact or agreement is referred to them by the states, and as the latter

can be exercised only by this Court, when a state is a party, the power is here, or it cannot exist. For these reasons, we cannot be persuaded that it could have been intended to provide only for the settlement of boundaries when states could agree and to altogether withhold the power to decide controversies on which the states could not agree and presented the most imperious call for speedy settlement.

There is another clause in the Constitution which bears on this question. The judicial power extends to "controversies between citizens of different states;" "between citizens of the same state claiming lands under grants of different states." We cannot but know judicially that the latter classes of cases must necessarily arise on boundary and that few if any ever arise from any other source. If there is a compact between the states, it settles the line of original right; it is the law of the case binding on the states and its citizens as fully as if it had been never contested; if there is no compact, then the controversy must be settled by adjudging where the line of boundary ought to be by the laws and rules appropriate to the case. 19 U. S. 6 Wheat. 393; 27 U. S. 2 Pet. 300. It is not recollected that any such cases have ever arisen "between citizens of the same state," as the judiciary acts have made no provision for this exercise of this undoubted constitutional jurisdiction, and it is not necessary for the decision of this cause to inquire whether a law is necessary for this purpose. But for the other class of cases, "controversies between citizens of different states," the eleventh section of the Judiciary Act makes provision, and the circuit courts in their original and this Court in its appellate jurisdiction have decided on the boundaries of the states under whom the parties respectively claim, whether there has been a compact or not. The jurisdiction of the circuit court in such cases was distinctly and expressly asserted by this Court as early as 1799 in *Fowler v. Miller,* 3 Dall. 411-412; *S.P.* 30 U. S. 5 Pet. 290.

In *Handly's Lessee v. Anthony*, the Circuit Court of Kentucky decided on the boundary between that state and Indiana in an ejectment between these parties, and their judgment was affirmed by this Court. 18 U. S. 5 Wheat. 375; 16 U. S. 3 Wheat. 212-218; *S.P. 25 U. S. Gaillard,* 12 Wheat. 523. When the boundaries of states can be thus decided collaterally in suits between individuals, we cannot by any just rule of interpretation declare that this Court cannot adjudicate on the question of boundary when it is presented directly in a controversy between two or more states and is the only point in the cause.

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There is yet another source of reference from which to ascertain the true construction of the Constitution.

By the ninth Article of Confederation adopted by the legislatures of the several states, it is provided

"That the United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or which may hereafter arise between two or more states concerning boundary, jurisdiction, or any other cause whatever."

It directed the appointment of a tribunal, whose judgment should be final and conclusive. It also gave to Congress power to appoint a judicial tribunal to decide on a petition of either of the parties, claiming land under grants of two or more states, who had adjusted their boundaries but had previously made the grants on which the controversy arose. One of the most crying evils of the Confederation was that it created no judicial power without the action of Congress, and confined the power of that body to the appointment of courts for the trial of piracies and felonies committed on the high seas, for determining finally on appeal, in all cases of captures, and for the adjustment of the controversies before referred to. Yet defective as was the Confederation in other respects, there was full power to finally settle controverted boundaries in the two cases by an appeal by a state or petition of one of its citizens. This power was given from the universal conviction of its necessity in order to preserve harmony among the confederated states, even during the pressure of the Revolution. If in this state of things it was deemed indispensable to create a special judicial power for the sole and express purpose of finally settling all disputes concerning boundary, arise how they might, when this power was plenary, its judgment conclusive on the right, while the other powers delegated to Congress were mere shadowy forms, one conclusion at least is inevitable. That the Constitution, which emanated directly from the people, in conventions in the several states, could not have been intended to give to the judicial power a less extended jurisdiction or less efficient means of final action than the Articles of Confederation, adopted by the mere legislative power of the states, had given to a special tribunal appointed by Congress, whose members were the mere creatures and representatives of state legislatures, appointed by them, without any action by the people of the state.

This Court exists by a direct grant from the people of their judicial power; it is exercised by their authority, as their agent selected by themselves, for the purposes specified; the people of the states as they

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respectively became parties to the Constitution, gave to the judicial power of the United States jurisdiction over themselves, controversies between states, between citizens of the same or different states, claiming lands under their conflicting grants, within disputed territory. No fact was more prominent in our history, none could have been more strongly impressed on the members of the general and state conventions, than that contests for the vacant lands of the Crown, long threatened the dissolution of the Confederation, which existed practically and by common consent, from 1774 to 1781, when, after five years of discussion, it was ratified by the legislatures of all the states. This Court has attested the fact, 10 U. S. 6 Cranch 142; 18 U. S. 5 Wheat. 376. Similar danger was imminent, from controversies about boundaries between the states till provision was made for their decision, with a proviso "That no state should be deprived of territory for the benefit of the United States." 1 Laws U.S. 17. These two provisions, taken in connection, put an end to any fears of convulsion by the contests of states about boundary and jurisdiction, when any state could, by appeal, bring the powers of Congress and a judicial tribunal into activity, and the United States could not take any vacant land within the boundary of a state. Hence resulted the principles laid down by this Court in *Harcourt v. Gaillard,* 12 Wheat. 526, that the boundaries of the United States was the external boundaries of the several states, and that the United States did not acquire any territory by the Treaty of Peace in 1783.

Yet though this express provision was made to settle controverted boundaries by judicial power, Congress had no supervision over compacts and agreements between states as to boundary save on grants made before the compact; the states did and could so settle them without the consent of Congress, to whom, as no express power on or over the subject of such compacts was delegated, their dissent could not invalidate them. Such was the law of the confederacy during a common war, when external danger could not suppress the danger of dissolution from internal dissentions, when, owing to the imbecility of Congress, the powers of the states being reserved for legislative and judicial purposes, and the utter want of power in the United States to act directly on the people of the states, on the rights of the states (except those in controversy between them), or the subject matters, on which they had delegated but mere shadowy jurisdiction, a radical change of government became necessary. The Constitution, which superseded the Articles of Confederation, erected

a new government, organized it into distinct departments, assigning to each its appropriate powers and to Congress the power to pass laws for carrying into execution the powers granted to each, so that the laws of the Union could be enforced by its own authority upon all persons and subject matters over which jurisdiction was granted to any department or officer of the government of the United States. It was to operate in a time of peace with foreign powers, when foreign pressure was not in itself some bond of union between the states and danger from domestic sources might be imminent; to extend the legislative, executive and judicial power alike over persons and states on the enumerated subjects by their own grants. The states submitted to its exercise, waived their sovereignty, and agreed to come to this Court to settle their controversies with each other, excepting none in terms. So they had agreed by the Confederation, not only not excepting but in express terms including all disputes and differences whatever.

In the front of the Constitution is a declaration by the sovereign power from which it emanated; that it was ordained, "in order to form a more perfect union, establish justice, insure domestic tranquility," &c. Whether it was best calculated to effect these objects by making the judicial power utterly incompetent to exercise a jurisdiction expressly delegated to the old Congress and its constituted court, over states and their boundaries, in the plenitude of absolute power, yet granted only by the legislative power of the several states, or whether the powers granted to this Court by the people of all the states, ought, by mere construction and implication, to be held inefficient for the objects of its creation, and not capable of "establishing justice" between two or more states, are the direct questions before us for consideration. Without going further into any general consideration on the subject, there is one which cannot be overlooked and is imperious in its results.

Under the Confederation, the states were free to settle their controversies of any kind whatever by compact or agreement; under the Constitution, they can enter into none without the consent of Congress in the exercise of its political power, thus making an amicable adjustment a political matter for the concurring determination of the states and Congress and its construction a matter of judicial cognizance by any court to which the appropriate resort may be had by the Judiciary Act.

This has uniformly been done in the courts of the states and

Union; no one has ever deemed such an exercise of power to be extrajudicial or a case which called for it to be *coram non judice.* When, therefore, the Court judicially inspects the Articles of Confederation, the preamble to the Constitution, together with the surrender by the states of all power to settle their contested boundaries, with the express grant of original jurisdiction to this Court, we feel not only authorized but bound to declare that it is capable of applying its judicial power to this extent at least:

1. To act as the tribunal substituted by the Constitution in place of that which existed at the time of its adoption, on the same controversies, and to a like effect.

2. As the substitute of the contending states, by their own grant, made in their most sovereign capacity, conferring that preexisting power, in relation to their own boundaries, which they had not surrendered to the legislative department, thus separating the exercise of political from judicial power and defining each.

There is but one power in this Union paramount to that by which, in our opinion, this jurisdiction has been granted and must be brought into action if it can. That power has been exerted in the 11th Amendment, but while it took from this Court all jurisdiction, past, present, and future, 3 U. S. 3 Dall. 382, of all controversies between states and individuals, it left its exercise over those between states as free as it had been before. This too with the full view of the decisions of this Court and the act of 1789 giving it exclusive jurisdiction of all controversies of a civil nature where a state is a party, and there can be no subject on which the judicial power can act with a more direct and certain tendency to effectuate the great objects of its institution than the one before us. If we cannot "establish justice" between these litigant states, as the tribunal to which they have both

submitted the adjudication of their respective controversies, it will be a source of deep regret to all who are desirous that each department of the government of the Union should have the capacity of acting within its appropriate orbit, as the instrument appointed by the Constitution, so to execute its agency as to make this bond of union between the states more perfect and thereby enforce the domestic tranquility of each and all.

Being thus fully convinced that we have an undoubted jurisdiction of this cause as far as we have proceeded in examining whether, by a true and just construction of the Constitution and laws, it is included or excluded in the grant of judicial power for any purpose,

we now proceed to inquire how that jurisdiction shall be exerted -- whether to retain or dismiss the complainant's bill.

This depends on our jurisdiction over any of the matters on which the plaintiff asks our interposition. If there is any one subject on which we can act, the bill must be retained, so that the true inquiry is not as to the extent, but the existence, of any jurisdiction. 1 Ves.Sr. 203, 205; 2 Ves.Sr. 356.

The bill prays

1. For the ascertaining and establishing the boundary line between the states by the order of this Court.

2. That the right of jurisdiction and sovereignty of the plaintiff to the disputed territory may be restored to her, and she be quieted in the enjoyment thereof and her title thereto, and for further relief. If we can decree any relief specially called for, or any other relief, consistently with the specific prayer, we must proceed in the cause. 35 U. S. 10 Pet. 228; 33 U. S. 8 Pet. 536.

The first prayer is to ascertain and establish a boundary. Having expressed our opinion that the subject of boundary is within our jurisdiction, we must exercise it to some extent and on some matter connected with or dependent upon it, and as the bill is on the equity side of the Court, it must be done according to the principles and usages of a court of equity.

In the bill are set forth various charters from the Crown from 1621 to 1691 and sundry proceedings by the grantees and the Crown in relation thereto; also agreements between the parties as colonies and states for adjusting their boundaries and the proceedings of their respective legislatures and commissioners in relation thereto from 1709 to 1818. The plaintiff relies on the charters of the two colonies as the rule by which to settle the boundary; on the continued assertion of her rights, as well by the charter, as her previous purchase from the Indians; denying altogether the validity of the agreements and subsequent proceedings; averring that they were made under misrepresentation and mistake as to material facts. On the other hand the defendant pleads the agreements as a bar; that they are binding, and have been ratified by the plaintiff, so that the plaintiff rests his case on a question of original boundary, unaffected by any agreement; the defendant rests on the agreements, without regard to the original charter boundaries. One asking us to annul, the other to

enforce, the agreements, one averring continual claim, the other setting up the quiet unmolested possession for more than a century in strict conformity to and by the line in the agreements.

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Our first inquiry then must be as to our power to settle the boundary -- in other words, to decide what portion of the territory in dispute belongs to the one state or the other, according to the line which is their common boundary. There is not in fact, or by any law can be, any territory which does not belong to one or the other state, so that the only question is to which the territory belongs. This must depend on the right by which each state claims the territory in question. Both claim under grants of contiguous territory by the King, in whom was the absolute propriety and full dominion in and over it; 34 U. S. 9 Pet. 745-748; 21 U. S. 8 Wheat. 595; the line drawn or pointed out in his grant is therefore that which is designated in the two charters as the common boundary of both. 18 U. S. 5 Wheat. 375.

The locality of that line is matter of fact, and when ascertained separates the territory of one from the other, for neither state can have any right beyond its territorial boundary. It follows that when a place is within the boundary, it is a part of the territory of a state; title, jurisdiction, and sovereignty are inseparable incidents, and remain so till the state makes some cession. The plain language of this Court in *United States v. Bevans,* 3 Wheat. 386, saves the necessity of any reasoning on this subject. The question is put by the Court

"What then is the extent of jurisdiction which a state possesses? . . . We answer without hesitation the jurisdiction of a state is coextensive with its territory, coextensive with its legislative power. The place described, is unquestionably within the original territory of Massachusetts. It is, then, within the jurisdiction of Massachusetts, unless that jurisdiction has been ceded to [by] the United States [*id.,* 16 U. S. 387]. . . . A cession of territory is essentially a cession of jurisdiction [*id.,* 16 U. S. 388]. Still the general jurisdiction over the place, subject to this grant of power [to the United States] adheres to the territory as a portion of sovereignty not yet given away [*id.,* 16 U. S. 389]."

This principle is embodied in the sixteenth clause of the eighth section, first article of the Constitution, relative to this district, forts, arsenals, dock yards, magazines, and uniformly applied to all acquisitions of territory by the United States in virtue of cessions by particular states or foreign nations. 18 U. S. 5 Wheat. 324; 18 U. S. 5 Wheat. 375; 16 U. S. 3 Wheat. 388-389; 27 U. S. 2 Pet. 300. Title, jurisdiction, sovereignty, are therefore dependent questions, necessarily settled when boundary is ascertained, which being the line of territory, is the

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line of power over it, so that great as questions of jurisdiction and sovereignty may be, they depend in this case on two simple facts. 1. Where is the southernmost point of Charles River. 2. Where is the point three English miles in a south line, drawn from it. When these points are ascertained, which by the terms are those called for in both charters, then an east and west line from the second point is necessarily the boundary between the two states if the charters govern it.

If this Court can, in a case of original jurisdiction, where both parties appear and the plaintiff rests his case on these facts, proceed to ascertain them, there must be an end of this case when they are ascertained if the issue between them is upon original right by the charter boundaries. We think it does not require reason or precedent to show that we may ascertain facts with or without a jury, at our discretion, as the circuit courts and all others do in the ordinary course of equity; our power to examine the evidence in the cause, and thereby ascertain a fact, cannot depend on its effects, however important in their consequences. Whether the sovereignty of the United States, of a state, or the property of an individual depends on the locality of a tree, a stone, or watercourse, whether the right depends on a charter, treaty, cession, compact, or a common deed, the right is to territory great or small in extent, and power over it, either of government or private property, the title of a state is sovereignty, full and absolute dominion; 27 U. S. 2 Pet. 300-301; the title of an individual such as the state makes it by its grant and law.

No court acts differently in deciding on boundary between states than on lines between separate tracts of land; if there is uncertainty where the line is, if there is a confusion of boundaries by the nature of interlocking grants, the obliteration of marks, the intermixing of possession under different proprietors, the effects of accident, fraud, or time, or other kindred causes, it is a case appropriate to equity. An issue at law is directed, a commission of boundary awarded, or, if the court are satisfied without either, they decree what and where the boundary of a farm, a manor, province, or a state is and shall be.

When no other matter affects a boundary, a decree settles it as having been by original right at the place decreed, in the same manner as has been stated where it is settled by treaty or compact; all dependent rights are settled when boundary is; 1 Ves.Sr. 448-450. If, therefore, there was an issue in this case on the locality of the point three miles south of the southernmost point of Charles River, we

should be competent to decide it, and decree where the boundary between the states was in 1629, and 1663 at the dates of their respective charters.

On these principles it becomes unnecessary to decide on the remaining prayers of the bill; if we grant the first and settle boundary, the others follow, and if the plaintiff obtains relief as to that, he wants no other. The established forms of such decrees extend to everything in manner or way necessary to the final establishment of the boundary as the true line of right and power between the parties.

This, however, is not a case where there is an issue on original boundary; the defendant does not rest on that fact, but puts in a plea setting up an agreement or compact of boundary between the parties while colonies, and the actual establishment of a line agreed on, run, marked, and ratified by both colonies, long possession, and a right by prescription to all the territory north of such line. This presents a case on an agreement on one side, alleged to be conclusive upon every matter complained of in the bill; on the other, to be invalid for the reasons alleged. If this matter of the plea is sufficient in law and true in fact, it ends the cause; if not so in both respects, then the parties are thrown back on their original rights according to their respective claims to the territory in

question, by charters, or purchase from the Indians. If, then, we can act at all on the case, we must, on this state of the pleadings, decide on the legal sufficiency of the plea, if true, as on a demurrer to it; next, on the truth of its averments; and then decide whether it bars the complaint of the plaintiff, and all relief; if it does not, then we must ascertain the fact on which the whole controversy turns. In the first aspect of the case it presents a question of the most common and undoubted jurisdiction of a court of equity; an agreement which the defendant sets up as conclusive to bar all relief, and the plaintiff asks to be declared void on grounds of the most clear and appropriate cognizance in equity, and not cognizable in a court of law. A false representation made by one party, confided in by the other, as to a fact on which the whole cause depends; the execution of the agreement, and all proceedings under it, founded on a mistaken belief of the truth of the fact represented. We must therefore do something in the cause unless the defendants have, in their objections, made out this to be an exception to the usual course of equity in its action on questions of boundary.

It is said that this is a political, not civil controversy between the parties, and so not within the Constitution or thirteenth section of the Judiciary Act.

As it is viewed by the Court, it is on the bill alone, had it been demurred to, a controversy as to the locality of a point three miles south of the southernmost point of Charles River; which is the only question which can arise under the charter. Taking the case on the bill and plea, the question is whether the stake set up on Wrentham Plain by Woodword and Saffrey in 1642, is the true point from which to run an east and west line, as the compact boundary between the states. In the first aspect of the case it depends on a fact; in the second on the law of equity, whether the agreement is void or valid; neither of which present a political controversy, but one of an ordinary judicial nature, of frequent occurrence in suits between individuals. This controversy, then, cannot be a political one unless it becomes so by the effect of the settlement of the boundary; by a decree on the fact, or the agreement; or because the contest is between states as to political rights and power, unconnected with the original, or compact boundary.

We will not impute to the men who conducted the colonies at home, and in Congress, in the three declarations of their rights previous to the consummation of the Revolution, from 1774, to 1776, and its final act, by a declaration of the rights of the states, then announced to the world; an ignorance of the effects of territorial boundary between them, in both capacities. Every declaration of the old Congress would be falsified, if the line of territory is held not to have been, from the first, the line of property and power. The Congress, which, in 1777, framed and recommended the Articles of Confederation for adoption by the legislative power of the several states were acting in a spirit of fatuity if they thought that a final and conclusive judgment on state boundaries was not equally decisive as to the exercise of political power by a state, making it rightful within but void beyond the adjudged line.

The members of the general and state conventions were alike fatuitous, if they did not comprehend, and know the effect of the states submitting controversies between themselves, to judicial power; so were the members of the first Congress of the Constitution, if they could see, and not know, read, and not understand its plain provisions, when many of them assisted in its frame.

The founders of our government could not but know what has

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ever been and is familiar to every statesman and jurist, that all controversies between nations are in this sense political, and not judicial, as none but the sovereign can settle them. In the Declaration of Independence, the states assumed their equal station among the powers of the earth and asserted that they could of right do what other independent states could do; "declare war, make peace, contract alliances;" of consequence, to settle their controversies with a foreign power, or among themselves, which no state, and no power could do for them. They did contract an alliance with France in 1778, and with each other, in 1781; the object of both was to defend and secure their asserted rights as states, but they surrendered to Congress and its appointed court the right and power of settling their mutual controversies, thus making them judicial questions, whether they arose on "boundary, jurisdiction, or any other cause whatever." There is neither the authority of law or reason for the position, that boundary between nations or states, is, in its nature, any more a political question than any other subject on which they may contend. None can be settled without war or treaty, which is by political power, but under the old and new confederacy they could and can be settled by a court constituted by themselves, as their own substitutes, authorized to do that for states, which states alone could do before. We are thus pointed to the true boundary line between political and judicial power, and question.

A sovereign decides by his own will, which is the supreme law within his own boundary; 31 U. S. 6 Pet. 714; 34 U. S. 9 Pet. 748; a court or judge decides according to the law prescribed by the sovereign power, and that law is the rule for judgment. The submission by the sovereigns or states to a court of law or equity of a controversy between them, without prescribing any rule of decision, gives power to decide according to the appropriate law of the case; 11 Ves. 294; which depends on the subject matter, the source and nature of the claims of the parties, and the law which governs them. From the time of such submission, the question ceases to be a political one, to be decide by the *sic volo, sic jubeo* of political power; it comes to the Court to be decided by its judgment, legal discretion, and solemn consideration of the rules of law appropriate to its nature as a judicial question, depending on the exercise of judicial power; as it is bound to act by known and settled principles of national or municipal jurisprudence, as the case requires.

It has never been contended that prize courts of admiralty jurisdiction,

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or questions before them, are not strictly judicial; they decide on questions of war and peace, the law of nations, treaties, and the municipal laws of the capturing nation, by which alone they are constituted; *a fortiori,* if such courts were constituted by a solemn treaty between the state under whose authority the capture was made, and the state whose citizens or subjects suffer by the capture. All nations submit to the jurisdiction of such courts over their subjects, and hold their final decrees conclusive on rights of property. 10 U. S. 6 Cranch 284-285.

These considerations lead to the definition of political and judicial power and questions; the former is that which a sovereign or state exerts by his or its own authority as reprisal and confiscation; 3

Ves. 429; the latter is that which is granted to a court or judicial tribunal. So of controversies between states; they are in their nature political when the sovereign or state reserves to itself the right of deciding on it; makes it the "subject of a treaty, to be settled as between states independent," or "the foundation of representations from state to state." This is political equity, to be adjudged by the parties themselves, as contradistinguished from judicial equity, administered by a court of justice, decreeing the *equum et bonum* of the case, let who or what be the parties before them. These are the definitions of law as made in the great Maryland case of *Barclay v. Russell,* 3 Ves. 435, as they have long been settled and established. Their correctness will be tested by a reference to the question of original boundary, as it ever has been and yet is by the Constitution of England, which was ours before the Revolution, while colonies; 21 U. S. 8 Wheat. 588; as it was here from 1771 to 1781, thence to 1788, and since by the Constitution as expounded by this Court.

If the question concerning the boundaries of contiguous pieces of land, manors, lordships, or counties palatine, arises within the realm, it was cognizable in the High Court of Chancery, in an appropriate case, a mere question of title to any defined part, was cognizable only by ejectment or real action in a court of law, which were in either case judicial questions. 1 Ves.Sr. 446-447. If between counts Palatine, boundary involved not only the right of soil, but the highest franchise known to the law of England, *jura regalia,* to the same extent as the King in right of the Crown and royal jurisdiction. Palatine jurisdiction was a qualified sovereignty till abridged by the 24 H. 8. ch. 24, Seld.Tit.Hon. 380, 382, 638, 838; 1 Black.Com. 108-17; 7 Co. 19; Cro.El. 240; 4 D.C.D. 450, &c. The

count appointed the judges of courts of law and equity; the King's writs did not run into his county; writs were in his name, and indictments against his peace, Co.Inst. 204-218. Yet his jurisdiction, his royalties, and *jura regalia,* &c., existed or disappeared, according as a chancellor should decree as to boundary. *Penn v. Baltimore,* 1 Ves.Sr. 448-449, &c. The King had no jurisdiction over boundary within the realm, without he had it in all his dominions, as the absolute owner of the territory, from whom all title and power must flow, 1 Bl.Com. 241; Co.Litt. 1; Hob. 322; 7 D.C.D. 76; Cowp. 205-211; 7 Co. 17, b., as the supreme legislator; save a limited power in Parliament. He could make and unmake boundaries in any part of his dominions, except in proprietary provinces. He exercised this power by treaty, as in 1763, by limiting the colonies to the Mississippi, whose charters extended to the South Sea; by proclamation, which was a supreme law, as in Florida and Georgia, 25 U. S. 12 Wheat. 524; 1 Laws U.S. 443-51; by order in council, as between Massachusetts and New Hampshire, cited in the argument.

But in all cases it was by his political power, which was competent to dismember royal, though it was not exercised on the chartered or proprietary provinces. *McIntosh v. Johnson,* 8 Wheat. 580. In council, the King had no original judicial power, 1 Ves.Sr. 447. He decided on appeals from the colonial courts, settled boundaries, in virtue of his prerogative, where there was no agreement; but if there is a disputed agreement, the King cannot decree on it, and therefore, the council remit it to be determined in another place, on the foot of the contract, 1 Ves.Sr. 447. In virtue of his prerogative, where there was no agreement, 1 Ves.Sr. 205, the King acts not as a judge, but as the sovereign acting by the advice of his counsel, the members whereof do not and cannot sit as judges.

By the statute 20 E. 3, ch. 1, it is declared, that "the King hath delegated his whole judicial power to the judges, all matters of judicature according to the laws," 1 Ruff. 246; 4 Co.Inst. 70, 74; he had, therefore, none to exercise, and judges, though members of council, did not sit in judicature, but merely as his advisers.

The courts had no jurisdiction over the colonies, persons or property therein, except in two cases; colonies and provinces being corporations under letters patent, 3 Ves. 435, were amenable to the King in the King's Bench, by *quo warranto,*which is a prerogative writ, and a *scire facias,* in chancery, to repeal the letters patent, which is a part of the statutory jurisdiction of that court in such cases, by

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the court in chancery, also in virtue of the royal prerogative, by which the charter was made. But chancery could not act on boundaries in the royal or chartered colonies; it could act on lords proprietors of provinces, when they were in the realm, where they were subjects, though in their provinces they were sovereign, dependent only on the Crown and the general supremacy of Parliament. Acts of Parliament did not bind them unless extended to them expressly or by necessary consequence, 2 Ves.Sr. 351. They had all the powers of counts palatine, the absolute propriety of soil, and the powers of legislation; the only restraint upon them was by the powers reserved to the King by his letters patent, and allegiance to the Crown in matters of prerogative not granted. The power of Parliament was, on the American principle of the Revolution, confined to the regulation of "external commerce," though by the English principle, it extended to all cases whatever. Yet sovereign as they were as to all things, except those relating to the powers of the King and Parliament, chancery could and did act on agreements between them as to their boundaries, in the case of *Penn v. Baltimore,* though it could not have done so had they stood at arms' length; in which case the King in council could alone have decided the original boundary on an appeal, 1 Ves.Sr. 446. Chancery also could and did decide on the title to the Isle of Man, which was a feudal Kingdom; on a bill for discovery of title, relief as to rectories and tithes, which was a mere franchise, a plea to jurisdiction was overruled. *Derby v. Athol,* 1 Ves.Sr. 202; *S.P. Bishop of Sodor & Man v. E. Derby,* 2 Ves.Sr. 337, 356.

In each of these cases, objections to the jurisdiction were made similar to those made in this, but were overruled, and neither the authority or principles of either have been questioned; on the contrary, they have been recognized and adopted by all courts which follow the course of the law of England; yet each involved the same question as the present. In the first, the decree as to boundary settled by consequence the collateral and dependent questions of title, jurisdiction, and sovereignty, of and over the disputed territory; in the two last, on a suit for rectories and tithes, the title to a feudal Kingdom was but a dependent matter, and was settled by deciding that the bishop had a right to the tithes he claimed. The same principle was settled in the case of *Nabob of the Carnatic v. East India Company,* though it is commonly referred to in favor of a contrary position.

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On the original pleadings, the case was on a bill for an account founded on two agreements between the parties, in 1785 and 1787. The defendants plead their rights and privileges under their charter,

with power to make peace and war within its limits; that the plaintiff was a sovereign prince; that the agreements stated in the bill were made with him in their respective capacities, one as an absolute, the other as a qualified sovereign, and that the matters therein contained related to peace and war, and the security and defense of their respective territorial possessions.

The plea was considered and overruled by the chancellor, thus exercising jurisdiction to that extent. 1 Ves. 371, 387. An answer was then put in, containing the same matter as the plea, adding that the agreements between the parties were treaties of a federal character, both being sovereigns, and that the agreement of 1787 was a final treaty, and therefore the subject matters thereof were cognizable by the law of nations not by a municipal court. The bill was dismissed on this ground:

"It is a case of mutual treaty between persons acting, in that instance, as states independent of each other, and the circumstance that the East India Company are mere subjects with relation to this country, has nothing to do with that. That treaty was entered into with them as a neighboring independent state, and is the same as if it was a treaty between two sovereigns, and consequently is not a subject of municipal private jurisdiction."

It thus is manifest that if the answer had been to the merits, there must have been a decree; the dismission resulted from the new matter added, as is evident from the opinion of the chancellor on the plea; and of lord commissioner Eyre on the answer, and his closing remarks, in which he declares

"That the case was considered wholly independent of the judgment on the plea, and was decided on the answer, which introduced matters showing that it was not mercantile in its nature, but political, and therefore the decision stood wholly clear of the judgment on the plea."

2 Ves.Jr. 56, 60.

That a foreign sovereign may sue in an English court of law or equity, was settled in cases brought by the King of Spain, Hob. 113. That a foreign government may sue in chancery, by such agents as it authorizes to represent them, on whom a cross-bill can be served, with such process as will compel them to do justice to the defendant, was decided in *Columbian Government v. Rothschild,* 1 Sim. 104. These cases were recognized in *King of Spain v. Machado,* by the House of Lords, which held that a King had the same right to

sue as any other person, but that when he did sue in chancery, it was as any other suitor, who sought or submitted to its jurisdiction; that it could decide on the construction and validity of the treaties between France and the allied sovereigns of Europe in 1814, and on the validity of a private and separate treaty between France and Spain.

The case involved both questions; both were fully considered by the Lords in affirming the decree of the chancellor overruling the demurrer, 4 Russell 560, which assigned for cause that the plaintiff had not made out a case for any relief in a court of equity, for the reasons assigned in the argument; that a foreign sovereign could not sue in virtue of his prerogative rights; that an English court

would not enforce these rights, accruing out of a treaty with France, which was inconsistent with the existing relations between each of those countries (France and Spain), and the King of England. 2 Bligh.P.C. new series, 31, 44, 46, 50, 60.

The Court of King's Bench also will consider the effect of the declaration of independence and treaty of peace in an action on a bond. *Folliott v. Ogden*, 3 D. & E. 730.

From this view of the law of England, the results are clear that the settlement of boundaries by the King in council is by his prerogative, which is political power acting on a political question between dependent corporations or proprietaries, in his dominions without the realm. When it is done in chancery, it is by its judicial power, in "judicature according to the law," and necessarily a judicial question, whether it relates to the boundary of provinces, according to an agreement between the owners, as *Penn v. Baltimore;* the title to a feudal Kingdom in a suit appropriate to equity, where the feudal King appears and pleads, as in the *Case of the Isle of Man,* or on an agreement between a foreign sovereign and the East India Company, in their mere corporate capacity. But when the company assumed the character of a sovereign, assert the agreement to be a "federal treaty" between them and the plaintiff as neighboring sovereigns, each independent, and the subject matter to be peace and war, political in its nature, on which no municipal court can act by the law of nations, chancery has no jurisdiction but to dismiss the bill. Not because it is founded on a treaty, but because the defendant refused to submit it to judicial power, for, had the Company not made the objection, by their answer, the court must have proceeded as in *King of Spain v. Machado,* and decreed on

the validity, as well as the construction of the treaties. The court in one case could not force a sovereign defendant to submit the merits of the case to their cognizance, but in the other, when he was plaintiff and a subject was a defendant who appeared and plead, the whole subject matter of the pleadings was decided by judicial power as a judicial question, and such has been and is the settled course of equity in England.

In the colonies there was no judicial tribunal which could settle boundaries between them, for the court of one could not adjudicate on the rights of another, unless as a plaintiff. The only power to do it remained in the King, where there was no agreement, and in chancery, where there was one, and the parties appeared, so that the question was partly political and partly judicial, and so remained till the declaration of independence. Then the states, being independent, reserved to themselves the power of settling their own boundaries, which was necessarily a purely political matter, and so continued till 1781. Then the states delegated the whole power over controverted boundaries to Congress, to appoint and its court to decide, as judges, and give a final sentence and judgment upon it, as a judicial question, settled by a specially appointed judicial power, as the substitute of the King in council, and the court of chancery in a proper case, before the one as a political and the other as a judicial question.

Then came the Constitution, which divided the power between the political and judicial departments after incapacitating the states from settling their controversies upon any subject, by treaty, compact, or agreement, and completely reversed the long established course of the laws of

England. Compacts and agreements were referred to the political, controversies to the judicial power. This presents this part of the case in a very simple and plain aspect. All the states have transferred the decision of their controversies to this Court; each had a right to demand of it the exercise of the power which they had made judicial by the Confederation of 1781 and 1788; that we should do that which neither states or Congress could do, settle the controversies between them. We should forget our high duty to declare to litigant states that we had jurisdiction over judicial, but not the power to hear and determine political controversies; that boundary was of a political nature, and not a civil one, and dismiss the plaintiff's bill from our records without even giving it judicial consideration. We should equally forget the dictate

of reason, the known rule drawn by fact and law; that from the nature of a controversy between Kings or states, it cannot be judicial; that where they reserve to themselves the final decision, it is of necessity by their inherent political power; not that which has been delegated to the judges, as matters of judicature, according to the law. These rules and principles have been adopted by this Court from a very early period.

In 1799, it was laid down that though a state could not sue at law for an incorporeal right, as that of sovereignty and jurisdiction, there was no reason why a remedy could not be had in equity. That one state may file a bill against another, to be quieted as to the boundaries of disputed territory, and this Court might appoint commissioners to ascertain and report them, since it is monstrous to talk of existing rights, without correspondent remedies. 3 U. S. 3 Dall. 413. In *New Jersey v. Wilson*, the only question in the case was, whether Wilson held certain lands exempt from taxation. 11 U. S. 7Cranch 164. In *Cohens v. Virginia*, the Court held that the judicial power of the United States must be capable of deciding any judicial question growing out of the Constitution and laws. That in one class of cases, "the character of the parties is everything, the nature of the case nothing;" in the other, "the nature of the case is everything, the character of the parties nothing." That the clause relating to cases in law or equity, arising under the Constitution, laws, and treaties, makes no exception in terms, or regards "the condition of the party." If there be any exception, it is to be implied against the express words of the article. In the second class, "the jurisdiction depends entirely on the character of the parties," comprehending

"controversies between two or more states. . . . If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

19 U. S. 6 Wheat. 378, 19 U. S. 384, 19 U. S. 392-393.

In the following cases it will appear that the course of the Court on the subject of boundary has been in accordance with all the foregoing rules; let the question arise as it may, in a case in equity or a case in law, of a civil or criminal nature, and whether it affects the rights of individuals, of states, or the United States, and depends on charters, laws, treaties, compacts, or cessions which relate to boundary. In *Robinson v. Campbell*, the suit involved the construction of the compact of boundary between Virginia and North Carolina, made in 1802, and turned on the question whether the land in controversy

was always within the original limits of Tennessee, which the Court decided. 16 U. S. 3 Wheat. 213, 16 U. S. 218, 16 U. S. 224. *United States v. Bevan* was an indictment for murder; the questions certified for the opinion of this Court were 1st, whether the place at which the offense was committed, was within the jurisdiction of Massachusetts, and 2d, whether it was committed within the jurisdiction of the circuit court of that district. It was considered and decided, as a question of boundary, 16 U. S. 3 Wheat. 339, 16 U. S. 386, as before stated. In *Burton v. Williams*, the case involved a collision of interest between North Carolina, Tennessee, and the United States, under the cessions by the former to the two latter, in which this Court reviewed all the acts of Congress and of the two states on the subject, and the motives of the parties, to ascertain whether the *casus foederis* had ever arisen. The case also involved the construction of the compact between Tennessee and the United States, made in 1806. The Court use this language in relation to it:

"The members of the American family possess ample means of defense under the Constitution, which we hope ages to come will verify. But happily for our domestic harmony, the power of aggressive operation against each other is taken away."

It is difficult to imagine what other means of defense existed in such a case, unless those which the court adopted, by construing the acts recited, as the contracts of independent states, by those rules which regulate contracts relating to territory and boundary. 16 U. S. 3 Wheat. 529, 16 U. S. 533, 16 U. S. 538. In *De La Croix v. Chamberlain*, it was held that

"a question of disputed boundary between two sovereign, independent nations is indeed more properly a subject for diplomatic discussion and of treaty, than of judicial investigation. If the United States and Spain had settled this dispute by treaty, before the United States extinguished the claim of Spain to the Floridas, the boundary fixed by such treaty would have concluded all parties."

25 U. S. 12 Wheat. 600. Accordingly, in *Harcourt v. Gailliard*, which arose on a British grant made in 1777, the Court decided the case by reference to the treaty of 1763, the acts of the King before the Revolution, the effect of the declaration of independence and treaty of peace in 1783, in order to ascertain the original boundary between Florida and Georgia, on which the whole case turned. 25 U. S. 12 Wheat. 524. In *Henderson v. Poindexter*, the same point arose, and the same course was taken; the treaty of boundary with Spain in 1795, was also considered by the Court, as well as the cession by Georgia to the United States in 1802, and the various acts of Congress on the

subject. 25 U. S. 12 Wheat. 530, 25 U. S. 534. In *Patterson v. Jenckes*, the title depended on the boundary between Georgia and the Cherokees, and the only question was as to the territorial limits of the state, according to the treaties with them and that state, which the court defined, and decided accordingly. 27 U. S. 2 Pet. 225-227. So they had previously done in various cases, arising on the boundary between North Carolina and the Cherokees. 14 U. S. 1 Wheat. 155; 15 U. S. 2Wheat.

25; 22 U. S. 9 Wheat. 673; 24 U. S. 11 Wheat. 380. In *Foster & Elam v. Neilson*, two questions arose:

1. On the boundary of the treaty of 1803, ceding Louisiana to the United States, as it was before the cession of the Floridas by Spain, by the treaty of 1819.

2d. The construction of the eighth article of that treaty. Both claimed the territory lying north of a line drawn east from the Iberville, and extending from the Mississippi to the Perdido.

The title to the land claimed by the parties, depended on the right of Spain to grant lands within the disputed territory, at the date of the Spanish grant to the plaintiff, in 1804. He claimed under it, as being then within the territory of Spain, and confirmed absolutely by the treaty of cession; the defendant rested on his possession. On the first question, the Court held that so long as the United States contested the boundary, it was to be settled by the two governments, and not by the Court, but if the boundary had been settled between France while she held Louisiana, and Spain while she held Florida, or the United States and Spain had agreed on the boundary after 1803; then the court could decide it as a matter bearing directly on the title of the plaintiff. On the second question, they held that as the government had up to that time construed the eighth article of the treaty of 1819, to be a mere stipulation for the future confirmation of previous grants by Spain, to be made by some legislative act, and not a present confirmation, absolute and final by the mere force of the treaty itself, as a supreme law of the land, the Court was bound not to give a different construction.

On that construction, the question was by whom the confirmation should be made; the Court held the words of the treaty to be the language of contract, to be executed by an act of the legislature, of course by political power; to be exercised by the Congress at its discretion, on which the Court could not act. But the Court distinctly recognized the distinction between an executory treaty, as a mere contract between nations, to be carried into execution by the sovereign power of the respective parties, and an executed treaty, effecting of itself the object to be accomplished, and defined the line

between them thus:

"Our Constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice, as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract; when either of the parties stipulate to perform a particular act; the treaty addresses itself to the political, not to the judicial department, and the legislature must execute the contract before it can become a rule for the Court."

Adopting the construction given by Congress, and the boundary being disputed in 1804, when the grant was made, the Court considered both to be political questions and held them not to be cognizable by judicial power. 27 U. S. 2 Pet. 253,27 U. S. 299, 27 U. S. 306, 27 U. S. 309, 27 U. S. 314-315. All the principles laid down in this case were fully considered and affirmed in

the *United States v. Arredondo,* which arose under an act of Congress submitting to this Court the final decision of controversies between the United States and all persons claiming lands in Florida under grants, &c., by Spain, and prescribing the rules for its decision, among which was the "stipulations of any treaty," &c. Thus acting under the authority delegated by Congress, the court held that the construction of the eighth article of the treaty of 1819, by its submission to judicial power, became a judicial question, and on the fullest consideration, held that it operated as a perfect, present, and absolute confirmation of all the grants which come within its provision. That no act of the political department remained to be done; that it was an executed treaty, the law of the land, and a rule for the Court. 31 U. S. 6 Pet. 710, 31 U. S. 735, 31 U. S. 741-743.

In the *United States v. Percheman,* the Court, on considering the necessary effect of this construction, repudiated that which had been given in *Foster & Elam v. Neilson,* 7 Pet. 89. In the numerous cases which have arisen since, the treaty has been taken to be an executed one, a rule of title and property, and all questions arising under it to be judicial, and Congress has confirmed the action of the court whenever necessary. In *New Jersey v. New York,* the Court was unanimous in considering the disputed boundary between these states to be within its original jurisdiction, and reaffirming the jurisdiction of the circuit courts, in cases between parties claiming lands under grants from different states, the only difference of opinion was on one point, suggested by one of the judges, whether, as New York had not appeared, the Court could award compulsory process, or proceed *ex parte* -- a point which does not arise in this cause, and need

not to be considered in its present stage, as Massachusetts has appeared and plead to the merits of the bill.

If judicial authority is competent to settle what is the line between judicial and political power and questions, it appears from this view of the law, as administered in England and the courts of the United States, to have been done without any one decision to the contrary from the time of Edward the Third. The statute referred to operated like our Constitution to make all questions judicial which were submitted to judicial power by the Parliament of England, the people or Legislature of these states, or Congress, and when this has been done by the Constitution, in reference to disputed boundaries, it will be a dead letter if we did not exercise it now, as this Court has done in the cases referred to.

The course of the argument made it necessary for the Court to pursue that which has been taken. Having disposed of the leading objection to jurisdiction, we will examine the others.

It has been argued by the defendant's counsel that by the Declaration of Independence, Massachusetts became a sovereign state over all the territory in her possession which she claimed by charter or agreement, in the enjoyment of which she cannot be disturbed.

To this objection there are two obvious answers:

1st. By the third Article of Confederation, the states entered into a mutual league for the defense of their sovereignty, their mutual and general welfare; being thus allies in the War of the

Revolution, a settled principle of the law of nations, as laid down by this Court, prevented one from making any acquisition at the expense of the other. 25 U. S. 12 Wheat. 525-526. This alliance continued, in war and peace, till 1788, when,

2d. Massachusetts surrendered the right to judge of her own boundary, and submitted the power of deciding a controversy concerning it to this Court. 19 U. S. 6 Wheat. 378, 19 U. S. 380, 19 U. S. 393.

It is said that the people inhabiting the disputed territory ought to be made parties, as their rights are affected. It might with the same reason be objected that a treaty or compact settling boundary, required the assent of the people to make it valid, and that a decree under the ninth Article of Confederation was void, as the authority to make it was derived from the legislative power only. The same objection was overruled in *Penn v. Baltimore* and in *Poole v. Fleeger*, this Court declared that an agreement between states, consented to by Congress, bound the citizens of each state. There are two principles of the law of nations which would protect them in

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their property:

1st. That grants by a government, *de facto*, of parts of a disputed territory in its possession, are valid against the state which had the right. 25 U. S. 12 Wheat. 600-601.

2d. That when a territory is acquired by treaty, cession, or even conquest, the rights of the inhabitants to property are respected and sacred. 21 U. S. 8 Wheat. 589; 25 U. S. 12 Wheat. 535; 31 U. S. 6 Pet. 712; 33 U. S. 8 Pet. 445; 34 U. S. 9 Pet. 133; 35 U. S. 10 Pet. 330, 35 U. S. 718.

It has been contended that this Court cannot proceed in this cause without some process and rule of decision prescribed appropriate to the case, but no question on process can arise on these pleadings; none is now necessary, as the defendant has appeared and plead, which plea in itself makes the first point in the cause, without any additional proceeding; that is whether the plea shall be allowed if sufficient in law to bar the complaint, or be overruled, as not being a bar in law, though true in fact. In this state of the case, it is that of *Nabob v. East India Company*, where the plea was overruled on that ground, whereby the defendant was put to an answer, assigning additional grounds, to sustain a motion to dismiss, or if the plea is allowed, the defendant must next prove the truth of the matters set up. When that is done, the Court must decide according to the law of equity, 1 Ves.Sr. 446, 203, whether the agreement plead shall settle, or leave the boundary open to a settlement by our judgment, according to the law of nations, the charters from the Crown under which both parties claim, as in 18 U. S. 5 Wheat. 375; by the law of prescription, as claimed by the defendant, on the same principles which have been rules for the action of this Court in the case, 1 Ves.Sr. 453; 34 U. S. 9 Pet. 760.

It is further objected that though the Court may render, it cannot execute a decree without an act of Congress in aid.

In testing this objection by the common law, there can be no difficulty in decreeing, as in *Penn v. Baltimore; mutatis mutandis.* That the agreement is valid and binding between the parties; appointing commissioners to ascertain and mark the line therein designated; order their proceedings to be returned to the court; 3 U. S. 3 Dall. 412, note; decree that the parties should quietly hold according to the articles; that the citizens on each side of the line should be bound thereby, so far and no farther than the states could bind them by a compact, with the assent of Congress, 36 U. S. 11 Pet. 209; 1 Ves.Sr. 455; 3 Ves.Sr., supplement by Belt. 195, 197. Or if any difficulty should occur, do as declared in 1 Ves.Sr.; if the parties want

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anything more to be done, they must resort to another jurisdiction, which is appropriate to the cause of complaint, as the King's Bench, or the King in council. *Vide 9 U. S. Peters,* 5 Cranch 115, 9 U. S. 135; make the decree without prejudice to the (United States) or any persons whom the parties could not bind. And in case any person should obstruct the execution of the agreement, the party to be at liberty, from time to time, to apply to the court. 1 Ves.Jr. 454; 3 Ves.Sr. 195, 196. Or, as the only question is one of jurisdiction, which the court will not divide, they will retain the bill, and direct the parties to a forum proper to decide collateral questions. 1 Ves.Sr. 204, 205; 2 Ves.Sr. 356, 357; 1 Ves.Sr. 454; 9 U. S. 5 Cranch 115, 9 U. S. 136. On the other hand, should the agreement not be held binding, the Court will decree the boundary to be ascertained agreeably to the charters according to the altered circumstances of the case, by which, the boundary being established, the rights of the parties will be adjudicated and the party in whom it is adjudged may enforce it by the process appropriate to the case, civilly or criminally, according to the laws of the state, in which the act which violates the right is committed. In ordinary cases of boundary, the functions of a court of equity consist in settling it by a final decree, defining and confirming it when run. Exceptions, as they arise, must be acted on according to the circumstances.

In England, right will be administered to a subject against the King, as a matter of grace, but not upon compulsion, not by writ, but petition to the chancellor, 1 Bl.Com. 243, for no writ or process can issue against the King, for the plain reason given in 4 Co. 55, a; 7 Com.Dig., by Day 83; Prerog. D 78; 3 Bl.Com. 255; "that the King cannot command himself." No execution goes out on a judgment or decree against him, on a *monstrans de droit* or petition of right, or traverse of an inquisition which had been taken in his favor; for this reason, that as the law gives him a prerogative for the benefit of his subjects, 1 Bl.Com. 255, he is presumed never to do a wrong, or refuse a right to a subject; he is presumed to have done the thing decreed, by decreeing in his Courts that it shall be done; such decree is executed by the law as soon as it is rendered, and though process is made out to make the record complete, it is never taken from the office. Co.Ent. 196; 9 Co. 98, a; 7 D.C.D. 83. The party in whose favor a decree is made, for removing the lands of the King from the possession of a subject or declaring a seizure unlawful and awarding a writ, *de libertate,* is, *eo instanti,* deemed to be in actual

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possession thereof, so that a feoffment, with livery of seizin, made before it is actually taken, is as valid as if made afterwards. Cro.El. 523; *S.P.* 463.

The same principle was adopted by the eminent jurists of the Revolution, in the ninth Article of the Confederation, declaring that the sentence of the court in the cases provided for should be final and conclusive, and with the other proceedings in the case, be transmitted to Congress, and lodged among their acts, for the security of the parties concerned, nothing further being deemed necessary. The adoption of this principle was indeed a necessary effect of the Revolution, which devolved on each state the prerogative of the King as he had held it in the colonies; 17 U. S. 4 Wheat. 651; 21 U. S. 8 Wheat. 584, 21 U. S. 588, and now holds it within the realm of England, subject to the presumptions attached to it by the common law, which gave, and by which it must be exercised. This Court cannot presume that any state which holds prerogative rights for the good of its citizens, and by the Constitution has agreed that those of any other state shall enjoy rights, privileges, and immunities in each, as its own do, would either do wrong, or deny right to a sister state or its citizens, or refuse to submit to those decrees of this Court, rendered pursuant to its own delegated authority, when in a monarchy its fundamental law declares that such decree executes itself. When, too, the highest courts of a kingdom have most solemnly declared that when the King is a trustee, a court of chancery will enforce the execution of a trust by a royal trustee; 1 Ves.Sr. 453, and that when a foreign king is a plaintiff in a court of equity, it can do complete justice, impose any terms it thinks proper, has him in its power and completely under its control and jurisdiction, 2 Bligh.P.C. 57, we ought not to doubt as to the course of a state of this Union, as a contrary one would endanger its peace, if not its existence.

In the *Case of Olmstead,* this Court expressed its opinion that if state legislatures may annul the judgments of the courts of the United States and the rights thereby acquired, the Constitution becomes a solemn mockery, and the nation is deprived of the means of enforcing its laws, by its own tribunal. So fatal a result must be deprecated by all, and the people of every state must feel a deep interest in resisting principles so destructive of the Union, and in averting consequences so fatal to themselves. 30 U. S. 5 Pet. 115, 30 U. S. 135.

The motion of the defendants is therefore

Overruled.

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MR. CHIEF JUSTICE TANEY, dissenting:

I dissent from the opinion of the Court, upon the motion to dismiss the bill. It has, I find, been the uniform practice in this Court for the Justices who differed from the Court on constitutional questions, to express their dissent. In conformity to this usage, I proceed to state briefly the principle on which I differ, but do not, in this stage of the proceedings, think it necessary to enter fully into the reasoning upon which my opinion is founded. The final hearing of the case, when all the facts are before the Court, would be a more fit occasion for examining various points stated in the opinion of the Court, in which I do not concur.

I do not doubt the power of this Court to hear and determine a controversy between states or between individuals in relation to the boundaries of the states where the suit is brought to try a

right of property in the soil, or any other right which is properly the subject of judicial cognizance and decision, and which depends upon the true boundary line.

But the powers given to the courts of the United States by the Constitution are judicial powers, and extend to those subjects only which are judicial in their character, and not to those which are political. And whether the suit is between states or between individuals, the matter sued for must be one which is properly the subject of judicial cognizance and control in order to give jurisdiction to the court to try and decide the rights of the parties to the suit.

The object of the bill filed by Rhode Island, as stated in the prayer, is as follows:

"That the northern boundary line between your complainants and the State of Massachusetts may, by the order and decree of this Honorable Court, be ascertained and established, and that the rights of jurisdiction and sovereignty of your complainants to the whole tract of land, with the appurtenances mentioned, described, and granted, in and by the said charter or letters patent to the said Colony of Rhode Island and Providence Plantations hereinbefore set forth, and running on the north, an east and west line drawn three miles south of the waters of said Charles River, or of any or every part thereof, may be restored and confirmed to your complainants and your complainants may be quieted in the full and free enjoyment of her jurisdiction and sovereignty over the same, and the title, jurisdiction, and sovereignty of the said State of Rhode Island and Providence Plantations over the same be confirmed and established by the decree of this Honorable Court, and that your complainants

may have such other and further relief in the premises as to this Honorable Court shall seem meet and consistent with equity and good conscience."

It appears from this statement of the object of the bill that Rhode Island claims no right of property in the soil of the territory in controversy. The title to the land is not in dispute between her and Massachusetts. The subject matter which Rhode Island seeks to recover from Massachusetts in this suit is "sovereignty and jurisdiction" up to the boundary line described in her bill. And she desires to establish this line as the true boundary between the states for the purpose of showing that she is entitled to recover from Massachusetts the sovereignty and jurisdiction which Massachusetts now holds over the territory in question. Sovereignty and jurisdiction are not matters of property, for the allegiance in the disputed territory cannot be a matter of property. Rhode Island therefore sues for political rights. They are the only matters in controversy and the only things to be recovered, and if she succeeds in this suit, she will recover political rights over the territory in question, which are now withheld from her by Massachusetts.

Contests for rights of sovereignty and jurisdiction between states over any particular territory are not, in my judgment, the subjects of judicial cognizance and control, to be recovered and enforced in an ordinary suit, and are therefore not within the grant of judicial power contained in the Constitution.

In the case of *New York v. Connecticut,* 4 Dall. 1, in the note, Chief Justice Ellsworth says

"To have the benefit of the agreement between the states, the defendants below, who are the settlers of New York, must apply to a court of equity, as well as the state herself, but in no case can a specific performance be decreed unless there is a substantial right of soil, not a mere right of political jurisdiction, to be protected and enforced."

In the case of *Cherokee Nation v. State of Georgia,* 5 Pet. 20, Chief Justice Marshall, in delivering the opinion of the Court, said:

"That part of the bill which respects the land occupied by the Indians, and prays the aid of the Court to protect their possession, may be more doubtful. The mere question of right might perhaps be decided by this Court in a proper case, with proper parties. But the Court is asked to do more than decide on the title. The bill requires us to control the legislation of Georgia and to restrain the exertion of its physical force. The propriety of such an

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interposition by the Court may be well questioned. It savors too much of the exercise of political power to be within the proper province of the Judicial Department. But the opinion on the point respecting parties makes it unnecessary to decide this question."

In the case before the Court we are called on to protect and enforce the "mere political jurisdiction" of Rhode Island, and the bill of the complainant in effect asks us to "control the Legislature of Massachusetts and to restrain the exercise of its physical force" within the disputed territory. According to the opinions above referred to, these questions do not belong to the Judicial Department. This construction of the Constitution is, in my judgment, the true one, and I therefore think the proceedings in this case ought to be dismissed for want of jurisdiction.

MR. JUSTICE BARBOUR said that he concurred in the result of the opinion in this case.

That this Court had jurisdiction to settle the disputed boundary between the two states litigant before it, but he wished to be understood as not adopting all the reasoning by which the Court had arrived at its conclusion.

MR. JUSTICE STORY did not sit in this case.

On consideration of the motion made by Mr. Webster on a prior day of the present term of this Court, to-wit, on Monday 15 January, A.D. 1838, to dismiss the complainant's bill filed in this case for want of jurisdiction, and of the arguments of counsel thereupon had as well in support of as against the said motion, it is now here ordered and adjudged by this Court that the said motion be and the same is hereby overruled.