SUPREME COURT CASES RULING ON FEDERAL VS STATE JURISDICTION

Albany, October, 1819. The People V. Godfrey.

The land on which *Fort Niagara* is erected, never having been actually ceded by this state to the *United States,* it still belongs to this state; and its courts have jurisdiction of all crimes or offices against the laws of the state, committed within that fort, or its precincts though it has been garrisoned by the troops of the *United States,* and held by them since its surrendered by *Great Britain,* pursuant to the treaties of 1783, and 1794; for the *United States* acquired no territory within this state by virtue of those treaties.

The right of exclusive legislation or jurisdiction, within the limits of any of the states, can be acquired by the *United States* only by purchase of territory from the states for the purpose, and in the mode prescribed by the Constitution of the *United States.*

People v. Godfrey, 17 Johnson 225, NY (1819)

(Pg 225) Oakley, (Attorney General), for the plaintiffs. It is said that by the various treaties made between the *United States* and *Great Britain,* the land on which the fort and garrison of *Niagara* are situated, has been vested in the *United States.* Originally, the fortress of *Niagara* belonged to France, and passed, by the treaty of *Paris,* in 1763, to *Great Britain.* By the Declaration of Independence, and the subsequent revolution by which it was accomplished, the rights of the British crown to all the territory comprised within the state of New York became vested in the people of this state, in full sovereignty, as a free and independent state.

(PG 226) The *United States* possess no power or rights but such as have been delegated by the several states; and the states retain all the rights and attributes of sovereignty not expressly ceded to the *United States.* "The power of exclusive legislation, (which is jurisdiction,) says Chief Justice *Marshall, (United States v. Bevans, 3 Wheat. 336. 388.)* "is united with cession of territory, which is to be the free act of the states.

(Pg 227) It is true, that Congress have provided for the punishment of crimes committed in places within the exclusive jurisdiction of the *United States;* but the *United States* have no exclusive jurisdiction, except what is acquired by grant or cession.

Again; by the act of the legislature of this state, passed the 19th of February, 1780, the delegates of this state to *Congress* were authorized to fix the limits of the territory of this state, and to cede to the *United States* all the lands beyond such limits; and the delegates to *Congress* did, accordingly, by a formal instrument, fix and describe the boundaries of the state, and cede to the united and confederated states, all lands and territories to the northward and westward of those boundaries; and this state has ever since held and enjoyed its territory according to those limits, and which (Pg 228) which include *Fort Niagara;* there being nowhere mentioned any exception or reservation, in behalf of the *United States,* of any forts, &c, (Vide Laws of the U.S. Edition of 1815. Vol. 1. p. 467. 471.)

(Pg 230) "The prisoner was again brought before the court, *on habeas corpus;* and the opinion of the court, on the question of jurisdiction, argued at the last term, was now delivered by the chief justice, as follows:

The question for the decision of this court is whether the cognizance of this offence belongs to

the courts of the *United States,* or to those of this state? It has been very ably argued, and the importance of the question has induced us to postpone a decision of it to the present term.

The jurisdiction of the courts of the *United States* must be derived under the eighth section of the first article and seventeenth paragraph of the constitution of the *United States* "which gives to the Congress exclusive legislation over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

It has been argued, that this state, though they have made no cession, have tacitly consented, by a necessary implication from the act of 1803, that the *United States* should hold the fortress of *Niagara,* and that in such case, the second paragraph of the third section of the fourth article of the constitution of the *United States,* would give to the Congress (Pg 231) the like exclusive power of legislation. That section declares, ***"that the Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States, and that nothing in the constitution shall be so construed as to prejudice any claims of the United States, or any particular state."***

The Congress, under the articles of confederation, were the representatives of the several states; and, having the power to make war and peace, were a party to the treaty of peace, in behalf of the confederated states, and every stipulation in the treaty enured to the benefit of the states in their sovereign capacities. (Pg 232)

(Pg 232) The section of the Articles of Confederation removes every doubt upon this subject: it provides, that "each state should retain its sovereignty, freedom and independence, and every power, jurisdiction, and right, which was not thereby expressly delegated to the *United States* in Congress assembled..."

Their possession of this post must be regarded, therefore, as a possession for the state, not against it; it was a friendly occupation, not in derogation of our rights; and we regard it as a fundamental principle that the rights of sovereignty are never to be taken away by implication. [emphasis added] In the case of ***the United States v. Bevans, (3 Wheaton, 388.)*** Chief Justice Marshall said, "the power of exclusive legislation under the 8th section of the first article of the constitution, which is jurisdiction, is united with cession of territory, which is to be the free act of the states." The correctness (Pg 233) of this remark is fully admitted; and if the *United States* had the right of exclusive legislation over the fortress of *Niagara,* they would have also exclusive jurisdiction; but we are of opinion, that the right of exclusive legislation within the territorial limits of any state, can be acquired by the *United States* only in the mode pointed out in the constitution, by purchase, by consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. The essence of that provision is, that the state shall freely cede the particular place to the *United States,* for one of the specific and enumerated objects. This jurisdiction cannot be acquired tortuously, or by dissension of the state; much less, can it be acquired by mere occupancy, with the implied or tacit consent of the state when such occupancy is for the purpose of protection.

The 3rd section of the 4th article of the constitution of the United States is clearly adapted to the territorial rights of the United States, beyond the limits or boundaries of any of the states, and to their chattel interests, and it therefore drops the expression of exclusive legislation.

To oust this state of its jurisdiction to support and maintain its laws, and to punish crimes, it must be shown that an offence committed within the acknowledged limits of the state, is clearly and exclusively cognizable by the laws and courts of the *United States.* In the case already cited, Chief Justice *Marshall* observed, that to bring the offence within the jurisdiction of the courts of the union, it must have been committed out of the jurisdiction of any state; it is not, (he says,) the offence committed, but the place in which it is committed, which must be out of the jurisdiction of the state. It does not, therefore, enter into the consideration of this question that the prisoner and the deceased were in the service of the *United States,* when the crime was perpetrated. On the whole, we are perfectly satisfied that the jurisdiction of this state attached on the crime, and extends to the person of the prisoner, and nothing remains but that judgment be passed upon him according to law.

Sentence of death was, accordingly, pronounced on the prisoner.

Kansas v. Colorado, 206 U.S. 46 (1906):

(Pg 46) Kansas having brought in this court an original suit to restrain Colorado ... from diverting the water of the Arkansas River for the irrigation of lands in Colorado, ... the United States filed an intervening petition claiming a right to control the waters of the river to aid in the reclamation of arid lands.

(Pg 81) The first article, treating of legislative powers, does not make a general grant of legislative power. It reads, "Article I, Section 1. All legislative powers herein granted shall be vested in a Congress," etc.: and then in Article VIII mentions and defines the legislative powers that are granted. By reason of the fact that there is no general grant of legislative power it has become an accepted constitutional rule that this is a government of enumerated powers.

(Pg 85) Turning now to the controversy as here presented, it is whether Kansas has a right to the continuous flow of the waters of the Arkansas River, as that flow existed before any human interference there with, or Colorado the right to appropriate the waters of that stream so as to prevent that continuous flow, or that the amount of the flow is subject to the superior authority and supervisory control of the Unite States.

The primary question is, off course, of national control. For, if the Nation has a right to regulate the flow of the waters, we must inquire what it has done in the way of regulation.... Congress has, by virtue of the grant to it of power to regulate commerce "among the several States," extensive control over the highways, natural or artificial, upon which such commerce may be carried. It may prevent or remove (Pg 86) obstructions in the natural waterways and preserve the navigability of those ways. ... In other words, the jurisdiction of the General Government over interstate commerce and its natural highways vest in that Government the right to take all needed measures to preserve the navigability of the navigable water course of the country even against any state action....

But the Government makes no such contention.

It rests its petition of intervention upon its alleged duty of legislating for the reclamation of arid lands:

(Pg 87) In other words, the determination of the rights of the two states intercede in regard to the flow of waters in the Arkansas River is subordinate to a superior right on the part of

the National Government to control the whole system of the reclamation of arid lands. That involves the question whether the reclamation or arid lands is one of the powers granted to the General Government. As heretofore stated, **the constant declaration of this court from the beginning is that this Government is one of enumerated powers. [emphasis added] "The** Government, then, of the United States, can claim no powers which are not granted to it by the Constitution, and powers actually granted, must be such as are expressly given, or given by necessary implication." Story, J., in Martin v. Hunters Lessee. I Wheat. 304,326.

Turning to the enumeration of the powers granted to Congress by the eighth section of the first article of the Constitution, (Pg 88) it is enough to say that no one of them by any implication refers to the reclamation of arid lands.

We must look beyond section 8 for Congressional authority over arid lands, and it is said to be found in the second paragraph of section 3 of Article IV, reading: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging (Pg 89) to the United States...."

The full scope of this paragraph has never been definitely settled. Primarily, at least, it is a grant of power to the United States of control over its property. That is implied by the words "territory or other property". It is true it has been referred to in some decisions as granting political and legislative control over the Territories as distinguished from the States of the Union.... But clearly **it does not grant to Congress any legislative control over the States,** [emphasis added] and must, so far as they are concerned, be limited to authority over the property belonging to the United States within their limits. ... But the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. ... This natural construction of the original body of the Constitution is made absolutely certain (Pg 90) by the Tenth Amendment.... With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act.... Its principal purpose was not the distribution of power between the United States and the States, but a reservation to the people of all powers not granted....

This Article X is not to be shorn of its meaning by any narrow or technical construction, but is to be considered fairly and liberally so as to give effect to its scope and meaning. As we said, construing an express limitation on the powers of Congress, in Fairbank v. United States, 181 U.S. 283, 288: "'We are not here confronted with a question of the extent of the powers of Congress but one of the limitations imposed by the Constitution on its action, and it seems to us clear that the same rule and spirit of construction must also be recognized," ... But, as our national territory has been enlarged, we have within our borders extensive tracts of arid lands (Pg 92) which ought to be reclaimed, and it may well be that no power is adequate for their reclamation other than that of the National Government. But if no such power has been granted, none can be exercised. (Pg 93) But it is useless to pursue the inquiry further in this direction. It is enough for the purpose of this case that **each State has full jurisdiction over the lands within its borders, including the beds of the streams and other waters, [emphasis added] Martin v.** Waddell, 16 Pet 367; Pollard v. Hagan, 3 How. 212; ... In Barney v. Keokuk, supra, Mr. Justice

Bradley said (p. 338): ... (P~ 94) "It properly belongs to the States by their inherent sovereignty, and the United States has wisely abstained from extending (if it could extend) its survey and grants beyond the limits of high water.

Pollard's Lessee **v. Hagan et al., 3 How. 212** (1845):

(Pg 242) The question is important to the new states, as involving an attribute of sovereignty, the want of which makes an invidious distinction between the old and new states ...

(Pg 243) In Pennsylvania, after the Revolution, an act was passed confiscating the property of the Penn family; but no act was passed transferring the sovereignty of the state. The reason is, that no act was necessary. Sovereignty transferred itself, and when this passes, the right over rivers passes too. Not so with public lands. The right which New Jersey acquired in 16 Peters was precisely the right which Alabama claims now. There can be no distinction between those states which acquired their independence by force of arms and those which acquired it by the peaceful consent of older states. The Constitution says, the latter must be admitted into the union on an equal footing with the rest....

They cannot put their foot in a state to claim jurisdiction without its consent. No principle is more familiar than this, that, whilst a state has granted a portion of its sovereign power to the United States, it remains in the enjoyment of all the sovereignty which it has not voluntarily parted with. [emphasis added] This court, though inexpressible valuable to the country, is yet a court of limited jurisdiction. In the Constitution, what power is given the United States over the subject we are now discussing? In a territory they are sovereign, but when a state is erected a change occurs. A new sovereign comes in. [emphasis added]

(Pg 246) On the Delaware, in the states of Delaware, New Jersey and Pennsylvania, the same law prevails.

In Maryland, South Carolina, and Georgia, valuable private property has been thus reclaimed from the water.

Throughout our western country, Ohio, Indiana, Illinois, Missouri, Louisiana, Alabama, Mississippi, no question has ever been raised on this point until theses cases first presented it. Millions of acres are thus held....

All the titles under these acts are now in controversy. It is said that the United States have little or no interest in this question; but their interests of incalculable value. See Darley's Louisiana, as to the amount of overflowed lands.

(Pg 247) This question has been heretofore raised, before this court, in cases from the same state, but they went off upon other points. As now presented, it is the only question necessary to the decision of the case before us, and must, therefore, be decided. And we now enter into its examination with a just sense of its great importance to all the states of the union, and (Pg 248) particularly to the new ones.

The counsel for the plaintiffs insisted, in argument, that the United States derived title to that part of Alabama, in which the land in controversy lies, from the King of Spain; and that they succeeded to all his rights, powers, and jurisdiction, over the territory ceded, and therefore hold the land and soil, under navigable waters, according to the laws and usages of Spain. ... and by the compact between the United States and Alabama, on her admission into the union, it was

agreed, that the people of Alabama for ever disclaimed all right or title to the waste or unappropriated lands lying within the state, and that the same should remain at the sole disposal of the United States; and that all the navigable waters within the state should for ever remain public highways, and free to the citizens of that state and the United States, without any tax, duty, or impost, or toll therefore, imposed by that state. That by these articles of the compact, the land under the navigable waters, and the public domain above high water, were alike subject to be sold by them; and to give any other construction to these compacts, would be to yield up to Alabama, and the other new states, all the public lands within their limits.

We think a proper examination of this subject will show, that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama, or any of the new states were formed; except for temporary purposes, [emphasis added] and to execute the trusts created by the acts of the Virginia and Georgia legislatures, and the deeds of cession executed by them to the United States, and the trust created by the treaty with the French republic, of the 30th of April, 1803, ceding Louisiana.

(Pg 250) When the United States accepted the cession of the territory, they took upon themselves the trust to hold the municipal eminent domain for the new states, and to invest them with it, to the same extent, in all respects, that it was held by the states ceding the territories.

(Pg 252) We will now inquire into the nature and extent of the right of the United States to these lands, and whether that right can in any manner affect or control the decision of the case before us. This right originated in voluntary surrenders, made by several of the old states, of their waste and unappropriated lands, to the United States, under a resolution of the old Congress, of the 6th of September, 1780, recommending such surrender and cession, to aid in paying the public debt, incurred by the war of the Revolution. The object of all the parties to these contracts of cession was to convert the land into money for the payment of the debt, and to erect new states over the territory thus ceded; and as soon as these purposes could be accomplished, the power of the United States over these lands, as property, was to cease.

Whenever the United States shall have fully executed these trusts, the municipal sovereignty of the new states will be complete, throughout their respective borders, and they, and the original states, will be upon an equal footing, in all respects whatever. [emphasis added] We, therefore, think the United States hold the public lands within the new states by force of the deeds of cession, and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possess, or have reserved by compact with the new states, for that particular purpose. The provision of the Constitution (Pg 253) above referred to shows that no such power can be exercised by the United States within a state. Such a power is not only repugnant to the Constitution, but it is inconsistent with the spirit and intention of the deeds of cession. [emphasis added]

(Pg 257) Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it before she ceded it to the United States. To (Pg 258) maintain any other doctrine, is to deny that Alabama has been admitted into the union on an equal footing with the original states, the constitution, laws and compact, to the contrary notwithstanding. [emphasis added] But her rights of sovereignty and jurisdiction are not

governed by the common law of England as it prevailed in the colonies before the Revolution, but as modified by our own institutions. In the case of Martin and others v. Waddell, 16 Pet., 410, the present chief justice, in delivering the opinion of the court, said: 'When the Revolution took place, the people of each state became themselves sovereign; and in that character hold the absolute right to all their navigable waters, and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution." Then to Alabama belong the navigable waters, and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States; and no compact that might be made between her and the United States could diminish or enlarge these rights.

Dred Scott v. Sandford, 60 U.S. 19 How. 393 (1856):

IV: The territory thus acquired, is acquired by the people of the United States for their common and equal benefit, through their agent and trustee, the Federal Government.

(Pg 446) There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States. **That power is plainly given; and if a new State is admitted, it needs no further legislation by Congress, [emphasis added] because the Constitution itself** defines the relative rights and powers, and duties of the State, and the citizens of the State, and the Federal Government. But no power is given to acquire a Territory to be held and governed permanently in that character.

(Pg 449) And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. **It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it, and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it. [emphasis added]** It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the Constitution. **(pg 451) The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them.** [emphasis added]

(Pg 451) And if Congress itself cannot do this if it is beyond the powers conferred on the Federal Government it will be admitted, we presume that it could not authorize a Territorial Government to exercise them. It could confer no power on any local Government, established by its authority, to violate the provisions of the Constitution.

New York v. United States 120 L Ed 2D 120 (1992):

(Pg 133) Justice O'Connor delivered the opinion of the Court.

"Just as the separation and independence of the coordinate Branches of the Federal

Government serves to prevent the accumulation of excessive power in any one Branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."

(19b, 20) Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials. An analogy to the separation of powers among the Branches of the Federal Government clarifies this point. The Constitution's division of power among the three branches is violated where one Branch invades the territory of another, whether or not the encroached upon Branch approves the encroachment....

The constitutional authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.

State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution.

(Pg 157) Some truths are so basic that, like, (Pg 158) the air around us, they are easily overlooked.... But the Constitution protects us from our own best intentions. It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.

(25) States are not mere political subdivisions of the United States. State governments are neither regional offices nor administrative agencies of the Federal Government. The positions occupied by state officials appear nowhere on the Federal Government's most detailed organizational chart. The Constitution instead "leaves to the several States a residuary and inviolable sovereignty." The Federalist No. 39, p 245 (C Rosssiter ed 1961). Reserved explicitly to the States by the Tenth Amendment.

(8c, 26, 27) Whatever the outer limits of that sovereignty may be, one thing is clear. The Federal Government may not compel the States to enact or administer a federal regulatory program.

Printz v. United States, 521 U.S 898 (1997):

Justice Scalia delivered the opinion of the Court

(Pg 935) We held in New York that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the State's officers, or those of their political subdivisions, to administer, or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty. Accordingly, the judgment of the Court of Appeals for the Ninth Circuit is reversed. It is so ordered.

For the first point, there can be no doubt that the will vested an estate for life only in the devisees. The will contains no words of inheritance, nor anything to show, according to the settled rules of construction, an intention on the part of the devisor to convey a fee.

The deed from Anning Smith, who was a co-tenant in common, bears date before the service of a copy of the petition and notice upon him or either of the defendants; and until such [*224 *service, the suit is not commenced. His plea is, therefore, made out, that he did not hold together with the other parties. But he conveyed all his right to Eliphalet Smith, who was, before that conveyance, a tenant in common with the plaintiffs and the other defendants. His plea, and that of the other defendants, except Anning Smith, is, therefore, falsified; for it appears they do hold as tenants in common. It is true that they do not hold precisely in the manner stated in the petition; but the Act (1 R. L., 508, sec. 3) refers it to the court, after the final determination of the issues, to ascertain and determine the respective rights of the parties in such lands, tenements or hereditaments, and give judgment that partition thereof be made between them according thereto, or between such of them as shall have any right therein." If there be, then, a variance between the petition and proofs, as to the quantity of interest which any of the tenants in common have in the lands whereof partition is sought, this can be set right by the court, to whom it is referred to ascertain and determine the respective rights of the parties. There can be no reason, now that the rights of the parties are ascertained, to turn the plaintiffs round to another suit; and we are clearly of opinion that the Legislature never intended, by giving the plea of *non tenent insimul*, if the defendant was a tenant in common, that he should defeat the partition, by showing that the extent of interest was inaccurately stated in the petition. As to Anning Smith, as he was not a tenant in common when the proceedings were commenced, nor when he pleaded, he is entitled to go without day, and recover his costs; but as to the other defendants, the plaintiffs are entitled to judgment according to the proofs in the cause.

Judgment accordingly.

Cited in—9 Cow., 566; 13 Wend., 586; 15 Wend., 343; 4 Trans. App., 401; 30 Barb., 335.

[*225 *THE PEOPLE

v.

JOHN GODFREY.

Jurisdiction of State Courts—Over Land on which Fort Niagara is Situated—The Same not having been Ceded to U. S.—Extends to Offenses against State—Treaties of 1783 and 1794—Effect of—Exclusive Jurisdiction of the U. S. within Limits of State—How Acquired.

The land on which Fort Niagara is erected never having been actually ceded by this State to the U. S., it still belongs to this State; and its courts have jurisdiction of all crimes or offenses against the laws of the State, committed within that Fort or its precincts, though it has been garrisoned by the troops of the U. S., and held by them since its surrender by Great Britain, pursuant to the Treaties of 1783 and 1794; for the U. S. acquired no territory within this State by virtue of those Treaties.

The right of exclusive legislation or jurisdiction within the limits of any of the States, can be acquired by the U. S. only by purchase of territory from the States, for the purpose, and in the mode prescribed by the Constitution of the U. S.

Citations—1 N. R. L., 197; 3 Wheat., 388.

THE prisoner was convicted at the last Court of Oyer and Terminer, held in the County of Niagara, of the murder of Thomas Branaghan. The record of conviction having been removed to this court, the prisoner was brought up, at the last term, on *habeas corpus*. *Mr. Justice* Platt, who presided at the trial, reported that the murder was committed in the garrison of the U. S., at Niagara, and that both the prisoner and the deceased were fellow soldiers in the Army of the U. S., serving in that garrison; and that doubts having been raised as to the jurisdiction of the court, sentence was not pronounced, in order that the prisoner might be brought before this court for judgment. It appeared that the deceased was, for some military offense, ordered under guard; that the prisoner was corporal of the guard, and while the deceased was under his custody, in a place called the "black hole," within the walls of the garrison, the prisoner stabbed him with a bayonet.

Mr. Oakley, Att'y-Gen., for the plaintiffs. It is said that by the various treaties made between the U. S. and Great Britain, the land on which the Fort and garrison of Niagara are situated has been vested in the U. S. Originally, the Fortress of Niagara belonged to France, and passed, by the Treaty of Paris, in 1763, to Great Britain. By the Declaration of Independence, and the subsequent Revolution by which it was accomplished, the rights of the British Crown to all the territory comprised within the State of N. Y. became vested in the people of this State, in full sovereignty, as a free and independent State. The Constitution of this State recites the Declaration of Independence and solemnly recognizes it. The powers and rights of the State emanate from the people alone, in their sovereign capacity, as a free and independent State, not from any Treaty made with Great Britain. In the Treaty of 1783, Great Britain treated with the U. S., as sovereign *and independ- [*226 ent. That Treaty contains no words of grant or cession, but merely recognizes the boundaries of this State as an independent State. The Articles of Confederation expressly reserve the sovereignty of each State. It was a league between sovereign states. This State, then, had power to establish and hold military posts and fortifications, and the possession of these Forts must be in its sovereign capacity. Great Britain held them hostilely and by force; and when she surrendered the possession of the Forts which she held within the boundaries of this State, they became, of course, vested in the State. This court cannot look beyond the State for a source of title to any of its lands. (*Jackson* v. *Ingraham*, 4 Johns., 163.)

NOTE.—*Jurisdiction of United States—Exclusive—How acquired over land ceded by the states—When exclusive.* See United States v. Cornell, 2 Mass., 60; United States v. Watkins, 3 Cr., C. C., 441; United States v. Barney, 3 Int. Rev. Rec., 46; United States v. Ames, 1 Wood & M., 76; 10 Opp. Atty-Gen., 392; Irvine v. Marshall, 20 How., 558.

Again: by the Constitution of the U. S. (art. 1, sec. 8), Congress have power "to exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the U. S., and to exercise like authority over all places purchased by consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, dock yards, and other needful buildings." This shows that the U. S. can exercise exclusive jurisdiction over such territory only as is acquired by purchase or cession from the several states. And this State, in all the grants or cessions which it has made to the U. S., of lands for the use of the U. S., has reserved the right of sending its officers to serve the process of its courts within the lands so granted. The U. S. possess no power or rights but such as have been delegated by the several states; and the states retain all the rights and attributes of sovereignty not expressly ceded to the U. S. "The power of exclusive legislation" (which is jurisdiction), says *Chief Justice* Marshall (*U. S.* v. *Bevans*, 3 Wh., 336, 388), "is united with cession of territory, which is to be the free act of the States."

The Treaties of 1783 and of 1794 contain no words of cession to the U. S. It merely stipulates that Great Britain shall withdraw its troops, &c. There was not, in fact, in 1783, **227***] any government of the U. S. *capable of receiving a cession of territory, or of garrisoning this fort. If it had been immediately surrendered, it would have been taken possession of by the troops of this State as an independent State.

Again; it will be said that there is an Act of the Legislature (sess. 26, ch. 106; 1 N. R. L., 197) authorizing the Governor of this State "to agree with such person or persons as may be authorized by the U. S. for that purpose, for the sale of such quantity of the lands adjoining Fort Niagara, as shall be necessary for the accommodation of that Fort, and to cede the right of the people of this State to the said lands to the U. S.," showing an implied admission that this Fort then belonged to the U. S. The fact, most probably, was not adverted to, at the time, that there never had been any cession of the land on which the Fort is erected, to the U. S. It is certain, however, that this court cannot presume any such grant. It is true that Congress have provided for the punishment of crimes committed in places within the exclusive jurisdiction of the U. S.: but the U. S. have no exclusive jurisdiction, except what is acquired by grant or cession.

A doubt may, possibly, be suggested, whether the land on which Fort Niagara stands is within the territory of this State. But it is well known that the grant of James II. extended to the Pacific Ocean. The disputes between this State and the States of Mass. and Ct., involved a discussion on this subject. By the Convention between this State and Mass., the jurisdiction was ceded to this State.

Again; by the Act of the Legislature of this State, passed Feb. 19, 1780, the delegates of this State to Congress were authorized to fix the limits of the territory of this State, and to cede to the U. S. all the lands beyond such limits; and the delegates to Congress did, accordingly, by a formal instrument, fix and describe the boundaries of the State, and cede to the United and Confederated States all lands and territories to the northward and westward of those boundaries; and this State has ever since held and enjoyed its territory according to those limits, and *which [**228** include Fort Niagara; there being nowhere mentioned any exception or reservation, in behalf of the U. S., of any Forts, &c. (See L. U. S., ed. of 1815. Vol. I., pp. 467, 471.)

Mr. Cady, for the prisoner. This question depends on the true construction of the clause of the Constitution of the U. S., as to its exclusive legislation. It is not essential to this power there should be a cession of territory by a state to the U. S. After the purchase of La., the U. S. exercised exclusive jurisdiction over the Territory, and over all Forts and places within its limits. When that country or any portion of it is erected into a sovereign and independent State, does the right of jurisdiction exercised by the U. S. over the Forts continue, or must they purchase that right from the new State? It is not necessary that there should be a cession of jurisdiction at the time of the purchase. Great inconvenience will arise if the government and courts of the U. S. have not exclusive jurisdiction over these places. Every soldier in the garrison who commits a petty offense may be arrested by the warrant of a justice of the peace. The true meaning of the Constitution is that the U. S. cannot erect any fort or building on any part of the territory of a state without its consent. As soon as the state grants to the U. S. the right of erecting a military fortress, the U. S. acquire an exclusive jurisdiction within such fortress, unless there has been some express stipulation to the contrary in the grant.

Again; has not this State, by its acts, virtually consented to give to the U. S. jurisdiction over this Fort? Treaties have been made between the U. S. and the Six Nations of Indians, in 1784, 1789 and 1794, by which the latter cede to the U. S. lands lying south of Lake Ontario, and south and east of Niagara River and Lake Erie, including the Fort of Niagara. (1 L. U. S., 307-309, 314, ed. 1815.) Two of these treaties were made subsequent to the adoption of the Constitution of the U. S.

Again; Great Britain, afterwards, pursuant to the Treaty *of 1794, surrendered the [**229** possession of this Fort to the government of the U. S., who immediately took possession of it, garrisoned it with their own troops, and have so kept possession until this day; whether rightfully or not, makes no difference, for this State, having uniformly acquiesced in it, must be bound by such acquiescence.

In the case of *The Commonwealth of Mass.* v. *Clary*, 8 Mass., 72, the Supreme Court of that State decided that the courts of that State had no cognizance of offenses committed on lands in the town of Springfield, purchased by the U. S. from that State, for the purpose of erecting arsenals, &c.

Mr. Oakley, Att'y-Gen., in reply, said that the case of a cession of territory to the U. S., by a foreign state, since the adoption of the present Constitution, was not analogous to the present case. None of the states ever had any right to the territory so ceded. But very serious doubts have been entertained whether the government of the U. S. could, under the Constitution, acquire new territory, and exercise jurisdiction over it; and though such cessions have been sanctioned by Acts of Congress, it is not easy to discover on what constitutional grounds those Acts can be supported.

As to the grants or cessions made by the Indians to the U. S., it is a sufficient answer to say that the Indians have never been recognized as the absolute owners of the soil, or as a source of title to lands in this State. Their right to the use of lands occupied by them has been admitted. But these very Six Nations of Indians had before ceded all their rights to Great Britain; and so, in truth, they had nothing to grant to the U. S. There can be no source of title to land acknowledged, but what is derived from the State.

Again; the relinquishment by Great Britain of places occupied by her troops, gave no right to the U. S. As well might the U. S. claim the City of N. Y. and its environs, which were surrendered pursuant to the Treaty of Peace, and taken possession of by the Army of the U. S.

Cur. adv. vult.

230*] *The prisoner was again brought before the court, on *habeas corpus*; and the opinion of the court, on the question of jurisdiction, argued at the last term, was now delivered by the *Chief Justice*, as follows:

SPENCER, *Ch. J.* (after stating the facts): The question for the decision of this court is, whether the cognizance of this offense belongs to the Courts of the U. S., or to those of this State. It has been very ably argued, and the importance of the question has induced us to postpone a decision of it to the present term.

The jurisdiction of the courts of the U. S. must be derived under the 8th section of the 1st Article and seventeenth paragraph of the Constitution of the U. S., which gives to the Congress "exclusive legislation over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings."

The only evidence of a purchase by the U. S. of Fort Niagara, from this State, or of a cession of any kind by it to the U. S., is contained in the Act of April 6, 1803. (1 N. R. L. 197.) That Act authorizes the Governor to agree with such person or persons as shall be authorized by the U. S. for that purpose, for the sale of such quantity of the lands adjoining the Fort Niagara, as shall be necessary for the accommodation of that post, and to cede the right of the people of this State to the said lands to the U. S.

It does not appear, nor is there the slightest ground to believe, that the powers conferred on the Governor, by this Act, have ever been executed, or that any cession has ever been made under it, of the Fort itself, or of the adjoining lands, to the U. S.

It has been argued that this State, though they have made no cession, have tacitly consented, by a necessary implication from the Act of 1803, that the U. S. should hold the Fortress of Niagara, and that in such case, the second paragraph of the 3d section of the 4th Article of the Constitution of the U. S., would give to the Congress *the like exclu- [*231 sive power of legislation. That section declares "that the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the U. S., and that nothing in the Constitution shall be so construed as to prejudice any claims of the U. S., or any particular State."

The Treaty of Peace between the U. S. and Great Britain, in 1783, has also been brought into view, as containing provisions bearing on the question. That Treaty contains a stipulation that His Britannic Majesty should withdraw, with all convenient speed, all his garrisons from the U. S., and from every post, place and harbor within the same; and the Treaty of Amity, Commerce and Navigation, concluded between Great Britain and the U. S., in 1794, contains a stipulation, on the part of the former, to withdraw their troops and garrisons, from all posts and places within the boundary lines assigned by the Treaty of Peace, before June 1, 1796. Fort Niagara was captured from the French in 1759, and passed, by virtue of the Treaty of Peace of 1763, to the Crown of Great Britain; and has continued to be held by that power, as a Fortress, until it was surrendered under the Treaty of 1794, since which it has been possessed and garrisoned by the U. S., with a short interruption during the late war, to the present period. That Fort Niagara is within the acknowledged boundaries and limits of this State is indisputable.

We consider it beyond all doubt, that the U. S. acquired no territorial rights to any portion of this State, in virtue of the Treaties of 1783 and 1794. Neither of those Treaties contain any words of grant to the U. S., as such; nor should we have submitted to accept as a grant what had already been acquired by our arms, and established by the solemn Declaration of Independence. The Congress, under the Articles of Confederation, were the representatives of the several states; and having the power to make war and peace, were a party to the Treaty of Peace, in behalf of the Confederated States, and every stipulation in the Treaty, inured to the benefit of the states in their sovereign capacities. When, therefore, it was agreed, by the *Treaty of Peace [*232 of 1783, that Great Britain should withdraw, with all convenient speed, its garrisons from the U. S., and from every port, place and harbor within the same, that agreement was for the benefit of the several states within whose limits those garrisons were. The section of the Articles of Confederation removes every doubt upon this subject: it provides that "each state should retain its sovereignty, freedom and independence, and every power, jurisdiction and right, which was not thereby expressly delegated to the U. S. in Congress assembled:" and it is not within our knowl-

edge or belief, that the U. S. have ever claimed or set up any pretension of property, to any fort within the boundaries of a state, under these treaties.

The occupation of Fort Niagara, by the troops of the U. S., since its evacuation, in pursuance of the Treaty of 1794, cannot be considered either as evidence of a right in the general government to the post itself, nor as an act hostile to the rights of this State. One of the great objects in the formation of a federal government was that it should provide for the common defense. This post was considered an essential point to be garrisoned by the troops of the U. S., as a security to our frontiers; and this State acquiesced tacitly in the propriety and necessity of the measure; under these circumstances to consider the occupation of the post as, *per se*, evidence of territorial right, in the U. S., or as in hostility to the rights of this State, would be imputing to the federal government a disregard of its obligations and duties, and a spirit of violence and injustice, highly derogatory to its known justice and providence. Their possession of this post must be regarded, therefore, as a possession for the State, not against it; it was a friendly occupation, not in derogation of our rights; and we regard it as a fundamental principle, that the rights of sovereignty are never to be taken away by implication. In the case of the *U. S.* v. *Bevans*, 3 Wh., 388, *Chief Justice* Marshall said "the power of exclusive legislation under the 8th section of the 1st article of the Constitution, which is jurisdiction, is united with cession of territory, which is to be the free act of the states." The correctness of 2:3:3*] *this remark is fully admitted; and if the U. S. had the right of exclusive legislation over the Fortress of Niagara, they would have also exclusive jurisdiction; but we are of opinion that the right of exclusive legislation within the territorial limits of any state, can be acquired by the U. S. only in the mode pointed out in the Constitution, by purchase, by consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings. The essence of that provision is, that the State shall freely cede the particular place to the U. S., for one of the specific and enumerated objects. This jurisdiction cannot be acquired tortiously, or by disseisin of the State; much less can it be acquired by mere occupancy, with the implied or tacit consent of the State, when such occupancy is for the purpose of protection.

The 3d section of the 4th Article of the Constitution of the U. S. is clearly adapted to the territorial rights of the U. S., beyond the limits or boundaries of any of the states, and to their chattel interests, and it therefore drops the expression of exclusive legislation.

To oust this State of its jurisdiction to support and maintain its laws and to punish crimes, it must be shown that an offense committed within the acknowledged limits of the State, is clearly and exclusively cognizable by the laws and Courts of the U. S. In the case already cited, *Chief Justice* Marshall observed, that to bring the offense within the jurisdiction of the courts of the Union, it must have been committed out of the jurisdiction of any state; it is not (he says) the offense committed, but the place in which it is committed, which must be out of the jurisdiction of the State. It does not, therefore, enter into the consideration of this question, that the prisoner and the deceased were in the service of the U. S. when the crime was perpetrated. On the whole, we are perfectly satisfied that the jurisdiction of this State attaches to the crime, and extends to the person of the prisoner and nothing remains but that judgment be passed upon him according to law.

Sentence of death was, accordingly, pronounced on the prisoner.

Cited in—31 How. Pr., 423; Edm., 116; 1 Sheld., 127; M'Mahon, 211; 1 Wood. & M., 84; 4 Kan., 57; 57 Wis., 384.

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*BARKER *v.* HAVENS. [*234

Maritime Law—Shipment by Owners, Freight to be Paid by Consignee—Delivery to Consignee without Payment of Freight—Subsequent Demand—Action will Lie against Consignor when Owner—Master must First Endeavor to Collect of Consignee.

Where the defendant, the owner of goods shipped them on board of the plaintiff's vessel, to be carried from N. Y. to Liverpool, and there delivered to C., the consignee, he paying freight for the same, with primage and average accustomed according to the bill of lading, signed by the master, who, on his arrival at Liverpool, delivered the goods to the consignee, without receiving the freight; though he afterwards demanded it, and the payment was refused. Held that the plaintiff might maintain an action for the freight against the consignor. It seems, that where the goods are not owned by the consignor, nor shipped for his account and benefit, the carrier is not entitled to call on him for the freight, on such a bill of lading.

It is the duty of the master of a vessel, in all cases, to endeavor to get the freight from the consignee.

Citation—13 East, 508.

THIS was an action of *assumpsit*, brought to recover the freight and primage of ninety bales of cotton, shipped by the defendant, on board of the plaintiff's vessel, to be carried from N. Y. to Liverpool. The cause was tried at the N. Y. sittings, in June last, and a verdict taken, by consent, for the plaintiff, for $587, subject to the opinion of the court on the following case. The declaration stated that the defendant, on the 1st of July, 1817, at the City of N. Y., in consideration that the plaintiff, at his request, would take on board of the plaintiff's ship, called the Loan, ninety bales of cotton belonging to the defendants, and should safely carry the same in the said ship to Liverpool, in England, and there deliver the said ninety bales of cotton to the consignees thereof, to wit: Messrs. Cropper, Benson, & Co., at Liverpool; agreeably to the bill of lading, the defendant undertook and promised the plaintiff to pay to him one penny sterling per pound weight, for the freight of the said ninety bales of cotton, and five *per cent* thereon for the primage, which freight and primage amounted to £121 13*s.* 9*d.* sterling, equal in value to $570.83. The plaintiff averred, that the ninety bales of cotton were delivered to C., B. & Co., on Aug. 30, 1817, according to the bills of lading, &c. The declaration also contained general counts for freight, work and labor, and *quantum meruit*.