*American Insurance Company and Ocean Insurance Company (of New York), Appellants, *v.* 356 Bales of Cotton: David Canter, Claimant and Appellee.

Cession of territory by treaty.—Territorial legislation.—Jurisdiction.—Tenure of judicial office.

The constitution of the United States confers, absolutely, on the government of the Union, the power of making war, and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty. p. 542.

The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace; if it be ceded by treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed; either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such transfer of territory, it has never been held, that the relations of the inhabitants with each other undergo any change; their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory; the same act which transfers their country, transfers the allegiance of those who remain in it, and the law which may be denominated political, is, necessarily, changed; although that which regulates the intercourse and general conduct of individuals, remains in force, until altered by the newly created power of the state.[1] p. 542.

The treaty with Spain, by which Florida was ceded to the United States, is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, right and immunities of the citizens of the United States; they do not, however, participate in political power; they do not share in the government, until Florida shall become a state; in the meantime, Florida continues to be a territory of the United States, governed by virtue of that clause in the constitution, which empowers "congress to make all needful rules and regulations, respecting the territory or other property belonging to the United States." p. 542.

The power of the territorial legislature of Florida extends to all righful objects of legislation; subject to the restriction, that their laws shall not be "inconsistent with the laws and constitution of the United States." p. 543.

All the laws which were in force in Florida, while a province of Spain, those excepted, which were political in their character, which concerned the relations between the people and their sovereign, remain in force, until altered by the government of the United States; congress recognises this principle, by using the words "laws of the territory now in force therein." No law could then have been in force, but those enacted by the Spanish government; if, among them, there existed a law on the subject of salvage, and it is scarcely possible there should not have been such a law, jurisdiction over it was conferred by the act of congress, relative to the territory of Florida, on the superior court; but that jurisdiction was not exclusive; a territorial act, conferring jurisdiction over the same cases, on an inferior court, would not have been inconsistent with the seventh section of the act, vesting the whole judicial power of the territory "in two superior courts, and in such inferior courts and justices of the peace, as the legislative council of the territory may from time to time establish." p. 544.

*512] *The eleventh section of the act declares, "that the laws of the United States relating to the revenue and and its collection, and all other public acts not inconsistent or repugnant to the act, shall extend to and have full force and effect in the territory of Florida." The laws which are extended to the territory, by this section, were either for the punishment of crimes, or for civil purposes; jurisdiction is given in all criminal cases, by the seventh section, but in civil cases, that section gives jurisdiction only in those which arise under and are cognisable by the laws of the territory; consequently, all civil cases arising under the laws which are extended to the territory by the eleventh section, are cognisable in the territorial courts, by virtue of the eighth section: and in those cases, the superior courts may exercise the same jurisdiction as is exercised by the court for the Kentucky district. p. 544.

The constitution and laws of the United States give jurisdiction to the district courts over all cases in admiralty; but jurisdiction over the case, does not constitute the case itself. p. 545.

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[1] United States *v.* Percheman, 7 Pet. 51; Leitensdorfer *v.* Webb, 20 How. 176; Palmer *v.* Low, 98 U. S. 15.

American Insurance Co. v. Canter.

The constitution declares, that "the judicial power shall extend to all cases in law and equity arising under it, the laws of the United States, and treaties made, or which shall be made, under their authority, to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction." The constitution certainly contemplates these as three distinct classes of cases, and if they are distinct, the grant of jurisdiction over one of them does not confer jurisdiction over either of the other two; the discrimination made between them, is conclusive against their identity. p. 545.

A case in admiralty does not, in fact, arise, under the constitution or laws of the United States; these cases are as old as navigation itself, and the law, admiralty and maritime, as it existed for ages, is applied by our courts to the cases, as they arise. It is not, then, to the eighth section of the territorial act, that we are to look for the grant of admiralty and maritime jurisdiction in the territorial courts of Florida; consequently, if that jurisdiction is exclusive, it is not made so by the reference, in the act of congress, to the district court of Kentucky. p. 545.

The judges of the superior court of Florida hold their offices for four years; these courts, then, are not constitutional courts, in which the judicial powers conferred by the constitution on the general government can be deposited; they are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government; or in virtue of that clause which enables congress to make laws regulating the territories belonging to the United States; the jurisdiction with which they are invested, is not a part of that judicial power, which is defined in the third article of the constitution, but is conferred by congress, in the exercise of its powers over the territories of the United States. p. 546.

Although admiralty jurisdiction can be exercised in the states, in those courts only which are established in pursuance of the third article of the constitution, the same limitation does not extend to the territories; in legislating for them, congress exercises the combined powers of the general and state governments. p. 546.

The act of the territorial legislature of Florida, erecting a court which proceeded, under the provisions of the law, to decree, for salvage, the sale of a cargo of a vessel, which had been stranded, and which cargo had been brought within the territorial limits, is not inconsistent with the laws and constitution of the United States, and is valid; and consequently, a sale of the property, made in pursuance of it, changed the property.[1] p. 546.

*Appeal from the Circuit Court of South Carolina. The libel filed in this cause, in the district court of South Carolina, on the 18th April 1825, alleged, that 584 bales of cotton, insured by the libellants, were shipped on board the ship Point à Petre, on a voyage from New Orleans to Havre de Grace, in France, and was, in February 1825, wrecked on the coast of Florida; from which it was saved, and carried into Key West, in the territory of Florida, where it was sold, without any previous adjudication by a court of competent jurisdiction, for the ostensible purpose of satisfying a claim for salvage, amounting to seventy-six per cent. of the property saved. That the cotton thus insured, was abandoned to the underwriters, the libellants, and the abandonment was accepted by them, on the 10th March 1825. That part of the cargo, amounting to 140 bales, subsequently arrived in the port of New York, and was there proceeded against by the libellants, as their property, under the abandonment. That another part of the cargo, amounting to between 300 and 356 bales, had arrived in the port of Charleston, within the jurisdiction of the court, in the possession of one David Canter, and was fraudulently sold in Charleston, at auction, on the 13th of April 1825. Restitution of this last-mentioned part was, therefore, prayed by the libellants, and process was issued against the said Canter *in personam*. The marshal returned to the warrant, that he had taken 160 [*513

[1] See Clinton *v.* Englebrecht, 13 Wall. 447; Reynolds *v.* United States, 98 U. S. 154; The City of Panama, 101 Id. 459. The jurisdiction of the territorial courts entirely ceased, by the admission of the territory of Florida into the Union as a state. Benner *v.* Porter, 9 How. 235.

bales of cotton, and the person of Canter ; 54 bales of the cotton, specifically brought into court, were ordered to be sold and the proceeds paid into the registry ; and the supposed value of the remainder in dispute, to be secured by stipulation.

David Canter filed his answer, claiming 356 bales of cotton, as a *bonâ fide* purchaser, under a sale at public auction, at Key West, by virtue of the decree of a certain court, consisting of a notary and five jurors, proceeding under an act of the governor and legislative council of Florida, passed the 4th of July 1823, which decree awarded to the salvors seventy-six per cent. on the net proceeds of sale.

The testimony of witnesses was taken, and other evidence produced, relating to the title of the libellants, under the insurances and abandonments thereon, and to the proceedings in the court at Key West. The district judge pronounced the proceedings in the court at Key West a nullity ; but decreed restitution to the libellants of 39 bales of the cotton only (deducting a salvage of *fifty per cent.); considering the evidence of the identity *514] of the residue, as insufficient to establish their proprietary interest. The libellants and claimant both appealed from this decree to the circuit court.

Further testimony was taken in the circuit court ; and at the hearing, the decree of the district court was reversed, and the entire cotton decreed to the claimant, with costs ; upon the ground, that the proceedings of the court at Key West were legal, and transferred the property to the alleged purchaser under them. From this decree, the libellants appealed to this court.

The documents exhibited, and evidence taken in the case, showed that 333 bales of the cotton, on board the Point à Petre, were insured by the American, and 351 by the Ocean office. The whole cargo of the ship consisted of 891 bales, but to whom the other 317 bales belonged, did not appear. The ship sailed on the voyage insured, on the 17th February 1825, and was wrecked on Carysford reef, on the east coast of West Florida, about eight miles from the shore ; she filled with water, and was abandoned by the master and crew.

In the depositions taken in the cause, it was stated, that when the vessel was first seen, she was filled with water, abandoned, bilged, and lying on her broad-side. The cotton was taken out of her, hove into the sea, rafts made of it, towed inside of the reef, and then put on board the vessels. The master of the ship was picked up on the shore, with his men, about fourteen miles from the wreck, and he went with the salvors to Key West, where the property saved was carried ; and the proceedings for salvage were, at Key West, carried on, as was alleged, with the co-operation and concurrence of master of the ship. The danger in saving the property was said to have been very great, the weather to have been stormy, some of the men were injured, and the saving was done during the night as well as the day ; most of the cotton was much injured. After the sale, the agent of the appellants, Mr. Ogden, came on from New York to Key West, for the purpose of attending the sale, and he expressed his willingness to pay to the purchasers of the cotton, a considerable sum, beyond what had been paid for it at the sale.

It was also in evidence, that the marks on the cotton were defaced, and that the efforts to ascertain the particular marks on that imported into Charleston by the appellee, were, to great extent, without success. A large por-

tion of the cotton brought to Charleston by the claimant, was sold at auction, as *damaged cotton. An agreement between the two insurance companies, the appellants, was made previous to the institution of the [*515 suit, that the same should be for their joint benefit. David Canter, the appellee, claimed 356 bales of the cotton, as a *bonâ fide* purchaser under the decree of the court of Key West, instituted by, and proceeding under a law of the legislative council of Florida, passed 4th July 1823; which decree awarded seventy-six per cent. to the salvors, of the net proceeds of the sale.

The appellants filed the following "reasons of appeal." That the decision of the circuit court is erroneous, inasmuch as the said tribunal at Key West was not legally organized, nor of competent jurisdiction in the premises. 1st. Because the constitution and laws of the United States are of full force and effect within the territory of Florida. 2d. Because the jurisdiction of salvage was not a rightful subject of legislation, with the Floridian government; and the wrecking law enacted by the same, is, in various respects, inconsistent with the said constitution and laws. 3d. Because the superior courts of the said territory are vested with plenary and exclusive jurisdiction over all admiralty and maritime cases; and this was a case of that description. 4th. Because, even if the jurisdiction of the said courts were confined to "cases arising under the constitution and laws of the United States," this was a case of that class. 5th. Because the said superior courts were vested with original cognisance, in all cases where the amount in issue exceeded the value of one hundred dollars.(*a*)

(*a*) The reporter acknowledges with pleasure, his obligations to Mr. Justice Johnson, by whom he has been furnished with a copy of the opinion delivered by him on the decision of the case.

Johnson, Justice.—This case comes up on a cross-appeal from a decision of the district court, adjudging a part of the *res subjecta* to the libellants, and the residue to the claimants. The decree establishes the right of the parties libellant to recover, but dismisses the libel as to a great proportion of the cotton, on the ground of a defect of evidence to identify it.

From the pleadings and testimony, it appears, that the libellants were insurers to a large amount, on a quantity of cotton shipped by certain individuals, in the French ship Point à Petre, on a voyage from New Orleans to Havre. That the ship was stranded and lost on the coast of Florida, and the cotton abandoned to these underwriters. That the cotton libelled, was a part of the cargo of the Point à Petre, is admitted; but it appears, that after being saved from the wreck, it was deposited at Key West, where it was sold and purchased by Canter, the claimant, under the order of a municipal court, constituted under a law of Florida, with jurisdiction over cases of salvage. The preliminary question alone has now been argued, to wit, whether the sale by that court was effectual to divest the interest of the underwriters.

The general principle is not denied, as to the mutations of property, which takes place through the intervention of courts of justice; but it was argued, that the constitution of the United States vests the admiralty jurisdiction exclusively in the general government; that no state can exercise a concurrent jurisdiction over admiralty and maritime causes; and that salvage was of that description. Wherefore, the legislature of Florida had, in organizing this court, exercised a power not legally vested in it, and the act constituting it, being a void act, it was as though no such court existed. That, moreover, the nullity of that court did not rest merely on an inherent want of power to constitute it, but on positive prohibition contained in the acts organizing the government of the territory, to pass any laws contrary to the laws and constitution of the United States.

*David Canter claimed all the cotton except thirty-nine bales, on the
*517] ground : *1st. That he was in the possession of it, not tortiously, but as a *bonâ fide* purchaser, and that that possession, thus

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That the act organizing this court, was an act of this nature, inasmuch as jurisdiction of causes, admiralty and maritime, was expressly vested in the superior courts of Florida; and that, without the right of exercising a concurrent power over the subject vesting this jurisdiction in an inferior court, *quoad hoc*, divesting the superior court of its jurisdiction, and rendering null the act of congress, which vests the admiralty jurisdiction in that alone.

On the other hand, it has been contended, that salvage is a subject of municipal and common-law cognisance, not exclusively belonging to the admiralty; that although the constitution may vest the exclusive cognisance of admiralty and maritime causes in the United States, in those instances in which the admiralty, at the adoption of the constitution, had exclusive jurisdiction of the subject, yet, in those cases, in which the common law exercised a concurrent jurisdiction with the admiralty, there is no reason for carrying the grant beyond a concurrent jurisdiction with the common-law courts of the states. That the court which ordered this sale, was properly a municipal court and a court of a separate and distinct jurisdiction from the courts of the United States, and as such, its acts are not to be reviewed in a foreign tribunal; of which description it was contended, were the courts of the United States for South Carolina district. That the district of Florida was no part of the United States, but only an acquisition or dependency, and as such, the constitution, *per se*, had no binding effect in or over it; and finally, that the argument drawn from the assumed fact, that the admiralty and maritime jurisdiction was, by law, expressly vested in another court, originates in a misconstruction of the law, inasmuch as no act of congress vests in the superior court any other portion of the jurisdiction of the Kentucky court, than that of causes arising under the laws of the United States; that this is not a cause of that description, it is one arising under a casualty in which no law of the United States came necessarily under review.

To this it was replied, that it was a cause arising under a law of the United States, and the case of Osborn *v.* Bank of United States, was quoted and insisted on as furnishing a decision in point. That if the cause there was one of that description, because the bank was incorporated by a law of the United States, for the same reason was this a cause of that description, because the body politic here was, like the body corporate there, created by a law of the United States; and if, at every step there, the court was met by the law which made the one a bank, gave it power to make by-laws, and to act under those by-laws, so was it equally met here, by the laws which made this a state, gave it power to legislate, and legalized this transfer of property, under laws which, without the laws of the United States, were mere nullities.

It becomes indispensable to the solution of these difficulties, that we should conceive a just idea of the relation in which Florida stands to the United States; and give a correct construction to the second section of the act of congress of May the 26th, 1824, respecting the territorial government of Florida; correct views on these two subjects, will dispose of all the points that have been considered in argument. And first, it is obvious, that there is a material distinction between the territory now under consideration, and that which is acquired from the aborigines (whether by purchase or conquest), within the acknowledged limits of the United States, as also that which is acquired by the establishment of a disputed line. As to both these, there can be no question, that the sovereignty of the state or territory within which it lies, and of the United States, immediately attach, producing a complete subjection to all the laws and institutions of the two governments, local and general, unless modified by treaty. The question now to be considered, relates to territories previously subject to the acknowledged jurisdiction of another sovereign; such as was Florida to the crown of Spain. And on this subject, we have the most explicit proof, that the understanding of our public functionaries, is, that the government and laws of the United States do not extend to

*acquired, is good against all but the person who proves a better title to this identical cotton. *2d. That the salvors had a rightful lien upon the cargo saved; that the master of the Point à Petre was agent for [*519

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such territory by the mere act of cession. For, in the act of congress, of March 30th, 1822, § 9, we have an enumeration of the acts of congress, which are to be held in force in the territory; and in the 10th section, an enumeration, in nature of a bill of rights, and of privileges and immunities, which could not be denied to the inhabitants of the territory, if they came under the constitution, by the mere act of cession. As, however, the opinion of our public functionaries is not conclusive, we will reveiw the provisions of the constitution on this subject.

At the time the constitution was formed, the limits of the territory over which it was to operate were generally defined and recognised. These limits consisted in part of organized states, and in part of territories, the absolute property and dependencies of the United States. These states, this territory, and future states to be admitted into the Union, are the sole objects of the constitution; there is no express provision whatever made in the constitution for the acquisition or government of territories beyond those limits. The right, therefore, of acquiring territory is altogether incidental to the treaty-making power, and perhaps to the power of admitting new states into the Union; and the government of such acquisitions is, of course, left to the legislative power of the Union, so far as that power is uncontrolled by treaty. By the latter, we acquire either positively, or *sub modo*, and by the former, dispose of acquisitions so made; and in case of such acquisitions, I see nothing in which the power acquired over the ceded territories, can vary from the power acquired under the law of nations, by any other government, over acquired or ceded territory. The laws, rights and institutions of the territory so acquired remain in full force, until rightfully altered by the new government. In the present instance, however, the laws of Florida were not left to derive their force from general principles alone; for, by the 13th section of the same act it is declared, "that the laws in force in the said terrritory at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified or repealed by the legislature."

From these views of the subject, it results, 1st. That whatever may be the correct idea of the distribution of the admiralty jurisdiction, as between the states and United States, it can have no application here, since this territory does not stand in the relation of a state to the United States. 2d. That whether salvage be of admiralty jurisdiction exclusively, or not, it is immaterial to this cause, since the whole power of legislation over the subject, in Florida, existed exclusively in the general government. 3d. That the general principles of international law, on the immunities of foreign courts and foreign decisions, have no application here, since the courts of Florida have a common origin with this court—our authority flows from the same source—we are connected with the fountain head, governed by the same legislative power, and have equal access to the laws which constitute and govern us. It follows, that neither can regard the decisions of the other, if acting without authority derived through the legislature of the Union.

The act entitled, "an act for the establishment of a territorial government in Florida," and the acts *in pari materia*, of the 3d March 1323, and the 26th May 1824, constitute what may be properly termed the constitution of Florida. The first provides for the appointment of an executive, with powers not material here to be considered. It constitutes a legislature, organizes a judiciary, and imposes upon the one and the other some general restrictions, subject to which they are empowered to exercise the legislative, judicial and executive powers which belong generally to an organized government. The act of March 1823 goes over the same ground, and repeals the preceding act, so far as the provisions of the latter are inconsistent with those of the former act. And with regard to both, or either, so far as the latter remains unrepealed, the position is incontrovertible, that the legislative power could enact nothing inconsistent with what congress has made inherent and permanent in the form of government

the *underwriters, and had authority to settle the amount of that claim,
*521] either by agreement, or an award of third persons; that *he applied to these third persons, and agreed to their proceedings, and to the sale;

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of the territory. Therefore, if the admiralty jurisdiction is made inherent in the superior court, it was not in the power of the territorial legislature to transfer it to any inferior tribunal.

To determine this question, we must examine the provisions of the several acts, touching the exercise of legislative and judicial power. In defining the legislative power, the words of the act of 1822 are these, "they shall have power to alter, modify or repeal the laws, which may be in force at the commencement of this act. These legislative powers shall also extend to all the rightful subjects of legislation; but no law shall be valid, which is inconsistent with the constitution and laws of the United States, or which lay any person under restraint, burden or disability, on account of his religious opinions, professions or worship; in all which he shall be free to maintain his own, and not to be burdened with those of another." The language of the act of 1823 is, "they shall have legislative power over all rightful subjects of legislation; but no law shall be valid, which is inconsistent with the constitution and laws of the United States; or, which lays any person under restraint, &c." That jurisdiction of salvage is a rightful subject of legislation, is not to be questioned. The jurisdiction then vested by the legislature in this municipal court, must be sustained, unless inconsistent with the laws or constitution of the United States. But with the constitution, in legislating on the subject of salvage, there can be no incongruity; it is only, therefore, the supposed inconsistency with the act of congress of May 1824, that can impugn it.

The provisions of that act upon this subject are these:—"Each of the said courts (meaning the superior courts of the district of Florida) shall moreover have and exercise the same jurisdiction, within its limits, in all cases arising under the laws and constitution of the United States, which, by an act to establish the judicial courts of the United States, approved the 24th day of September 1789, and 'an act in addition to the act, entitled an act to establish the judicial courts of the United States, approved the 2d March 1793,' was vested in the court of Kentucky district." The question, then, is reduced to this—in what cases, arising under the laws and constitution of the United States, is jurisdiction vested in the court of Kentucky district, by the two acts of the 24th September 1789, and the 2nd of March 1793?

It has been erroneously assumed, that all the jurisdiction vested by those acts in the Kentucky court, was vested by this law in the superior court of Florida; it is expressly confined to cases arising under the laws and constitution of the United States; and the reason is obvious. In all cases arising under the laws of the district, jurisdiction is given by the preceding section of the same act; but as most of the laws of the United States had been made of force in the territory, as before observed, the 2d section is intended to extend the jurisdiction of the court to cases arising under the latter laws, and further, if necessary, to all cases arising under laws of the United States, over which jurisdiction had been given to the Kentucky court—a practice in defining jurisdiction, that had been pursued by congress, with regard to all the territories, subsequent to the time when the Kentucky court was established. In the original organization of the judiciary of the United States, Kentucky and Maine were excluded from the arrangement of circuits. And as no circuit court was required in law to be held there, the district court was vested with circuit court jurisdiction. This is the whole purport of the act of 1789, referred to in the Florida act of 1824. The other act there referred to, to wit, that of 1793, has no other operation as to the Kentucky court, besides vesting in it the power given to the circuit courts to hold special sessions.

If the Florida act were as broad in its operation as the two acts referred to, it would indeed be a serious question, whether the legislature of Florida could divest its superior

that the sale was afterwards ratified by Ogden, the special agent of the underwriters. *3d. He claims the whole 356 bales, on the ground of a sale by a court of the territory of Florida. *4th. That was a [*523

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court of any part of its admiralty jurisdiction, as existing in and exercised by the district courts of the United States. But I think it incontestable, that the jurisdiction here given is explicitly restricted to so much of the jurisdiction of the Kentucky court only, as comes within the description of cases arising under the laws and constitution of the United States. Now, excepting in the single instance of the present Bank of the United States, congress never has vested a jurisdiction, even in its circuit courts, generally, over causes arising under the constitution and laws of the United States. It has given an appellate jurisdiction, and that only to the supreme court, over causes of that description, when such causes arise in the state courts, but we look in vain through the law defining the jurisdiction of the Kentucky court, for any general claim to jurisdiction under the description of "cases arising under the laws and constitution of the United States." Yet, very ample operation must be given to these words of the Florida act, considered in reference to the jurisdiction actually possessed and exercised by the Kentucky court, under the two laws of 1789 and 1793. The land laws, revenue laws, laws of trade, criminal laws, and many other public laws, were all laws of the United States, under which, cases might arise, and over which the Kentucky court was undoubtedly vested with jurisdiction. Nor do I doubt, that the admiralty jurisdiction over revenue cases, as exercised by the Kentucky court, is rightfully vested (and that beyond the control of the Florida legislature) in the superior court of this district. But here, it appears to me, the grant of jurisdiction terminates. The admiralty jurisdiction, beyond this limit, is left to be administered under the laws of the territory, for this simple reason, that other causes, occuring in the admiralty, cannot be brought within this description of causes, arising under the laws of the United States—at least, this appears incontrovertible, when applied to questions of salvage arising on wreck of the sea—to questions of salvage, on captures as prizes of war, I am inclined to think, it would extend, at least, to all causes, in which the distribution of prize money depends upon laws of the United States.

But it is argued, that this is a cause arising under the laws of the United States, within the reason of the decision of the supreme court, in the case of Osborn *v.* Bank of the United States; that the validity of the sale, divesting the interests of these libellants, depends upon the legality of the powers, exercised by the court of Key West, which depends upon the powers vested in the legislature of Florida, which finally depends upon the acts of congress, which created the body politic of Florida; that creating a body politic, is only creating a body corporate on a larger scale, but essentially, the exercise of one and the same power; that whether the one or the other sues or defends, legislates or acts, by itself or its agents, all must be done with reference to the law that creates and organizes it; and in fine, in the language of the court, in the case cited, "the charter not only creates it, but gives every faculty that it possesses. The power to acquire rights of every description, to transact business of every description, to sue on those contracts, is given and measured by its charter, and that charter is a law of the United States. This being can acquire no right, make no contract, bring no suit, which is not authorized by a law of the United States. It is not only itself the mere creature of the law, but all its actions and all its rights are dependent on the same law," &c.

I have taken a week to reflect upon this question alone, and I cannot withhold from the gentleman who argued the cause for the libellants, an acknowledgment, that I have not been able to draw any line of discrimination, between this and the decided cause, which satisfies my mind. Yet, I am thoroughly persuaded, that the learned men who decided that cause, never contemplated that such an application would have been given of their decision. I am happy in the propect that this cause will finally be disposed of elsewhere, not doubting, that the mental acumen of those who decided the

foreign court, acting under a municipal law, and having the property within its reach; its jurisdiction cannot be inquired into. 5th. If the jurisdiction of that court can be inquired into, they contend, that jurisdiction was con-

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other, will be found fully adequate to distinguish or reconcile the two cases, on grounds which have escaped my reflections. At present, I must content myself with observing, that it is too much to require of a court, upon mere analogy, to sustain an argument, that not only proves too much, if it proves anything, but which leads, in fact, to positive absurdity.

It will be recollected, that it is not only in the territories, that we find bodies politic created by the laws of the United States, but that near one-half the states derive their origin and admission into the Union, under laws of the United States. But will it be contended, that all the causes arising under their laws, are causes arising under laws of the United States? It is true, that in the district of Columbia, the appellate jurisdiction given to the supreme court, can be maintained only on the ground that the laws of that district are laws of the United States; and that all the laws of the district of Florida derive directly, or indirectly, their force from the same origin. But in the case of the district of Columbia, this power is expressly given to the supreme court, and we are not now inquiring whether congress might not have vested this jurisdiction in the superior court of Florida, but whether they have so vested it. The simple inquiry is, what force and operation is to be given to those words, in the second section of the act of 1824, "jurisdiction in all cases, under the laws and constitution of the United States?" And what could be more absurd, than to decide, that the same force is to be given to those words as if they were not there. Expunge that sentence altogether, and the construction of the clause will be necessarily and precisely that contended for by the libellants, to wit, an unrestricted grant of the jurisdiction vested by law in the Kentucky court. It not unfrequently happens, that in the construction of a whole law, or a section or a clause of a law, words or even sentences are declared surplusage, or irreconcilable with other words or sentences; but here we are called upon to give a meaning to words, which deprives them of all meaning, and that, without any incongruity with other words, or want of distinct meaning in themselves, but from an analogy with another case, in which similar words have received a construction which produces that consequence, when applied to these words. Until better advised, I must maintain, that these words have a definite meaning and bearing in their place in this law, and amount to a restriction of the jurisdiction of the superior court of Florida, to a class of cases which does not comprise salvage on wreck of the sea.

Some minor grounds have been dwelt upon in argument, of which it is proper to take a brief notice. It has been argued, that the superior court of Florida acquired jurisdiction in another way, to wit, that the 9th section of the Florida act, of 1822, makes of force in the territory, all public laws of the United States, not repugnant to the provisions of that act. That the judiciary acts are acts of that description, and therefore, are laws of the territory. But this argument is without point, until such an organization of circuit and district courts of the United States takes place in that territory, as will admit of the application of this law to the jurisdiction of its courts. Or rather, it takes effect as to the subject now under consideration, only through those clauses which relate to the jurisdiction of the Kentucky court, and thus returns, in a circle, to the argument which we have been before considering.

It has also been contended, that the Florida act, under which the court at Key West was organized, is void; 1st. because never ratified by congress; and 2d, because inconsistent with that provision of the first section of the act of 1824, which gives original jurisdiction to the superior courts of the territory, in all cases of $100 value. To the first of these reasons, the 5th section of the act of 1822 furnishes an unequivocal answer. It is only the right of repealing that congress retains over the laws of Florida. That clause which requires the governor to report the laws of the territory

ferred upon it: 6th. With the 8th section of the act of congress of the 3d March 1823, which is in these words: "that each of the said superior courts shall moreover have and exercise the same jurisdiction within its limits, in all cases arising under the laws and constitution of the United States, which by an act to establish the judicial courts of the United States, approved the 27th September 1789, and an act in addition to said act, approved the 2d of March 1793, was vested in the court of Kentucky district.

The case was argued by *Ogden*, for the appellants; and by *Whipple* and *Webster*, for the claimants.

Ogden.—The great question in this case is the validity of the proceedings of the territorial court; und upon the threshold of this inquiry, it is asked, how far it is competent for this court to examine the constitutionality of the court at Key West, and the legality of its proceedings? The libel filed in the district court sought the restoration of the cotton, subject to a reasonable salvage. The claimant asserts his right to it under a sale, and the inquiry is, whether the property was changed by the proceedings directing the sale? The decision upon this inquiry, rests upon the right of the court to take jurisdiction of the subject-matter. The common-law rule is, that

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to the president, to be laid before congress, is merely directory, but has no bearing upon the validity of those laws, until repealed. The words are, "which, if disapproved by congress, shall thenceforth be of no force;" necessarily implying their previous operation. With regard to the second, I have no doubt, but that the individual who chooses to resort to his common-law remedy, of an action for work and labor, instead of libelling for salvage, may maintain an original suit in the superior court of the territory. But I see nothing in the act which makes that jurisdiction exclusive, in a case in which both remedies are open to the choice of the parties. The language of the 6th section is, "that the judicial power shall be vested in two superior courts, and in such inferior courts, and justices of the peace, as the legislative council of the territory may, from time to time, establish." The 7th section of this act, and the 2d of the subsequent act, confine to the superior courts exclusively, the jurisdiction over the cases arising under the laws, &c., of the United States, of which the Kentucky court had jurisdiction; but as to all others, I perceive nothing in the law, which precluded the Florida legislature, from making any distribution of jurisdiction, consistent with preserving to the superior court a concurrent jurisdiction, to be exercised according to its own terms.

It is proper to remark here, that whatever may be the fact, as to the integrity and propriety which regulate the proceedings of the court at Key West, there is nothing novel or unprecedented in the organization of the court. The model of it is of great antiquity, and throughout the civilized world, some such summary mode of adjusting salvage, in cases of wreck of the sea, is to be found. We had just such a court here, and, I believe, in most of the states, when the constitution was adopted; and although jurisdiction of the subject has been everywhere abandoned to the district courts of the United States, where it is adjusted with great solemnity and discretion, and I believe, very much to the satisfaction of all the commercial world, there exists no reason to preclude the congress of the United States from constituting similar summary tribunals, whenever and wherever it may become necessary. The establishment of this tribunal, therefore, however justice may be distributed in it, is no unwarrantable exercise of the legislative or judicial power vested in Florida. Finally, I am of opinion, that there is error in the decision of the district court, and adjudge that it be reversed, and the goods restored to the claimant, with costs.

H. N. Cruger, for libellant; *King* and *Gadsden*, for claimant.

when a court acts within its powers, its acts are binding on all the world; but if beyond them, they are entirely void. It is therefore necessary to look into the constitution of the court. Abbott on Ship. (11th ed.) 16 n.; Stark. 215; 9 Mass. 462; 3 Wheat. 234.

The next inquiry is, into the nature of the case, of which the court took cognisance; and then, whether it was within its jurisdiction? It was a case of salvage, and salvage is of admiralty jurisdiction. 1 Wheat. 335; Sergeant's Constitutional Law 207. In England, there was a great contest upon this question, but it was finally settled in favor of the jurisdiction of the admiralty, by the statute of Richard III. Abbott on Ship. 433.

It is now to be inquired, could the court of Key West lawfully exercise admiralty jurisdiction? The constitution was made for the whole people of the United States, without reference to their being within the original thirteen states. The 3d article, 2d section, defines "the judicial powers," and declares, "it shall extend to all cases of admiralty and maritime jurisdiction." *The treaty with Great Britain of 1783, ceded a large tract
*524] of country to the United States, a great portion of which, if not the whole, was within the limits of the thirteen states, and was claimed by several of the states, but was afterwards ceded to the United States. Thus, the United States became possessed of all these territories by cession, all of which, except that ceded by Georgia, having been acquired under the confederation, the people upon those territories became citizens of the United States by those cessions, and were entitled to all the rights and privileges of citizens. In the articles of confederation, there is no provision for acquiring rights to lands; but on the contrary, the lands within the territories of the several states, were considered as belonging to those states. By what authority did the confederation acquire a right to the lands ceded to them? Whence, then, did the confederation draw the capacity to take and hold those lands? Not from any municipal regulations, or from the laws of the states; or from the express terms of the articles of confederation; but from the great principles of public law. The powers of congress were to make war and peace, and to make treaties; and in those and the other powers, were included those under which territories were acquired and governed. That congress considered themselves possessed of those powers, is shown by the resolutions of 6th September 1780, and 10th October 1780, recommending to the states to cede their unappropriated lands; and also by the ordinance for the government of the territory north-west of the river Ohio, passed 13th July 1787.

That the inhabitants of the territories thus acquired, were citizens of the United States, is manifest, from the fact, that as soon as they were sufficiently numerous to protect themselves, and to form a state government, they became a part of the Union. The territories to which these observations apply, were not part of the nation, at the time of the establishment of the constitution. The circuit court, in delivering their opinion, draw a distinction between territories so situated, and those which were afterwards acquired. Is there any foundation for this distinction? The rights of the United States to hold territories, not a part of the nation, at the time of the confederation, in the same manner as the right to all those within the original thirteen states, is derived from the same universal principle of general law; from the powers of making peace and war, and of making treaties, &c.

It is necessary for the peace of the Union, that they should possess those powers.

In what relation, then, do the inhabitants of an acquired territory, *stand to the United States? Are they citizens or subjects? This is a grave question, and merits the serious consideration of the court. [*525 The first territory acquired by the United States, was Louisiana; and by the third article of the treaty, as well as by subseqent legislative acts, the inhabitants of the country became entitled to the privileges of citizens. The acquiescence of the people of the United States fully establishes, that the powers exercised in reference to Louisiana, were properly exercised. The third section, fourth article, of the constitution, authorizes the admission of new states into the Union. This section of the constitution gives to congress a power a power, only limited by their own discretion, to admit as many states as they may think proper, in what manner soever the territory composing those new states may have been acquired. After the acquisition of Louisiana, congress considered and treated the people of the country in the same manner they considered the inhabitants of every other territory of the United States,—as a part of the nation, at the time of the confederation. The various legislative acts in reference to Louisiana establish this position.

The next great acquisition of the United States by cession from a foreign government, was that of Florida from Spain. The sixth article of the treaty declares, "the inhabitants of the territories which his Catholic Majesty cedes to the United States by this treaty, shall be incorporated into the Union of the United States, as soon as may be consistent with the principles of the federal constitution, and admitted to the enjoyment of all the privileges, rights and immunities of citizens of the United States." The provisions of this article, in all respects similar to that on the Louisiana treaty, stipulating for the privileges of the inhabitants of the country, authorize the belief, that the government of the United States doubted their power, under the constitution, to receive a cession upon any other terms than that the people inhabiting the country should be citizens of the United States.

The act of congress, entitled "an act for the establishment of a territorial government in Florida," followed this treaty, and was passed 20th March 1802. The fifth section of this act constitutes a legislative body for the territory, and declares, that their legislative powers shall extend to all the rightful subjects of legislation; but no law shall be valid, which is inconsistent with the constitution and laws of the United States. The sixth section establishes the judicial power, and appoints a superior court, and gives the territorial *legislature power to establish inferior courts. [*526 The seventh section prescribes the jurisdiction of the superior court, and declares, that the said superior court shall have and exercise the same jurisdiction, within its limits, in all cases arising under the laws and constitution of the United States, which was vested in the court of the Kentucky district, by the judiciary act of 1789; and the act in addition thereto, of 2d March 1793; and writs of error and appeal from the decisions in the said superior court, authorized by this section of the act, shall be made to the supreme court of the United States, in the same cases, and under the same regulations, as from the circuit courts of the United States. By the eighth section, the judges of the superior courts, and other officers, are to

be appointed by the president, by and with the advice and consent of the senate; and all the judges are to take an oath to support the constitution of the United States, before they enter on the duties of their office; and the salaries of the governor, judges, &c., are to be paid out of the treasury of the United States. The 9th section declares, that certain acts of congress which are enumerated in the section, "and all other public laws of the United States, which are not repugnant to the provisions of this act, shall extend to, and have full force and effect, in the territory aforesaid." The 14th section provides for the appointment of one delegate to congress, for the territory.

The circuit court, in their opinion in this case, say, "they have the most explicit proof, that the understanding of the public functionaries, is, that the government of the United States does not extend to such territories, by the mere act of cession. For, in the act of congress of March 1822, section 9th, we have an enumeration of the acts of congress, which are to be held in force in the territory, and in the 10th section, an enumeration in the nature of a bill of rights and privileges, and which could not be denied to the inhabitants of the territory, if they came under the constitution, by the mere act of cession." An examination of the act will show that it does not warrant this construction. The 5th section declares, no law shall be passed by the territorial legislature, which is inconsistent with the constitution and laws of the United States. This shows that congress did consider the constitution and laws as extending there. Why prohibit the passage of a law inconsistent with them, if they had no operation there? The 7th section gives the supreme court jurisdiction in all cases, under the laws and constitution of the United States. Those laws must, therefore, have been con-
*527] sidered to extend *there, or why empower their enforcement by the supreme court? The 8th section provides for the appointment of the officers of the government, including the judges of the supreme court, by the president, by and with the advice of the senate. This manifests the admission, that the constitution extends there; as, by the constitution, this mode of appointment is established. The law also provides, that the officers of the territory, appointed according to its purposes, shall take an oath to support the constitution of the United States. Why take this oath, if that constitution does not extend to the territory? The payment of the officers of the territory, out of the treasury of the United States, which could not be constitutionally authorized by congress, unless the constitution operated there, may also be referred to, as evidence of the principles contended for by the appellants.

Because congress have enumerated certain laws as extending to the territory, in the 9th section of the act, it is inferred, that congress desired none other should extend there, and that, without such enactment, none would have been in operation there. The language of the section disaffirms this position. After enumerating certain acts, it closes with a provision, "that all the other public laws of the United States, which are not repugnant to the provisions of this act, shall extend to, and have full force in the territory." By the enumeration of "some laws," it is, therefore, evident, that congress did not mean to exclude those not enumerated. But it is said, the 10th section contains an enumeration in the nature of a bill of rights and privileges, which, if the constitution extended there, could not be denied,

This is not admitted. The introduction of this provision was necessary, for the purpose of controlling the powers granted to the local legislature, and to secure to the inhabitants rights which they had under the constitution, but which might have been otherwise infringed, unless provisions were made to carry the principles of the constitution into effect.

It has been shown: 1. That the people in the territories of the United States are citizens of the United States, entitled to all the benefits derived from the laws and constitution of the United States, and subject to all the provisions of the constitution, and the laws passed under it. 2. That in principle, there can be no difference between a territory formed out of a country, within the old limits of the United States, and a territory in newly-acquired country. 3. And that, therefore, the people of Florida, immediately *upon its cession, or at any rate upon the passing of the act instituting the territorial government, became citizens of the United [*528 States, to whom the laws and constitution extended.

The inquiry now is, whether, in establishing the court or tribunal by which the cotton claimed in this case was ordered to be sold, the legislature of Florida have not violated the constitution of the United States, and the laws of congress passed under it. If they have, then the court is an illegal court, and all its acts are void. It is not only upon general principles, that the act of establishing the court is invalid, but also by the provision of the act of congress, which prohibits the passing any law, inconsistent with the laws and constitution of the United States. In the article of the constitution relative to the judicial power of the government, it is declared, that it shall extend to all cases of admiralty and maritime jurisdiction. It has been shown, that the provision applies to territories as well as states; the constitution being necessarily paramount, within the limits of the United States. The constitution having vested the judicial power in a supreme court, and such inferior courts as congress may, from time to time, establish, the legislative power under this provision has been exercised by the acts of March 1822 and 1823. Superior courts has been erected, to which, in addition to the powers of territorial courts, jurisdiction is assigned within its limits, in all cases arising under the laws and constitution of the United States, which, by the judicial acts of the United States, was vested in the court of Kentucky district, with a right of appeal, and a writ of error to this court. By the same acts, authority is given to the territorial legislature, to establish inferior courts, strictly territorial, and the jurisdiction of which extends to subjects not within the cognisance of the tribunals of the Union.

What are the powers of the court of the Kentucky district? Among other subjects of jurisdiction in the district court of the United States, it is declared, by the ninth section of the judiciary act of 1799, "that they shall have exclusive original cognisance of all civil causes of admiralty and maritime jurisdiction, including all seizures under the laws of impost, navigation and trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden." Thus, the Kentucky district had exclusive cognisance of cases of admiralty and maritime jurisdiction, and consequently, it has exclusive control over cases of salvage. The tenth section provides, that the district court of Kentucky shall, besides the jurisdiction aforesaid, have jurisdiction *of all other causes, except of appeals, made cognisable in a circuit court, &c. It [*529

follows, from the provisions of the act relative to the territorial government, and its reference for the jurisdiction of the superior court, to that existing in the court of the Kentucky district, that in the superior court of Florida, there is exclusively jurisdiction over admiralty and maritime causes, and of course, of the claims of the salvors of the cotton, comprising part of the cargo of the Point à Petre. The jurisdiction is exclusive, for it could not be given to the territorial courts by an act of the territorial legislature, they not having the power to give it; the laws of the United States having vested it in the supreme court, having similar powers to the district court of Kentucky, and the powers of the territorial court being limited within the observance of the provisions of the laws of the United States.

Independent of the restriction imposed upon the territorial legislature, by which they were disabled from giving admiralty and maritime jurisdiction to the inferior courts of Florida, the constitution of the United States would have been violated by such legislation. The constitution is the supreme law of the land; and if, without a prohibition in the territorial law, the legislative authority of Florida could not "coin money" or "issue bills of credit," the establishing of a court with admiralty and maritime jurisdiction, would be equally repugnant to the constitution; such jurisdiction being exclusively, by the constitution, in courts established by congress.

It is said, in the opinion of the circuit court, that the jurisdiction in cases of salvage, is not vested by congress in the superior courts of Florida. A reference to the laws establishing the court of the district of Kentucky, and to the act relative to Florida, authorizes a different position. Jurisdiction is given, by those laws, "in cases arising under the constitution and laws of the United States." What is such a case? Is not the extent of the judicial power of the courts of the United States, a question arising under the constitution? The constitution having declared, that the judicial power shall extend to cases of admiralty and maritime jurisdiction, is not a case of admiralty jurisdiction, a question of this character? A prohibition in a state court in a case of admiralty jurisdiction, and a plea interposed, that exclusive cognisance of admiralty cases is in the courts of the United States, would at once raise a question under the constitution. The principle seems to be, that whenever a case arises, in which the question is, as to the jurisdiction of the courts of the United States, it is necessarily and always a question arising under the constitution and laws of the United States.

*A case of salvage does not, strictly speaking, arise under the laws and constitution of the United States, as the right to salvage [*530
depends on the principles of maritime law; but the amount of salvage, depends on the decision of a court, guided by the circumstances of the case, and exercising admiralty and maritime jurisdiction. Thus, as the jurisdiction over the case is given by the constitution, the decision upon it, becomes a case arising under the constitution. Whether a man is bound to pay a promissory note, is not a question of this description, and yet in cases of promissory notes held by the Bank of the United States, this court have always decided, that the courts of the United States have jurisdiction; because all actions brought by the bank, are cases arising under the constitution and laws of the United States. Congress could give this court jurisdiction of such cases, on no other principle. If, then, under a clause in

the constitution extending the judicial power of the United States to all cases arising under the constitution and laws of the United States, this court will sustain jurisdiction upon a promissory note, with the making of which, and the extent of the liability of the parties thereto, the constitution and laws of the United States have nothing to do; if those liabilities are questions arising under a different law, and the jurisdiction is sustained by the court, only in the particular case of the Bank of the United States, as a case arising under the constitution and laws of the United States; why is a different rule to apply in a case of salvage, of which the exclusive jurisdiction is given by the constitution and law, of the United States, to the district court? Is not the one as much a case arising under the laws of the United States, as the other?

Upon the whole, it is contended, that the superior courts of Florida, having the same jurisdiction in cases arising under the laws and constitution of the United States, as the district court of Kentucky had, under the acts of congress; and as the district court of Kentucky has exclusive jurisdiction in all civil cases of admiralty and maritime jurisdiction; that, therefore, the superior courts in Florida have exclusive jurisdiction in all civil, admiralty and maritime cases; that salvage is a case of admiralty and maritime jurisdiction; and that, therefore, any law of Florida, giving jurisdiction in a case of salvage to any other court, is unconstitutional; and all the acts of the court under it, are void.

Whipple and *Webster*, for the claimant.

Whipple contended:—1. That Canter was a purchaser at Key West of the property in question, which was sold by the consent of the owners. After the disaster and abandonment, the master of the Point *à Petre, [*531
acted as agent to the underwriters. When the cotton arrived at Key West, the salvors and the master were owners of it, as tenants in common. The master had a legal right to sell the proportion that belonged to the underwriters, or to consent to a division of it, through the agency of a court. He chose the latter mode. He himself, with the salvors, applied to the justice to issue process; and he co-operated in all the subsequent proceedings, and he received his proportion of the sale of the part of the cargo which was saved. These acts were subsequently ratified by the agent, who, it is in evidence, offered the claimant $7500 for his bargain. Upon these facts, it is contended, that the consent of the party operates as a change of title to the property. It will not supply a defect of power in the court, acting as a court, but the court is the mere organ of the will of the party. As between the original parties, the plaintiff may take advantage of the want of jurisdiction of the court to which he has resorted. But can he obtain judgment, proceed to execution, obtain a sale, under which a third person purchases; and then dispute the title of that third person, for an alleged want of jurisdiction in the court?

The court at Key West had jurisdiction, and its decree cannot be questioned. It may be proper to consider, in the first place, whether the jurisdiction of the Key West court, can be be inquired into by this court? Was it not the judge of its own jurisdiction? It was a muicipal court, acting *in rem*, under a municipal law. 2 Dall. 273; 2 W. Bl. 977; 4 T. R. 191; 2 H. Bl. 410; 4 Cranch 271, 268, 275–6, 293; 3 Wheat. 236, note; 15 Johns.

144 ; 1 Stark. 215–16 ; 9 Mass. 46 ; 9 East 192. In *Rose* v. *Himely*, 4 Cranch 268, it is said, "but of their own jurisdiction, so far as it depends on municipal laws, the courts of every country are the exclusive judges."

Can the Key West court be considered a foreign court ? It was constituted by congress, or by a power derived from congress ; yet it may be considered, that the United States has two sovereignties, one over the people of the United States, the other over the territories ; and that they are as foreign to each other, as the parliament of England, and the legislature of Jamaica ; and that the courts of each are as foreign as the courts of Westminster and Kingston. Perhaps, a distinction may be also taken between the power of this court, to inquire into the jurisdiction of another court, in a case in which a third person, not a party to the original suit, defends his right to the property purchased under that judgment, and a case where a party to the original judgment seeks to enforce that judgment in this court, and thereby to acquire new rights under it. Another *distinction
*532] may be taken, between a defect of jurisdiction, in consequence of the absence of some fact necessary to confer jurisdiction, and that want of jurisdiction, which arises from the different construction put upon a municipal law by this court, from the construction adopted by the municipal court.

Instead of considering the territorial court of Florida, a strictly foreign court, suppose the same right to inquire into the jurisdiction of a state court is admitted. As a general principle, it is true, that the proceedings of a court are void, unless it has jurisdiction over the subject-matter. This, however, like all general rules, has its limits and its qualifications. Whether the subject-matter (the person or property) is within the power of the court, is a question of fact, to be decided, generally, by the return of an officer. The court may be supposed to act upon the existence of that fact. When it is proved in another court, that the court whose jurisdiction is questioned had been deceived as to that essential fact, it does not impugn its judgment, to say, that it acted without jurisdiction. But the construction of the statutes of the states, is peculiarly the province of the courts of the state ; and a uniform construction becomes the settled law of the state. The jurisdiction cannot be settled in any other way, than by the courts of the state. It presents a question of law, and the decision of that question, though it relates to jurisdiction, is as binding upon the parties, as though it related to the merits of the case. The question as to the extent of the power of the court, under a statute, is a question of law, and the decision conclusive on the parties.

The courts of Florida alone, are to construe the acts of congress in relation to the jurisdiction of Florida. Had the justice, at Key West, jurisdiction of the question of salvage ? By the territorial act of 1823, called the "wreckers' act," it is admitted, that sufficient authority was given to the justice over this subject. The question arises out of the act of congress of March 1823, and is this—does that act of congress grant sufficient power to the legislature of Florida to pass such a law ? The act of congress of March 1823, authorizes the territorial legislature, "to legislate upon all rightful subjects of legislation." It makes it the duty of the governor to lay before congress, annually, all the acts passed by the legislature. If either of those acts are disapproved of by congress, it is, from thenceforth, to be of no effect. The act concerning wreckers was laid before *congress, in
*533] December 1823, and its attention particularly pointed to that subject,

by a memorial in which the necessity of such a law was enforced. Congress did not disapprove or annul that law, until 1826. In the opinion of congress, then, this law did not violate the provisions of the constitution, or of any general law of the United States. It ought to be noticed, that the right conferred on the territorial legislature "to legislate upon all rightful subjects of legislation," was qualified by the condition, that no law should be valid "if inconsistent with the constitution or laws of the United States."

Much argument has been used, in order to show that the constitution and laws of the United States are, *per se*, in force in Florida, and that the inhabitants are citizens of the United States. How the constitution became of force in Florida, has not been shown. Was it by the act of cession? Is there any principle in the law of nations, which, upon the act of cession or conquest, gives to the ceded or conquered country a right to participate in the privileges of the constitution of the parent country? The usages of nations, from the period of Grecian colonization, to the present moment, are precisely the reverse. Such a right never was asserted. The constitution was established by the people of the United States, for the United States. It provides for the future admission of territories into the Union, and expressly confers upon congress the power of governing them as territories, until they are admitted as states. If the constitution is in force in Florida, why is it not represented in congress? Why was it necessary to pass an act of congress extending several of the laws of the United States to Florida? Why did congress designate particular laws, such as the crimes act, the slave-trade and revenue acts, and introduce them as laws into Florida? Why enumerate particular rights secured to the people of the United States, if the inhabitants of Florida were entitled to them upon the act of cession?

It is denied, that *all* the cases of admiralty and maritime jurisdiction are exclusively vested in the courts of the Union. On the contrary, it is asserted, that many cases within the admiralty are also within the common-law jurisdiction of the state courts. Seamen's wages, salvage, marine torts, collision, &c., are of this description. 2 Doug. 614; Abb. on Ship. 433, 436; 3 Bos. & Pul. 612; 8 East 57; 2 Selw. N. P. 1287; 1 Johns. 175; 1 Nott & McCord 170; 18 Johns. 257; 2 Gallis. 399; 1 Kent's Com, 351–2.

If, however, salvage is admitted to be exclusively vested in *the courts of the United States, as a part of their admiralty jurisdiction, [*534 how does that deprive congress of the power of distributing that jurisdiction among the courts of the territories, as it pleases? It is vested in the courts of the Union, exclusive of the courts of the states. The state courts are constituted by state legislatures, over which congress has no control. They are, in a measure, adverse jurisdictions. If it be admitted, that congress has no power to vest any part of admiralty jurisdiction in the state courts, over which it has *no* control, how does it follow, that it has no power to vest it in a territorial court, over which it *has* control?

Congress can constitute new courts within the states, and confer portions of admiralty jurisdiction upon them. It can confer that jurisdiction upon the superior or inferior courts of the territory, or it can authorize the territorial legislature to do it. And this, whether the constitution is, or is not, in force in Florida. The power of congress over the territory is the same in the one case as in the other. The constitution authorizes congress to provide for the government of the territories. It has all the power over them

that congress and the legislature of the state have over a state. Its power to appoint courts of admiralty jurisdiction, can be as legally delegated, as its power to appoint any other courts. All the courts of Florida, whether appointed by congress, or by the territorial legislature, are dependent upon congress, and are courts of the United States. They are, therefore, upon the admission of the opposite counsel, capable of receiving grants of admiralty jurisdiction. It is only state courts, which are independent of congress, that cannot be clothed with such power. If the power of congress to distribute admiralty jurisdiction among the courts of the territory, as it pleases, is denied, its power to distribute it among the courts of the United States as it pleases, must be denied. Of what consequence is it, then, whether the constitution is, or is not, in force in Florida, since the constitution excludes the state courts alone from the exercise of admiralty jurisdiction?

The ground assumed is this, that congress authorized the territorial legislature "to legislate upon all rightful subjects of legislation," unless inconsistent with the constitution. That salvage is a rightful, and in Florida, a necessary subject of legislation; that the necessary import of the words of this grant includes the exercise of the power in question; that the exercise of that power, by enacting the wreckers' act, was not inconsistent with the constitution or laws of the United States; and that, consequently, it must be supported, unless it can be clearly shown, that it is inconsistent with some other parts of the act of congress of March 1823. *This
*535] is attempted, by resorting to the 8th section, which confers jurisdiction upon the superior courts of Florida. These superior courts were appointed by congress, and jurisdiction was conferred by congress, and the argument is, that as congress have conferred exclusive admiralty jurisdiction upon these courts of its own appointment, that the power given to the legislature in the same act, to appoint other inferior courts, and "to legislate upon all rightful subjects of legislation," was not intended to include the power over subjects of admiralty jurisdiction.

As the necessary import of the terms of the grant to the legislature does include the power in question, it must be shown, that the necessary import of the grant of jurisdiction to the superior courts excludes it. Words of a clear import are not to be controlled by other words in the same statute, unless their import is equally clear; for doubtful words shall not limit the operation of clear and precise ones. Two propositions must be established, as the necessary result of these words of the 8th section. 1st. That an exclusive admiralty jurisdiction is conferred upon the superior courts. 2d. That that exclusive jurisdiction extends to all cases.

The words are the "same jurisdiction." And it is argued, that because the jurisdiction of the Kentucky court was exclusive, that these terms, necessarily, vest an exclusive jurisdiction in the superior courts. The grant is "the same jurisdiction." Must it necessarily be exclusive in Florida, because it was exclusive in Kentucky? Are the terms, exclusive or concurrent, parts or qualities of the jurisdiction, so that a grant of the principle carries them along with it, as incidents? Or are they, in fact, no part of the jurisdiction itself, but terms used to express the relation which that court has to some other court? Is not the term "exclusive," intended to prohibit other courts from exercising the same jurisdiction? Is a jurisdiction

more extensive, when *exclusive*, or less so, when *concurrent?* Is it not precisely the same, in the one case as in the other? The power of the court over the parties, the subject-matter and the process, is the same in the one case as in the other. A grant, then, of the "same jurisdiction," does not necessarily carry with it the same relation to other jurisdictions. It may be concurrent in Kentucky, and exclusive in Florida. Suppose, two courts in Florida, whose jurisdiction extended over the same district. Congress confers upon these two courts the "same jurisdiction," that the Kentucky court possessed. It was exclusive in Kentucky, but as it was conferred on two courts, would it not be concurrent in Florida?

These terms, then, do not necessarily import an exclusive jurisdiction, *and ought not to limit the grant of power to the legislature. The intention of congress might have been one way or the other; it is [*536 probable, they did not intend an exclusive jurisdiction. In Kentucky, this admiralty power is exclusive of the state courts, over which congress has no control. Why, in Florida, should it be exclusive of the territorial courts, over which congress had a control? The libellants, then, fail to establish the first proposition, that the necessary import of the terms confers an exclusive jurisdiction on the superior courts. The second proposition, it is apprehended, cannot be established, which is, that jurisdiction over all cases, to which the jurisdiction of the Kentucky court extended, was intended to be conferred. The words of the act are "all cases arising under the laws of the United States."

It is at once perceived, that unless it can be established, that the case of salvage tried before the justice and jury, was a case arising under the law of the United States, that congress have not conferred jurisdiction over it, on the superior courts, and consequently, that the territorial legislature had the right of conferring it upon an inferior court. The reasoning adopted to show, that it was a case arising under the laws of the United States, is somewhat novel. The jurisdiction of the justice depended upon the territorial law; the right of the territorial legislation to enact that law depended on the act of congress; it was, therefore, a case arising under the laws of the United States. And the case of *Osborn* v. *Bank of the United States*, 9 Wheat. 73, is relied upon as an authority.

The case of *Osborn* v. *The Bank*, did not involve the right of the bank to sue in a particular court, nor a mere question of jurisdiction, but the right of the bank to sue in any court; its right to a legal existence. The fact of the legal existence of the bank, depended on a law of the United States. The decision of the question settled the case between the parties; no suit could be afterwards bronght by the bank in another court. But, if the justice in Florida had decided against his own jurisdiction, it would have left the rights of the parties as they were before, to be decided upon in another court. It would have effected the remedy in that court, and that alone. Besides, if every case which involves a question of jurisdiction under a law of the United States, is a case arising under the laws of the United States, then, every case which by possibility can be brought in the Kentucky court, is of that description, because every case involves that question. What meaning then have the words "arising under the laws of the United States?" Why not omit them entirely, and read the section thus, "the same jurisdiction, in all cases, which the Kentucky court

*has." If these words do not limit the grant to cases where some right is claimed under a law, they are wholly inoperative.

It will be found, not only that these words are inoperative, upon the construction of the libellants, but that distinct and independent provisions in the act of congress of 1824, are also inoperative. Immediately following these words conferring jurisdiction upon the superior courts, it is provided, that "all cases arising under the laws of the United States," shall be tried the first six days of the term, and all other cases afterwards; that in such cases, the clerk shall have the same fees that the clerks of the district courts have, but in all other cases, such fees as the legislature shall establish. Now, if every case brought in a territorial court, involves a question of the jurisdiction of the court, and that alone gives it the character of "a case under the laws of the United States," according to the meaning of congress, how can the distinction as to the time of trial, and the amount of fees exist? Congress has established two classes of cases, one under, and the other not under, the law of the United States. The libellants say, there is but one class. All cases brought in the courts of Florida are cases arising under the laws of the United States, because they all involve a question of jurisdiction. This view of the subject appears conclusive.

The whole case results in this, that congress, being the sovereign, *de facto*, or under the constitution of Florida, had a right to provide for its government by a direct or a delegated exercise of power, or by both. That it had the right of distributing all branches of judicial power among the several courts of Florida, as it pleased, and how it pleased, and this, to the same extent, if the constitution is, or if it is not, *per se*, in force in Florida.

That the grant of power to the territorial legislature clearly embraces the exercise of it in question, and that so far from a clear grant of exclusive jurisdiction in all admiralty cases, being conferred upon the superior courts, which could alone limit the grant of power to the legislature, that it is very doubtful, whether any exclusive jurisdiction was intended, and if it was, it was only in relation to cases in which some right or power is claimed under a law of the United States. It is agreed, that salvage is not of that description, unless the possibility of a question of jurisdiction makes it so.

Webster.—This will be a hard case against the claimant of the property, should he lose it, having purchased it in good faith under the decree of a court exercising jurisdiction over the matter, and to which jurisdiction, no objection was made by the parties to the proceeding. *How did the district court of South Carolina obtain jurisdiction in this case? No wrong was done—no tort was committed. That court had not, therefore, jurisdiction of the subject. Salvage is too indefinite a term, to designate jurisdiction. Marine salvage, when the service has been rendered at sea, may form a proceeding in the admiralty, but in this case, the services were after the vessel was a wreck; and therefore, the same principles do not apply. This proceeding is in the nature of an action of trespass; the process was against the *res*, and the person of the claimant; and because there had been a question of salvage in the court under whose decree the *res* is held by the claimant, it does not follow, that there is jurisdiction in the courts of the United States. It is said, the property has not passed by any valid decree, and trespass or trover would lie.

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Has there been such judicial sale, as conveyed the property to the claimant? If not, the insurance companies claim to hold the property. What is Florida? It is no part of the United States. How can it be? how is it represented? do the laws of the United States reach Florida? Not unless by particular provisions. The territory, and all within it, are to be governed by the acquiring power, except where there are reservations by treaty. By the law of England, when possession is taken of territories, the king, *jure coronæ*, has the power of legislation, until parliament shall interfere. Congress have the *jus coronæ* in this case, and Florida was to be governed by congress as she thought proper. What has congress done? she might have done anything—she might have refused the trial by jury, and refused a legislature. She has given a legislature, to be exercised at her will; and a government of a mixed nature, in which she has endeavored to distinguish between state and United States jurisdiction, anticipating the future erection of the territory into a state. Does the law establishing the court at Key West, come within the restrictions of the constitution of the United States? If the constitution does not extend over this territory, the law cannot be inconsistent with the national constitution.

It is said, that the court erected for the territory by the law of the United States, has exclusive jurisdiction over this case, and that the interference of the local legislature is unauthorized. Does the law erecting the superior court of Florida, give this exclusive jurisdiction? The jurisdiction given to the Florida court is the same as that given to the district court of Kentucky; and as the district court of Kentucky has jurisdiction of all cases arising *under the laws of the United States, it is inferred, that the same is vested in the Florida court. But it does not follow, from the language of the acts, that the jurisdiction is exclusive; and thus the power of the court erected by the legislature of Florida, may be and was concurrent. The main point in this case is, whether it is a case arising under the constitution of the United States? What are the cases which are referred to in provision? and is this one? [*539

The principles of those cases have been examined, and enough has been settled, to show that this is one which does not so arise. A case is not one arising under a law of the United States, because, in some part of it, a question may arise under a law of the United States. The meaning of the provision of the constitution cannot be, that when a law of the United States can have any influence in a case, it is to be considered as one arising under the law of the United States. How does the cause before the court arise under a law of the United States? It is a claim for salvage. The goods are brought into Key West, and there is no law of the United States limiting or fixing the amount of salvage. Salvage is not a right arising under a law of the United States; it is a common-law right; and the action for its recovery, or the rate to be allowed, does not depend upon any law of the United States. It cannot be claimed, that any laws operated in the case, unless the general laws which extended over the territory. The case of *Osborn* v. *Bank of the United States*, decided in this court, does not apply to this case. The law giving to the bank their charter, gave to that institution a power to sue in the courts of the United States. But as has been stated, the salvors of the cotton did not claim salvage under any law of the Union. The

salvage might have been sued for, wherever the goods could be found and libelled, in England or in France, or elsewhere.

The argument, that this court should lay its hands on the proceedings of the courts of Key West, because of the great injuries sustained by merchants and underwriters, if it could, at any time, have force here, cannot have it now; as the law establishing the court which is so much complained of, has been repealed.

Ogden, in reply.—The place where the service is done, ascertains the jurisdiction. It is upon this principle, that questions of seamen's wages are subjects of admiralty jurisdiction, and entertained in admiralty courts; and upon this principle, the case before the court is of admiralty cognisance. The whole of the services of the salvors were at sea; the place where the Point à Petre was wrecked, was at a distance from the main-land, and there the goods were saved. *It is admitted, that for the cotton, *540] which is the subject of this suit, an action of trover will lie; but this is a concurrent remedy with that afforded in a court of admiralty.

Territories acquired by conquest, and by cession, stand under different relations to the United States. Where territories are ceded, they become part of the United States; it has been the uniform understanding, that this shall be the case. Those territories obtained by treaties with France and Spain, were so considered, and the provisions in those treaties, relative to the rights and privileges of the inhabitants, were introduced, under the belief that congress would not interfere. The act relative to the territory of Florida provides, that no law shall be passed against the provisions of the constitution of the United States. The officers appointed under it, take an oath to support the constitution, and thus, the full force and operation of the constitution is acknowledged in the territory.

By the constitution, the courts of the United States have jurisdiction in all cases of admiralty and maritime jurisdiction; and it, therefore, follows, that this is exclusive. What courts have congress ordained and established in the territory of Florida, to exercise the jurisdiction assigned by the constitution to the courts of the United States? The law establishes a superior court, with general jurisdiction, similar to the courts established in the states; it then provides, that inferior courts may be erected by the territorial legislature, whose jurisdiction shall not exceed one hundred dollars; and it is afterwards said in the law, that the superior court shall, in addition to the defined powers, exercise all such powers as are granted to the United States court of Kentucky. The court established in Kentucky has given to it admiralty and maritime jurisdiction, and therefore, the superior court of Florida has the same jurisdiction. If, then, it is given by congress to the superior court, it exists nowhere else.

It is said, that congress has given to the territorial legislature all the rights of legislation they have. Legislative powers cannot be delegated: *delegatus non potest delegare.* Whether the territorial court had jurisdiction, is a question arising under the constitution of the United States. How else does it arise? Suppose, a jurisdiction in admiralty cases, assumed by New York, during a war. How can the powers thus assumed be examined before the courts of the United States, but by affirming the acts to be void by the constitution and laws of the United States?

This is a question of salvage ; and had the territorial court jurisdiction of salvage ? If the cotton was not sold under the decree of a court competent to decide such a question, the *property is not changed. [*541
Does the territorial act give the jurisdiction ? The powers of courts formed under the territorial law, being limited to controversies not exceeding one hundred dollars, the limitation has been exceeded ; and the provisions for the establishment of the court are, therefore, void.

Marshall, Ch. J., delivered the opinion of the court.—The plaintiffs filed their libel in this cause, in the district court of South Carolina, to obtain restitution of 356 bales of cotton, part of the cargo of the ship Point à Petre ; which had been insured by them, on a voyage from New Orleans to Havre de Grace, in France. The Point à Petre was wrecked on the coast of Florida, the cargo saved by the inhabitants, and carried into Key West, where it was sold, for the purpose of satisfying the salvors, by virtue of a decree of a court, consisting of a notary and five jurors, which was erected by an act of the territorial legislature of Florida. The owners abandoned to the underwriters, who having accepted the same, proceeded against the property ; alleging that the sale was not made by order of a court competent to change the property.

David Canter claimed the cotton as a *bonâ fide* purchaser, under the decree of a competent court, which awarded seventy-six per cent. to the salvors, on the value of the property saved. The district judge pronounced the decree of the territorial court a nullity, and awarded restitution to the libellants, of such part of the cargo as he supposed to be identified by the evidence ; deducting therefrom a salvage of fifty per cent. The libellants and claimant both appealed. The circuit court reversed the decree of the district court, and decreed the whole cotton to the claimant, with costs ; on the ground, that the proceedings of the court at Key West were legal, and transferred the property to the purchaser. From this decree, the libellants have appealed to this court.

The cause depends, mainly, on the question whether the property in the cargo saved, was changed, by the sale at Key West. The conformity of that sale to the order under which it was made, has not been controverted. Its validity has been denied, on the ground, that it was ordered by an incompetent tribunal. The tribunal was constituted by an act of the territorial legislature of Florida, passed on the 4th July 1823, which is inserted in the record. That act purports to give the power which has been exercised ; consequently, the sale is valid, if the territorial legislature was competent to enact the law.

The course which the argument has taken, will require, that, *in [*542
deciding this question, the court should take into view the relation in which Florida stands to the United States. The constitution confers absolutely on the government of the Union, the powers of making war, and of making treaties ; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty. The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is

annexed; either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such transfer of territory, it has never been held, that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse, and general conduct of individuals, remains in force, until altered by the newly created power of the state.

On the 2d of February 1819, Spain ceded Florida to the United States. The 6th article of the treaty of cession, contain the following provision: "The inhabitants of the territories, which his Catholic Majesty cedes to the United States by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the federal constitution; and admitted to the enjoyment of the privileges, rights and immunities of the citizens of the United States." This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights and immunities of the citizens of the United States. It is unnecessary to inquire, whether this is not their condition, independent of stipulation. They do not, however, participate in political power; they do not share in the government, till Florida shall become a state. In the mean time, Florida continues to be a territory of the United States; governed by virtue of that clause in the constitution, which empowers congress "to make all needful rules and regulations, respecting the territory, or other property, belonging to the United States."

Perhaps, the power of governing a territory belonging to the United States, which has not, by becoming a state, acquired the means of self-government, may result necessarily from the fact, that it is not within the jurisdiction of any particular state, and is within the power and jurisdiction
*543] of the United *States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned. In execution of it, congress, in 1822, passed "an act for the establishment of a territorial government in Florida;" and on the 3d of March 1823, passed another act to amend the act of 1822. Under this act, the territorial legislature enacted the law now under consideration.

The 5th section of the act of 1823, creates a territorial legislature, which shall have legislative powers over all rightful objects of legislation; but no law shall be valid, which is inconsistent with the laws and constitution of the United States. The 7th section enacts, "that the judicial power shall be vested in two superior courts, and in such inferior courts, and justices of the peace, as the legislative council of the territory may, from time to time, establish." After prescribing the place of session, and the jurisdictional limits of each court, the act proceeds to say, "within its limits herein described, each court shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all capital offences; and original jurisdiction in all civil cases of the value of one hundred dollars, arising under and cognisable by the laws of the territory, now in force therein, or which may, at any time, be enacted by the legislative council thereof." The 8th section enacts, "that

each of the said superior courts shall moreover have and exercise the same jurisdiction, within its limits, in all cases arising under the laws and constitution of the United States, which, by an act to establish the judicial courts of the United States, approved the 24th of September 1789, and an act in addition to the act, entitled an act to establish the judicial courts of the United States, approved the 2d of March 1793, was vested in the court of Kentucky district."

The powers of the territorial legislature extend to all rightful objects of legislation, subject to the restriction, that their laws shall not be "inconsistent with the laws and constitution of the United States." As salvage is admitted to come within this description, the act is valid, unless it can be brought within the restriction. The counsel for the libellants contend, that it is inconsistent with both the law and the constitution; that it is inconsistent with the provisions of the law, by which the territorial government was created, and with the amendatory act of March 1823. It vests, they say, in an inferior tribunal, a jurisdiction, which is, by those acts, vested exclusively in the superior courts of the territory.

*This argument requires an attentive consideration of the sections which define the jurisdiction of the superior courts. The 7th section [*544 of the act of 1823, vests the whole judicial power of the territory "in two superior courts, and in such inferior courts, and justices of the peace, as the legislative council of the territory may, from time to time, establish." This general grant is common to the superior and inferior courts, and their jurisdiction is concurrent, except so far as it may be made exclusive in either, by other provisions of the statute. The jurisdiction of the superior courts is declared to be exclusive over capital offences; on every other question over which those courts may take cognisance by virtue of this section, concurrent jurisdiction may be given to the inferior courts. Among these subjects, are "all civil cases arising under and cognisable by the laws of the territory, now in force therein, or which may at any time be enacted by the legislative council thereof."

It has been already stated, that all the laws which were in force in Florida, while a province of Spain, those excepted which were political in their character, which concerned the relations between the people and their sovereign, remained in force, until altered by the government of the United States. Congress recognises this principle, by using the words "laws of the territory, now in force therein." No laws could then have been in force, but those enacted by the Spanish government. If, among these, a law existed on the subject of salvage, and it is scarcely possible there should not have been such a law, jurisdiction over cases arising under it, was conferred on the superior courts, but that jurisdiction was not exclusive. A territorial act, conferring jurisdiction over the same cases on an inferior court, would not have been inconsistent with this section.

The 8th section extends the jurisdiction of the superior courts, in terms which admit of more doubt. The words are "that each of the said superior courts shall, moreover, have and exercise the same jurisdiction, within its limits, in all cases arising under the laws and constitution of the United States, which, by an act to establish the judicial courts of the United States, was vested in the court of the Kentucky district." The 11th section of the act declares, "that the laws of the United States, relating to the revenue

and its collection, and all other public acts of the United States, not inconsistent or repugnant to this act, shall extend to, and have full force and effect, in the territory aforesaid."

The laws which are extended to the territory by this section, were either for the punishment of crime, or for civil *purposes. Jurisdiction is *545] given in all criminal cases, by the 7th section, but in civil cases, that section gives jurisdiction only in those which arise under and are cognisable by the laws of the territory : consequently, all civil cases arising under the laws which are extended to the territory by the 11th section, are cognisable in the territorial courts, by virtue of the 8th section ; and in those cases, the superior courts may exercise the same jurisdiction as is exercised by the court for the Kentucky district.

The question suggested by this view of the subject, on which the case under consideration must depend, is this—Is the admiralty jurisdiction of the district courts of the United States vested in the superior courts of Florida, under the words of the 8th section, declaring that each of the said courts "shall, moreover, have and exercise the same jurisdiction, within its limits, in all cases arising under the laws and constitution of the United States," which was vested in the courts of the Kentucky district? It is observable, that this clause does not confer on the territorial courts all the jurisdiction which is vested in the court of the Kentucky district, but that part of it only which applies to "cases arising under the laws and constitution of the United States." Is a case of admiralty, of this description?

The constitution and laws of the United States give jurisdiction to the district courts over all cases in admiralty ; but jurisdiction over the case, does not constitute the case itself. We are, therefore, to inquire, whether cases in admiralty, and cases arising under the laws and constitution of the United States, are identical. If we have recourse to that pure fountain from which all the jurisdiction of the federal courts is derived, we find language employed which cannot well be misunderstood. The constitution declares, that "the judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases affecting ambassadors, or other public ministers and consuls ; to all cases of admiralty and maritime jurisdiction." The constitution certainly contemplates these as three distinct classes of cases ; and if they are distinct, the grant of jurisdiction over one of them, does not confer jurisdiction over either of the other two. The discrimination made between them, in the constitution, is, we think, conclusive against their identity. If it were not so, if this were a point open to inquiry, it would be difficult to maintain the proposition that they are the same. A case in admiralty does not, in fact, arise under the constitution or laws of the United States. These cases *are as old as *546] navigation itself ; and the law admiralty and maritime, as it has existed for ages, is applied by our courts to the cases as they arise. It is not then to the 8th section of the territorial law, that we are to look for the grant of admiralty and maritime jurisdiction to the territorial courts. Consequently, if that jurisdiction is exclusive, it is not made so by the reference to the district court of Kentucky.

It has been contended, that by the constitution the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction ;

and that the whole of this judicial power must be vested "in one supreme court, and in such inferior courts as congress shall from time to time ordain and establish." Hence, it has been argued, that congress cannot vest admiralty jurisdiction in courts created by the territorial legislature. We have only to pursue this subject one step further, to perceive that this provision of the constitution does not apply to it. The next sentence declares, that "the judges both of the supreme and inferior court, shall hold their offices during good behavior." The judges of the superior courts of Florida hold their offices for four years. These courts, then, are not constitutional courts, in which the judicial power conferred by the constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the constitution, but is conferred by congress, in the execution of those general powers which that body possesses over the territories of the United States. Although admiralty jurisdiction can be exercised in the states, in those courts only which are established in pursuance of the third article of the constitution; the same limitation does not extend to the territories. In legislating for them, congress exercises the combined powers of the general, and of a state government.

We think, then, that the act of the territorial legislature, erecting the court by whose decree the cargo of the Point à Petre was sold, is not "inconsistent with the laws and constitution of the United States," and is valid. Consequently, the sale made in pursuance of it changed the property, and the decree of the circuit court, awarding restitution of the property to the claimant, ought to be affirmed, with costs.

Decree affirmed.