*The Mayor, Aldermen and Inhabitants of the City of New Orleans, Plaintiffs in error, *v.* Christoval G. De Armas and Manuel Simon Cucullu.

Federal jurisdiction.

A lot of ground, situated in the city of New Orleans, which was occupied, under an incomplete title, for some time, by permission of the Spanish government, granted before the acquisition of Louisiana by the United States, was confirmed to the claimants, under the laws of the United States, and a patent was issued for the same, on the 17th of February 1821. The city of New Orleans claiming this lot as being part of a quay dedicated to the use of the city, in the original plan of the town, and therefore, not grantable to the King of Spain, enlarged the levee, in front of New Orleans, so as to include it. The patentees from the United States brought a suit in the district court of the state of Louisiana for the lot, which pronounced judgment in their favor, and that judgment was affirmed by the supreme court of the state; the judgment was removed to this court, under the 25th section of the judiciary act; a motion was made to dismiss the writ of error for want of jurisdiction. The merits of this controversy cannot be revised in this tribunal; the only inquiry here is, whether the record shows that the constitution, or a treaty, or a law of the United States has been violated by the decision of that court.

The 25th section of the judiciary act is limited by the constitution, and must be construed so as to be confined within these limits; but to construe this section so that a case can arise under the constitution or a treaty, only when a right is created by the constltution or treaty, would defeat the obvious purpose of the constitution, as well as the act of congress; the language of both instruments extends the jurisdiction of this court to rights protected by the constitution, treaties or laws of the United States, from whatever source these rights may spring.[1]

To sustain the jurisdiction of this court in this case, it must be shown, that the title set up by the city of New Orleans, is protected by the treaty ceding Louisiana to the United States, or by some act of congress applicable to that title.

The third article of the treaty of Louisiana stipulates for the admission of Louisiana into the Union, and it obviously contemplates two objects; one, that stated; and the other that, until that admission, the inhabitants of the ceded territory shall be protected in the enjoyment of their liberty, property and religion; had any of these rights been violated, while the stipulation continued in force, the individual supposing himself to be injured, might have brought his case into this court, under the 25th section of the judiciary act.

But this stipulation ceased to operate, when Louisiana became a member of the Union, and its inhabitants were "admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States." The right to bring questions of title decided in a state court before this tribunal, *is not classed among those immunities; the inhabitants of Louisiana enjoy all the advantages of American citizens, in common with their brethren in [*225
their sister states, when their titles are decided by the tribunals of the state.

The act of congress admitting Louisiana into the Union, carries into execution the third article of the treaty of cession; and cannot be construed to give appellate jurisdiction to the court over all questions of title between the citizens of Louisiana.

The patent granted to the claimants of the land did not profess to destroy any previous existing

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[1] See Crowell *v.* Randell, 10 Pet. 368, for a review of the cases arising under the 25th section of the judiciary act. It was there decided, that to bring a case within that section, it must appear upon the face of the record: 1. That some one of the questions stated in that section did arise in the state court. 2. That the question was decided in the state conrt, as required in the same section. 3. That it is not necessary that the question should appear on the record to have been raised, and the decision made, in direct and positive terms; *ipsissimis verbis*; but that it is sufficient, if it appears by clear and necessary intendment, that the question must have been raised, and must have been decided, to have induced the judgment. 4. That it is not sufficient to show, that a question might have arisen, or been applicable to the case; unless it is further shown, on the record, that it did arise, and was applied by the state court to the case. (p. 398.) These points have been re-affirmed in numerous subsequent cases, and have never been departed from.

title, nor could it so operate; the patent was issued under the act of May 1820, entitled "an act supplementary to the several acts for the adjustment of land titles in the state of Louisiana; that act confirms the titles to which it applies, "against any claim on the part of the United States;" the title of the city of New Orleans could not be affected by this confirmation. It is a principle applicable to every grant, and it cannot affect pre-existing titles. United States *v.* Arredondo, 6 Pet. 733, cited.

Error to the Supreme Court of Louisiana. The defendants in error commenced a petitory action, by filing a petition in the first district court in and for the first judicial district for the state of Louisiana, claiming to be the owners of a lot of ground, in the city of New Orleans, eighty feet front, and close to the foot of the Old Levee, between St. Philip's and Maria streets; and stating that the lot had formerly been built upon, and had been possessed by a certain Thomas Beltran, or Bertrand, with the knowledge, permission and authorization of the Spanish government, from March 1788, to 1803, and by his widow, who afterwards demolished the buildings, and removed to another part of the city. The widow, acting for herself and the minors, took all the legal steps to have the title confirmed by the United States; and the commissioners of the land-office reported on the title, that "it would be more an act of justice than of generosity, if the government should confirm it." The commissioners under the act of congress of 11th May 1820, entitled "an act supplementary to the several acts for the adjustment of land-claims in the state of Louisiana," confirmed the title against any claim of the United States; and a patent for the same was granted to the widow and heirs of Bertrand. After the death of the widow, the petitioners became the owners of the property by purchase from her heirs—they being also the heirs of Bertrand.

*226] The petition proceeded to state, that prior to the cession of Louisiana by France, the lot of ground belonged to the King of France; and by the laws of Spain, which were introduced into the colony of Louisiana, after the said cession, the King of Spain, by his officers, had the full right of disposing of the same. By the retrocession of the colony to France by Spain, the right to the lot of ground became vested in France, if it was not the property of Bertrand; and the same right was not divested by any act done by the King of Spain, except in favor of Bertrand. That, by the treaty of cession of Louisiana to the United States by France, the United States clearly acquired every lot of ground, land, squares (*emplacemens terrains*), buildings, fortifications and edifices therein, which were not private property; and that the grant made by the afore-mentioned letters-patent, therefore, justly and lawfully vested in the said widow of Bertrand, with all the rights of ownership and possession, which all the different governments who had possessed Louisiana, had or could have to the said lot of ground. The petition alleged, that the corporation of New Orleans, under the pretence that the lot claimed by the petitioners was a part of certain quays marked on a plan of the city, had enlarged the levee in front of the city, so as to include the same, and pretended that they had just title to this lot; and prayed process, &c., and that it might be adjudged and decreed, that the petitioners were the only true and lawful owners and proprietors of the above-described property; and that the said mayor, aldermen and inhabitants had no right whatever in, to or upon the same.

The answer of the corporation of New Orleans denied that there had

been an absolute grant of the lot in question by the Spanish government to Bertrand, but only a permission to build a temporary cabin thereon; and asserted, that the patent of the United States could not be a good title thereto. They insisted, that it had been determined in 1812 or 1813, in a suit brought by the corporation against the widow and heirs of Bertrand, that the latter had no title to the lot, and was compelled to take down the buildings thereon. The answer proceeds as follows: "And the said defendants further say, that even supposing, which they do deny, that the Spanish government would have, at any time, made an absolute grant of the said parcel of land *to the said Beltran or Bertrand; the said grant should [*227 be null and void, because the said parcel of land made a part of the quays of this city; that is, one of those public things which even the sovereign himself had no authority to dispose of, to the prejudice of the public, without a flagrant abuse of his powers. And these defendants further say, that at the time of the foundation of the city of New Orleans, under the French government; said government left between the bank of the river Mississippi and the first row of houses fronting said river, a large space, emptied and unoccupied, under the name of quays, and intended to serve and to be reserved as such for the use of the inhabitants of this city, as they exist in the several cities of France, and in her colonies; and as it is proved by the ancient plans of the city of New Orleans, which have been preserved in the office of the marine charts, maps and plans, which existed at Versailles, in France."

After proceeding to take the evidence of witnesses, and on the exhibition of their testimony, with the documentary evidence of the parties; the district court, on the 12th of March 1832, gave a judgment in favor of the petitioners in the following terms:

"The plaintiffs allege, that the widow Gonzales, from whom they derive title, obtained a grant from the United States of the lot in question, and that the defendants have extended the levee so as to embrace said lot, and conclude with the payer, that they may be decreed to be the lawful owners, and the defendants enjoined from disturbing them in the free enjoyment of their rights as owners of said lot. The defendants oppose this claim upon several grounds; but the only one which can be relied upon with any hope of success is, that the space between the front buildings of the city and the river was, at the time the city was laid off, under the government of France, intended to be kept open for public use, designated as a quay, and which could not be the subject of a grant. If the facts, as stated in the answer, were true, the conclusion drawn from them would be undeniable. The sovereign could not cede what had been already granted, unless there be retrocession or forfeiture. The only evidence in support of the defendant's claim is a fac-simile of a plan made by Charlevoix, and by him *stated [*228 to be copied from a plan deposited in the marine office, made by N. B., Ing. de la M., 1744, and on which is marked on the space between the front of the city and the river, the word 'quay.' Names do not change the nature of things; a quay is an artificial work, and may belong to an individual as well as a corporation; but to belong to either, it must not only exist and have a defined extent, but must be shown to have been granted. It is self-evident to every one who has seen this space of ground, that it is not a quay. The defendants have shown no other title which can be validly

opposed to the grant under which the plaintiffs claim; there is no material difference between this and the case of *Metzinger* and the defendants; that was a grant under the King of Spain; this a grant under the United States, who have succeeded to the same rights. Had the defendants sheltered themselves under their charter, and shown that the public safety required that the base of the levee should be extended, to prevent inundation, or that it was necessary for a public way, the case might have presented a different aspect. It is ordered and decreed, that the defendants be enjoined not to disturb the plaintiffs in the possession and free exercise of their rights, in and to the lot mentioned and described in their petition, and that the defendants pay costs."

From this decision, the corporation of New Orleans appealed to the supreme court of the state of Louisiana. In February 1833, the supreme court affirmed the judgment of the inferior court, and the case was finally disposed of, by a judgment in favor of the original petitioners—a rehearing having been refused, on the 27th of March, in the same year. The mayor, aldermen and inhabitants prosecuted this writ of error; and the following errors in the judgment of the supreme court of Louisiana, were assigned by the plaintiffs in error, and came up with the record.

"The judgment of the supreme court of the eastern district of the state of Louisiana, affirming the judgment of the court of the first district of said state, is erroneous, and ought to be reversed, and judgment ought to be rendered in favor of the plaintiffs in error, with costs; for the following reasons, and such others as may appear on the record.

*229] *1. The spot of ground in controversy makes part of an open space in front of the city of New Orleans, called a pay, which by the ancient plans of the city was constituted a quay, or public place, and dedicated to public use, as well by its designation on said plans, as by the sovereign authority, and by its use and occupation for public purposes.

2. The right of the former sovereigns of Louisiana over this place was a matter of prerogative, varying according to the institutions of the different governments which have held Louisiana, but always inseparable from the sovereignty.

3. The right of use of this place by the public is a vested right; is a species of property in which the inhabitants of Louisiana are protected under the third article of the treaty of cession.

4. By the treaty of cession, Louisiana was ceded in full sovereignty to the United States.

5. The United States held this sovereign power, during the time they held the sovereignty of Louisiana; but by the admission of Louisiana into the Union, this branch of sovereignty was vested in the state of Louisiana, and under the constitution, could not exist in the United States.

6. The power of regulating the use or of appropriating or changing the destination of public places belongs to the sovereign power alone.

7. Since the admission of Louisiana into the Union on a footing with the original states, the United States had no power to interfere with the property or use of any public place in Louisiana.

8. The plaintiffs in error, who are, under the laws of Louisiana, the proper parties to vindicate the public rights, held the place in controversy, by permission of, and by the authority of, the state of Louisiana, as will

appear by the charter of the city of New Orleans and the laws of the state, and claimed the undisturbed use thereof, by virtue of the treaty of cession, and under the act of congress, passed on the 8th of April 1812, for the admission of Louisiana into the Union; and the decision of the supreme court of the eastern district of Louisiana is against the title, rights and privileges thus claimed by the plaintiffs in error, and this is contrary to the provisions of the treaty and law of the United States; and ought, therefore, to be reversed.

Clay and *Porter*, for the defendants in error, moved to dismiss [*230 the writ or error for want of jurisdiction.

The jurisdiction will be attempted to be sustained, on the allegation that the questions in the cause depend on the treaty by which Louisiana was ceded to the United States. It was understood, that in some cases the court had permitted a cause to be argued on the merits, before the question of jurisdiction was decided: but this was when the whole of the matters in the cause were so intermixed as not to permit the point of jurisdiction to be separately examined. Such is not the fact in this case; the question of jurisdiction stood forth from the merits. If the jurisdiction can be supported, it will rest on the first, second and third articles of the Louisiana treaty, and principally on the third article, which declares that Louisiana shall be incorporated into the Union, and in the meantime that the inhabitants should be protected in their property. The execution of the provision of the treaty to incorporate Louisiana, as a state of the Union, was looked to, in thus securing the property of the inhabitants. It was not necessary to provide for the rights of property afterwards. From the time of the incorporation, property in the state was held under the guarantee of the constitution of the United States, as the property of the citizens of other states is held. After the admission of Louisiana into the Union, as a state, the treaty ceased to operate. From that time, the rights of property depend upon, and are to be decided by the laws and by the courts of the state.

But if these are not the effects of the admission of Louisiana into the federal family, this is not a case arising under the treaty. The purpose of the 25th section of the judiciary law, under which the jurisdiction in this case is claimed to exist, is to enable this court to carry the constitution, treaties and laws of the United States into execution. *Owings* v. *Norwood's Lessee*, 5 Cranch 344. The case must arise out of—spring out of, a treaty; be created by the treaty, or the right claimed be given by the treaty, and which requires the courts of the United States to give force to the treaty.

The title of the defendants in error originated during the existence of the right of the Spanish crown to Louisiana; and *was afterwards [*231 confirmed by patent from the United States. The plaintiffs in error claim the lot in controversy as a part of a quay which belonged to the inhabitants of New Orleans, and so designated in a map; it having, as they allege, been appropriated for public use, before the cession of the territory. Thus, both the parties claim under the Spanish crown, and assert their rights as having existed prior to the treaty; and neither claims under the treaty. The treaty has nothing to do with the title of either; and in the state courts, nothing was said of it. The property was granted, before the treaty, to

Bertrand; and is now in the grantees of his heirs, under the Spanish grant; or, at the time of the cession, it was vacant, and has since been granted by a patent, and is held under that patent.

Again, it is not a case arising under the treaty, in which the decision has been against the treaty; the decision is in favor of the treaty. Both the corporation of New Orleans, and the defendants in error, were intended to be secured by the treaty. The decision of the supreme court of Louisiana is in favor of a right under the treaty, and under a patent granted by a law of the United States. There is, thus, a perfect neutrality in the parties as to the treaty.

It is now contended, that the plaintiffs in error claim under the act of congress of 1812, by which Louisiana was admitted into the Union, as a state. It has not been before asserted, that the city of New Orleans claimed under that law. The question in the courts of Louisiana was, whether the King of Spain had granted, and whether he had authority to grant, the lot in controversy; it having been previously dedicated to public uses. The city of New Orleans claimed under a dedication in 1788. The act of 1812 did not interfere with or affect either of these asserted rights. It did not authorize the state of Louisiana, thus made a sovereign state, to interfere with the rights of the city of New Orleans. The property never belonged to the state of Louisiana. If, at the time of the admission of the state into the Union, this property passed to or belonged to the state, the state might interfere in the question between the parties to this case, which has not yet taken place. But if such right existed, or does exist, it may yet be presented, as it could not be affected by the decision in this case. Louisiana, as a state, *has no other right to come into this court, than have the other states of the Union.

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Webster, against the motion.—It has not been the practice of the court to discuss questions of jurisdiction, when so intimately blended with the facts and merits of the case, as are these in the cause now before them. If they find the question so connected, they postpone a decision until the whole argument is heard; and this is desired by the plaintiffs in error.

It early became a question, in what manner the questions in a case, which had been before a state court, should be made to appear, so that jurisdiction of them could be taken in this court. It became afterwards settled, that if, in the whole proceeding, it was manifest, that a party set up, under a law or treaty, or the constitution, a right, and a decision was against that right, this court could intervene and exercise its revising power over the case. The only question in this case is, therefore, whether a right of this kind was claimed by either of the parties now before the court.

The question of jurisdiction is identical with the main question between the parties. The claim of the plaintiffs below was founded on a patent from the United States; and the state court held it valid. Thus, their whole title depends upon the validity of the patent. The claims of the city of New Orleans are under the treaty, by which the property of those claiming under the governments which had held Louisiana, was assured to them. The corporation of New Orleans claim under the treaty, asserting that the property was dedicated to public uses, and belonged to the city of New Orleans. The principles on which their right rests, were settled in this court, in the Cin-

cinnati and Pittsburgh cases. *Barclay* v. *Howell*, 6 Pet. 498; *City of Cincinnati* v. *White*, Ibid. 431. It the property in dispute was in the inhabitants of New Orleans, at the time of the treaty; it was out of the power of the United States to grant it to those under whom the defendants in error claim. The decision was against the treaty, which secured the property to the plaintiffs in error; and in favor of a patent which was given in violation of the treaty. The question is, whether the act of 1812 operates in the *case? The treaty is part of the title which was completed by that act. The creation of Louisiana into a state, made this state the [*233 guardian and trustee of all the property which had, before that event, become vested in the inhabitants of that part of the territory of Louisiana. The rights thus guarantied by the creation of the state of Louisiana by the act of 1812, have been disregarded by the supreme court in their decision in favor of a patent issued after that act.

The assignment of errors shows that the protection of the treaty was claimed by the plaintiffs in error in the state court; and the opinion of Judge Martin, one of the judges of the supreme court of Louisiana, is also evidence of this position. The application of the act of 1812 to the case, was in that court overruled; and the plaintiffs in error say, that in so doing, the court misconstrued the act. The plaintffs in error contend, that the lot in question was appropriated land in 1788; and by the act of 1812, it passed as such into the jurisdiction of the state of Louisiana, as the other property of citizens or inhabitants of the state, and could not afterwards be interfered with or granted by the United States. The effect of the act of 1812, was, to transfer the property to the state for the use of the inhabitants.

There are many rights which are in the state, which, if violated, may be brought before this court. Thus, rivers and highways, if interfered with, are such rights. Could not Louisiana, in cases of this kind, come into this court, under the act of 1812?

Marshall, Ch. J., delivered the opinion of the court.—The appellees claim title to a lot of ground in the city of New Orleans, as purchasers from the heirs of Catharine Gonzales, the widow of Thomas Beltran, *alias* Bertrand, who had been in possession of the lot, for several years, by permission of the Spanish government. This incomplete title was regularly confirmed under the laws of the United States, and a patent was issued for the premises to Catharine Gonzales, on the 17th of February 1821. The city of New Orleans, claiming this lot as being part of a quay, dedicated to the use of the city in the original plan of *the town, and therefore, not grantable by the king, has enlarged the levee so as to embrace it. The [*234 appellees brought their petitory action in the district court of the state of Louisiana, praying to be confirmed in their rights to the said lot of ground, and that the corporation might be enjoined from disturbing them in the exercise thereof. The district court pronounced its judgment in favor of the petitioners, which, on appeal, was affirmed by the supreme court of the state. This judgment of affirmance has been removed into this court, under the 25th section of the judiciary act.

The merits of the controversy cannot be revised in this tribunal. We can inquire only whether the record shows that the constitution, or a treaty, or a law of the United States, has been violated by the decision of the state

court. The appellees move to dismiss the writ of error, because no such violation appears. In support of this motion, the counsel has, we think, in his argument, prescribed too narrow a principle for the action of this court. He says, very truly, that the 25th section of the judiciary act is limited by the constitution, and must be construed so as to be confined within those limits; but he adds, that a case can arise under the constitution or a treaty, only when the right is created by the constitution or by a treaty. We think differently. This construction would defeat the obvious purpose of the constitution, as well as of the act of congress. The language of both instruments extends the jurisdiction of this court to rights protected by the constitution, treaty or law of the United States, from whatever source those rights may spring.

To sustain the jurisdiction of the court in the case now under consideration, it must be shown, that the title set up by the city of New Orleans, is protected by the treaty ceding Louisiana to the United States, or by some act of congress applicable to that title. The counsel in support of the motion contends, and we think correctly, that the treaty does not embrace the case. The first article makes the cession, and the second describes its extent, as comprehending every right vested in France. The third is expressed in
*235] these words, "the inhabitants of the *ceded territory shall be incorporated in the union of the United States, and admitted, as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess." No other article of the treaty is supposed to contain any stipulation for the rights of individuals. This article obviously contemplates two objects: one, that Louisiana shall be admitted into the Union, as soon as possible, upon an equal footing with the other states; and the other, that, until such admission, the inhabitants of the ceded territory shall be protected in the free enjoyment of their liberty, property and religion. Had any one of these rights been violated, while this stipulation continued in force, the individual supposing himself to be injured, might have brought his case into this court, under the 25th section of the judiciary act. But this stipulation ceased to operate, when Louisiana became a member of the Union, and its inhabitants were "admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States." The right to bring questions of title decided in a state court, before this tribunal, is not classed among these immunities. The inhabitants of Louisiana enjoy all the advantages of American citizens, in common with their brethren in their sister states, when their titles are decided by the tribunals of the state.

The counsel for the appellant scarcely hopes to maintain the jurisdiction of the court under the treaty, but seems to rely on the act of congress for admitting the state of Louisiana into the Union. The section of that act which is supposed to apply, is in these words, "be it enacted, &c., that the said state shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union, on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana." This simply carries into execution the third article of the treaty of cession; and cannot, as has already been observed, be con-

strued to give appellate jurisdiction to this court over all questions of title between the citizens of Louisiana. If, in any case, such jurisdiction could be supposed to be given, it might *be, where an act of congress attempted to divest a title which was vested under the pre-existing [*236 government. Therefore, the counsel opposing the motion contends, that the jurisdiction of the court is involved in the merits of the controversy, and cannot be separated from them. We do not think so. The controversy in the state court was between two titles : the one, originating under the French, the other, under the Spanish government. It is true, the successful party had obtained a patent from the United States, acknowledging the validity of his previous incomplete title under the King of Spain. But this patent did not profess to destroy any previously existing title ; nor could it so operate, nor was it understood so to operate by the state court. It appears from the petition filed in the district court, that the patent was issued in pursuance of the act of the 11th of May 1820, entitled, "an act supplementary to the several acts for the adjustment of land-claims in the state of Louisiana." That act confirms the titles to which it applies, "against any claim on the part of the United States." The title of the city of New Orleans could not be affected by this confirmation. But, independently of this act, it is a principle applicable to every grant, that it cannot affect pre-existing titles. *United States* v. *Arredondo*, 6 Pet. 738.

The judgment of the state court appears on the record to have depended on, and certainly ought to have depended on, the opinion entertained by that court, of the legal rights of the parties under the crowns of France and Spain. The case involves no principle on which this court could take jurisdiction, which would not apply to all the controversies respecting titles originating before the cession of Louisiana to the United States. It would also comprehend all controversies concerning titles in any of the new states, since they are admitted into the Union by laws expressed in similar language. The writ of error is dismissed, this court having no jurisdiction of the cause.

On consideration of the motion made in this cause, on a prior day of the present term of this court, to wit, on Saturday, the 24th of January past, and of the arguments of counsel thereupon had, as well for the plaintiffs in error as for the *defendants in error : It is now here ordered and adjudged by this court, that this writ of error to the supreme [*237 court of the state of Louisiana for the eastern district, be and the same is hereby dismissed, for the want of jurisdiction.