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of interpreting the words of the Constitution relating to it has been overcome. And if we will but rid ourselves of those doubts in respect to what are cases for a maritime court caused by the limitation of them in England, I do not think we shall ever be at a loss to determine what cases are within the admiralty jurisdiction of the courts of the United States; and I believe the whole of them will be found to make no trespass upon, or interference with, the jurisdiction of the other courts of the United States, or with those of the States, either as to the modes of proceeding in them, or as to the suits of which they have cognizance.

Mr. Justice CATRON.

On the question of jurisdiction, for want of which this cause has been dismissed, I am not satisfied either way, and therefore give no opinion.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Massachusetts, and was argued by counsel. On consideration whereof, it is the opinion of this court, that neither the said Circuit Court, nor the District Court from which this case was removed to the said Circuit Court, had jurisdiction of this cause, and that consequently this court has not jurisdiction but for the purpose of reversing the decree of the said Circuit Court. Whereupon, it is now here ordered and decreed by this court, that the decree of the said *738] Circuit Court, entertaining *jurisdiction in this cause, be, and the same is hereby, reversed for the want of jurisdiction in that court; and that this appeal be, and the same is hereby, dismissed for the want of jurisdiction; and that this cause be, and the same is hereby, remanded to the said Circuit Court, with directions to proceed therein in conformity to the opinion of this court.

HEZEKIAH SMITH, PLAINTIFF IN ERROR, v. WILLIAM HUNTER, TREASURER OF BUTLER COUNTY, JAMES B. CAMERON, AUDITOR OF BUTLER COUNTY, AND THE PRESIDENT AND TRUSTEE OF THE MIAMI UNIVERSITY.

Where a complainant alleged that a school tax, which was levied upon his land, was contrary to the spirit and meaning of a law of the State of Ohio

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which exempted his property from all State taxes, and conflicted also with the terms and conditions of the leases by which he held his land, and the State court dismissed the bill, this decision of the State court cannot be reviewed by this court by a writ of error issued under the twenty-fifth section of the Judiciary Act.

The rules which regulate cases brought up to this court under that section again examined and affirmed.¹

THIS case was brought up from the Supreme Court of Ohio, by a writ of error issued under the twenty-fifth section of the Judiciary Act.

The facts were these :—

By the fourth section of the act of Congress of the 3d of March, 1803, to enable the State of Ohio to form a State constitution, (2 Stat. at L., 226,) a township of land, to be laid off in the Cincinnati land district, was granted to the State of Ohio for the purpose of establishing an academy.

On the 17th of February, 1809, the legislature of the State of Ohio passed an act entitled "An act to establish the Miami University." (Pamphlet Acts of 1809, page 184.)

That act incorporated the university, provided for its support, government, &c. Section tenth vested the above-mentioned township in the corporation, for the use and support of the university, and authorized the corporation to divide the township into lots, and lease them out for the term of ninety-nine years, renewable for ever, subject to a valuation every fifteen years. The thirteenth section exempts the township from all State taxes. It reads in these words :— "That the lands appropriated and vested in the corporation, with the buildings which may be erected thereon for the accommodation of the president, professors, and other officers, students, and servants of the university, and any buildings appertaining thereto, and also the dwelling-house and other buildings which may be built and erected on the lands, *shall be exempt from all State taxes." Under this [*739 act the university lands were divided into lots and leased out, the plaintiff in error being the lessee of a part of them.

On the 16th of March, 1839, the legislature of Ohio passed an act entitled "An act providing for the levying of a school tax in Oxford township, in Butler county." Local Laws of Ohio, p. 235 of Pamphlet Acts.

The township here named is the university township. The first section of the act directs the county commissioners of that county to appoint appraisers in the township of Oxford "to appraise the lands held under permanent leases

¹ See post, *743 n.

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in said township at their true value in money, considered in their natural state," taking into view the rent encumbrance upon the same, payable to the university.

The second section of the act is in these words:—"Said commissioners shall, in addition to the levying of a tax on personal property in said township, authorize the levying of a school tax annually upon the *ad valorem* amount of appraisement in said township, the property of blacks and mulattoes excepted, not exceeding one mill on the dollar, which assessment shall be made by the county auditor, and collected by the county treasurer, in the same manner as other county, township, or State taxes are levied and collected."

The third section provides, that "the taxes so levied and collected under the provisions of this act shall be appropriated exclusively for the support of common schools in the respective districts in the township of Oxford; and in the disbursement of the same, the provisions of the act entitled 'An act for the support and better regulation of common schools, and to create permanently the office of superintendent,' passed March 7th, 1838, shall be conformed to, at least so far as it is practicable to carry out the objects of this act, having in view the support of common schools in the said township of Oxford."

Under this last-named act, a tax for the support of common schools in Butler township was levied on the university lands, and, among others, on the lands of the plaintiff in error. Whereupon he filed his bill in chancery in the Court of Common Pleas for said county of Butler, setting out in substance the facts as above stated, and praying that the treasurer and auditor of the county might be enjoined from collecting said tax, on the ground that it was imposed in contravention of the terms of his lease, and of the act of the 17th of February, 1809, to establish the Miami University.

The defendants demurred to this bill, and on the hearing the demurrer was sustained and the bill dismissed. From this decree of the Common Pleas the plaintiff appealed to *740] the Supreme *Court of Ohio, where, upon hearing on the demurrer, the bill was again dismissed. From this last decree the plaintiff sued out a writ of error into this court.

It was argued by *Mr. Schenck*, for the plaintiff in error, and *Mr. Vinton*, for the defendants in error.

Mr. Schenck contended that the case was drawn into the jurisdiction of this court,—

1st. Because it arises under a law of the United States.

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It presents, in fact, a question as to the effect and objects of a grant of lands made in pursuance of an act of Congress for the purposes of education, and how far the same may be interfered with and controlled by State legislation.

2d. Because it is claimed that the act of the legislature of Ohio of 1839, taxing these lands, conflicts with a former act of the legislature in 1809, exempting them from taxation, and, being in violation of the rights of lessees (of whom the complainant is one) under that act of 1809, is a law impairing the obligation of contracts.

Mr. Vinton denied the jurisdiction of this court, and contended also that State taxes in Ohio were clearly distinguished from county and road and school and bridge taxes, which were entirely local, and not included in the exemption from State taxes.

Mr. Justice DANIEL delivered the opinion of the court.

This is a writ of error to the Supreme Court of Ohio, prosecuted under the twenty-fifth section of the act to establish the judicial courts of the United States, and arises out of the following facts and proceedings.

By the fourth section of an act of Congress of the 3d of March, 1803, (2 Stat. at L., 226,) a township of land in the Cincinnati land district was granted to the State of Ohio for the purpose of establishing a university.

On the 17th of February, 1809, the legislature of Ohio, by law, incorporated and established the Miami University, and, by the tenth section of this law, vested the township above mentioned in the corporation, for the support of the university, and authorized it to divide the township into lots, and to make leases of these lots for the term of ninety-nine years, renewable for ever, but subject to a valuation at intervals of fifteen years. The thirteenth section of the law contains the following provision:—"That the lands appropriated and vested in the corporation, with the buildings which may be erected thereon for the accommodation of the president, professors, and other officers, students, and servants of the university, and any buildings *appertaining thereto, and also [*741 the dwelling-house and other buildings which may be built and erected on the lands, shall be exempt from all State taxes." Under the authority of this law of Ohio, the lands vested in the university were divided into lots and leased out, and the plaintiff in error became the lessee of a part of them. On the 16th of March, 1839, the legislature of Ohio passed an act entitled "An act providing for the levying of a school

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tax in Oxford township, in Butler county." The township of Oxford is the same which was vested in the Miami University by the law of the 17th of February, 1809. The first section of the law of 1839 provided that the county commissioners of Butler county should appoint one or more appraisers in the township of Oxford, whose duty it should be to appraise the lands held under permanent leases in said township at their true value in money, considered in their natural state, and that, in making such appraisement, they should take into view the rent encumbrance upon the same annually or otherwise payable to the Miami University by reason of the condition of the leases under which such lands are holden. The third section of the act of 1839 appropriates the taxes thereby ordered to be assessed and levied on the lands in Butler county exclusively to the support of the common schools in the school districts of the township of Oxford, and directs the disbursement of the amount of these taxes in conformity with the provisions of a statute of Ohio for the regulation of common schools, passed on the 7th of March, 1838. The lease under which the plaintiff in error claims sets out specially the extent of his tenure, with the privilege of perpetual renewal, and, in general terms, refers to all the privileges and immunities granted to the lessees of the university by the several acts and laws of the State. In consequence of a demand made by the auditor and treasurer of Oxford township for the taxes assessed on the lands held by the plaintiff for the use of the common schools of that township, the plaintiff filed his bill in the Court of Common Pleas of Butler county, making defendants thereto the auditor and treasurer of the township and the trustees of the Miami University, and praying that the auditor and treasurer and their successors might be perpetually enjoined from collecting of the plaintiff any taxes whatsoever enacted by the State and imposed on the lands held by him under leases from the president and directors of the Miami University. The plaintiff claims an exemption from the payment of all taxes, under the provision of the tenth section of the act of 1809, and insists that the law of 1839 is inconsistent with the privilege or exemption secured to him by the former law. The bill was demurred to by the defendants; the demurrer was sustained *742] by the Court of *Common Pleas, and the bill directed to be dismissed; and upon an appeal to the Supreme Court of the State, the decree of the Court of Common Pleas was in all respects affirmed.

In considering this case, a difficulty meets us at the threshold in the question of jurisdiction. This being neither an

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appeal from, nor writ of error to, a court of the United States, but a case brought hither under the twenty-fifth section of the Judiciary Act, it must fall within some of the categories prescribed by that section, in order to justify the cognizance of it by this court; and this must appear too in the modes, and to the extent, which this court has repeatedly and distinctly announced. It is contended, in the argument on behalf of the plaintiff in error, that the act of the legislature of Ohio, of March 6th, 1839, is an invasion of his right to exemption from taxes, or rather *from all taxation*, alleged to have been conferred by the act of 1809, and therefore an infringement of that portion of the tenth section of the first article of the Constitution of the United States, which prohibits the passing of laws by the States impairing the obligation of contracts. On the other hand, it is insisted for the defendants, that the phrase "State taxes," contained in the law of 1809, was and is applicable to a well-known distinction between taxes for general revenue, and payable as a portion of the public fisc, and county or township dues levied by local power, and applicable only to purposes which were local and limited in their character. The latter would seem to be the interpretation adopted by the courts of Ohio of the two laws in question; they must have been regarded as reconcilable and consistent with each other, to justify the dismissal of plaintiff's bill on the merits. But whether these statutes of Ohio be reconcilable with each other, or in conflict with themselves and with the above-cited article of the Constitution, is a matter into which, according to the record before us, we do not think it material to inquire. The pleadings in this cause nowhere allege any right, title, or interest derived from or under any authority of the United States, nor the violation of any right, title, or interest so derived, nor any violation of the Constitution, nor of any right guaranteed thereby. Nothing of this kind is apparent either on the face of the decree of the Court of Common Pleas, or of that of the Supreme Court of Ohio. The course of decision here, as to the requisites apparent upon the record to invest this court with jurisdiction under the twenty-fifth section of the Judiciary Act, would seem too clear, and too well established, to be misunderstood; but whether understood or regarded by parties or by counsel, this court cannot permit the disturbance of a settled rule of practice, whereby great confusion and *inconvenience would of necessity be induced. Some [*743 of the positions ruled by this court, upon the subject of jurisdiction, under the twenty-fifth section, will be here adverted to. In *Montgomery v. Hernandez*, 12 Wheat., 129, it is said that

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“the Supreme Court has no jurisdiction under the twenty-fifth section of the Judiciary Act, unless the right, title, privilege, or exemption under a statute or commission of the United States be *specially set up*, by the party claiming it, in the State court, and the decision be against the same.” In the case of *Crowell v. Randell*, 10 Pet., 392, the court, after reviewing all the previous cases touching the question of jurisdiction under the twenty-fifth section of the Judiciary Act, some of which cases were calculated to shed doubt upon the meaning of the statute, lays down these clear and well-defined propositions. That to give this court jurisdiction, two things should have occurred and be apparent on the record,—first, that some one of the questions stated in the section *did arise* in the court below; and secondly, that a decision was actually made thereon by the same court, in the manner required by the section. That if both these do not appear on the record, the appellate jurisdiction fails. It is not sufficient to show that such a question *might have occurred, or such a decision might have been made in the court below*. It must be demonstrable, *that they did exist, and were decided*. In the case of *McKinney v. Carroll*, 12 Pet., 66, it is said, two things must be *apparent on the record*, to give the Supreme Court jurisdiction under the twenty-fifth section of the Judiciary Act;—first, that some one of the questions stated in that section did arise in the State court; and secondly, that a decision was actually made thereon in the manner required by the section.

The same positions are ruled, almost in the identical words, in the cases of *Coons v. Gallaher*, 15 Pet., 18, and of *Fulton v. McAfee*, 16 Pet., 149.

In the last case which will be here cited, that of *Armstrong v. The Treasurer of Athens County*, reported in 16 Pet., 281, this subject of jurisdiction under the twenty-fifth section of the Judiciary Act appears to have been still more elaborately treated than it had been previously done, and the law concerning it propounded in a series of six plain propositions; they are as follow. That to give jurisdiction, it must appear on the *record itself* that the case is one embraced by the section,¹—first, either by express averment or by necessary intendment in the pleadings in the case; secondly, by directions given by the court, and stated in the exceptions; or, thirdly, when the proceedings are according to the laws of Louisiana, by the statement of the facts, and of the decis-

¹ FOLLOWED. *Nelson v. Lagow*, 12 *phia*, 20 Id., 28. CITED. *Doe v. Eslava*, How., 109; *Christ Church v. Philadel-* 9 How., 444.

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ion as is usually made in *such cases by the court; fourthly, it must be entered on the record of the proceedings of the appellate court, in cases where the record shows that such a point may have arisen and may have been decided, that it was a fact raised and decided, and this entry must appear to have been made by order of the court or by the presiding judge by order of the court, and certified by the clerk as part of the record in the State court; or, fifthly, in proceedings in equity, it may be stated in the body of the final decree of the State court; or, sixthly, it must appear from the record, that the question was necessarily involved in the decision, and that the State court could not have given the judgment or decree without deciding it.

Thus, with respect to the construction proper to be given to the twenty-fifth section of the Judiciary Act, and with respect also to the modes of presenting upon the records from the State courts the questions arising under that section, which can properly draw the decisions of those courts within the cognizance of this tribunal, we find a series of adjudications embracing and settling the law as to both these subjects. The rules and principles settled by those adjudications are entirely approved, and could not be disturbed without much inconvenience and mischief. Recurring to the record of the case under consideration, and regarding it as deficient in all the requisites to give jurisdiction, according to the express demands of the authorities cited, we therefore adjudge and order, that the writ of error in this case be dismissed.

ORDER.

This cause came on to be heard on the transcript of the record of the Supreme Court of the State of Ohio, and was argued by counsel. On consideration whereof, and it appearing to the court here, from an inspection of the transcript of the record, that there is nothing upon its face to give this court jurisdiction in the case, it is thereupon now here ordered and adjudged by this court, that this cause be, and the same is hereby, dismissed for the want of jurisdiction.

*WILLIAM McDONALD, ADMINISTRATOR OF DUNCAN
MCARTHUR, DECEASED, PLAINTIFF IN ERROR, v.
MATTHEW HOBSON. [*745]

Where the complainant and respondent in a suit in chancery entered into a mutual covenant, that, pending the suit, they would divide the money