*ADAM L. MILLS, JOHN H. GAY, CHARLES MULLIKIN, JOHN O'FALLON, WILLIAM C. WIGGINS, ANDREW CHRISTY, ELIZABETH CHRISTY, MARY F. CHRISTY, MELANIE CHRISTY, WHICH MELANIE IS THE WIDOW, AND WHICH SAID ELIZABETH CHRISTY AND MARY F. CHRISTY ARE THE ONLY CHILDREN AND HEIRS AT LAW OF SAMUEL C. CHRISTY, DECEASED,—SAID CHILDREN BEING INFANTS, AND APPEARING BY SAID MELANIE, THEIR NEXT FRIEND, —EMILY PRATTE, WIDOW OF BERNARD PRATTE, LEWIS PENGUET, AND THERESE, HIS WIFE, STEPHEN F. NIEDLET AND CELESTE, HIS WIFE, LOUIS V. BOGY AND PELAGIE, HIS WIFE, JOSEPH BLAINE AND AIMI, HIS WIFE, WHICH SAID EMILY PRATTE, BERNARD PRATTE, THERESE PENGUET, CELESTE NIEDLET, PELAGIE BOGY, AND AIMI DIANE BLAINE, ARE CHILDREN AND ONLY HEIRS AT LAW OF BERNARD PRATTE, DECEASED, PLAINTIFFS IN ERROR, *v.* THE COUNTY OF ST. CLAIR AND JAMES HARRISON.

In the year 1819, the Legislature of Illinois authorized Samuel Wiggins, his heirs and assigns, to establish a ferry on the east bank of the River Mississippi, near the town of Illinois, and to run the same from lands "that may belong to him," provided the ferry should be put into actual operation within eighteen months.

At this time he had no land, but within the eighteen months acquired an interest in a tract of one hundred acres.

In 1821, another act was passed, authorizing him to remove the ferry "on any land that may belong to him" on the said Mississippi River, under the same privileges as were prescribed by the former act.

The words of this act, "on any land that may belong to him," must be construed to apply to the lands which then belonged to him, and not to such as he obtained after the passage of the act, viz., in 1822.[1]

The following rules for construing statutes applied to the case, viz.:—

First,—That in a grant, designed by the sovereign power making it to be a general benefit and accommodation to the public, if the meaning of the words be doubtful, they shall be taken most strongly against the grantee and for the government; and therefore should not be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed; and if these do not support the right claimed, it must fall.[2]

Secondly,—If the grant admits of two interpretations, one of which is more extended, and the other more restricted, so that a choice is fairly open, and either may be adopted without any apparent violation of the apparent objects of the grant, if in such case one interpretation would render the grant inoperative and the other would give it force and effect, the latter, if within a reasonable construction of the terms employed, should be adopted.

The jurisdiction of this court, under the twenty-fifth section of the Judiciary Act, extends to a review of the judgment of a state court, where the point involved was the alleged violation of a contract granting a ferry right by a

[1] APPLIED. *Sullivan* v. *Board of Supervisors*, 58 Miss., 801. CITED. *Conway et al.* v. *Taylor's Exec.*, 1 Black, 630.

[2] FOLLOWED. *Rice* v. *Railroad Co.*, 1 Black, 380. CITED. *Minturn* v. *Larue*, 23 How., 437.

state to an individual, but it does not extend to a case where the alleged violation of a contract is, that a state has taken more land than was necessary for the easement which it wanted, and thus violated the contract under which the owner held his land by a patent. It rests with state legislatures and state courts exclusively to protect their citizens from injustice and oppression of this description.[3]

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

Mills and others filed their bill in chancery in the state court of Illinois, seeking to obtain an injunction against the defendants *in error. The bill states the case of [*570 the complainants as follows:—

The people of the western part of Illinois had from the earliest settlement of that country, maintained a constant commercial intercourse with the town of St. Louis, and long felt the necessity for increased facilities in crossing the Mississippi River. For the purpose of securing these facilities, the state made a contract with Samuel Wiggins for the establishment of a ferry across that stream, with boats to be propelled by steam or horse power. An act of the General Assembly was passed, which was approved on the 2d of March, 1819, which was as follows:—

"An act to authorize Samuel Wiggins to establish a Ferry upon the Waters of the Mississippi. Approved March 2, 1819.

"SEC. 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, that Samuel Wiggins, his heirs and assigns, be, and they are hereby, authorized to establish a ferry on the waters of the Mississippi, near the town of Illinois in this state, and to run the same from lands at the said place that may belong to him. Provided, that he shall not use any boat or water-craft, except such as shall be propelled or urged to the water by steam, horses, oxen, or other four-footed animals. Provided, that the said Samuel Wiggins, his heirs and assigns, shall have the said ferry in actual operation within eighteen months from and after the passage of this act.

"SEC. 2. And be it further enacted, that no person or persons, except those who have ferries now established at this place, shall establish any ferry of the description aforesaid within one mile of the ferry established under this act. And if any person or persons shall, contrary to the provisions of this act, run any boat or boats of the description aforesaid, he,

[3] CITED. *Dodge* v. *Woolsey*, 18 How., 379.

she, or they shall forfeit every such boat, with its furniture and apparel, to the said Samuel Wiggins, his heirs and assigns, which may be attached and recovered before any court in this state having competent jurisdiction.

"SEC. 3. And be it further enacted, that it shall and may be lawful for the said Samuel Wiggins, his heirs or assigns, to demand and receive the same rates of ferriage as are now of right demandable at the ferry established nearest to the ferry authorized to be established by this act. Provided, that no more shall be charged for a wagon, cart, or other carriage, if loaded, than could be charged if empty.

"SEC. 4. And be it further enacted, that the ferry hereby
*571] established shall be subject to the same taxes as are now, or hereafter *may be, imposed on other ferries within this state, and under the same regulations and forfeitures. And that if the provisions of the second section of this act shall be made to appear to the General Assembly to be injurious to the public good, that then, and in such case, the said second section may be repealed."

At the date of this act, Wiggins did not own any land near the town of Illinois; but within the time allowed by the act for the establishment of the ferry, he purchased a tract of land of one hundred acres, and established the ferry, with boats propelled by horses, according to the terms of the act.

He increased the means of transportation as the public wants required, and changed the boats employed from boats propelled by horses to boats propelled by steam, so as to comply with the letter and spirit of his contract with the state of Illinois, and meet all the demands of the increasing population and commerce.

The bill claims, that under this act of the 2d of March, 1819, Samuel Wiggins, his heirs and assigns, were entitled to the perpetual franchise of maintaining a ferry across the Mississippi from any point near the town of Illinois, upon any land that might at any time belong to him or them.

The bill states that the bank of the Mississippi, opposite the town of St. Louis, is an alluvial formation, which is continually falling into the stream, and that the character of the stream is such that, by reason of the frequent changes in the channel, the sudden formation of sand-bars, and the falling of the banks, it became necessary for Wiggins, in order to fulfil his contract with the state of Illinois, to acquire title to a large space of land on the bank of the river, in order to change the place of landing as the changes in the river and in its banks might require.

The Legislature of Illinois, appreciating this necessity, and

recognizing the franchise as perpetual, passed an act on the 6th day of February, 1821, the essential parts of which were as follows:—

"An Act to authorize Samuel Wiggins to make a Turnpike Road, and for other Purposes. Approved February 6, 1861.

"SEC. 1. Be it enacted, by the people of the state of Illinois, represented in the General Assembly, that Samuel Wiggins, his heirs or assigns, be, and hereby are, authorized to make and construct a turnpike road, of one hundred feet wide, to commence on the Mississippi River, opposite to St. Louis, *on lands that may belong to him, to run thence across the American Bottom to the bluffs within two [*572 miles of George Swaggart's, and to construct and erect all necessary bridges on said road; and that he or they be, and are hereby, authorized to build and make said turnpike road through the lands of any person or persons whomsoever, except yards, gardens, orchards, or dwelling-houses; that, when the aforesaid road is about to be carried through any improved land, the maker of said road shall first obtain the consent of the proprietor or proprietors of said grounds, and should the parties not agree on the amount of said damages, then a jury of six reputable freeholders should be summoned, and being duly sworn before any justice of the peace of the county faithfully and impartially to assess the damages, which damages shall be paid before the said road shall be permitted to pass through such grounds."

"And whereas the said Samuel Wiggins, his heirs and assigns, were authorized to establish a ferry upon the waters of the Mississippi River, near the town of Illinois, in this state, and a sand-bar having been formed since that time opposite said ferry, therefore:—

"SEC. 5. Be it further enacted, that the said Samuel Wiggins, his heirs and assigns, be, and they are hereby authorized to remove said ferry on any land that may belong to him or them on the said Mississippi River, under the same privileges as were prescribed by the act entitled, 'An act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi,' approved March 2d, 1819."

On the 13th of July, 1822, Wiggins acquired title to a tract of four hundred acres of land, adjoining the tract from which he first ran his ferry. The tract so acquired is situated on the bank of the river below his first tract, and was necessary to the owners of the ferry franchise in order to secure a con-

venient landing of the boats, as changes occurred in the channel or in the bank of the river.

The bill states sundry conveyances and descents, by which the complainants have become invested with the title to all the land held by said Wiggins, and with the franchise granted by the state of Illinois.

It is also averred that Wiggins, while the owner of the franchise, fulfilled all the duties and obligations which he had assumed under his contract with the state of Illinois, and that his assignees, owners of said franchise, have ever since his transfer of the franchise in like manner fully discharged those duties; that speedy, secure, and comfortable passage *573] has been *at all times afforded for all persons and property offered to be crossed over the river, in such vessels only as are required by the act granting the franchise.

The bill then states an act of the legislature of the state of Illinois, approved on the 2d of March, 1839, by which commissioners were appointed to locate a road and ferry-landing between Cahokia Creek and the Mississippi River, opposite St. Louis; the road and ferry-landing to be three hundred feet wide, upon the most eligible ground for the purpose. This act authorized the County Commissioners' Court of St. Clair County to cause the land on which the road and ferry-landing should be located to be condemned, and pay the owners of the land the damages; and after such payment the said court should have power to enter upon the land so condemned, and establish a ferry across the Mississippi River, and might either carry on the ferry for the county itself, or lease it for any term not exceeding five years, to any lessees.

The commissioners thus appointed located the road and ferry-landing, three hundred feet wide, upon the land which Wiggins acquired in July, 1822, and which was conveyed by him with the franchise.

The land was condemned, and its value estimated at six hundred dollars, being less than the annual ground rent which it would produce without any connection with any ferry privilege.

In estimating the damages to be paid, the jury were expressly directed to confine their estimate of the damages to the value of the land itself, and not to consider any interference with the ferry franchise of the complainants as a subject of compensation.

The bill states that the county of St. Clair, through its agents, entered upon and took in possession the said lands so condemned, and has leased the same, together with the ferry authorized by the said act of 1839, to James Harrison, at a

yearly rent of $800; and that a ferry has been established from said land to the city of St. Louis. The rates of ferriage charged by said Harrison are fixed in his lease, exhibited with the bill, as exhibit S. No. 18.

The complainants aver that the land so taken from them is a part of their ferry-landing, as authorized by the two acts of the legislature under which they claim, and that the land so taken is indispensable to the exercise of the franchise with which they are invested. From time to time they have been compelled to change their place of landing, as the changes in the river, and its banks and sand-bars, required, so that the whole *front on the river has been necessary to the [*574 enjoyment of their franchise and the performance of their duty, and that the said land so taken from them is not only the most convenient point on their land for their ferry-landing, but is the only point where boats can securely be landed without running far up the stream, so as to make their trip about twelve hundred yards longer than if they still owned and could use the land so taken from them.

The complainants allege that the act of the legislature of Illinois of March 2, 1839, authorizing the taking of a part of their ferry-landing, is a violation of the first clause of the tenth section of the first article of the Constitution of the United States, which prohibits the states from passing laws impairing the obligation of contracts.

The bill prays for an injunction to restrain the defendants from maintaining a ferry from the land so taken from the complainants.

To this bill there was a demurrer, which was sustained by the Circuit Court of St. Clair County, and the bill dismissed. An appeal was taken to the Supreme Court, and the decree of the Circuit Court affirmed.

From this decree of the Supreme Court of the state of Illinois, a writ of error brought the case up to this court.

It was argued by *Mr. Gamble* and *Mr. Webster*, for the plaintiffs in error, and *Mr. Breeze*, for the defendants.

Mr. Gamble made the following points, which he sustained orally. (*Mr. Breeze* and *Mr. Webster* both presented written arguments, of which the Reporter can only give extracts.)

1. The franchise which the complainants hold by purchase from Wiggins, extended to the land which has been taken from them under the act of the legislature of Illinois of 2d March, 1839.

2. The land so taken is necessary to the enjoyment of the franchise.

3. No compensation has been made to the complainants, nor is any authorized to be made, for the violation of the franchise.

4. The act of the Illinois legislature complained of is a violation of the Constitution of the United States, under the earlier decisions of this court. *Fletcher* v. *Peck*, 6 Cranch, 87; *Providence Bank* v. *Billings*, 4 Pet., 514; *New Jersey* v. *Wilson*, 7 Cranch, 164; *Dartmouth College case*, 4 Wheat., 518.

5. The act complained of is not constitutional, within the scope of the later decisions in the *Charles River Bridge case*, 11 Pet., 549; and *West River Bridge case*, 6 How., 507.

*575] *Mr. *Breeze* first contended, that this case did not fall within the jurisdiction of the court, because the Supreme Court of Illinois rested its decision upon the construction of the act of the Legislature, and the extent of the ferry franchise acquired under it; limiting it to the land owned by Wiggins when the act of 1821 was passed, with the exercise of which franchise the law complained of did not interfere.

2. That the grant to Wiggins was of no validity, because the legislature had no power to make grants of privileges to be exercised beyond its territorial limits and over a navigable stream, declared by law to be a public highway.

3. That the laws in question were not contracts, within the meaning of the prohibition of the Constitution of the United States. That private contracts alone were contemplated in this provision of the Constitution.

4. That these laws in themselves had none of the features of contracts, for the want of mutuality, &c.

5. Admitting, however, for the sake of the argument only, that these laws are contracts, then the appellees insist that the legislature of Illinois has, in no degree, impaired their obligation, by any other act in favor of other parties subsequently passed, and certainly not by the act of March 2, 1839, about which this controversy has arisen. The appellants, to sustain their complaint, assume the ground, that, by the act of 1819, the authority to Wiggins to establish a ferry was perpetual and exclusive, and that having become the proprietor of other lands at a great distance from the tract he pretended to own in 1819, the legislature authorized him, by the act of 6th February, 1821, to remove his ferry to them, and thereby, as his assigns, the appellants, contend, have necessarily excluded all other ferries between them, making theirs a movable one, covering a distance of a mile or more up and

down the river, and authorizing them to shift it from point to point, as their views of expediency might suggest.

The appellees contend, that the appellants have not, as the assigns of Wiggins, any exclusive right to a ferry franchise by the act of 1819, and that their ferry is not of that ambulatory character they insist it has been made by the act of 1821.

The court understands, that, when the act of 1819 was passed, Wiggins owned no land on the river near the town of Illinois; that it was not until a year or more thereafter that he obtained title to an undivided two sevenths of a tract of one hundred acres, of the heirs of one Piggot, and known as claim 624. Upon this tract he located his ferry, at a certain known and fixed point. It will be further understood by the plat of survey *before the court, that the town of [*576 Illinois is not on the river, but on the east bank of Cahokia Creek, and some hundred yards from the river, and from it to the river there never was a public road until after the passage of the act of 1839, under which appellees claim. The grantor of appellants, owning the land between the creek and the river, and the whole of the river bank, could, and did up to that time, prevent all competition with him and his assigns and keep off all rivals; and for a similar purpose he enlarged his possessions on the bank of the river by the purchase of land from Jarrot and others, in 1822, known as claim 579, on which the appellees established their ferry, at the termination of a public road, regularly laid out, three hundred feet wide, from the bridge over Cahokia Creek to the river, and through the land of the appellants, after the same was regularly condemned in pursuance of the laws of the state of Illinois, and compensation tendered. To this last-named tract, appellants' ferry was removed under the authority supposed to be granted by the act of 1821, although Wiggins did not, at the passage of that act, own it. To whatever point, then, on this tract, it was removed, the appellees insist, that point became the ferry-landing, and there appellants' privileges were to be exercised, and not elsewhere. It could not thereafter be removed to the first location without the consent of the Legislature, nor to any other point on the tract. A ferry must, from the nature of such establishments, be kept stationary at one point, until legislative sanction can be had to remove it to another; and so Wiggins thought when he applied to the Legislature to remove it from claim 624 to claim 579. And this from motives of public convenience. It would be a great injury to the public to permit the owner of such a franchise, at his discretion, and to suit his whim or caprice, to move it from point to point. When a point was selected, that became the "ferry,"

and there and there only, and from it, could the privilege be exercised. The right of way over the water could not, by any reasonable construction, extend over every particle of space covered by miles of distance. A reasonable space for landings and ferry-ways is all that could be claimed. The excuse put forth by appellants, for shifting their landing,—the character of the current and the texture of the banks,—is all idle, as every one knows who has ever seen the bank of the Mississippi opposite St. Louis. A landing can be made at one point as well as at another, if proper means are used for grading the banks, and proper platforms provided. The object and design for shifting the landing was undoubtedly to keep off rivals,—to prevent competition, and thus enable, for all time to come, the appellants to divide their fifty thousand dollars a year.

*577] *The ferry being established, by the act of 1819, on the Piggot tract (claim 624), within eighteen months after its passage, Wiggins had the right, so far as the Legislature could confer it, to all the advantages which might result from it, and to all the provisions of the act, and nothing more.

Did, then, the legislature, by that act, intend that his privilege should be exclusive forever, and is that intention manifest from the terms used in the act?

The first section contains the grant, if it be one, and is, in substance, as follows:—That Samuel Wiggins, his heirs or assigns, are authorized to establish a ferry on the waters of the Mississippi, near the town of Illinois, in this state, and to run the same from lands at the said place that may belong to him, with a provision that he shall use steam or the power of four-footed animals, and provided, that the same shall be in operation within eighteen months, &c.

The second section provides, that no person or persons, except those who had ferries then established at that place, should establish any ferry of that description within one mile of it, and if it is done, a forfeiture to Wiggins of the boats, furniture, and apparel shall be the consequence.

The third section authorizes Wiggins to receive the accustomed rates of ferriage, and the fourth and last section subjects it to taxes, and then declares, "If the provisions of the second section shall be made to appear to the General Assembly to be injurious to the public good, that then, and in such case, the said section may be repealed."

The appellants contend, that the grant would be perfect without the second section. So it would; but when arraigning an act of the legislature of a sovereign state as repugnant to the Constitution of the United States, because it repealed

a former act of that body, we must examine and see what the first act is,—we must take the whole of it together, to ascertain the intention of the law-maker; and we see in this act of 1819 a right reserved to the state to repeal that part of it which bestows the character of exclusiveness upon the appellants' privilege. The legislature of 1819 acted upon circumstances as they then were, and foreseeing that, from the great advantages the state possessed, in soil, climate, and power of production, and its great capacity for settlement and cultivation, people from distant lands would seek it for a home, reserved the right to take away a privilege, which, when granted, might be of great public benefit, but likely to become in time oppressive.

With commendable forecast, the fourth section was inserted, and became an important part of the so-called contract, and the *act of 1821 was passed, with the same power [*578 to repeal included. The acts were accepted, with that power reserved. In 1833, (Rev. Laws, 310, 311), the legislature determined that section was injurious to the public good, as well as the fifth section of the act of 1821. Fourteen years' experience had satisfied them, that what was intended for the public benefit had become an oppressive monopoly, and they performed a most popular act by repealing them, thus taking away all pretext of exclusiveness, and opening the whole subject to further legislation. This was "nominated in the bond," and the appellants cannot with any propriety or justice complain, if it is injurious to them.

The legislature, then, having, by the act of 1833 (Rev. Laws of 1833, p. 310), repealed the restrictive clause of the second section of the act of 1819, and of the fifth section of the act of 1821, proceeded in 1839, in obedience to public clamor, excited to a high tone by the continued and oppressive exactions of this monopoly, and its repeated failures, and manifest inability or want of desire to satisfy the public demands for proper facilities for crossing the river, to put measures in train to satisfy the public want. The preamble to the act of 2d March, 1839, assigns the reason for its passage,—the facts upon which the Legislature acted,—and they must be taken to be true. It is a legislative decision, that the exigency had arisen, which, on the repeal of the second section of the act of 1819, required increased facilities of approach to a place then grown to be a great commercial city, and the great market of the state.

By examining the provisions of that act, it will be seen that in no part of it is an expression used of a design to take from the appellants their franchise; theirs still exists

in all its vigor, precisely as it did before the passage of the act. No interference with their ferry-ways is contemplated or attempted; no part or portion of their right, as secured by the act of 1819 or 1821, is taken from them or abridged. Although the receipt of tolls may be lessened by this rival ferry, yet the right itself is as perfect as ever. It is still lawful for them to receive all the tolls that may come to their ferry. Should the rival ferry so successfully compete with them, as finally to take from them all the travel, still their rights, conferred by the act of 1819 and 1821, yet inure to them. (*Charles River Bridge* v. *Warren Bridge*, 11 Pet., 420.)

The appellees perceive no distinction between the rights of pontage and of ferriage, and if it was lawful, as it was unquestionably, to establish the Warren Bridge, by which all the tolls were taken from the Charles River Bridge, previously
*579] established by an act of the Legislature of Massachusetts, it is not perceived *why the same results should not rightfully flow in this case, the more especially as the legislature had reserved the right, in the very act which gave the authority, to destroy the character of exclusiveness for which the appellants contend. Legislation affects every day the value of property, and it must be so in the nature of things. *Providence Bank* v. *Billings*, 4 Pet., 514.

If the act of 1839 designed to seize the ferry-ways of the appellants, there would be ground of complaint; but it does not. It designs only to establish a healthy and necessary competition, at a very important point, by which the public good is vastly promoted, and the land taken for such a beneficial public purpose, for a road and landing, has been condemned in the usual mode, the damages assessed, and a tender of the amount made to appellants.

Whether the road is too wide or not is not for this court to determine; it is only to determine whether, in the adjudication of the rights of these parties by a state court, validity has been given to a law of the state impairing the obligation of any contract entered into between the state and the appellants, and doing, by such decision, injustice to them. The appellees can see no ground for such a pretence, and without taking up more time, they submit the case on their part to the court, confident that this most just and enlightened tribunal will not condemn a law of a sovereign state, unless that law is manifestly repugnant to the Constitution of the United States.

Mr. Webster replied to each one of these points, and par-

ticularly the last, citing and commenting upon many parts of the bill, which were all admitted by the demurrer, in order to show that the act of 1839 had destroyed the value of the ferry privilege.

Mr. Justice CATRON delivered the opinion of the court.

By an act of March 2d, 1839, the legislature of Illinois appointed five commissioners to locate a road and ferry landing, three hundred feet wide, on the east bank of the River Mississippi, opposite to the city of St. Louis; the road to extend back to Cahokia Creek. The road and landing were accordingly located; the distance from the river to the creek being about sixty poles. The ferry having gone into operation under the act of 1839, this bill was filed, seeking to obtain a perpetual injunction against an exercise of a ferry privilege, on the ground, among others, that Samuel Wiggins and his assignees were entitled to the exclusive ferry right at that place, by contract with the state of Illinois; and that said contract was violated by *the act of 1839, and the establishment of a road and ferry under and by force [*580 of its provisions. The Supreme Court of Illinois having decided that the state law, and the acts done pursuant thereto, did not violate the contract made with Wiggins, and that it was not opposed to the Constitution of the United States, that court proceeded, by a final decree, to dissolve an injunction granted *nisi*, and to dismiss the bill. To reverse this decree, on the grounds stated, a writ of error has been prosecuted to the Supreme Court of Illinois, from this court, under the twenty-fifth section of the Judiciary Act of 1789.

The contract relied on by the defendants was made with Wiggins, by two acts of the legislature of Illinois. The first act, approved March 2d, 1819, authorizes Samuel Wiggins, his heirs and assigns, to establish a ferry on the east bank of the River Mississippi, near the town of Illinois, and to run the same from lands "that may belong to him;" provided that said ferry should be put into actual operation within eighteen months from and after the passage of that act. And it was also provided by the second section, that no other person should thereafter establish any ferry within one mile of that established by Wiggins, with this reservation:—"That if the provisions of the second section of this act shall be made to appear to the General Assembly to be injurious to the public good, that then, and in such case, the second section may be repealed." Wiggins had no land of his own on the river near the town of Illinois when the above act was passed; but within less than eighteen months, he acquired an

interest in a tract of land of one hundred acres, part of which lay between Illinois town and the river, and extended to a considerable distance above it; and on this tract he established his ferry.

On the 6th of February, 1821, Samuel Wiggins had another act passed in his favor by the legislature of Illinois, authorizing him to make a turnpike road, to commence on the Mississippi River opposite to St. Louis, on lands that "may belong to him," and to run across the American bottom to the bluffs. The act further provides:—"And whereas the said Samuel Wiggins, his heirs and assigns, were authorized to establish a ferry upon the waters of the Mississippi River, near the town of Illinois, in this state, and a sand-bar having been formed since that time opposite said ferry, therefore:—

"SEC. 5. Be it further enacted, that the said Samuel Wiggins, his heirs and assigns, be, and they are hereby, authorized to remove said ferry on any land that may belong to him or them on the said Mississippi River, under the same privileges as were prescribed by the act entitled, 'An act to authorize
*581] Samuel *Wiggins to establish a ferry upon the waters of the Mississippi,' approved March 2d, 1819."

By an act approved January 19th, 1833, so much of the acts of 1819 and 1821 as prohibited another ferry from being established within one mile of Wiggins' ferry-landing, was repealed. This restriction is, therefore, out of the case.

On the 13th of July, 1822, Wiggins obtained, by purchase from Julia Jarrot, a tract of one hundred acres lying below the tract first acquired, adjoining thereto on the south, and fronting on the river; and it is upon this tract that the new ferry and road were located under the act of 1839. The parties respectively assume, and so the court below held, that the establishment and regulation of ferries across navigable streams is a subject within the control of the government, and not matter of private right; and that the government may exercise its powers by contracting with individuals. We deem this general principle not open to controversy; and in regard to so much of the controversy as involves the contract itself, no material difficulty exists as to what principles of law shall govern: only two general principles need be invoked in construing the acts of 1819 and 1821, which are,—First, that in a grant, like this, designed by the sovereign power making it to be a general benefit and accommodation to the public, the rule is, that, if the meaning of the words be doubtful, they shall be taken most strongly against the grantee, and for the government; and therefore should not be extended by implication in favor of the grantee, beyond the natural and obvious

meaning of the words employed; and if these do not support the right claimed, it must fall. Such is the established doctrine of this court, as was held in the case of *The Charles River Bridge* v. *The Warren Bridge*, 11 Pet., 544–547. Secondly, if the grant admits of two interpretations, one of which is more extended, and the other more restricted, so that a choice is fairly open, and either may be adopted without any violation of the apparent objects of the grant, if, in such case, one interpretation would render the grant inoperative, and the other would give it force and effect, the latter, if within a reasonable construction of the terms employed, should be adopted.

Testing the contract by these rules, and what are the complainants entitled to, under the acts of 1819 and 1821? By the first act, Wiggins was to establish the ferry near the town of Illinois, "and to run the same from lands at said place which may belong to him." At the time the act was passed, Wiggins owned no land near the town of Illinois, and if the grant was in the present tense, and extended only to land *that was then the property of the grantee, the [*582 act of Assembly had no operation, and was worthless. But we suppose the words employed were not restricted to the time when the act was passed; the grantee was allowed eighteen months to put the ferry into operation, and he was to run his boats from his own lands, that is, from lands which might belong to him at the time the running commenced; and for this there was great reason, as the opposite shore lay within another state, and there, also, a ferry-landing had to be secured. The matter was one of speculation; and lands could not, with propriety, be purchased at high prices before the privilege was secured on both banks. And this construction, as we apprehend, is the one that the legislature of Illinois put on the act of 1819 by that of 1821; by which it was admitted that a ferry had been established according to the first act, and the grantee was authorized to remove it to another point, because a sand-bar had been formed in front of the landing. We therefore feel ourselves constrained to differ from the carefully prepared and able opinion of the Supreme Court of Illinois, found in the record, which holds the first grant to have been inoperative.

We come next to consider the act of 1821. When it was passed, Wiggins had land fronting on the river for nearly a mile, extending both above and below Illinois town, and lying between it and the river. It was all the land he then could desire for the purposes of his ferry and the end of his road. Indeed, it is doubtful whether, under the grant, Wiggins

could have gone below his first purchased tract and been "near the town of Illinois," because his land extended considerably below the town. As the act of 1821 recognized the fact that Wiggins had complied with his contract under the act of 1819, and had established a ferry on land that belonged to him, and that it was established "near the town of Illinois," it is fair to presume that both parties to the contract, as modified and enlarged by the act of 1821, understood what land it was that Wiggins owned at that time, and the boundaries thereof; and also the extent of his interest, being two sevenths of the tract.

The act of 1821 was treated by the bill, and was relied on in argument, as conferring a perpetual privilege on Wiggins, and on his assigns, to remove the ferry to any land that might belong to him, or to them, at the time of the removal; and, furthermore, that the right of removal was unrestricted as respects time, and could have been made at any time heretofore, or could be made hereafter.

That the act is somewhat obscure, in regard to the place to *583] which the ferry could be removed, must be admitted; and in *seeking its true construction, several considerations present themselves. In the first place, that the act operated in the present tense, and was a mere enlargement of the privileges conferred by the act of 1819, and must be taken as a part of the first contract, cannot be denied; secondly, when we take into consideration the fact that Wiggins had a specific tract of land at that time, at the proper place,—that is to say, lying in front of Illinois town, and extending above and below it,—a reasonable conclusion is, that some place on such tract was referred to by the act of 1821; and, thirdly, as the act of 1819 reserved authority in the legislature to repeal so much of the law as secured to Wiggins an exclusive ferry right for two miles on the river front, such reservation could only mean that rival ferries might be established, at discretion, by the legislature. Nor can it be assumed, with any claim to a plausible construction, that the power of removal had no limitation of time or place, as this would confer a right to remove to the same landing with a newly established ferry, set up as a rival, and drive it away; and thus the public convenience would again be reduced to a single ferry. Now, in view of these facts and consequences, and applying them to language of an ambiguous character, and seeking assistance from a settled rule of construction in case of doubt, and finding that rule of construction to be, that when two constructions are equally open to the court, the one shall be adopted most favorable to the government, the consequence

must be, on this construction, that Wiggins was confined to the tract of land partly owned by him when the act of 1821 was passed; and that when the ferry was removed to other land, lower down the river, it was an act not within the contract, nor protected by it. This disposes of the first and principal ground of relief sought by the bill.

Whether Wiggins, or those claiming under him, had the right after he had established his new ferry, under the act of 1821, to remove it to another place on the tract of land he then owned, and whether the state of Illinois may not authorize another ferry on the same tract of land, not interfering with the operations of the one established by Wiggins, are questions which the record does not bring before us, and upon which, therefore, we express no opinion.

A second ground of relief is relied on by the bill, and was most earnestly and ably urged in argument here, and which it is incumbent on us to dispose of also.

The first special prayer would seem to conclude an inquiry into any ground of interference by this court, other than the *question arising on the acts of 1819 and [*584
1821, standing as a contract, claimed to have been violated by the act of 1839. But the bill has also a general prayer; and on this, as well as upon the special prayer, the Supreme Court of Illinois ordered, "that it be certified in this case, that there was drawn in question the validity of the statute of the state of Illinois entitled, 'An act to authorize St. Clair county to establish a ferry across the Mississippi River,' approved March 2, 1839, on the ground that it was repugnant to the Constitution of the United States, and that the decision of the court was in favor of the validity of said statute;" from which certificate it is manifest that the act of 1839 was upheld against each state of facts set forth by the bill; and if it was apparently repugnant to the Constitution on either ground assumed, this court has jurisdiction of the cause; and having jurisdiction, the plaintiffs in error were entitled to be heard, and are entitled to our judgment, on both grounds presented, and relied on to reverse.

The bill sets forth that gross abuses were imposed on complainants by the act of 1839, and by the commissioners and their lessee, under the act; that the said three hundred feet include a wider space, and more land, than is necessary or convenient for a road, and but a small portion of it has been used and appropriated by the said county of St. Clair to that purpose, leaving a strip on either side to be used by the said county of St. Clair and its lessees, for private property, for building lots, and other private purposes; and that that por-

tion of the said three hundred feet which is not included in said road, and which is now used for private purposes, or is left to be thus used, will yield an annual ground rent larger than the whole amount of the damages assessed as aforesaid for the whole of said three hundred feet; and furthermore, that only the condemned land was valued, and no compensation awarded or tendered for the ferry franchise and landing taken from complainants.

As the bill was demurred to, and the demurrer sustained in the state courts, and in this form the case comes before us, all charges of abuse and oppression on the part of the authorities of Illinois are admitted, to the extent alleged; and the question presented here on these facts is, whether this court has power to redress the injuries complained of, under the twenty-fifth section of the Judiciary Act of 1789.

The Constitution having declared that no state shall pass any law impairing the obligation of contracts, it becomes our duty to inquire whether the state law, and the acts done
*585] under it, violate a contract. If any contract was violated under the *act of 1839, it must have been a grant to land vesting the fee simple title; and such title complainants exhibit. To the width of needful roads and ferry-landings, property can undoubtedly be taken, for the purposes of such easements; and necessarily, the state authorities must decide (as a general rule) how much land the public convenience requires. That the power may be abused, no one can deny; and that it is abused, when private property is taken, not for public use, but to be leased out to private occupants to the end of raising money, is too plain for reasoning to make it more so. Such an act is mere evasion, under pretence of an authorized exercise of the eminent domain; and if it be an evasion, it is void, and may be redressed by an action at law, like any other illegal trespass, done under assumed authority; as, for instance, a trespass by a younger grantee on land held by an elder patent depending for support on a state law of later date than the first grant. But it is not an invasion and illegal seizure of private property on pretence of exercising the right of eminent domain, and which act is an abuse claiming the sanction of a state law, that gives this court jurisdiction; such law, and the acts done under it, are not, "the violation of a contract," in the sense and meaning of the Constitution. It rests with state legislatures and state courts to protect their citizens from injustice and oppression of this description. The framers of the Constitution never intended that the legislative and judicial powers of the general government should extend to municipal regulations

necessary to the well-being and existence of the states. Were this court to assume jurisdiction, and re-examine and revise state court decisions, on a doubtful construction, that an interest in land held by patent was a contract, and the owner entitled to constitutional protection by our decision in case of abuse and trespass by an oppressive exercise of state authority, it would follow, that all state laws, special and general, under whose sanction roads, ferries, and bridges are established, would be subject to our supervision. A new source of jurisdiction would be opened, of endless variety and extent, as, on this assumption, all such cases could be brought here for final adjudication and settlement; of necessity, we would be called on to adjudge of fairness and abuse to ascertain whether jurisdiction existed, and thus to decide the law and facts; in short, to do that which state courts are constantly doing, in an exercise of jurisdiction over peculiarly local matters; by which means a vast mass of municipal powers, heretofore supposed to belong exclusively to state cognizance, would be taken from the states, and exercised by the general government, *through the instrumentality of this court. [*586
That such a doctrine cannot be maintained here has in effect been decided in previous cases; and especially in that of *Charles River Bridge* v. *Warren Bridge*, 11 Pet., 539, 540, where other cases are cited and reviewed.

For the reasons above stated, it is ordered that the judgment of the Supreme Court of Illinois be affirmed.

Mr. Justice McLEAN dissented.

Order.

This cause came on to be heard on the transcript of the record from the Supreme Court of the state of Illinois, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed, with costs.