issuing of the writ of error, without which we can have no jurisdiction of the case. The motion to dismiss must be allowed.

So much of the motion made in behalf of the plaintiff in error as asks leave to withdraw the record is granted; but the residue of the motion must be denied. The case can be brought here only by a new writ of error.

WASHINGTON COUNTY *v.* DURANT.*

Cases cannot be brought within the appellate jurisdiction of this court by agreement of parties, and without an appeal allowed or writ of error served.

THE record showed that this cause had been brought here from the Circuit Court for Iowa, as on a writ of error, *by agreement of parties, and without the issuing or service of such a writ.* Coming before this court on a printed argument for the defendant in error, and the fact above-mentioned being observed by the court, the appeal was DISMISSED; the CHIEF JUSTICE stating it to be the opinion of the court, that an appeal allowed or a writ of error served, was essential to the exercise of its appellate jurisdiction.

AUSTIN *v.* THE ALDERMEN.

If a State statute, passed in professed exercise of an authority given by Congress to the States to pass such a statute, does not deprive, contrary to the act of Congress, *the party to the suit*, of any right, nor work, as to him, any effect which the act of Congress forbids, this court cannot, on the case being brought here by such party, on the ground that the State statute violated the act of Congress, declare the State statute void.

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* Decided at December Term, 1865.

Statement of the case.

Nor, in considering whether the act does or does not do this, will this court enter upon the question, whether, in another case arising upon a different state of facts from that of the case before it, the statute might not produce results in conflict with the act of Congress, and which this court would therefore be bound to revise and correct.

ERROR to the Supreme Judicial Court of Massachsetts.

The case was this: By a true interpretation of the rights of the Federal government, as settled by this court, the States have no right to tax its means and instruments of government. However, Congress, in creating the associations known as National banks—and by a statute which obliges the parties applying for banking privileges to designate the "particular county and city, town or village," where the business of the association is to be carried on—made a proviso, in these words, as to the right of the States to tax them:*

"*Provided*, that nothing in this act shall be construed to prevent all the shares in any of the said associations, held by any person, from being included in the valuation of the personal property of such person, in the assessment of taxes imposed, by or under State authority, at the *place where such bank is located, and not elsewhere*," &c.

In exercising or attempting to exercise the authority thus conferred, Massachusetts—in which State many of these associations were, and under whose system of taxation it is the practice to include in the valuation of the personal property belonging to its taxable citizens, everything of that nature, which they own in any place whatever—enacted a statute thus (act of May 15, 1865, ch. 242):

"The assessors of each city and town, *in which any shareholder in such association resides*, shall include all shares in such associations held by persons resident and liable to taxation in said city or town, in the valuation of the personal property of such person, for the assessment of all taxes imposed and levied in said town by authority of law, to be assessed," &c.

* 13 Stat. at Large, 112.

Statement of the case.

In this condition of the statutes, Federal and State, the assessors of Boston valued and assessed the bank shares of Austin, *living in Boston*, and being the owner of stock in six banks situated *there*. He objected to this, because, as he maintained, the Massachusetts act, under which it purported to be done, did not conform to the limitation of the act of Congress, as to the *place* of taxation; that is to say, he maintained that the State law, in order to conform to this limitation, should have authorized the assessors to include the shares of the National banks in the valuation of the personal property of the holders *only in the place*, i. e., *in the city, county or village* where the banks were located; whereas the State law had disregarded the limitation as to place, by requiring the assessors to include these shares in the valuation, not in the city, town or village only where the bank is located, but *elsewhere*, to wit, in the town *where the shareholders reside;* and so that, under the State act, shareholders in the National banks, residing in cities, towns, or villages where no banks were located, might be assessed there for shares which they owned in banks located in cities, towns, or villages where they do not and never did reside.

On suit brought against him by the Aldermen of Boston, for the tax which the city assessors had assessed on his bank stock in Boston, the Supreme Court of the State decided, that the true construction of the proviso did not confine the assessment of the tax to the place where the bank was located, and that it merely required that the tax, to be valid, should be imposed under the State authority existing at the place where it was thus located;* in other words, "that the reference in the proviso to the place where the bank is located, was designed to define the State authority which was to be allowed to impose a tax, and not to limit the place of assessment."

It will, of course, be observed by the reader—whether this interpretation of the act was well founded, or whether the one of Austin was right—that—assuming the State act to

* Austin *v.* The Aldermen, &c., 14 Allen, 359–365.

be valid at all—so far as Austin was concerned, no practical injury was done *him*, he residing in Boston, and *all* the banks in which he had stock being situated *there;* or in other words, that had the State act conformed to the proviso of the act of Congress, as interpreted by him, the result, to *him*, would have been the same, though it might not have been to persons living out of Boston, and having stock in banks in that city.

The case was now here under the twenty-fifth section of the Judiciary Act, which gives a right of review here to a party where there has been drawn in question in the highest court, the validity of a statute of a State as being repugnant to a law of the United States, and the decision has been in favor of such validity.

Mr. I. J. Austin, for the plaintiff in error, argued that the only question before this court, was this precise one, viz., whether the construction put, by the Supreme Court of the State, upon the proviso, was right? In other words, with what intention did Congress use the phrase, "*place where such bank is located?*" Did that word there signify the State, territory, or district, or did it signify the particular city, town, or village in which a National bank was located? The position of the learned counsel was in favor of the last view, and in support of it he submitted various propositions in opposition to the view of the court below.

If, then, the State act did not conform to the permission or proviso of the act of Congress, it mattered not whether Austin was or was not worse off than if it had conformed. The State act was void, and the assessment and tax laid under it was void also. And Austin had a right to have the judgment below reversed, in order that he might have a trial of his rights, without prejudice from any influence which an erroneous construction of an act of Congress might be presumed to have had on the court.

No argument on the other side.

Opinion of the court.

Mr. Justice SWAYNE delivered the opinion of the court.

This case is brought before us by a writ of error, issued pursuant to the twenty-fifth section of the Judiciary Act of 1789.

The legislature of Massachusetts, by a statute passed on the 15th of May, 1865 (ch. 242), provided for "the taxation of shares in associations for banking, established under the laws of the United States," and prescribed the mode of procedure for that purpose. The statute is confined to such associations in that State, and to shares held by persons living within its limits. The third section enacts that the assessment for taxation shall be made where the shareholders reside.

The proviso in the act of Congress which permits the shares to be taxed by the States, requires them to be included "in the valuation of the personal property" of the holder, "in the assessment of taxes imposed by or under State authority, at the place where such bank is located, and not elsewhere."* There are other regulations upon the subject, but they do not affect the point to be considered, and need not to be more particularly adverted to.

The plaintiff in error lived in Boston, and was the owner of stock in six National banks there situated, and the valuation and assessment were there made.

It is not denied that this was in conformity to the act of Congress, but it is insisted that the taxes assessed were illegal and void, because the statute of the State requires that they shall be assessed at the place of the residence of the shareholder, without reference to the locality of the bank.

The only question of Federal jurisdiction, and of which this court can take cognizance is, whether the plaintiff in error has been deprived of any right, contrary to the act of Congress, upon which he relies for protection.

The facts bring the case within the terms of the act, according to the strictest construction which can be given to them. This is conclusive of the case. Whether, in another

* Act of June 3, 1864, ch. 106, § 41, 13 Stat. at Large, 112.

case, arising upon a different state of facts, the statute may not produce results in conflict with the act of Congress, and which this court will therefore be bound to revise and correct, is an inquiry upon which we are not called to enter. We can only consider the statute in connection with the case before us. Having ascertained that it has wrought no effect which the act forbids, our jurisdiction is at an end. The twenty-fifth section of the Judiciary Act is explicit upon the subject.

The right of taxation, where it exists, is necessarily unlimited in its nature. It carries with it inherently the power to embarrass and destroy.

It is well settled that the States cannot exercise this authority in respect to any of the instrumentalities which the general government may create for the performance of its constitutional functions. It is equally well settled, that this exemption may be waived wholly, or with such limitations and qualifications as may be deemed proper, by the law-making power of the nation; but the waiver must be clear, and every well-grounded doubt upon the subject should be resolved in favor of the exemption.

In respect to the class of cases to which the one before us belongs, the waiver is expressed in clear and unmistakable language.

Important questions have arisen as to the construction and effect of the permission given to tax, by the act of Congress under consideration, with reference to the national securities held by the banks. These questions have been settled by this court in repeated decisions.*

In this case, the only question open for our examination must, for the reasons before stated, be resolved against the plaintiff in error.

JUDGMENT AFFIRMED.

* Van Allen *v.* The Assessors, 3 Wallace, 573; The People *v.* The Commissioners, 4 Id. 244; Bradley *v.* The People, Id. 459.