for the District of Massachusetts, sitting in admiralty, HAS JURISDICTION to entertain the libel in this case.

ANSWER ACCORDINGLY.

PARMELEE *v.* LAWRENCE.

1. To authorize the re-examination of a question brought here as within the 25th section of the Judiciary Act, the conflict of the State law with the Constitution of the United States, and a decision by a State court in favor of its validity, must appear on the face of the record. And the question must have been necessarily involved in the decision, so that the State court could not have given a judgment without deciding it. (*Railroad Company* v. *Rock*, 4 Wallace, 177, affirmed.)

   Accordingly, where no question of such conflict was made in the pleadings, nor in the evidence, nor at the hearing in the court where the suit was brought; and the question was first made in the Supreme Court where the certificate of the presiding judge showed only that it was taken in argument and overruled, the writ was dismissed.
2. The office of the certificate from the Supreme Court, as it respects the Federal question, is to make more certain and specific what is too general and indefinite in the record, but it is incompetent to originate the question within the true construction of the 25th section.

ON motion to dismiss a writ of error to the Supreme Court of Illinois, brought here on the assumption that the case was shown to be within the 25th section of the Judiciary Act; the idea of the plaintiff in error having been that a statute of the State of Illinois, on the subject of interest, was brought in question in this suit, and was upheld by the court below, though repugnant to the Constitution of the United States, as impairing the obligation of contracts.

It appeared by the record that Parmelee & Co. filed their bill in chancery, in the Superior Court of Chicago, against one Lawrence, in which they sought to enforce the specific performance of what they alleged to be a contract, by Lawrence, to convey to them certain lots in Chicago for the consideration of $50,000, and interest at 10 per cent., free and clear of incumbrance. The bill set forth that they were

ready to pay on receiving such a conveyance, but that Lawrence was unable to make title to the land; that he had demanded the money, and was threatening to eject them.

Lawrence in his answer set up that the transaction was not, as represented in the bill, a naked agreement to convey, but was a mortgage to secure the loan of $50,000, and he tendered a reconveyance on payment of the principal and interest. He also filed his cross-bill for a foreclosure of the mortgage in the usual form.

The complainants, in answer to this cross-bill, asserted as before, that the agreement had been simply an agreement to sell; but further insisted that, if the agreement was a mortgage, then the loan was usurious, and that Lawrence thereby forfeited, under the laws of Illinois, threefold the whole interest so received. They also set up, that the rate of interest was 12 per cent., and that they had given Lawrence their bond for the 2 per cent. interest, above the ten as already mentioned.

The cause was finally heard on the cross-bill, answer, replication, and proofs in the case. The Superior Court decreed that the plaintiffs should pay to the defendant the amount of the loan remaining due, with 6 per cent. interest from date of the last payment, but he to retain the 12 per cent. already paid. The defendant appealed to the Supreme Court, which reversed this decree, holding that the usurious interest already paid should be credited on the principal, and that interest should be allowed at the rate of 10 per cent. The cause was remanded to the Superior Court for a new trial, where a decree was rendered in conformity with the above opinion, and this was afterwards affirmed by the Supreme Court.

The record showed that the litigation resulted in a question as to the rate of interest to be allowed to Lawrence, the lender, according to the laws of Illinois, and that neither in the pleadings, nor in the evidence, nor at the hearing in the Superior Court, was any question made as to the validity of any statute of the State on the ground of its repugnancy to the Constitution of the United States. This question was

first made before the Supreme Court on the appeal. The certificate of the presiding judge showed that the objection was taken in the argument there and overruled, and this furnished the only evidence that any Federal question was raised in the case.

Messrs. G. Payson and C. A. Gregory, in support of the motion, argued that the certificate alone was not sufficient to show the existence of any Federal question, citing the *Railroad Company* v. *Rock*.*

Mr. Beckwith, contra.

Mr. Justice NELSON delivered the opinion of the court.

In *Lawler et al.* v. *Walker et al.*,† it is said that the 25th section of the Judiciary Act required something more definite than the certificate of the Supreme Court to give this court jurisdiction.

The conflict of the State law with the Constitution of the United States, and a decision by a State court in favor of its validity, must appear on the face of the record before it can be re-examined in this court. It must appear in the pleadings of the suit, or from the evidence in the course of the trial, in the instructions asked for, or from exceptions taken to the rulings of the court. It must be that such a question was necessarily involved in the decision, and that the State court would not have given a judgment without deciding it. The decision in this case was approved, and applied in *Railroad Company* v. *Rock*. The certificate was as full in that case as in the present, but it was the only evidence of the fact that a Federal question had been presented.

The judge, in delivering the opinion of the court in that case, observed that "it is probable that counsel in the argument of the case in the Supreme Court of Iowa, insisted that these matters were involved, and that the chief justice felt bound to certify, when requested, that they were drawn

* 4 Wallace, 177.

† 14 Howard, 152.

in question. But if the record," he proceeds, "does not show that they were necessarily drawn in question, this court cannot take jurisdiction to reverse the decision of the highest court of a State upon the ground that counsel brought them in question in argument." We will add, if this court should entertain jurisdiction upon a certificate alone in the absence of any evidence of the question in the record, then the Supreme Court of the State can give the jurisdiction in every case where the question is made by counsel in the argument. The office of the certificate, as it respects the Federal question, is to make more certain and specific what is too general and indefinite in the record, but is incompetent to originate the question within the true construction of the 25th section.

MOTION TO DISMISS GRANTED.

VIRGINIA *v.* WEST VIRGINIA.

1. This court has original jurisdiction, under the Constitution, of controversies between States of the Union concerning their boundaries.
2. This jurisdiction is not defeated because in deciding the question of boundary it is necessary to consider and construe contracts and agreements between the States, nor because the judgment or decree of the court may affect the territorial limits of the jurisdiction of the States that are parties to the suit.
3. The ordinance of the organic convention of the Commonwealth of Virginia, under which the State of West Virginia was organized, and the act of May 13th, 1862, of the said Commonwealth, constitute a proposition of the former State that the counties of Jefferson and Berkeley and others might, on certain conditions, become part of the new State; and the provisions of the constitution of the new State concerning those counties are an acceptance of that proposition.
4. The act of Congress admitting the State of West Virginia into the Union at the request of the Commonwealth of Virginia, with the provisions for the transfer of those counties in the constitution of the new State, and in the acts of the Virginia legislature, is an implied consent to the agreement of those States on that subject.
5. The consent required by the Constitution to make valid agreements between the States need not necessarily be by an express assent to every proposition of the agreement. In the present case the assent is an irresistible inference from the legislation of Congress on the subject.