MATHEWS *v.* MCSTEA.

The decision of a State court passing upon the effect produced by the act of the executive on a given contract in inaugurating the late civil war in the United States, is reviewable here by writ of error under the second section of the act of 5th February, 1867, to amend the Judiciary Act; § 709 of the Revised Statutes of the United States.

ERROR to the Court of Common Pleas of New York.

On motion to dismiss the writ for want of jurisdiction. The case was thus:

On the 15th of April and 19th of April, 1861, the President, by his proclamation, declared that insurrection existed in Louisiana and certain other Southern States, and that the ports of Louisiana, with those of the said States, were under blockade.

On the 23d of the same April, a firm composed of three persons, Mathews, Brander, and Chambliss—*of whom Mathews resided in New York and the other two in New Orleans*—accepted *at New Orleans*, a draft drawn on them for $8050, payable twelve months after date.

On the 13th of July, 1861, an act of Congress was passed* authorizing the President to issue a proclamation declaring the inhabitants of any State where insurrection existed in a state of insurrection against the United States, and the act declared that thereupon "all commercial intercourse by and between the same, and the citizens thereof, and the citizens of the rest of the United States, shall cease and be unlawful, so long as such condition of hostilities shall continue." And on the 16th of August, 1861, the President did issue his proclamation,† declaring Louisiana, with other States, in a state of insurrection against the United States, and forbidding all commercial intercourse with the inhabitants of such States.

On the 26th of February, 1862 (after this act and procla-

* 12 Stat. at Large, 257, § 5.

† Ib. Appendix.

mation), other drafts were drawn and accepted in the same way.

All the drafts came before maturity into the hands of one McStea, and he brought suit in the court below on the whole of them. Mathews alone appeared. He set up the defence that at the time of the acceptances war had been declared and existed between that part of the United States in which he resided and that in which his other partners resided, by virtue of which the partnership had been dissolved before these acceptances were made, and that the contracts as to him were, therefore, void. The court decided against him as to the acceptance made on the 23d of April, and in his favor as to the others. He then took the case into the Court of Appeals; and there, upon the acceptance of the 23d of April, for $8050, raised the same question as before, and no other; contending that the proclamations of blockade of the 15th and 19th of April, by the President, had the effect to dissolve the partnership, and that by reason of them the act of acceptance was void as to him.

The Court of Appeals in its opinion discussed the question at what stage of the civil war the rule against commercial intercourse with the enemy took effect so as to dissolve the contract of partnership. Conceding that under the decision in *The Prize Cases*,* the war existed for some purposes prior to that act, the court still held that it did not become, until recognized by the act of Congress of July 13th, 1861, of such a character as to suspend commercial intercourse, and, therefore, that it had no effect upon the acceptance of the 23d of April, 1861. As to the other acceptances it admitted that they had been rightly disposed of in the court below. Accordingly the question abovementioned as raised by Mathews—the only question in the case, as heard and decided in the Court of Appeals,—was decided against him.

The record having been remitted according to the practice of New York from the Court of Appeals to the court where the suit was brought, in order that the judgment might be

* 2 Black, 635.

carried into effect, Mathews now brought the case here, as within the second section of the act of February 5th, 1867, set forth *supra*, p. 592, 593, right-hand column.

Mr. A. F. Smith, in support of the motion to dismiss:

It cannot be pretended that the case is within the first provision of the act, for the final judgment was not against the validity of any treaty or statute of, or authority exercised under the United States.

Nor is it within the second, for the final judgment was not in favor of the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States.

Nor is it within that part of the third which speaks of "a commission held or authority exercised under the United States:" for Mathews held no such commission and exercised no such authority. There accordingly only remains for consideration the point whether he claimed in the State court "*any title, right, privilege, or immunity under the Constitution, or any treaty or statute of the United States,*" against which the decision was. And it is clear that he did not. His position was that the war of the rebellion dissolved the partnership, on or before April 23d, 1861, and that he was not, therefore, bound by the acceptance of his firm on that day. He asserted this as a general principle. He did not assert that any statute of the United States made it so; nor that his liability was affected either way by the non-intercourse act of July 13th, 1861, passed nearly three months after the acceptance, and under which the non-intercourse proclamation was issued on August 16th of that year.

Messrs. J. Sherwood and W. M. Evarts, contra:

I. Mathews, it is plain, insisted, in the State court, that under the act of July 13th, 1861, the proclamations of the President of April 15th, 1861, and April 19th, 1861, were *approved, legalized, and made valid.*

Under these proclamations he claimed immunity from

liability as a copartner in a firm, which he insisted was dissolved on the day of the date of the proclamation of blockade, four days before the date of the acceptance made by the firm.

He did then claim an immunity under that statute, and the decision in the Court of Appeals was against that immunity.

II. In the decision of the case there was drawn in question the construction of clauses of the Constitution.

The clauses giving to Congress the power to declare war, and defining the authority and powers of the executive, were necessarily considered in order to determine whether the President, in the absence of Congress, could initiate war or repel war brought on by foreign powers or enemies at home.

The questions actually and necessarily determined were:

1. Whether the war of the rebellion in the beginning was a war carrying with it the consequences of international war.

2. Whether by the war, beginning as it did, commercial intercourse was, in the month of April, 1861, suspended.

These were certainly Federal questions requiring the most enlarged and thoughtful examination of the Constitution of the United States.*

Mr. Justice MILLER delivered the opinion of the court.

We are of opinion that the only question made and decided in this case against plaintiff in error was the sufficiency of the acts of the President to inaugurate a war which would render invalid this contract, and that this is one of the questions embraced by the act of February 5th, 1867.

The motion to dismiss is, therefore,

OVERRULED.

* The Prize Case, 2 Black; The Protector, 12 Wallace, 700; The United States v. Lane, 8 Id. 195.