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Power of the U.S. Supreme Court to Enforce Judgments Against States

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NOTE AND COMMENT

Power of the U. S. Supreme Court to Enforce Judgments Against States.—In the year 1460, when the perogatives of sovereignty or at least of the Crown were asserted in England much more vigorously than they are today, "the Counsell of the right high and mighty Prynce Richard Duc of York, brought into the Parliament Chambre a writyng conteignyng the clayme and title of the right, that the seid Duc pretended unto the Corones of Englond and of Fraunce, and Lordship of Irelond, and the same writyng delveryerd to the Right Reverent Fader in God George Bishop of Excestre, Chaunceller of Englond, desiryng hym that the same writyng myght be opened to the Lordes Spirituelx and Temporelx assembled in this present Parlament, and that the seid Duc myght have brief and expedient answere thereof." Whereupon the lords, apparently embarrassed by this extraordinary manifestation of confidence in them, declared "that the said writyng shuld be radde and herd, not to be answered without the Kyngs commandement, for so moche as the mater is so high, and of soo grete wyght and poysye." When four days later the petition was again urgently presented "therupon incontynent all the seid Lordes Spirituelx and Temporelx went to the Kyngs high presence, and therunto opened and declared the seid mater, by the mouth of his said Chaunceller of Englond." The King was
graciously pleased to command the lords that they should "serche for to
fynde in asmuch as in them was, all such thyngs as myght be objecte and
leyde ayenst the cleyme and title of the seid Duc." And though the King's
command could scarcely be regarded as indicating a judicial inquiry, the
lords in their extremity "sent for the Kyngs Justices into the Parlement
Chambre, to have their avis and Counsell in this behalf, * * * * sadly
to take avisament therin, and to serche and fynde all such objections as
myght be leyde ayenst the same, in fortifying of the Kynges right." Duke
of York’s Claim to the Crown, 5 Rot. Parl., 375, 1 Wambaugh’s Cas. Const.
Law, I.

Four and one-half centuries later the “sovereign state” of Virginia sued
the “sovereign state” of West Virginia to recover a sum of money alleged
to be due upon the agreement of West Virginia to assume its proportion-
ate share of the debt of the old state of Virginia. The suit was brought in
the Supreme Court of the United States, which after prolonged consider-
ation rendered judgment for the plaintiff. No execution or other compul-
sory process was issued, however. But now after delays for various rea-
sons and pretexts urged by West Virginia the court is compelled to face the
problem of what if any compulsory powers it may exercise to enforce the
judgment. In its opinion rendered April 22 of this year, the Supreme
Court, when confronted with task of compelling, as did Parliament and the
King’s Justices of old, finds the matter apparently “too high.” Virginia v.
West Virginia, U. S. Supreme Court No. 2 Original, Oct. Term, 1917.

No wonder the court is embarrassed. For the question is one which in-
volves difficulties of theory and policy, and can scarcely be settled by legal
principles and rules alone. At least though the case would be clear if be-
tween private parties, must not the court consider whether the character
of the parties as well as circumstances may alter cases?

The latest move in this extraordinary litigation which has now been
before the Supreme Court eight times, is an application by Virginia for proc-
ess in the nature of mandamus to compel the legislature of West Virginia
to exercise its power of taxation to raise money wherewith to pay the judg-
ment, West Virginia having no property subject to execution, unless it be
that used for government purposes. There is no express qualification or
limitation of the grant of jurisdiction in “controversies between two or more
states” to the Supreme Court. Unquestionably a grant of “jurisdiction”
includes, in cases between private parties, power not only to adjudicate, but
to issue compulsory process to enforce orders, judgments and decrees. Wayman v. Southard, 10 Wheat, 1, 2, 3; Bank of U. S. v. Halstead, 10
Wheat, 57; Pleas v. Rathbun Jones Co., 228 Fed. 279; Knox Co. v. Aspinwall,
24 How. 384. But the grant of jurisdiction to the Supreme Court in con-
troversies between states and that in cases between private parties is in the
same clause and in language identical in legal significance.

How then can it be claimed that the grant in the first class of cases,
is less complete and comprehensive than that in the second? West Virginia
answers that it is because, as a State, her governmental powers cannot be
controlled or limited. But this position rests upon a theory of complete
sovereignty, and admittedly our states are not completely sovereign. Does the power contended for fall within that portion of the state's sovereignty reserved to it, or is it not rather by the very grant referred to within that portion surrendered to the federal government. There is no express limitation upon this grant of jurisdiction, no modification of the universally conceded legal signification of the term jurisdiction, and none can be implied unless it be by appeal to the character of the parties. But it is singular that in so important a matter as this, the Constitution should delegate power to the federal government by employing, unqualified and unrestricted a legal term of well defined meaning, if in fact it was intended to limit that power to less than the usual significance of the term employed.

There is very little in the records of the constitutional convention or other contemporary material, to throw light upon the question. Chief Justice Warren's opinion deals very satisfactorily with this phase of the matter citing Elliott's Debates, and The Federalist, No. 81, as tending to show that "jurisdiction" in its full legal significance was granted to the Court in these controversies. The history of the particular clause of the Constitution involved, may be traced in 1 Farrand, Records of the Federal Convention, 28, 244, 247, 298; 2 ibid. 146, 147, 157, 173, 186, 425, 601.

The fact that during the colonial period differences between the Colonies though determined by a committee of the Privy Council, were enforced either by royal decree or legislation by Parliament is not persuasive, for our entire governmental machinery under English rule was totally different from that existing after the Declaration of Independence. For the omnipotence of Parliament, there was substituted a distribution of powers, in which the matter in dispute, seems to be definitely assigned to the Supreme Court. See Rhode Island v. Massachusetts, 12 Peters, 657, 739, et seq. and historical authorities cited in the margin of the opinion in the instant case.

Under the Articles of Confederation (Art. IX) disputes between the states were to be determined by a special commission or court to be appointed in each case by consent if possible, if not by congress, and the judgment, which was to be "final and conclusive," was to be "transmitted to congress, and lodged among the acts of congress for the security of the parties concerned." As was to be expected this bungling method was very unsatisfactory in practice, and the dissatisfaction with the results obtained and the significant omission under the Constitutional scheme of any provision for Congressional participation argue that the intention of the Federal Convention was to give that complete power to the Supreme Court, which the legal meaning of "jurisdiction" implies.

The case of Kentucky v. Dennison, 24 How. 66, unquestionably lends support to the West Virginia contention; but that case involved a phase of the slavery question which was already a cause of dangerous ferment, and was decided by a court dominated by the extreme states' right theories of Taney, C. J., and four other appointees of President Jackson. From a legal view-point the decision is an indefensible confession of judicial impotence, and while the case has never been overruled, it is perhaps signifi-
cant that in the present opinion the Chief Justice does not so much as refer to it. (See an article by W. C. Coleman, 31 Harv. Law Rev., 210.) It must be admitted that statesmen of our early constitutional period, including such staunch nationalists as Hamilton expressed doubt occasionally as to the power of the federal courts to enforce judgments (See The Federalist, No. 81) but this never became the accepted view of the courts, except perhaps in the unfortunate line of cases just referred to. Over against them must be set the unquestionable shift of the center of power toward the nation, which economic conditions, the Civil War, and the Civil War amendments, have accomplished. It is idle to deny that constitutional law is made in this way.

Finally we have a long line of cases beginning with New York v. Connecticut, 4 Dall. 1, and running to Arkansas v. Tennessee, 246 U. S.—in which the jurisdiction over controversies between states was freely exercised. It is true that as the states in all these cases voluntarily gave effect to the judgments, compulsion was not required, but that very fact argues that the court's judgments were regarded as more than mere arbitral pronouncements. In South Dakota v. North Carolina, 192 U. S. 286, the court clearly asserted its ability to enforce a money judgment against a state, a step, however, which it became unnecessary to take because of subsequent developments. It should be noted, too, that four justices dissented, Whits, C. J., writing the dissenting opinion. But the latter's opinion in the present case must be taken as greatly modifying, if not a rejection of, his former view.

Moreover in Van Hoffman v. Quincy, 4 Wall. 535, and many other cases the Supreme Court has not hesitated to approve of the compulsion exercised by the judicial power upon municipalities to enforce the levy of an authorized tax to pay judgments "rendered in consequence of a default in paying the indebtedness." And while the difference between the municipal and the state legislatures must be recognized, never the less the former as well as the latter exercises state governmental power.

While the step asked for by Virginia is opposed by many practical difficulties, and is by no means free of doubt as to the soundness of its legal theory, yet on the whole the wording of the constitutional grant of jurisdiction and the logic of the situation point strongly to the existence of the power claimed. And this seems to be the view of the Court for it declares: "In so far as the duty to award that remedy is disputed merely because authority to enforce a judgment against a State may not affect state power, the contention is adversely disposed of by what we have said."

The suggestion of the Chief Justice that Congress may have power to enforce the obligation of West Virginia is interesting, but cannot be adequately discussed within the space here available. The basis for such proposed action is the constitutional requirement that agreements between states can be given validity only through the consent of Congress, from which flows a general supervisory power in Congress, which under the doctrine of McCulloch v. Maryland, 4 Wheat. 316, may be exercised by an appropriate legislation. There is much strength in this position, but in any proposed
legislation for this purpose, care would have to be exercised to avoid interfering with judicial functions, or impairing already vested rights. Perhaps a general law drawn to provide a method of enforcing judgments against states, and confining itself to “remedy,” would afford the solution.

H. M. B.