A BRIEF SURVEY OF THE JURISDICTION AND PRACTICE OF THE COURTS OF THE UNITED STATES

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A Brief Survey of the Jurisdiction and Practice of the Courts of the United States by Charles W. Bunn

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CHAPTER I

THE JUDICIAL POWER

The first section of the third article of the Constitution of the United States provides:

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

By this language the Constitution establishes "one Supreme Court," but leaves it for Congress to ordain and establish from

time to time such inferior courts as it may think proper. Consequently Congress cannot abolish the one Supreme Court.

Congress under this power has established a District Court and a Circuit Court (now abolished) of the United States, and on March 3, 1891, it established a new court called the Circuit Court of Appeals. These courts rank in the following order, commencing at the lowest: District Court, Circuit Court of Appeals, Supreme Court.

The Supreme Court sits at Washington. It consists now of nine judges, though originally of six; and it holds one session each year, commencing on the second Monday of October, usually ending about the first of May. Congress has divided the United States into nine circuits, in each of which Circuit Courts, until January 1, 1912, were held in various places as provided by the acts of Congress. And by similar acts the country is divided into smaller divisions, called districts, for each of which a District Court is established. The Circuit Court of Ap-

peals is a separate court in each circuit, holding sessions as stated in section 126 of the Judicial Code (Act March 3, 1911, c. 231, 36 Stat. 1132 [U. S. Comp. St. § 1118]) and at such other times and places as the judges of that court determine. Minnesota is in the Eighth Circuit, and the Circuit Court of Appeals holds each year one term at St. Louis, one at St. Paul and one at Denver or Cheyenne.

The jurisdiction of all these courts is limited by the Constitution. Congress can confer no power or authority on any of them beyond that enumerated in the second section of the third article of the Constitution, which reads:

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizen of another state, between citizens of different states,

between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

In defining the judicial power of the United States Courts, the Constitution says it "shall extend to all cases, in law and equity." This language has been decided to refer to the known division in English jurisprudence between common law and equity law; and this distinction is preserved throughout the practice and proceedings of the United States Courts. It is of no moment in those courts that some of the states have abolished the distinction. The states can pass no laws which affect either the jurisdiction or the practice of the courts of the United States. *Sheffield Furnace Co. v. Witherow,* 149 U. S. 574, 579, 13 Sup. Ct. 936, 37 L. Ed. 853. State laws may be adopted by Congress or by the United States Courts as rules of decision, and in actions at common law Congress and the United States Courts have adopted to a certain extent the practice and rules of

decision in the several states. Rev. Stat. § 721 (U. S. Comp. St. § 1538). But the equity jurisdiction of the courts of the United States is vested in them by this language of the Constitution and is the jurisdiction of the English Court of Chancery substantially as it existed when the Constitution was adopted. The practice in equity in the federal courts is uniform throughout the United States, and these courts administer the same system of equity through the whole country. The law of no state affects the jurisdiction or practice of the federal courts in equity cases.

The Constitution next defines the cases that may be brought in the federal courts. First are named those "arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." Any case which depends in whole or in part on the construction and effect to be given to the Constitution of the United States, or a law of Congress, or a treaty, comes under this language

and therefore under the judicial power of the United States Courts and under the jurisdiction which has been or may be conferred upon them. Next are named all cases affecting ambassadors, other public ministers and consuls, and then admiralty and maritime cases, "all controversies to which the United States shall be a party," and "controversies between two or more states."

The next clause, "between a state and citizens of another state," gave rise to an amendment of the Constitution of the United States. Soon after the Constitution was adopted a citizen of Massachusetts sued the state of Rhode Island in the federal courts. It was held in *Chisholm v. State of Georgia,* 2 Dall. 419, 1 L. Ed. 440, that the right to sue a state in the federal courts was given by the Constitution and this interpretation became a subject of great complaint among the states, which resulted in the Eleventh Amendment of the Constitution, providing: