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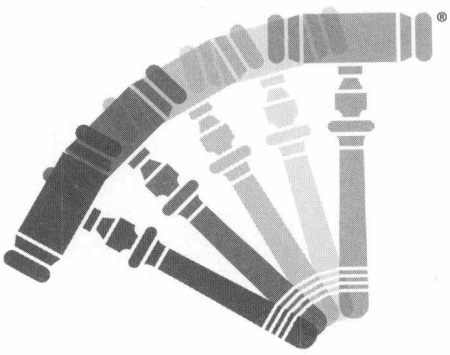

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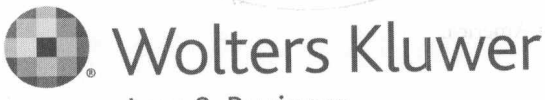

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Format for the Casenote Legal Brief

Nature of Case: This section identifies the form of action (e.g., breach of contract, negligence, battery), the type of proceeding (e.g., demurrer, appeal from trial court's jury instructions), or the relief sought (e.g., damages, injunction, criminal sanctions).

Party ID: Quick identification of the relationship between the parties.

Fact Summary: This is included to refresh your memory and can be used as a quick reminder of the facts.

Rule of Law: Summarizes the general principle of law that the case illustrates. It may be used for instant recall of the court's holding and for classroom discussion or home review.

Facts: This section contains all relevant facts of the case, including the contentions of the parties and the lower court holdings. It is written in a logical order to give the student a clear understanding of the case. The plaintiff and defendant are identified by their proper names throughout and are always labeled with a (P) or (D).

Concurrence/Dissent: All concurrences and dissents are briefed whenever they are included by the casebook editor.

Analysis: This last paragraph gives you a broad understanding of where the case "fits in" with other cases in the section of the book and with the entire course. It is a hornbook-style discussion indicating whether the case is a majority or minority opinion and comparing the principal case with other cases in the casebook. It may also provide analysis from restatements, uniform codes, and law review articles. The analysis will prove to be invaluable to classroom discussion.

Palsgraf v. Long Island R.R. Co.

Injured bystander (P) v. Railroad company (D)

N.Y. Ct. App., 248 N.Y. 339, 162 N.E. 99 (1928).

NATURE OF CASE: Appeal from judgment affirming verdict for plaintiff seeking damages for personal injury.

FACT SUMMARY: Helen Palsgraf (P) was injured on R.R.'s (D) train platform when R.R.'s (D) guard helped a passenger aboard a moving train, causing his package to fall on the tracks. The package contained fireworks which exploded, creating a shock that tipped a scale onto Palsgraf (P).

RULE OF LAW

The risk reasonably to be perceived defines the duty to be obeyed.

FACTS: Helen Palsgraf (P) purchased a ticket to Rockaway Beach from R.R. (D) and was waiting on the train platform. As she waited, two men ran to catch a train that was pulling out from the platform. The first man jumped aboard, but the second man, who appeared as if he might fall, was helped aboard by the guard on the train who had kept the door open so they could jump aboard. A guard on the platform also helped by pushing him onto the train. The man was carrying a package wrapped in newspaper. In the process, the man dropped his package, which fell on the tracks. The package contained fireworks and exploded. The shock of the explosion was apparently of great enough strength to tip over some scales at the other end of the platform, which fell on Palsgraf (P) and injured her. A jury awarded her damages, and R.R. (D) appealed.

ISSUE: Does the risk reasonably to be perceived define the duty to be obeyed?

HOLDING AND DECISION: (Cardozo, C.J.) Yes. The risk reasonably to be perceived defines the duty to be obeyed. If there is no foreseeable hazard to the injured party as the result of a seemingly innocent act, the act does not become a tort because it happened to be a wrong as to another. If the wrong was not willful, the plaintiff must show that the act as to her had such great and apparent possibilities of danger as to entitle her to protection. Negligence in the abstract is not enough upon which to base liability. Negligence is a relative concept, evolving out of the common law doctrine of trespass on the case. To establish liability, the defendant must owe a legal duty of reasonable care to the injured party. A cause of action in tort will lie where harm, though unintended, could have been averted or avoided by observance of such a duty. The scope of the duty is limited by the range of danger that a reasonable person could foresee. In this case, there was nothing to suggest from the appearance of the parcel or otherwise that the parcel contained fireworks. The guard could not reasonably have had any warning of a threat to Palsgraf (P), and R.R. (D) therefore cannot be held liable. Judgment is reversed in favor of R.R. (D).

DISSENT: (Andrews, J.) The concept that there is no negligence unless R.R. (D) owes a legal duty to take care as to Palsgraf (P) herself is too narrow. Everyone owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others. If the guard's action was negligent as to those nearby, it was also negligent as to those outside what might be termed the "danger zone." For Palsgraf (P) to recover, R.R.'s (D) negligence must have been the proximate cause of her injury, a question of fact for the jury.

ANALYSIS

The majority defined the limit of the defendant's liability in terms of the danger that a reasonable person in defendant's situation would have perceived. The dissent argued that the limitation should not be placed on liability, but rather on damages. Judge Andrews suggested that only injuries that would not have happened but for R.R.'s (D) negligence should be compensable. Both the majority and dissent recognized the policy-driven need to limit liability for negligent acts, seeking, in the words of Judge Andrews, to define a framework "that will be practical and in keeping with the general understanding of mankind." The Restatement (Second) of Torts has accepted Judge Cardozo's view.

Quicknotes

FORESEEABILITY A reasonable expectation that change is the probable result of certain acts or omissions.

NEGLIGENCE Conduct falling below the standard of care that a reasonable person would demonstrate under similar conditions.

PROXIMATE CAUSE The natural sequence of events without which an injury would not have been sustained.

Issue: The issue is a concise question that brings out the essence of the opinion as it relates to the section of the casebook in which the case appears. Both substantive and procedural issues are included if relevant to the decision.

Holding and Decision: This section offers a clear and in-depth discussion of the rule of the case and the court's rationale. It is written in easy-to-understand language and answers the issue presented by applying the law to the facts of the case. When relevant, it includes a thorough discussion of the exceptions to the case as listed by the court, any major cites to the other cases on point, and the names of the judges who wrote the decisions.

Quicknotes: Conveniently defines legal terms found in the case and summarizes the nature of any statutes, codes, or rules referred to in the text.

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Casenote Legal Briefs should never be used as a substitute for assigned casebook readings. They work best when read as a follow-up to reviewing the underlying opinions themselves. Students who try to avoid reading and digesting the judicial opinions in their casebooks or online sources will end up shortchanging themselves in the long run. The ability to absorb, critique, and restate the dynamic and complex elements of case law decisions is crucial to your success in law school and beyond. It cannot be developed vicariously.

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How to Brief a Case

A. Decide on a Format and Stick to It

Structure is essential to a good brief. It enables you to arrange systematically the related parts that are scattered throughout most cases, thus making manageable and understandable what might otherwise seem to be an endless and unfathomable sea of information. There are, of course, an unlimited number of formats that can be utilized. However, it is best to find one that suits your needs and stick to it. Consistency breeds both efficiency and the security that when called upon you will know where to look in your brief for the information you are asked to give.

Any format, as long as it presents the essential elements of a case in an organized fashion, can be used. Experience, however, has led *Casenotes* to develop and utilize the following format because of its logical flow and universal applicability.

NATURE OF CASE: This is a brief statement of the legal character and procedural status of the case (e.g., "Appeal of a burglary conviction").

There are many different alternatives open to a litigant dissatisfied with a court ruling. The key to determining which one has been used is to discover *who is asking this court for what.*

This first entry in the brief should be kept as *short as possible.* Use the court's terminology if you understand it. But since jurisdictions vary as to the titles of pleadings, the best entry is the one that addresses who wants what in this proceeding, not the one that sounds most like the court's language.

RULE OF LAW: A statement of the general principle of law that the case illustrates (e.g., "An acceptance that varies any term of the offer is considered a rejection and counteroffer").

Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is *the* rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is simply the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

FACTS: A synopsis of only the essential facts of the case, i.e., those bearing upon or leading up to the issue.

The facts entry should be a short statement of the events and transactions that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the "facts" will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. "Hard" facts must be included. Both must be *relevant* in order to be listed in the facts entry. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion.

Generally, the facts entry should not be longer than three to five *short* sentences.

It is often helpful to identify the role played by a party in a given context. For example, in a construction contract case the identification of a party as the "contractor" or "builder" alleviates the need to tell that that party was the one who was supposed to have built the house.

It is always helpful, and a good general practice, to identify the "plaintiff" and the "defendant." This may seem elementary and uncomplicated, but, especially in view of the creative editing practiced by some casebook editors, it is sometimes a difficult or even impossible task. Bear in mind that the *party presently* seeking something from this court may not be the plaintiff, and that sometimes only the cross-claim of a defendant is treated in the excerpt. Confusing or misaligning the parties can ruin your analysis and understanding of the case.

ISSUE: A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a "yes" or "no" answer. In reality, the issue is simply the Rule of Law put in the form of a question (e.g., "May an offer be accepted by performance?").

The major problem presented in discerning what is *the* issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as *"obiter dictum"* or merely *"dictum."* While dicta may be included later in the brief, they have no place under the issue heading.

To find the issue, ask *who wants what* and then go on to ask *why did that party succeed or fail in getting it.* Once this is determined, the "why" should be turned into a question.

The complexity of the issues in the cases will vary, but in all cases a single-sentence question should sum up the issue. *In a few cases,* there will be two, or even more rarely, three issues of equal importance to the resolution of the case. Each should be expressed in a single-sentence question.

Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny. A noted law professor gave this advice: "Close the book; look at the title on the cover." Chances are, if it is Property, you need not concern yourself with whether, for example, the federal government's treatment of the plaintiff's land really raises a federal question sufficient to support jurisdiction on this ground in federal court.

The same rule applies to chapter headings designating sub-areas within the subjects. They tip you off as to what the text is designed to teach. The cases are arranged in a casebook to show a progression or development of the law, so that the preceding cases may also help.

It is also most important to remember to *read the notes and questions* at the end of a case to determine what the editors wanted you to have gleaned from it.

HOLDING AND DECISION: This section should succinctly explain the rationale of the court in arriving at its decision. In capsulizing the "reasoning" of the court, it should always include an application of the general rule or rules of law to the specific facts of the case. Hidden justifications come to light in this entry: the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case (e.g., "Decision of the trial court for Mr. Smith (P) reversed").

The foregoing format is designed to help you "digest" the reams of case material with which you will be faced in your law school career. Once mastered by practice, it will place at your fingertips the information the authors of your casebooks have sought to impart to you in case-by-case illustration and analysis.

B. Be as Economical as Possible in Briefing Cases

Once armed with a format that encourages succinctness, it is as important to be economical with regard to the time spent on the actual reading of the case as it is to be economical in the writing of the brief itself. This does not mean "skimming" a case. Rather, it means reading the case with an "eye" trained to recognize into which "section" of your brief a particular passage or line fits and having a system for quickly and precisely marking the case so that the passages fitting any one particular part of the brief can be easily identified and brought together in a concise and accurate manner when the brief is actually written.

It is of no use to simply repeat everything in the opinion of the court; record only enough information to trigger your recollection of what the court said. Nevertheless, an accurate statement of the "law of the case," i.e., the legal principle applied to the facts, is absolutely essential to class preparation and to learning the law under the case method.

To that end, it is important to develop a "shorthand" that you can use to make marginal notations. These notations will tell you at a glance in which section of the brief you will be placing that particular passage or portion of the opinion.

Some students prefer to underline all the salient portions of the opinion (with a pencil or colored underliner marker), making marginal notations as they go along. Others prefer the color-coded method of underlining, utilizing different colors of markers to underline the salient portions of the case, each separate color being used to represent a different section of the brief. For example, blue underlining could be used for passages relating to the rule of law, yellow for those relating to the issue, and green for those relating to the holding and decision, etc. While it has its advocates, the color-coded method can be confusing and time-consuming (all that time spent on changing colored markers). Furthermore, it can interfere with the continuity and concentration many students deem essential to the reading of a case for maximum comprehension. In the end, however, it is a matter of personal preference and style. Just remember, whatever method you use, underlining must be used sparingly or its value is lost.

If you take the marginal notation route, an efficient and easy method is to go along underlining the key portions of the case and placing in the margin alongside them the following "markers" to indicate where a particular passage or line "belongs" in the brief you will write:

N (NATURE OF CASE)
RL (RULE OF LAW)
I (ISSUE)
HL (HOLDING AND DECISION, relates to the RULE OF LAW behind the decision)
HR (HOLDING AND DECISION, gives the RATIONALE or reasoning behind the decision)
HA (HOLDING AND DECISION, APPLIES the general principle(s) of law to the facts of the case to arrive at the decision)

Remember that a particular passage may well contain information necessary to more than one part of your brief, in which case you simply note that in the margin. If you are using the color-coded underlining method instead of marginal notation, simply make asterisks or

checks in the margin next to the passage in question in the colors that indicate the additional sections of the brief where it might be utilized.

The economy of utilizing "shorthand" in marking cases for briefing can be maintained in the actual brief writing process itself by utilizing "law student shorthand" within the brief. There are many commonly used words and phrases for which abbreviations can be substituted in your briefs (and in your class notes also). You can develop abbreviations that are personal to you and which will save you a lot of time. A reference list of briefing abbreviations can be found on page xii of this book.

C. Use Both the Briefing Process and the Brief as a Learning Tool

Now that you have a format and the tools for briefing cases efficiently, the most important thing is to make the time spent in briefing profitable to you and to make the most advantageous use of the briefs you create. Of course, the briefs are invaluable for classroom reference when you are called upon to explain or analyze a particular case. However, they are also useful in reviewing for exams. A quick glance at the fact summary should bring the case to mind, and a rereading of the rule of law should enable you to go over the underlying legal concept in your mind, how it was applied in that particular case, and how it might apply in other factual settings.

As to the value to be derived from engaging in the briefing process itself, there is an immediate benefit that arises from being forced to sift through the essential facts and reasoning from the court's opinion and to succinctly express them in your own words in your brief. The process ensures that you understand the case and the point that it illustrates, and that means you will be ready to absorb further analysis and information brought forth in class. It also ensures you will have something to say when called upon in class. The briefing process helps develop a mental agility for getting to the *gist* of a case and for identifying, expounding on, and applying the legal concepts and issues found there. The briefing process is the mental process on which you must rely in taking law school examinations; it is also the mental process upon which a lawyer relies in serving his clients and in making his living.

Abbreviations for Briefs

acceptance	acp
affirmed	aff
answer	ans
assumption of risk	a/r
attorney	atty
beyond a reasonable doubt	b/r/d
bona fide purchaser	BFP
breach of contract	br/k
cause of action	c/a
common law	c/l
Constitution	Con
constitutional	con
contract	K
contributory negligence	c/n
cross	x
cross-complaint	x/c
cross-examination	x/ex
cruel and unusual punishment	c/u/p
defendant	D
dismissed	dis
double jeopardy	d/j
due process	d/p
equal protection	e/p
equity	eq
evidence	ev
exclude	exc
exclusionary rule	exc/r
felony	f/n
freedom of speech	f/s
good faith	g/f
habeas corpus	h/c
hearsay	hr
husband	H
injunction	inj
in loco parentis	ILP
inter vivos	I/v
joint tenancy	j/t
judgment	judgt
jurisdiction	jur
last clear chance	LCC
long-arm statute	LAS
majority view	maj
meeting of minds	MOM
minority view	min
Miranda rule	Mir/r
Miranda warnings	Mir/w
negligence	neg
notice	ntc
nuisance	nus
obligation	ob
obscene	obs
offer	O
offeree	OE
offeror	OR
ordinance	ord
pain and suffering	p/s
parol evidence	p/e
plaintiff	P
prima facie	p/f
probable cause	p/c
proximate cause	px/c
real property	r/p
reasonable doubt	r/d
reasonable man	r/m
rebuttable presumption	rb/p
remanded	rem
res ipsa loquitur	RIL
respondeat superior	r/s
Restatement	RS
reversed	rev
Rule Against Perpetuities	RAP
search and seizure	s/s
search warrant	s/w
self-defense	s/d
specific performance	s/p
statute	S
statute of frauds	S/F
statute of limitations	S/L
summary judgment	s/j
tenancy at will	t/w
tenancy in common	t/c
tenant	t
third party	TP
third party beneficiary	TPB
transferred intent	TI
unconscionable	uncon
unconstitutional	unconst
undue influence	u/e
Uniform Commercial Code	UCC
unilateral	uni
vendee	VE
vendor	VR
versus	v
void for vagueness	VFV
weight of authority	w/a
weight of the evidence	w/e
wife	W
with	w/
within	w/i
without	w/o
without prejudice	w/o/p
wrongful death	wr/d

Table of Cases

CHAPTER 1

The Supreme Court's Authority and Role

Quick Reference Rules of Law

Marbury v. Madison

Justice (P) v. Secretary of State (D)

5 U.S. (1 Cranch) 137 (1803).

NATURE OF CASE: Writ of mandamus to compel delivery of commission.

FACT SUMMARY: President Jefferson's Secretary of State, James Madison (D), refused to deliver a commission granted to William Marbury (P) by former President Adams.

RULE OF LAW

The Supreme Court has the power, implied from Article VI, § 2, of the Constitution, to review acts of Congress and if they are found repugnant to the Constitution, to declare them void.

FACTS: On March 2, 1801, the outgoing President of the United States, John Adams, named forty-two justices of the peace for the District of Columbia under the Organic Act passed the same day by Congress. William Marbury (P) was one of the justices named. The commissions of Marbury (P) and other named justices were signed by Adams on his last day in office, March 3, and signed and sealed by the Acting Secretary of State, John Marshall. However, the formal commissions were not delivered by the end of the day. The new President, Thomas Jefferson, treated those appointments that were not formalized by delivery of the papers of commission prior to Adams's leaving office as a nullity. Marbury (P) and other affected colleagues brought this writ of mandamus to the Supreme Court to compel Jefferson's Secretary of State, James Madison (D), to deliver the commissions. John Marshall, the current Chief Justice of the Supreme Court, delivered the opinion.

ISSUE: Does the Constitution give the Supreme Court the authority to review acts of Congress and declare them, if repugnant to the Constitution, to be void?

HOLDING AND DECISION: (Marshall, C.J.) Yes. The Supreme Court has the power, implied from Article VI, § 2, of the Constitution, to review acts of Congress and if they are found repugnant to the Constitution, to declare them void. The government of the United States is a government of laws, not of men. The President, bound by these laws, is given certain political powers by the Constitution which he may use at his discretion. To aid him in his duties, he is authorized to appoint certain officers to carry out his orders. Their acts as officers are his acts and are never subject to examination by the courts. However, where these officers are given by law specific duties on which individual rights depend, any individual injured by breach of such duty may resort to his country's laws for a remedy. Here, Marbury (P) had a right to the commission, and Madison's (D) refusal to deliver it violated that right. The present case is clearly one for mandamus. However, should the Supreme Court be the court to issue it? The Judiciary Act of 1789 established and authorized United States courts to issue writs of mandamus to courts or persons holding office under U.S. authority. Secretary of State Madison (D) comes within the Act. If the Supreme Court is powerless to issue the writ of mandamus to him, it must be because the Act is unconstitutional. Article III of the Constitution provides that the Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and where a state is a party. In all other cases, the Supreme Court shall have appellate jurisdiction. Marbury (P) urged that since Article III contains no restrictive words, the power to assign original jurisdiction to the courts remains in the legislature. But if Congress is allowed to distribute the original and appellate jurisdiction of the Supreme Court, as in the Judiciary Act, then the constitutional grant of Article III is form without substance. But no clause in the Constitution is presumed to be without effect. For the Court to issue a mandamus, it must be an exercise of appellate jurisdiction. The grant of appellate jurisdiction is the power to revise and correct proceedings already instituted; it does not create the cause. To issue a writ of mandamus ordering an executive officer to deliver a paper is to create the original action for that paper. This would be an unconstitutional exercise of original jurisdiction beyond the power of the court. It is the province and duty of the judicial department to say what the law is. And any law, including acts of the legislature that is repugnant to the Constitution is void. Mandamus denied.

ANALYSIS

Judicial review of legislative acts was a controversial subject even before the Constitution was ratified and adopted. Alexander Hamilton upheld the theory of judicial review in the Federalist Papers. He argued that the judiciary, being the most vulnerable branch of the government, was designed to be an intermediary between the people and the legislature. Since the interpretation of laws was the responsibility of the judiciary, and the Constitution the supreme law of the land, any conflict between legislative acts and the Constitution was to be resolved by the court in favor of the Constitution. But other authorities have attacked this position. In the case of *Eakin v. Raub*, 12 Serg. & Rawle 330 (1825), Justice Gibson dissented, stating that the judiciary's function was limited to interpreting the laws and should not extend to scrutinizing the legislature's authority to enact them. Judge Learned Hand felt that judicial review was inconsistent with the separation of powers. But history has supported the authority of judicial review of legislative acts. The United States survives on a tripartite government. Theoretically, the three branches

Continued on next page.

should be strong enough to check and balance the others. To limit the judiciary to the passive task of interpretation would be to limit its strength in the tripartite structure. Marbury served to buttress the judiciary branch making it equal to the executive and legislative branches.

Quicknotes

APPELLATE JURISDICTION The power of a higher court to review the decisions of lower courts.

JUDICIAL REVIEW The authority of the courts to review decisions, actions or omissions committed by another agency or branch of government.

ORIGINAL JURISDICTION The power of a court to hear an action upon its commencement.

WRIT OF MANDAMUS A court order issued commanding a public or private entity, or an official thereof, to perform a duty required by law.

Martin v. Hunter's Lessee

Heir to land (P) v. Lessee (D)

14 U.S. (1 Wheat.) 304, 4 L.Ed. 97 (1816).

NATURE OF CASE: Appeal from an action of ejectment.

FACT SUMMARY: After the Supreme Court reversed a Virginia Court of Appeals ruling that had held that Martin (P) had lost title to land in favor of the state, the Virginia court ruled that since the Federal Judiciary Act extended the Supreme Court's appellate jurisdiction to state courts, the Judiciary Act was unconstitutional.

RULE OF LAW

Federal courts may hear appeals brought from state court decisions.

FACTS: Martin (P), a British subject resident in England, inherited vast Virginia landholdings from his uncle, Lord Fairfax. In 1789, Virginia, pursuant to state laws confiscating land owned by British subjects, purported to grant a land patent to Hunter. Martin (P) sought to eject Hunter's lessee (D) from the land. The Virginia District Court ruled for Martin (P) on the basis of anti-confiscation clauses in the treaties of 1783 and 1794 with Great Britain. The Virginia Court of Appeals reversed on grounds that the 1796 act of compromise between the Fairfax claimants and the state settled the matter against Martin (P) and that the state's title had been perfected before the treaties. The Supreme Court, relying on the treaty of 1794 and without discussing the compromise, reversed and remanded. On remand, the Virginia court ruled that insofar as the Judiciary Act extended the Supreme Court's appellate jurisdiction to state courts, the Act was unconstitutional. Martin (P) appealed.

ISSUE: May federal courts hear appeals brought from state court decisions?

HOLDING AND DECISION: (Story, J.) Yes. Federal courts may hear appeals brought from state court decisions. The third article of the Constitution grants appellate jurisdiction to the Supreme Court where it does not have original jurisdiction except in those instances where Congress has limited federal appellate jurisdiction. The Framers anticipated federal courts would not have original jurisdiction over cases that arose in state court, but provided for appellate jurisdiction. Some argue that the federal courts cannot interfere with state sovereignty by taking jurisdiction over state cases, but the Constitution provides in several other instances for state obligations and intrusions into state sovereignty. State judges are not entitled to independence from the federal judicial system but are in fact subject to it pursuant to the Constitution. Federal appellate power over state cases is a necessity for uniformity because of the possibility of different state courts interpreting the same statute or treaty differently. The Supreme Court's job is not to inquire into the reasons the Framers provided for federal appellate jurisdiction but to construe the Constitution as written. The Constitution expressly provides for federal appellate jurisdiction over cases arising in state courts. Reversed (judgment of the district court affirmed).

ANALYSIS

As a historical note, Chief Justice Marshall disqualified himself in the first, remanded case, *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch 603 (1813), and in the case above. Marshall, as a member of the Virginia legislature, had negotiated the 1796 act of compromise while acting for the purchasers of the Fairfax estate. Marshall also had a great financial interest in the outcome because he and his brother had organized a syndicate which had purchased, from Martin (P), 160,000 acres of the land in question.

Quicknotes

APPELLATE JURISDICTION The power of a higher court to review the decisions of lower courts.

EJECTMENT An action to oust someone in unlawful possession of real property and to restore possession to the party lawfully entitled to it.

FEDERAL JUDICIARY ACT § 34 The laws of the states shall be regarded as rules of decisions in trials at common law in the federal courts.