of several Supreme Court interpretations of the Fair Labor Standards Act; it also provided that no court should have jurisdiction to enforce any claim arising from these decisions. The United States Court of Appeals for the Second Circuit sustained the Act.[1235] The court noted that the withdrawal of jurisdiction would be ineffective if the extinguishment of the claims as a substantive matter were invalid. "We think . . . that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is to say, while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law or to take private property without just compensation." [1236] The Court, however, found that the Portal-to-Portal Act "did not violate the Fifth Amendment in so far as it may have withdrawn from private individuals . . . any rights . . . which rested upon private contracts they had made. Nor is the Portal-to-Portal Act a violation of Article III of the Constitution or an encroachment upon the separate power of the judiciary." [1237]

Conclusion.—There thus remains a measure of doubt that Congress's power over the federal courts is as plenary as some of the Court's language suggests it is. Congress has a vast amount of discretion in conferring and withdrawing and structuring the original and appellate jurisdiction of the inferior federal courts and the appellate jurisdiction of the Supreme Court; so much is clear from the practice since 1789 and the holdings of many Court decisions. That its power extends to accomplishing by means of its control over jurisdiction actions which it could not do directly by substantive enactment is by no means clear from the text of the Constitution or from the cases.

FEDERAL-STATE COURT RELATIONS

Problems Raised by Concurrency

The Constitution established a system of government in which total power, sovereignty, was not unequivocally lodged in one level

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[1235] Battaglia v. General Motors Corp., 169 F.2d 254 (2d Cir. 1948), *cert. denied*, 335 U.S. 887 (1948). *See also* Seese v. Bethlehem Steel Co., 168 F.2d 58, 65 (4th Cir. 1948). For later dicta, *see* Johnson v. Robison, 415 U.S. 361, 366–67 (1974); Weinberger v. Salfi, 422 U.S. 749, 761–62 (1975); Territory of Guam v. Olsen, 431 U.S. 195, 201–02, 204 (1977); Adamo Wrecking Co. v. United States, 434 U.S. 275 (1978); Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 681 n.12 (1986); Webster v. Doe, 486 U.S. 592, 603 (1988); *but see* id. at 611–15 (Justice Scalia dissenting). Note the relevance of United States v. Mendoza-Lopez, 481 U.S. 828 (1987).

[1236] 169 F.2d at 257.

[1237] 169 F.2d at 261–62.