Another Reconstruction Congress attempt to curb the judiciary failed in *United States v. Klein*,[1220] in which the Court voided a statute, couched in jurisdictional terms, which attempted to set aside both the effect of a presidential pardon and the judicial effectuation of such a pardon.[1221] The statute declared that no pardon was to be admissible in evidence in support of any claim against the United States in the Court of Claims for the return of confiscated property of Confederates nor, if already put in evidence in a pending case, should it be considered on behalf of the claimant by the Court of Claims or by the Supreme Court on appeal. Proof of loyalty was required to be made according to provisions of certain congressional enactments, and when judgment had already been rendered on other proof of loyalty the Supreme Court on appeal should have no further jurisdiction and should dismiss for want of jurisdiction. Moreover, it was provided that the recitation in any pardon which had been received that the claimant had taken part in the rebellion was to be taken as conclusive evidence that the claimant had been disloyal and was not entitled to regain his property.

The Court began by reaffirming that Congress controlled the existence of the inferior federal courts and the jurisdiction vested in them and the appellate jurisdiction of the Supreme Court. "But the language of this provision shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. . . . It is evident . . . that the denial of jurisdiction to this court, as well as to the Court of Claims, is founded solely on the application of a rule of decision, in causes pending, prescribed by Congress. The Court has jurisdiction of the cause to a given point; but when it ascer-

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could command a majority view today." Justice Harlan, however, cited *McCardle* with apparent approval of its holding, id. at 567–68, while noting that Congress's "authority is not, of course, unlimited." Id. at 568. *McCardle* was cited approvingly in Bruner v. United States, 343 U.S. 112, 117 n.8 (1952), as illustrating the rule "that when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law. . . ."

[1220] 80 U.S. (13 Wall.) 128 (1872). *See* C. Fairman, supra at 558–618. The seminal discussion of *Klein* may be found in Young, *Congressional Regulation of Federal Courts' Jurisdiction and Processes: United States v. Klein Revisited*, 1981 WISC. L. REV. 1189. While he granted that *Klein* is limited insofar as its bearing on jurisdictional limitation *per se* is concerned, he cited an ambiguous holding in Armstrong v. United States, 80 U.S. (13 Wall.) 154 (1872), as in fact a judicial invalidation of a jurisdictional limitation. Young, id. at 1222–23 n.179.

[1221] Congress by the Act of July 17, 1862, §§ 5, 13, authorized the confiscation of property of those persons in rebellion and authorized the President to issue pardons on such conditions as he deemed expedient, the latter provision being unnecessary in light of Article II, § 2, cl. 1. The President's pardons all provided for restoration of property, except slaves, and in United States v. Padelford, 76 U.S. (9 Wall.) 531 (1870), the Court held the claimant entitled to the return of his property on the basis of his pardon. Congress thereupon enacted the legislation in question. 16 Stat. 235 (1870).