

Sec. 2—Judicial Power and Jurisdiction Cl. 2—Original and Appellate Jurisdiction

missed for want of jurisdiction.¹¹⁸⁰ “We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.”

“What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.”¹¹⁸¹ Although *McCardle* grew out of the stresses of Reconstruction, the principle it applied has been applied in later cases.¹¹⁸²

Jurisdiction of the Inferior Federal Courts.—The Framers, as we have seen,¹¹⁸³ divided with regard to the necessity of courts inferior to the Supreme Court, simply authorized Congress to create such courts, in which, then, judicial power “shall be vested” and

¹¹⁸⁰ *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869). In the course of the opinion, Chief Justice Chase speculated about the Court’s power in the absence of any legislation in tones reminiscent of Marshall’s comments. *Id.* at 513.

¹¹⁸¹ 74 U.S. at 514.

¹¹⁸² See, e.g., Justice Frankfurter’s remarks in *National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 655 (1948) (dissenting): “Congress need not give this Court any appellate power; it may withdraw appellate jurisdiction once conferred and it may do so even while a case is *sub judice*.” In *The Francis Wright*, 105 U.S. 381, 385–386 (1882), upholding Congress’s power to confine Supreme Court review in admiralty cases to questions of law, the Court said: “[W]hile the appellate power of this court under the Constitution extends to all cases within the judicial power of the United States, actual jurisdiction under the power is confined within such limits as Congress sees fit to prescribe. . . . What those powers shall be, and to what extent they shall be exercised, are, and always have been, proper subjects of legislative control. Authority to limit the jurisdiction necessarily carries with it authority to limit the use of the jurisdiction. Not only may whole classes of cases be kept out of the jurisdiction altogether, but particular classes of questions may be subjected to reexamination and review, while others are not.” See also *Luckenbach S. S. Co. v. United States*, 272 U.S. 533, 537 (1926); *American Construction Co. v. Jacksonville, T. & K.W. Ry.*, 148 U.S. 372, 378 (1893); *United States v. Bitty*, 208 U.S. 393 (1908); *United States v. Young*, 94 U.S. 258 (1876). Numerous restrictions on the exercise of appellate jurisdiction have been upheld. E.g., Congress for a hundred years did not provide for a right of appeal to the Supreme Court in criminal cases, except upon a certification of division by the circuit court: at first appeal was provided in capital cases and then in others. F. Frankfurter & J. Landis, *supra* at 79, 109–120. Other limitations noted heretofore include minimum jurisdictional amounts, restrictions of review to questions of law and to questions certified from the circuits, and the scope of review of state court decisions of federal constitutional questions. See *Walker v. Taylor*, 46 U.S. (5 How.) 64 (1847). Though *McCardle* is the only case in which Congress successfully forestalled an expected decision by shutting off jurisdiction, other cases have been cut off while pending on appeal, either inadvertently, *Insurance Co. v. Ritchie*, 72 U.S. (5 Wall.) 541 (1866), or intentionally, *Railroad Co. v. Grant*, 98 U.S. 398 (1878), by raising the requirements for jurisdiction without a reservation for pending cases. See also *Bruner v. United States*, 343 U.S. 112 (1952); *District of Columbia v. Eslin*, 183 U.S. 62 (1901).

¹¹⁸³ *Supra*, “One Supreme Court” and “Inferior Courts”.