

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

Court's mandate, the party losing below may appeal again<sup>1248</sup> or she may presumably apply for mandamus to compel compliance.<sup>1249</sup> Statutorily, the Court may attempt to overcome state recalcitrance by a variety of specific forms of judgment.<sup>1250</sup> If, however, the state courts simply defy the mandate of the Court, difficult problems face the Court, extending to the possibility of contempt citations.<sup>1251</sup>

The most spectacular disobedience of federal authority arose out of the conflict between the Cherokees and the State of Georgia, which was seeking to remove them and seize their lands with the active support of President Jackson.<sup>1252</sup> In the first instance, after the Court had issued a writ of error to the Georgia Supreme Court to review the murder conviction of a Cherokee, Corn Tassel, and after the writ was served, Corn Tassel was executed on the day set for the hearing, contrary to the federal law that a writ of error superseded sentence until the appeal was decided.<sup>1253</sup> Two years later, Georgia again defied the Court, when, in *Worcester v. Georgia*,<sup>1254</sup> it set aside the conviction of two missionaries for residing among the Indians with-

Note, *Evasion of Supreme Court Mandates in Cases Remanded to State Courts Since 1941*, 67 HARV. L. REV. 1251 (1954); Schneider, *State Court Evasion of United States Supreme Court Mandates: A Reconsideration of the Evidence*, 7 VALP. U. L. REV. 191 (1973).

<sup>1248</sup> *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816). See 2 W. CROSSKEY, *POLITICS AND THE CONSTITUTION IN THE HISTORY OF THE UNITED STATES* 785–817 (1953); 1 C. WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* 442–453 (1926). For recent examples, see *NAACP v. Alabama*, 360 U.S. 240, 245 (1959); *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288 (1964), after remand, 277 Ala. 89, 167 So.2d 171 (1964); *Stanton v. Stanton*, 429 U.S. 501 (1977); *General Atomic Co. v. Felter*, 436 U.S. 493 (1978).

<sup>1249</sup> It does not appear that mandamus has ever actually issued. See *In re Blake*, 175 U.S. 114 (1899); *Ex parte Texas*, 315 U.S. 8 (1942); *Fisher v. Hurst*, 333 U.S. 147 (1948); *Lavender v. Clark*, 329 U.S. 674 (1946); *General Atomic Co. v. Felter*, 436 U.S. 493 (1978).

<sup>1250</sup> *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 437 (1819); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 239 (1824); *Williams v. Bruffy*, 102 U.S. 248 (1880) (entry of judgment); *Tyler v. Maguire*, 84 U.S. (17 Wall.) 253 (1873) (award of execution); *Stanley v. Schwalby*, 162 U.S. 255 (1896); *Virginia Coupon Cases (Poindexter v. Greenhow)*, 114 U.S. 270 (1885) (remand with direction to enter a specific judgment). See 28 U.S.C. §§ 1651(a), 2106.

<sup>1251</sup> See 18 U.S.C. § 401. In *United States v. Shipp*, 203 U.S. 563 (1906), 214 U.S. 386 (1909); 215 U.S. 580 (1909), on action by the Attorney General, the Court appointed a commissioner to take testimony, rendered judgment of conviction, and imposed sentence on a state sheriff who had conspired with others to cause the lynching of a prisoner in his custody after the Court had allowed an appeal from a circuit court's denial of a petition for a writ of *habeas corpus*. A question whether a probate judge was guilty of contempt of an order of the Court in failing to place certain candidates on the ballot was certified to the district court, over the objections of Justices Douglas and Harlan, who wished to follow the *Shipp* practice. *In re Herndon*, 394 U.S. 399 (1969). See *In re Herndon*, 325 F. Supp. 779 (M.D. Ala. 1971).

<sup>1252</sup> 1 C. Warren, *supra* at 729–79.

<sup>1253</sup> *Id.* at 732–36.

<sup>1254</sup> 31 U.S. (6 Pet.) 515 (1832).