under the guise of reconsideration of his nomination." The Senate thereupon voted to reconsider the nominations in question, again approving two of the nominees, but rejecting the third, against whom it instructed the District Attorney of the District of Columbia to institute *quo warranto* proceedings in the Supreme Court of the District. In *United States v. Smith*,[551] the Supreme Court overruled the proceedings on the ground that the Senate had never before attempted to apply its rule in the case of an appointee who had already been installed in office on the faith of the Senate's initial consent and notification to the President. In 1939, President Roosevelt rejected a similar demand by the Senate, an action that went unchallenged.[552]

The Removal Power

The Myers Case.—Save for the provision which it makes for a power of impeachment of "civil officers of the United States," the Constitution contains no reference to a power to remove from office, and until its decision in *Myers v. United States*,[553] on October 25, 1926, the Supreme Court had contrived to sidestep every occasion for a decisive pronouncement regarding the removal power, its extent, and location. The point immediately at issue in the *Myers* case was the effectiveness of an order of the Postmaster General, acting by direction of the President, to remove from office a first-class postmaster, in the face of the following provision of an act of Congress passed in 1876: "Postmasters of the first, second, and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate, and shall hold their offices for four years unless sooner removed or suspended according to law."[554]

A divided Court, speaking through Chief Justice Taft, held the order of removal valid and the statutory provision just quoted void. The Chief Justice's relied mainly on the so-called "decision of 1789," which referred to Congress's that year inserting in the act establishing the Department of State a proviso that was meant to imply recognition that the Secretary would be removable by the President at will. The proviso was especially urged by Madison, who invoked in support of it the opening words of Article II and the President's duty to "take Care that the Laws be faithfully executed."

Succeeding passages of the Chief Justice's opinion erected on this basis a highly selective account of doctrine and practice regard-

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[551] 286 U.S. 6 (1932).
[552] E. Corwin, supra at 77.
[553] 272 U.S. 52 (1926).
[554] 19 Stat. 78, 80.