

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

out a license. Despite the issuance of a special mandate to a local court to discharge the missionaries, they were not released, and the state's governor loudly proclaimed resistance. Consequently, the two remained in jail until they agreed to abandon further efforts for their discharge by federal authority and to leave the state, whereupon the governor pardoned them.

Use of State Courts in Enforcement of Federal Law.—

Although the states' rights proponents in the Convention and in the First Congress wished to leave to the state courts the enforcement of federal law and rights rather than to create inferior federal courts,¹²⁵⁵ it was not long before they or their successors began to argue that state courts could not be required to adjudicate cases based on federal law. The practice in the early years was to make the jurisdiction of federal courts generally concurrent with that of state courts,¹²⁵⁶ and early Congresses imposed positive duties on state courts to enforce federal laws.¹²⁵⁷ Reaction set in out of hostility to the Embargo Acts, the Fugitive Slave Law, and other measures,¹²⁵⁸ and, in *Prigg v. Pennsylvania*,¹²⁵⁹ involving the Fugitive Slave Law, the Court indicated that the states could not be compelled to enforce federal law. After a long period, however, Congress resumed its former practice,¹²⁶⁰ which the Court sustained,¹²⁶¹ and it went even further in the Federal Employers' Liability Act by not only giving state courts concurrent jurisdiction but also by prohibiting the removal of cases begun in state courts to the federal courts.¹²⁶²

When Connecticut courts refused to enforce an FELA claim on the ground that to do so was contrary to the public policy of the state, the Court held on the basis of the Supremacy Clause that,

¹²⁵⁵ See "Organization of Courts, Tenure, and Compensation of Judges," *supra*.

¹²⁵⁶ Judiciary Act of 1789, §§ 9, 11, 1 Stat. 76, 78; *see also id.* at § 25, 1 Stat. 85.

¹²⁵⁷ *E.g.*, Carriage Tax Act, 1 Stat. 373 (1794); License Tax on Wine & Spirits Act, 1 Stat. 376 (1794); Fugitive Slave Act, 1 Stat. 302 (1794); Naturalization Act of 1795, 1 Stat. 414; Alien Enemies Act of 1798, 1 Stat. 577. State courts in 1799 were vested with jurisdiction to try criminal offenses against the postal laws. 1 Stat. 733, 28. The Act of March 3, 1815, 3 Stat. 244, vested state courts with jurisdiction of complaints, suits, and prosecutions for taxes, duties, fines, penalties, and forfeitures. *See Warren, Federal Criminal Laws and State Courts*, 38 HARV. L. REV. 545, 577–581 (1925).

¹²⁵⁸ Embargo Acts, 2 Stat. 453, 473, 499, 506, 528, 550, 605, 707 (1808–1812); 3 Stat. 88 (1813); Fugitive Slave Act, 1 Stat. 302 (1793).

¹²⁵⁹ 41 U.S. (16 Pet.) 539, 615 (1842). *See also* *Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 69 (1820) (Justice Story dissenting); *United States v. Bailey*, 34 U.S. (9 Pet.) 238, 259 (1835) (Justice McLean dissenting). However, the Court held that states could exercise concurrent jurisdiction if they wished. *Claffin v. Houseman*, 93 U.S. 130 (1876), and cases cited.

¹²⁶⁰ *E.g.*, Act of June 8, 1872, 17 Stat. 323.

¹²⁶¹ *Claffin v. Houseman*, 93 U.S. 130 (1876).

¹²⁶² 35 Stat. 65 (1908), as amended, 45 U.S.C. §§ 51–60.