tions and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress."[331]

Treaties Versus Prior Acts of Congress.—The Court has enforced numerous statutory provisions that it recognized as superseding prior treaty engagements. Chief Justice Marshall asserted that the converse would be true as well[332]—that a treaty that is self-executing is the law of the land and prevails over an earlier inconsistent statute—and this proposition has been repeated many times in dicta.[333] But there is dispute whether in fact a treaty has ever been held to have repealed or superseded an inconsistent statute. Willoughby, for example, writes: "In fact, however, there have been few (the writer is not certain that there has been any) instances in which a treaty inconsistent with a prior act of Congress has been given full force and effect as law in this country without the assent of Congress. There may indeed have been cases in which, by treaty, certain action has been taken without reference to existing Federal laws, as, for example, where by treaty certain populations have been collectively naturalized, but such treaty action has not operated to repeal or annul the existing law upon the subject."[334]

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[331] *Head Money Cases*, 112 U.S. 580, 598 (1884). The repealability of treaties by act of Congress was first asserted in an opinion of the Attorney General in 1854. 6 Ops. Atty. Gen. 291. The year following the doctrine was adopted judicially in a lengthy and cogently argued opinion of Justice Curtis, speaking for a United States circuit court in Taylor v. Morton, 23 Fed. Cas. 784 (No. 13,799) (C.C.D. Mass 1855). *See also The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616 (1871); United States v. Forty-Three Gallons of Whiskey, 108 U.S. 491, 496 (1883); Botiller v. Dominguez, 130 U.S. 238 (1889); *The Chinese Exclusion Case*, 130 U.S. 581, 600 (1889); Whitney v. Robertson, 124 U.S. 190, 194 (1888); Fong Yue Ting v. United States, 149 U.S. 698, 721 (1893). "Congress by legislation, and so far as the people and authorities of the United States are concerned, could abrogate a treaty made between this country and another country which had been negotiated by the President and approved by the Senate." La Abra Silver Mining Co. v. United States, 175 U.S. 423, 460 (1899). *Cf.* Reichart v. Felps, 73 U.S. (6 Wall.) 160, 165–66 (1868), which states in dictum that "Congress is bound to regard the public treaties, and it had no power . . . to nullify [Indian] titles confirmed many years before by the authorized agents of the government."

[332] Foster v. Neilson, 27 U.S. (2 Pet.) 253, 314–15 (1829). In a later case, it was determined in a different situation that by its terms the treaty in issue, which had been assumed to be executory in the earlier case, was self-executing. United States v. Percheman, 32 U.S. (7 Pet.) 51 (1833).

[333] *E.g.*, United States v. Lee Yen Tai, 185 U.S. 213, 220–21 (1902); *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616, 621 (1871); Johnson v. Browne, 205 U.S. 309, 320–21 (1907); Whitney v. Roberston, 124 U.S. 190, 194 (1888).

[334] 1 W. Willoughby, supra, at 555.