to which nine classes of cases and controversies "shall extend."[1184] While Justice Story deemed it imperative of Congress to create inferior federal courts and, when they had been created, to vest them with all the jurisdiction they were capable of receiving,[1185] the First Congress acted upon a wholly different theory. Inferior courts were created, but jurisdiction generally over cases involving the Constitution, laws, and treaties of the United States was not given them, diversity jurisdiction was limited by a minimal jurisdictional amount requirement and by a prohibition on creation of diversity through assignments, equity jurisdiction was limited to those cases where a "plain, adequate, and complete remedy" could not be had at law.[1186] This care for detail in conferring jurisdiction upon the inferior federal courts bespoke a conviction by Members of Congress that it was within their power to confer or to withhold jurisdiction at their discretion. The cases have generally sustained this view.

Thus, in *Turner v. Bank of North America*,[1187] the issue was the jurisdiction of the federal courts in a suit to recover on a promissory note between two citizens of the same state but in which the note had been assigned to a citizen of a second state so that suit could be brought in federal court under its diversity jurisdiction, a course of action prohibited by § 11 of the Judiciary Act of 1789.[1188] Counsel for the bank argued that the grant of judicial power by the Constitution was a direct grant of jurisdiction, provoking from Chief Justice Ellsworth a considered doubt[1189] and from Justice Chase a firm rejection. "The notion has frequently been entertained, that the federal courts derive their judicial power immediately from the constitution: but the political truth is, that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this Court, we possess it, not otherwise: and if Congress has not given the power to us, or to any other Court, it still remains at the legislative disposal. Be-

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[1184] Article III, § 1, 2.

[1185] Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 374 (1816). For an effort to reframe Justice Story's position in modern analytical terms, *see* the writings of Professors Amar and Clinton, supra and infra.

[1186] Judiciary Act of 1789, 1 Stat. 73. *See* Warren, *New Light on the History of the Judiciary Act of 1789*, 37 HARV. L. REV. 49 (1923). A modern study of the first Judiciary Act that demonstrates the congressional belief in discretion to structure jurisdiction is Casto, *The First Congress's Understanding of Its Authority over the Federal Courts' Jurisdiction*, 26 B. C. L. REV. 1101 (1985).

[1187] 4 U.S. (4 Dall.) 8 (1799).

[1188] "[N]or shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favour of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange." 1 Stat. 79.

[1189] Turner v. Bank of North America, 4 U.S. (4 Dall.) 8, 10 (1799).