premacy Clause, which makes the Constitution, laws enacted pursuant to the Constitution, and treaties the supreme law of the land,[707] and which Congress effectuated by enacting § 25 of the Judiciary Act of 1789.[708] Five years before *Marbury v. Madison*, the Court held invalid a state law as conflicting with the terms of a treaty,[709] and seven years after Chief Justice Marshall's opinion it voided a state law as conflicting with the Constitution.[710]

Virginia provided a states' rights challenge to a broad reading of the Supremacy Clause and to the validity of § 25 in *Martin v. Hunter's Lessee*[711] and in *Cohens v. Virginia*.[712] In both cases, it was argued that while the courts of Virginia were constitutionally obliged to prefer "the supreme law of the land," as set out in the Supremacy Clause, over conflicting state constitutional provisions and laws, it was only by their own interpretation of the supreme law that they as courts of a sovereign state were bound. Furthermore, it was contended that cases did not "arise" under the Constitution unless they were brought in the first instance by someone claiming such a right, from which it followed that "the judicial power of the United States" did not "extend" to such cases unless they were brought in the first instance in the courts of the United States. But Chief Justice Marshall rejected this narrow interpretation: "A case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise under the Constitution or a law of the United States, whenever its correct decision depends upon the construction of either."[713] Passing on to the power of the Supreme Court to review such decisions of the state courts, he said: "Let the nature and objects of our Union be considered: let the great fundamental principles on which the fabric stands, be examined: and we think, the result must be, that there is nothing so extravagantly absurd, in giving to the Court of the nation the power of revising the decisions of local tribunals, on questions which af-

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[707] 2 W. Crosskey, supra at 989. *See* the famous remark of Holmes: "I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as the laws of the several States." O. Holmes, Collected Legal Papers 295–296 (1921).

[708] 1 Stat. 73, 85, quoted supra.

[709] Ware v. Hylton, 3 U.S. (3 Dall.) 190 (1796).

[710] Fletcher v. Peck, 10 U.S. (6 Cr.) 87 (1810). The case came to the Court by appeal from a circuit court and not from a state court under § 25. Famous early cases coming to the Court under § 25 in which state laws were voided included Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122 (1819); and McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819).

[711] 14 U.S. (1 Wheat.) 304 (1816).

[712] 19 U.S. (6 Wheat.) 264 (1821).

[713] 19 U.S. at 379.