tion over the years, inasmuch as congressional displeasure with judicial decisions has sometimes led to successful efforts to "curb" the courts and more frequently to proposed but unsuccessful curbs.[1171] Supreme Court holdings establish clearly the breadth of congressional power, and numerous dicta assert an even broader power, but that Congress may through the exercise of its powers vitiate and overturn constitutional decisions and restrain the exercise of constitutional rights is an assertion often made but not sustained by any decision of the Court.

Appellate Jurisdiction.—In *Wiscart v. D'Auchy*,[1172] the issue was whether the statutory authorization for the Supreme Court to review on writ of error circuit court decisions in "civil actions" gave it power to review admiralty cases.[1173] A majority of the Court decided that admiralty cases were "civil actions" and thus reviewable; in the course of decision, it was said that "[i]f Congress had provided no rule to regulate our proceedings, we cannot exercise an appellate jurisdiction; and if the rule is provided, we cannot depart from it."[1174] Much the same thought was soon to be expressed by Chief Justice Marshall, although he seems to have felt that in the absence of congressional authorization, the Court's appellate jurisdiction would have been measured by the constitutional grant. "Had the judicial act created the supreme court, without defining or limiting its jurisdiction, it must have been considered as possessing all the jurisdiction which the constitution assigns to it. The legislature would have exercised the power it possessed of creating a supreme court, as ordained by the constitution; and in omitting to exercise the right of excepting from its constitutional powers, would have necessarily left those powers undiminished."

"The appellate powers of this court are not given by the judicial act. They are given by the constitution. But they are limited and regulated by the judicial act, and by such other acts as have

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[1171] A classic but now dated study is Warren, *Legislative and Judicial Attacks on the Supreme Court of the United States: A History of the Twenty-Fifth Section of the Judiciary Act*, 47 AM. L. REV. 1, 161 (1913). The most comprehensive consideration of the constitutional issue is Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362 (1953). *See* Hart & Wechsler (6h ed.), supra at 287–305.

[1172] 3 U.S. (3 Dall.) 321 (1796).

[1173] Judiciary Act of 1789, § 22, 1 Stat. 84.

[1174] Wiscart v. D'Auchy, 3 U.S. (3 Dall.) 321, 327 (1796). The dissent thought that admiralty cases were not "civil actions" and thus that there was no appellate review. Id. at 326–27. *See also* Clarke v. Bazadone, 5 U.S. (1 Cr.) 212 (1803); Turner v. Bank of North America, 4 U.S. (4 Dall.) 8 (1799).