preme Court. In *Verlinden B. V. v. Central Bank of Nigeria*,[823] the Court reviewed a congressional grant of jurisdiction to federal courts to hear suits by an alien against a foreign state, jurisdiction not within the "arising under" provision of article III. Federal substantive law was not applicable, that resting either on state or international law. Refusing to consider protective jurisdiction, the Court found that the statute regulated foreign commerce by promulgating rules governing sovereign immunity from suit and was a law requiring interpretation as a federal-question matter. That the doctrine does raise constitutional doubts is perhaps grounds enough to avoid reaching it.[824]

Supreme Court Review of State Court Decisions.—In addition to the constitutional issues presented by § 25 of the Judiciary Act of 1789 and subsequent enactments,[825] questions have continued to arise concerning review of state court judgments which go directly to the nature and extent of the Supreme Court's appellate jurisdiction. Because of the sensitivity of federal-state relations and the delicate nature of the matters presented in litigation touching upon them, jurisdiction to review decisions of a state court is dependent in its exercise not only upon ascertainment of the existence of a federal question but upon a showing of exhaustion of state remedies and of the finality of the state judgment. Because the application of these standards to concrete facts is neither mechanical nor nondiscretionary, the Justices have often been divided over whether these requisites to the exercise of jurisdiction have been met in specific cases submitted for review by the Court.

The Court is empowered to review the judgments of "the highest court of a State in which a decision could be had."[826] This will ordinarily be the state's court of last resort, but it could well be an

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[823] 461 U.S. 480 (1983).

[824] *E.g.*, Mesa v. California, 489 U.S. 121, 136–37 (1989) (would present grave constitutional problems).

[825] On § 25, *see* "Judicial Review and National Supremacy," supra. The present statute is 28 U.S.C. § 1257(a), which provides that review by writ of *certiorari* is available where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States. Prior to 1988, there was a right to mandatory appeal in cases in which a state court had found invalid a federal statute or treaty or in which a state court had upheld a state statute contested under the Constitution, a treaty, or a statute of the United States. *See* the Act of June 25, 1948, 62 Stat. 929. The distinction between *certiorari* and appeal was abolished by the Act of June 27, 1988, Pub. L. 100–352, § 3, 102 Stat. 662.

[826] 28 U.S.C. § 1257(a). *See* R. Stern & E. Gressman, Supreme Court Practice ch. 3 (6th ed. 1986).