tains that a certain state of things exists, its jurisdiction is to cease and it is required to dismiss the cause for want of jurisdiction."

"It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power."[1222] The statute was void for two reasons; it "infring[ed] the constitutional power of the Executive,"[1223] and it "prescrib[ed] a rule for the decision of a cause in a particular way."[1224] *Klein* thus stands for the proposition that Congress may not violate the principle of separation of powers[1225] and that it may not accomplish certain forbidden substantive acts by casting them in jurisdictional terms.[1226]

Other restraints on congressional power over the federal courts may be gleaned from the opinion in the much-disputed *Crowell v. Benson*.[1227] In an 1856 case, the Court distinguished between matters of private right which from their nature were the subject of a suit at the common law, equity, or admiralty and which cannot be withdrawn from judicial cognizance, and those matters of public right which, though susceptible of judicial determination, did not require it and which might or might not be brought within judicial cognizance.[1228] What this might mean was elaborated in *Crowell v. Benson*,[1229] involving the finality to be accorded administrative findings of jurisdictional facts in compensation cases. In holding that an employer was entitled to a trial *de novo* of the constitutional jurisdictional facts of the matter of the employer-employee relationship and of the occurrence of the injury in interstate commerce, Chief Justice Hughes fused the Due Process Clause of the Fifth Amendment and Article III but emphasized that the issue ultimately was "rather a question of the appropriate maintenance of the Federal

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[1222] United States v. Klein, 80 U.S. (13 Wall.) 128, 145–46 (1872).

[1223] 80 U.S. at 147.

[1224] 80 U.S. at 146.

[1225] 80 U.S. at 147. For an extensive discussion of *Klein*, *see* United States v. Sioux Nation, 448 U.S. 371, 391–405 (1980), and id. at 424, 427–34 (Justice Rehnquist dissenting). *See also* Pope v. United States, 323 U.S. 1, 8–9 (1944); Glidden Co. v. Zdanok, 370 U.S. 530, 568 (1962) (Justice Harlan). In Robertson v. Seattle Audubon Society, 503 U.S. 429 (1992), the Ninth Circuit had held unconstitutional under *Klein* a statute that it construed to deny the federal courts power to construe the law, but the Supreme Court held that Congress had *changed* the law that the courts were to apply. The Court declined to consider whether *Klein* was properly to be read as voiding a law "because it directed decisions in pending cases without amending any law." Id. at 441.

[1226] United States v. Klein, 80 U.S. (13 Wall.) 128, 147 (1872).

[1227] 285 U.S. 22 (1932). *See also* Ng Fung Ho v. White, 259 U.S. 276 (1922); Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920); St. Joseph Stock Yards Co. v. United States, 298 U.S. 38 (1936).

[1228] Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272 (1856).

[1229] 285 U.S. 22 (1932). Justices Brandeis, Stone, and Roberts dissented.