



Frederick P. Leavenworth Papers.

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F. Leamon M. St Paul Minn



vol. 6

Brook P. Seammorth

we

ODE TO SPRING.

WRITTEN IN A LAWYER'S OFFICE.

Whereas on sundry boughs and sprays  
Now divers birds are heard to sing;  
And sundry flowers their heads upraise,  
Hail to the coming on of Spring.

The songs of the said birds arouse  
The memory of our youthful hours,  
As young and green as the said boughs;  
Fresh and fair as the said flowers.

The birds aforesaid, happy pairs!  
Love midst the aforesaid boughs and shrines  
In household nests, themselves, their heirs,  
Administrators, and assigns,

O busiest term of Cupids' court!  
When tender plaintiffs' actions bring;  
Seasons of frolic and of sport,  
Hail as aforesaid, coming spring!

A. Suaviter in modo fortiter in re

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Vol. 6

Abstract of Kents Com-  
mentaries on American  
Law — St Paul April 20<sup>th</sup> 179  
Part II

Lecture X  
Of the History of the Am. Union

P201. Govt of U.S was made by free voice and  
joint will of people for their com-  
mon defence & general warfare.

The association of Am. people took  
place while they were British colonies  
But the necessity of union known long  
before. New Eng. colonies were leagued  
in 1643 against encroachments & attack  
of Indians & Dutch. A congress of 2 com<sup>rs</sup>  
from each of the 4 settlements met annually  
with power and jurisdiction. Each colony  
furnished quota of men for war. This confed-  
eracy was dissolved in 1686, by vacation of  
N.E. charters by commission of James II.  
Lords com<sup>rs</sup> for trade & plan<sup>ts</sup> called a  
congress of com<sup>rs</sup> at Albany in 1754 from

9030

N. H., Mass. R. I., Ct. N. Y. Penn, & Md. to  
protect colonies from French in their war  
Mass. delegate had instructions to enter  
into confederacy. The congress resolved  
union of colonies absolutely necessary  
proposed council of triennially elected  
delegates from provincial assemblies &  
privy general, chosen by crown. Some  
& colonies rejected proposition & in 1760  
Dr Franklin said union was impossible  
unless forced without being forced into  
it by tyranny of another country.

But value of a union was already seen  
& assertion of power of taxation by Brit Parl.  
& attempt to enforce same by sword  
were causes of Am. Union

Delegates from 9 colonies met at N. Y. Oct.  
1765 at recommendation of Mass & proposed  
bill of rights declaring power of tax<sup>n</sup> to  
rest in their col<sup>onial</sup> legislatures

The increasing opposition induced the colonies  
in Sept 1774 to send a congress to Philad<sup>a</sup>

This congress asserted unalienable rights  
pointed out violence of Britain, and  
bound the people to remove commerce with  
by Britain This was Union

May 1775 congress assembled at Phil<sup>ad<sup>a</sup></sup> with  
ample discretionary powers. The delegates  
much more partly by col<sup>onial</sup> legislatures  
partly by popular conventions. After this  
Georgia came in. Hostilities had commenced  
in Mass. Congress now published a dec<sup>lar</sup>  
of causes of arms levied an army  
contracted debts, issued paper currency  
and July 4<sup>th</sup> 1776 took rank as a separate  
sovereignty. June 11<sup>th</sup> 1776 congress commenced  
articles of confederation. Finished Nov 15<sup>th</sup> 1777. Del-  
aware refused to ratify them till 1779. Md  
rejected them, till public lands were agreed  
to be appropriated to defray war expenses N. Y.  
in 1779 & 1780 released her <sup>indebted</sup> lands to new states  
in March 1<sup>st</sup> 1780 Md gave in and the articles  
were unanimously adopted. Congress had  
then roughly & imperfectly the jura summi  
imperii as in the congress of 1775

In 1776 Congress transferred to the conf<sup>d</sup> with complete power "requiritur publica dei iuramentum capiat." Authority was too loose. But if it had passed through a national judicial & execution power down to the people, it might have answered. But it carried its decrees to the states in their sovereign capacity. This is a pernicious principle ex. gr. The Swiss war between the cantons Zurich & Glaris. Congress could add no sanction to its laws. Ex. gr. Amphictyonic League. Was restricted in power. Ex. gr. United Netherlands, unable to make war or peace, or alliance or raise money, without the consent of every province.

Congress having no power to interfere in contests between states or delinquencies never came full off. Debt was not met. Hardly a quorum in congress. In 1780 only 80 soldiers in national army.

The defect was that it was a sovereignty over sovereigns.

Leg. of Va called for a convention of delegates in Jan 1786 to regulate commerce. 5 states sent delegates to Annapolis. Recommended a general convention to Congress. Congress called a convention at Philada. in May 1787. All states sent delegates but R.I. This conv. agreed on the present plan when N. H. the 9<sup>th</sup> state ratified it, it became a compact, then Va & N. Y. In 1790 the ratification was unanimous.

## Section XI Of Congress

(221) The legislative is the supreme and preponderant power in a state. We shall consider (1) The constituent parts of Congress, & method of appointment (2) Its powers and privileges (3) Its legislative method, with the veto power.

The advantages of 2 houses. Penn & Mass had 4. French favored only 1. Adams wrote a defense of 2 houses.

Senate is 2 from each state chosen by legislature & grounded on equal sovereignty of States. Legislature prescribe times places & manner.

of election, Congress may alter all these but  
place. Joint ballot

The Senate a moderate body. The House  
passionate. Notable legislation dan-  
gerous. House checked by Senate  
Senate divided into three classes  
1 class vacates seats at exp<sup>d</sup> of 2<sup>nd</sup> yr  
1/3 are chosen every 2<sup>nd</sup> yr. V. Pres't has  
no vote. Decides questions of order. Senator  
30 yrs old. 9 yrs a citizen. English law not  
so enlarged as ours on citizenship

(225) (3) Ho of Rep is chosen every 2<sup>nd</sup> yr by people  
of states who are qualified electors

4-25 yrs required, 7 yrs citizenship.

Qualifications of electors such that the Rep's  
represent  
include the whole body of the American people  
not too many elections.  
Term of Repes not too short or too long.

Apportionment 110,000,000 - 110,450,000. Later in  
1831, 110,470,000 - as near as may be  
3/5 of slaves counted, but taxes in same  
ratio. Ho of Reps should not be too large  
suffrages of Athens Sparta Rome limited

Imperfection in Eng. system Paley observes that  
once, 1/2 commons only, elected by people. 7000  
later turned 1/2 House of commons. But it was  
asylum of European liberty

At present 6 separate powers of Congress. Assen-  
1st 1<sup>st</sup> prgr. Each house its own judge of  
election & qualifications of members. So Brit  
house of commons & State Leg<sup>es</sup> Rules. Case  
(236) of Anderson for contempt

House of R originates bills for revenue but  
checked by senate

Powers of Congress. Taxes & Tariffs, Loans  
Commerce, War, Army, Navy, Militia, Con-  
stitution - Debates public. Passage of  
Bills - 1 day notice, 3 readings. Vet to power

## Section XII

Judicial construction of Power of Congress  
1 U.S. entitled to prior payment over private  
creditors in insolvency & distribution of  
estate

The settled principle is that U.S. having



(245) <sup>excl</sup> privilege of preference ascendant over private citizens & status in insolvency or bankruptcy of debtor. This statute no lien. Only a priority of payment. Bona fide conveyances respected. Insolvency must be legal U.S. preferred (1) in death of debtor without sufficient assets (2) Bankruptcy or legal insolvency (3) voluntary assignment (4) in absconding, absent or concealed debtors whose effects are attached by process of law Custom House duties.

1791. Bank Question agitated. Washington signed bill. In 1819, Supreme Court decided the constitutionality of National Bk. But again that Congress could not create a corporation for its own sake or for private purposes.

1796. Ruled that Congress unrestrainedly can lay and collect taxes, but must be constitutionally apportioned.

Have exclusive right of pre-emption to all  
Indian lands in U.S. & territories

Indians are merely occupants—

(260) Verification of public acts records be in another state. A judgment duly authenticated is prima facie evidence, & conclusion. Nil debet nisi a good plea. Nil tūc record

(6) Congress can call out militia of U.S. President commands them. In 1827 Sup. Court decided that President is the sole judge of the exigency which constitutionally authorizes him to call out militia. Before the militia reach the rendezvous, they are subject to state court martial. Afterward to U.S. Actual service the criterion

(267) (7) The authority of Congress to appropriate pub. moneys for int. <sup>L</sup> imp<sup>T</sup> doubts extends to post-roads & canals. Jefferson & Madison denied right. Adams supported it in 1825.

XIII Section  
The President

(271) (1) The unity of this dept. <sup>constitutional</sup> (2) Qualifications.  
(3) Mode of appoint<sup>n</sup> (4) Duration (5) Support  
(6) Power. — Unity increases efficacy & responsibility of execution

(273)

(2) President must be a natural-born citizen & 35 yrs or resident.

(3) Mode of election. Decides whether popular or legislative election. Must be chosen within 34 days of day of <sup>1st</sup> election. Electors of each state = sen<sup>105</sup> & Rep<sup>5</sup> Pres<sup>1</sup> of Senate counts the votes. If no majority Ho of Reps chooses immediately upon 4th ballot following. Vice P. chosen by Senate if no majority of electors. <sup>34th</sup> to commence on 4th and next election.

(280) (4) Term 4 years. Usage not exceeding 8.

(5) Salary stated. Independent of legislation Reason the control over a man's living is control over his actions.

In the same vein that the 3 great primary departments shd be kept separate & distinct

(282) (6) President is commander of the forces of U.S.

" indifferently reprimands & pardons <sup>of impeachment</sup> except in cases.

" Makes treaties by consent of 2/3 of Senators present

" Appoints officers with Senate - consuls, changes

" Judges &c. Senate is check on him. During

" recess of Senate he fills vacancies, nominates & appoints, sees to execution of laws.

(289) President & Vice<sup>1st</sup> can be impeached by Ho of Rep for treason, bribery, &c. if convicted by Senate removed

## Lecture XIV

### Of the Judiciary

(290) (1) The appointment, tenure, support, & responsibility of the judges (2) structure powers & officers of the several courts —

(1) Judicial power of U.S. vested in 1 Sup. Court & such inferior courts as Congress may ordain & establish. President & Senate appoint & judges hold during good behavior. Salary stated. English judges hold <sup>quandem</sup> <sup>et bene</sup> <sup>gesserunt</sup>. Salaries settled

(295) Ho. of Reps. can impeach & Senate can convict & remove. (2) Power is over all cases in law & equity under the constitution, laws & treaties, ambassadors & consuls, admiralty & marine, controversies to wh. U.S. is a party, controversies between states, a state plaintiff & citizens of another state, citizens vs citizens of other states, citizen or state & foreign <sup>state or</sup> citizen &c. Is final expositor of constitution

(298) Has 1 Ch. justice & 8 associates, 5 make quorum & term annually 1<sup>st</sup> Monday in Dec<sup>r</sup> 1 judge can make all orders in court preparatory to trial, and continue from day to day in absence of quorum. 1 judge of 4<sup>th</sup> circuit attends Washington 1<sup>st</sup> Monday of Aug. for interlocutory matters



(298) Has no jurisdiction where state is def<sup>t</sup>, expt  
where a state is pl<sup>ff</sup>

(299) Has appellate jurisdiction as to law & fact  
by act of 1789 appellate from circuit courts &  
of several states. In matter exceeding \$2,000  
final judgment & decrees can be examined  
omit error before Sup. Ct. So in a final  
judgment in <sup>highest court of</sup> law or equity in any state on point of  
error. Or validity of treaty raised in state  
court, or validity of state authority alleged  
in judgment to Court. <sup>to</sup> & adjudged valid

300 Has superintendence over state courts  
writs of ne exeat & injunction habeas corpus  
There are 9 circuit Courts. Held by 1 Sup. Ct. Judge & Dist.  
Judge of Dist. Or 2 Sup. Judges

(301) Have cognizance of civil suits on common law or eq<sup>ty</sup>  
exceeding \$500 exclusion of cases & U.S. is pl<sup>ff</sup> or  
alien is party & citizen of state & citizen of  
another state. Also of crimes & offenses  
cognizable under authority of U.S.  
in same dist. Cannot change juris-  
diction by assignment of person. notes

except bills of exchange - This does not  
apply to notes payable to bearer;  
nor Indorsels @ Indorser (for that creates  
new contract), nor suits in equity by judgment  
nor cases in which U.S. is party.

Also appellate from decrees & judgments  
in dist courts exceeding \$50. If rendered by  
order of judge in dist court for admiralty &  
maritime exceeding \$500.00 it is by appeal  
if in civil actions exceeding \$50.00 it is by  
writ of error. If an alien, or citizen of  
diff<sup>t</sup> state, or citizen of same state claiming  
grant of land from another state, exceeding  
\$500 go to next Circuit Court Also of cases  
of copy and patent rights without regard  
to amount in dispute.

So the circuit courts are of limited but  
not inferior jurisdiction, which must  
appear on their records

(3) District Courts held by one judge  
holding 1, 2, 3, or 4 terms annually  
Have cognizance of lesser crimes &

in their districts, or on high seas, for a  
fine does not exceed \$100 or imprisonment 6 mos  
or 30 stripes. Also of civil causes of admir-  
alty & maritime, seizures for imports of  
10 tons or more vessels, suits for penalties  
under revenue laws. Concurrent cog-  
nizance with circuit & state courts  
of alien for a tort in violation of law  
of nation or of a treaty of U.S., of U.S. or  
any one where amt excl-corts = \$200  
also of V. Courts except for offenses  
of greater magnitude. Also of captives  
within a marine league of coast, &  
patents under claimed. Can issue

(305) writ of injunction like next Circuit  
Court. When Judge of Supreme can  
not attend dist. Court has power of a  
circuit court. Sup. Judge overrules  
dist judge. In case of division Judge  
imprisonment or punishment unallowable.  
Territorial Courts appellate by  
writ of error

(306) (4) State Courts sometimes cognizant  
of cases under U.S. laws

307 1 Attorneys, & counsel are admitted  
Attorneys mechanical, Counsellors  
advisory. Sup. Court does not allow  
an advocate to act in both capacities  
Attorney general to advise Pres. to  
prosecute in U.S. @?

(308) So each judicial dist.

(2) Several Courts appoint clerks.  
clk of Dist. Ct ex officio clk Circuit  
Court. Have seal & records, give  
security, deposit moneys, give acts  
to judge

(309) (3) Marshals = common law sheriffs.  
Pres & Senate appoint for 4 yrs  
removable at pleasure  
Responsible for deputies, gives \$20,000  
security. Dead, his deputies still act  
Removed, executes process till suc-  
cessor qualified

# Original & Appellate Jurisdiction of U.S. Sup. Court.

(313) Constitution grants specific powers  
defined generally by sense & practice of state  
or by Supreme Court. This final & concl.  
Judicial power somewhat limited by Cong.<sup>2</sup>  
(Ex) circuit courts cannot issue mandamus

(314) except when necessary to jurisdiction  
Original jurisdic<sup>n</sup> of Sup. Ct. very limited &  
Congress has no power to extend. Confined  
to ambassadors, public ministers & those to wh<sup>a</sup>  
state is a party. Congress gives concurrent

(315) jurisdiction to other courts in these same  
"original" not exclusive <sup>cases</sup>

(316) (1) Sup. Ct in certain cases has <sup>appellate</sup> <sup>over</sup> final decisions  
in state courts. Cannot review its own  
decisions.

Fairfax v Hunter. Sup. Ct reverses decision  
of Court of Appeals & confirms <sup>judgment</sup> opinion of  
Dist Court. Sup. Ct has power to revise  
decisions of local tribunals. Limited in  
its object but supreme.

## Section XVI

On Jurisdiction of Federal courts in  
Respect to the common Law, & to parties

(1) Whether the courts of the U.S. have a  
common Law jurisdic<sup>n</sup> & to what  
extent is a mooted point.

(331) U.S. @ Worral attempt at bribery of U.S. officer

(333) opinion divided. U.S. v Burr. Ch. Justice  
declared "no man could be prosecuted  
or condemned in federal courts on  
a state law"

334 U.S. @ Hudson & Goodwin. Libel on Pres<sup>t</sup>  
Held, circuit ct had no com<sup>n</sup> Law jurisdic<sup>n</sup>  
in criminal cases

U.S. @ Coolidge Has circ. Ct jurisdic<sup>n</sup> to punish  
offenses ag<sup>t</sup> U.S. not previously defined & specific  
punishment in statute? Admitted in  
absence of positive law. Com. Law is in-  
terpreter of jurisdiction of courts

Punish by fine & imprisonment in absence  
of statutory penalties. Decided against  
com. Law Jurisdic<sup>n</sup> in criminal cases

(339) Du Ponceau regards common law not

- (339) *Cuius iuris dictio data est ea quoque concessa esse videtur sine quibus iurisdictio explicari non potest.* or instrument as source of jurisdiction, but as means of exercising jurisdiction. Do not derive a right to act, but only rules of action.
- (337) The Com. Law a safe guide

Robinson @ Campbell held "remedies in federal courts at com-law & equity, were not like as state courts, but according to principles of Com Law & equity. So common law is part of

### 342 Jurisprudence of U.S

- 343 II. Jurisdiction of federal courts "ratione personarum" Bingham @ Cabot held necessary to set forth citizenship or alienage of parties by position arguments to bring case in jurisdiction of Sup. Ct. In Circuit Ct. defd't a citizen of one state, must show by argument pl'tf a citizen of another state or alien. So endorser to payee. But alien cannot <sup>be</sup> citizen absent abroad in Circuit Ct. So alien cannot sue alien

Principle is the record must show the character of the parties support the jurisdiction.

If 2 or more joint parties appear both must be competent to sue or liable to be sued. The litigant right of a corporation depends on the members who compose it

- 347 A corporation of 1 state sues a citizen of another. But if any stockholders are citizens of defd't state — no jurisdiction  
Rule applies to suits removed from state courts.

- 350 "Pendente lite" removal does not change jurisdiction already vested. Where state laws contravene constitution, suits are held, not ag't state, but ag't <sup>executors</sup> officers of said laws

- (352) In criminal cases U.S. Ct. disclaim com. law. jurisdiction. Principle is, all federal jurisdiction in civil & criminal cases comes from const. <sup>n</sup> laws in pursuance

### XVII

District Courts — <sup>an</sup> of common law & of Admiralty



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