

"Where a Treaty is the law of the land, and as such affects the rights of parties litigating in court, that Treaty as much binds those rights, and is as much to be regarded by the court, as an Act of Congress." And the repealing effect of a Treaty over the previous legislative Acts of State Legislatures had been earlier declared by the same Supreme Court, that "a Treaty, as the supreme law, overrules all State laws on the same subject, to all intents and purposes."

It may be conceded generally that whenever, under a constitutional government, a Treaty becomes operative by itself, its confirmation by a legislative act is not necessary. But where it imports a contract, or where money is required to be appropriated, or fiscal revenue affected, or territory to be ceded, in each of such cases a legislative act becomes necessary before the Treaty can be given the force of law; for the public money cannot be appropriated, nor fiscal charges be varied, nor national territory be ceded, (except as a result of war), by the Treaty-making power of a Government.*

By the exercise of the legislative and judicial process of constitution-making assumed by the Congress and courts of the United States, it has been legislatively and judicially determined that Treaties made by the United States with foreign nations are subject to the same Congressional power of variation, or abrogation, as are the ordinary legislative Acts of Congress.

This Congressional power of abrogation was first exercised by the United States in 1798, by "An Act to declare the Treaties heretofore concluded with France no longer obligatory on the United States." After a preamble reciting, among other grounds, that the Treaties with France had been "repeatedly violated on behalf of the French Government," it enacted "that

* *United States v. Schooner Peggy* (1801), 1 Cranch (U.S.), 103.

* *Ware v. Hylton* (1796), 3 Dallas (U.S.), 199; *Passenger Tax Cases* (1849), 7 Howard, 283; *Moore's Digest of International Law*, vol. 5, ss. 777 and 778.

* *American and English Encyclopædia of Law* (2nd ed.), vol. 28, p. 480; *Damodhar Gordham v. Deoram Kanji* (1876), 1, Appeal Cases, 332.