

The  
'Articles  
of Con-  
federation',  
1778-81.

The Declaration of Independence, in severing the bonds connecting the colonies with the mother country, already spoke of them as the United States, recognizing that they were as independent nations under international law. It was foreseen that something more was needed than a mere declaration of union if the States were to act in union and if the fraternal feeling born of the moment was to endure. Therefore, before the Declaration of Independence was framed, a committee had been appointed to consider a form of government, whose labours eventually resulted in the Articles of Confederation, ratified by ten of the States on July 9, 1778, and by the last of the thirteen on March 1, 1781, by virtue of which the United States of America became a Confederation, under an instrument of government known as the Articles of Confederation.

The 9th of the Articles vested the Congress with the power 'of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated . . . of appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of capture'.

Provi-  
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Anticipating that disputes between the States would arise in the future as in the past, both between the Colonies and the States themselves, the 9th Article made of the Congress the court of appeal in disputes between them, and provided the following method of appointing a Court for their disposition; upon petition of a State to Congress and notice by that body to the other State, the agents of the States in controversy appeared before the Congress, who by its direction appointed commissioners by joint consent to constitute the Court; failing agreement, the Congress named three persons from each State, and from the 39 thus named, each agent beginning with the defendant, or the Secretary of the Congress in case of absence or unwillingness of one or other to act, struck a name until thirteen remained; from this number not less than seven nor more than nine names were drawn by lot, and of these any five would form the Court. The judges so appointed took an oath to decide without fear or favour, and the judgement, sentence, and proceedings in the case were to be transmitted to Congress 'and lodged among the acts of Congress for the security of the parties concerned'. The same procedure was to be followed in controversies over private right to the soil claimed under different grants of two or more States.

Without dwelling upon the details of proceedings under the 9th Article, particular attention is invited to what may be called the preamble, providing that 'the United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever'. There is no doubt or uncertainty in this language. States living together and under a common form of government were likely to have disputes, and as they renounced diplomacy and the resort to war, some other method had to be provided if the disputes were to be settled and the Confederation to be preserved. The question was not academic, because the charters of the colonies overlapped; and in the dispute between Connecticut and Pennsylvania concerning a strip of territory now belonging to Pennsylvania blood had flowed.<sup>1</sup>

<sup>1</sup> For this controversy see *State of Pennsylvania v. State of Connecticut* (131 U.S. Appendix, liv), 1781.