No. 20-6689

IN THE

SUPREME COURT OF THE UNITED STATES

MATTHEW J. KWONG - PETITIONER

VS.

CHESWOLD (TL), LLC, Et Al. - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE APPELLATE COURT OF THE STATE OF CONNECTICUT

PETITION FOR REHEARING

BY

MATTHEW JOHN KWONG
PRO SE

9 BRADLEY LANE
SANDY HOOK, CT 06482

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

INDEX TO APPENDICES

GROUNDS FOR GRANTING REHEARING

Pursuant to the allowance hereby invoked under United States Supreme Court Rule 44.2, the petitioner *in error* and defendant *in ejectment*, Matthew J. Kwong, in the above captioned case respectfully requests that the Court grant him rehearing on the petition for writ of certiorari which he'd filed on December 14, 2020, and which had subsequently been denied on February 22, 2021. In support of the case as it now stands on appeal, the petitioner would humbly draw the attention of the Court to what he believes to be arguably the most foundationally storied of all its earliest case law precedents: *Martin, Heir at law and devisee of Fairfax, v. Hunter's Lessee,* 1 Wheat. 304 (1816).

In itself, given the remarkable historical context within which its opinion's legally binding storyline was first initially and then again subsequently authored, the significance of *Martin v. Hunter's Lessee*'s canon should, even by today's jaundiced standards, be of no small measure of intellectual inspiration to those of its more aptly privileged readers who would share such cognitive concerns. Borne in the throes of what could, even now under the most generous of currently contemporaneous characterizations, only be described as an ill-begotten war with Great Britain ineptly precipitated by no less than one of our nation's more prominently established founding fathers who really should have known better,[1] the prescience of its ascribed remedy is, in hindsight, paradoxically both belied and confirmed by the relative obscurity with

[1] *See* Appendix M - at pp. 73 & 78 for a contemporary, more commonly held accounting of the burning down of our nation's capital by an expeditionary marine force of His Majesty King George III's Royal Navy under the leadership of his, at that time, most seasoned and inveterately self-starting admiral in command, Sir George Cockburn.

which it has sustained itself within the continuously evolving legal and political lexicon of our nation's ever inconstant self-consciousness. Indeed the soundness of the Court's judgment in the matter can be well affirmed by the profound relationship which burgeoned thereafter between the two peoples of both nations to the deep and unabated envy of the rest of the world.

How did the Court work such marvelously good governance in the face of such disastrously bad governance? First, it had to reconcile the nation's then current bad governance with that which preceded it, with naught but the documented record at hand:

> This was a writ of error to the Court of Appeals of the State of Virginia, founded upon the refusal of that court to obey the mandate of this court, requiring the judgment rendered in this same cause, at February term, 1813, to be carried into due execution. The following is the judgment of the Court of Appeals, rendered on the mandate: "The court is unanimously of opinion that the appellate power of the Supreme Court of the United States does not extend to this court under a sound construction of the constitution of the United States; that so much of the 25th section of the act of Congress, to establish the judicial courts of the United States, as extends the appellate jurisdiction of the Supreme Court to this court, is not in pursuance of the constitution of the United States. That the writ of error in this cause was improvidently allowed under the authority of that act; that the proceedings thereon in the Supreme Court were coram non judice in relation to this court, and that obedience to its mandate be declined by the court."
>
> The original suit was an action of ejectment, brought by the defendant in error, in one of the district courts of Virginia, holden at Winchester, for the recovery of a parcel of land, situate within that tract, called the northern neck of Virginia, and part and parcel thereof. A declaration in ejectment was served (April, 1791,) on the tenants in possession; whereupon Denny Fairfax (late Denny Martin), a British subject, holding the land in question, under the devise of the late Thomas Lord Fairfax, was admitted to defend the suit, and plead the general issue, upon the usual terms of confessing lease, entry, and ouster, etc., and agreeing to insist, at the trial, on the title only, etc. The facts being settled in the form of a case agreed to be taken and considered as a special verdict, the court, on consideration thereof, gave judgment (24th of April, 1794), in favor of the defendant in ejectment. From that judgment the plaintiff in ejectment (now defendant in error) appealed to the Court of Appeals, being the highest court of law of Virginia. At April term, 1810, the Court of

Appeals reversed the judgment of the District Court, and gave judgment for the then appellant, now defendant in error, and thereupon the case was removed to this court.

State of the facts as settled by the case agreed:

1rst. The title of the late Lord Fairfax to all that entire territory and tract of land called the Northern Neck of Virginia, the nature of his estate in the same, as he inherited it, and the purport of the several charters and grants from the kings Charles II. and James II., under which has ancestor held, are agreed to be truly recited in an act of the assembly of Virginia, passed in the year 1736 (vide Rev. Code, v. 1, ch. 3, p. 5), "For the confirming and better securing the titles to lands in the Northern Neck, held under the Rt. Hon. Thomas Lord Fairfax," etc.

From recitals of the act, it appears that the first letters patent (1 Car. II.), granting the land in question to Ralph Lord Hopton and others, being surrendered, in order to have the grant renewed, with alterations, the Earl of St. Albans and others (partly survivors of, and partly purchasers under, the first patentees) obtained new letters patent (2 Car. II.), for the same land and appurtenances, and by the same description, but with additional privileges and reservations, etc.

The estate granted is described to be, "All that entire tract, territory, or parcel of land, situate, etc., and bound by, and within the heads of, the rivers Tappahannock, etc., together with the rivers themselves, and all the islands, etc., and all woods, underwoods, timber, etc., mines of gold and silver, lead, tin, etc., and quarries or stone and coal, etc., to have, hold and enjoy the said tracts of land, etc., to the said patentees, their heirs and assigns forever, to their only use and behoof, and to no other use, intent or purpose whatsoever."

There is reserved to the crown the annual rent of £6 13 4 "in lieu of all services and demands whatsoever;" also one-fifth part of all gold, and one-tenth of all silver mines.

To the absolute title and seizin in fee of the land and its appurtenances, and the beneficial use and enjoyment of the same, assured to the patentees, as tenants in capite, by the most direct and abundant terms of conveyancing, there are superadded certain collateral powers of baronial dominion; reserving, however, to the governor, council, and assembly of Virginia, the exclusive authority in all the military concerns of the granted territory, and the power to impose taxes on the persons and property of its inhabitants for the public and common defense of the colony, as well as a general jurisdiction over the patentees, their heirs and assigns, and all other inhabitants of the said territory.

In the enumeration of privileges specifically granted to the patentees, their heirs and assigns, is that "freely and without molestation of the king to give, grant, or by any ways or means, sell or alien all and singular the granted premises, and every part and parcel thereof, to any person or persons being willing to contract for, or buy, the same."

There is also a condition to avoid the grant as to so much of the granted premises as should not be possessed, inhabited, or planted, by the means of procurement of the patentees, their heirs or assigns, in the space of 21 years.

The third and last of the letters patent referred to (4 Jac. II.), after reciting a sale and conveyance of the granted premises by the former patentees, to the Thomas Lord Culpepper, "who was thereby become sole owner and proprietor thereof, in fee-simple," proceeds to confirm the same Lord Culpepper, in fee-simple," and release him from said condition for having the lands inhabited or planted as aforesaid.

The said act of assembly then recites, that Thomas Lord Fairfax, heir at law of Lord Culpepper, had become "sole proprietor of the said territory, with the appurtenances, and the above-recited letters patent."

By another act of assembly, passed in the year 1748 (Rev. Code, v. 1, ch. 4, p. 10), certain grants from the crown, made while exact boundaries of the Northern Neck were doubtful, for lands which proved to be within those boundaries, as then presently settled and determined, were, with the express consent of Lord Fairfax, confirmed to the grantees; to be held, nevertheless, of him, and all the rents, services, profits, and emoluments (reserved by such grants), to be paid and performed to him.

In another act of assembly, passed May, 1778, **for establishing a land-office**, and ascertaining the terms and manner of granting waste and unappropriated lands, there is the following clause, viz. (vide Chy. Rev. of 1783, ch. 13, s. 6, p. 98): "And that the proprietors of land within this commonwealth may no longer be subject to any servile, feudal, or precarious tenure, and to prevent the danger to a free state from perpetual revenue, be it enacted, that the royal mines, quit-rents, and all other reservations and conditions in the patents or grants of land from the crown of England, under the former government, shall be, and are hereby declared null and void; and that all lands thereby respectively granted shall be held in absolute and unconditional property, to all intents and purposes whatsoever, in the same manner with the lands hereafter granted by the commonwealth, by virtue of this act."

2d. As respects the actual exercise of property by Lord Fairfax.

It is agreed that he did, in the year 1748, open and conduct, at his own expense, an office within the Northern Neck, for granting and conveying what he described and called the waste and ungranted lands therein, upon certain terms, and according to certain rules by him established and published; that he did, from time to time, grant parcels of such lands in fee (the deeds being registered at his said office, in books kept for that purpose, **by his own clerks and agents**); that, according to the uniform tenor of such grants, he did, styling himself proprietor of the Northern Neck, etc., in consideration of a certain composition to him paid, and of certain annual rents therein reserved, grant, etc.; with a clause of re-entry for non-payment of the rent, etc.; that he also demised, for lives and terms of years, parcels of the same description of lands, also reserving annual rents; that he kept his said office open for the purposes aforesaid, from year 1748 till his death, in December, 1781; during the whole of which period, and before, he exercised the right of granting fee, and demising for lives and terms of years, as aforesaid, and received and enjoyed rents annually, as they accrued, as well under the grants in fee as under the leases for lives and years. It is agreed that Lord Fairfax died seized of lands in the Northern Neck, equal or about 300,000 acres, which had been granted by him in fee, to one T. B. Martin, upon the same terms and conditions, and in the same form as the other

grants in fee before described; which lands were, soon after being so granted, reconveyed to Lord Fairfax in fee.

3d. Lord Fairfax being a citizen and inhabitant of Virginia, died in the month of December, 1781, and, by his last will and testament, duly made and published, devised the whole of his lands, etc., called, or known by the name of the Northern Neck of Virginia, in fee, to Denny Fairfax (the original defendant in ejectment), by the name and description of the Reverend Denny Martin, etc., upon condition of his taking the name and arms of Fairfax, etc.; and it is admitted that he fully complied with the conditions of the devise.

4th. It is agreed that Denny Fairfax, the devisee, was a native born British subject, and never became a citizen of the United States, nor any one of them, but always resided in England, as well during the revolutionary war as from his birth, about the year 1750, to his death, which happened some time between the years 1796 and 1803, as appears for the record of the proceedings in the Court of Appeals.

It is also admitted that Lord Fairfax left, at his death, a nephew named Thomas Bryan Martin, who was always a citizen of Virginia, being the younger brother of the said devisee, and the second son of a sister of the said Lord Fairfax; which sister was still living, and had always been a British subject.

5th. The land demanded by this ejectment being agreed to be part and parcel of the said territory and tract of land called the Northern Neck, and to be a part of that description of lands within the Northern Neck, called and described by Lord Fairfax as "waste and ungranted," and being also agreed never to have been escheated and seized into the hands of the commonwealth of Virginia, pursuant to certain act of assembly concerning escheators, and never to have been the subject of any inquest of office, was contained and included in a certain patent, bearing date the 30th of April, 1789, under the hand of the then governor, and the seal of the commonwealth of Virginia, purporting that the land in question is granted by the said commonwealth unto David Hunter (the lessor of the plaintiff in ejectment) and his heirs forever, by virtue and in consideration of a land-office treasury warrant, issued the 23d of January, 1788. The said lessor of the plaintiff in ejectment is, and always has been, a citizen of Virginia; and in pursuance of his said patent, entered into the land in question, and was thereof possessed, prior to the institution of the said action of ejectment.

6th. The definitive treaty of peace concluded in the year 1783, between the United States of America and Great Britain, and also the several acts of the assembly of Virginia, concerning the premises, are referred to as making a part of the case agreed.

Upon this state of facts the judgment of the Court of Appeals of Virginia was reversed by this court, at February term, 1813, and thereupon the mandate above mentioned was issued to the Court of Appeals, which being disobeyed, the cause was again brought to this court.

(Boldface emphasis liberally added.) *Martin v. Hunter's Lessee,* 1 Wheat. 304, at pp. 305 - 313 (*Story, J.).* With the readership of those thus concerned thus apprised, the Court had to then academically construct, singlehandedly from scratch, binding constitutional law directly contravening Virginia's well-coordinated contumacy:

> The questions involved in this judgment are of great importance and delicacy. Perhaps it is not too much to affirm that, upon their right decision, rest some of the most solid principles which have hitherto been supposed to sustain and protect the constitution itself. The great respectability, too, of the court whose decisions we are called upon to review, and the entire deference which we entertain for the learning and ability of that court, add much to the difficulty of the task which has so unwelcomely fallen upon us. It is, however, a source of consolation that we have had the assistance of most able and learned arguments to aid our inquiries; and that the opinion which is now to be pronounced has been weighed with every solicitude to come to a correct result, and matured after solemn deliberation.
>
> Before proceeding to the principal questions, it may not be unfit to dispose of some preliminary considerations which have grown out of the arguments at the bar.
>
> The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by "the people of the United States." There can be no doubt that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary; to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be that the people had a right to prohibit to the states the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact; to make the powers of the state's governments, in given cases, subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The constitution was not, therefore, necessarily carved out of existing state sovereignties, nor a surrender of powers already existing in state institutions, for the powers of the states depend upon their own constitutions; and the people of every state had the right to modify and restrain them, according to their own views of policy or principle. On the other hand, it is perfectly clear that the sovereign powers vested in the state governments, by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States.
>
> These deductions do not rest upon general reasoning, plain and obvious as they seem to be. They have been positively recognized by one of the articles in amendment of the constitution, which declares, that "the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

The government, then, of the United States, can claim no powers which are not granted to it by the constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication. On the other hand, this instrument, like every other grant, is to have a reasonable construction, according to the import of its terms; and where a power is expressly given in general terms, it is not to be restrained to particular cases, unless that construction grow out of the context expressly, or by necessary implication. The words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged.

The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications which, at the present, might seem salutary, might, in the end, prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mold and model the exercise of its powers, as its own wisdom and the public interests should require.

With these principles in view - principles in respect to which no difference of opinion ought to be indulged - let us now proceed to the interpretation of the constitution, so far as regards the great points in controversy.

The third article of the constitution is that which must principally attract our attention. The first section declares, "the judicial power of the United States shall be vested in one Supreme Court, and in such other inferior courts as the Congress may, from time to time, ordain and establish." The second section declares, that "the judicial power shall extend to all cases in law or equity, arising under this constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states; between a state and a citizen of another state; between citizens of different states; between citizens of the same state, claiming lands under the grants of different states; and between a state or the citizens thereof, and foreign states, citizens, or subjects." It then proceeds to declare, that all "in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make."

Such is the language of the article creating and defining the judicial power of the United States. It is the voice of the whole American people solemnly declared, in

establishing one great department of that government which was, in many respects, national, and in all, supreme. It is a part of the very same instrument which was to act not merely upon individuals, but upon states; and to deprive them altogether of the exercise of some powers of sovereignty, and to restrain and regulate them in the exercise of others.

Martin v. Hunter's Lessee, 1 Wheat. 304, at pp. 324 - 328 (*Story, J.);* thereby ascribing to itself the Court's own exclusive role in maintaining the nation's continued integrity as a constitutionally circumscribed republic of a legitimately democratically represented people.

CONCLUSION

How effectively, in the future course of our nation's thus far storied history, will *Martin v. Hunter's Lessee* foreseeably continue to serve our own posterity as it has us? Perhaps that answer can be best gleaned in the actions most recently taken by the Duke and Duchess of Sussex, Prince Harry and Lady Meghan, in the relocation of theirs from his homeland to hers, and the inferred cost-to-benefit analysis presumably undertaken by them prior.

> Now old desire doth in his death-bed lie,
> And young affection gapes to be his heir;
> That fair for which love groan'd for and would die,
> With tender Juliet match'd, is now not fair.
> Now Romeo is belov'd, and loves again,
> Alike bewitched by the charm of looks;
> But to his foe suppos'd he must complain,
> And she steal love's sweet bait from fearful hooks.
> Being held a foe, he may not have access
> To breathe such vows as lovers use to swear;
> And she as much in love, her means much less
> To meet her new beloved any where.
> But passion lends them power, time means, to meet,
> Temp'ring extremities with extreme sweet. [2]

---

[2] *The Tragedies Of William Shakespeare, New York/*The Heritage Press, Revised text copyright © 1958 William Collins Sons & Co., Ltd., Glasgow, Scotland - at p. 328.

Respectfully submitted,

Matthew J. Kwong
9 Bradley Lane
Sandy Hook, CT 06482
Date: March 19, 2021.

Additional material from this filing is available in the Clerk's Office.