

The Other Declarations of 1776

Mock Argument Materials

Vanhorne’s Lessee v. Dorrance (Pa. 1795)

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Antonin Scalia Law School, Arlington, Virginia

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Case Background

A Colonial Land War

This case¹ grew out of one of the longest-running territorial disputes in American history: the Connecticut-Pennsylvania conflict over the Wyoming Valley (modern-day Luzerne County, PA). The dispute originated in overlapping royal charters. Connecticut’s 1662 charter from Charles II included a “sea-to-sea” grant extending westward to the Pacific, while William Penn’s 1681 charter from the same king included the same territory.

In 1753, Connecticut settlers formed the Susquehanna Company to develop the disputed lands, purchasing title from an Iroquois delegation at Albany in 1754. Permanent settlement began around 1769. Three violent conflicts followed—the Pennamite-Yankee Wars (1769-1784), as Connecticut “Yankees” and Pennsylvania “Pennamites” fought for control. The Wyoming Massacre of July 3, 1778, during the Revolution, devastated the Connecticut settlement when Loyalist and Iroquois forces inflicted roughly 300 Patriot casualties. Washington responded by dispatching the Sullivan Expedition, which destroyed 40 Iroquois villages.

The Trenton Decree (1782)

Under the Articles of Confederation, Congress convened the only Article IX interstate dispute court ever to render a judgment. After 41 days of proceedings, on December 30, 1782, five judges unanimously ruled that Pennsylvania had jurisdiction over the territory. But critically, the Decree resolved only the question of *state sovereignty*, not *private land titles*. Connecticut settlers believed their personal property claims survived. Pennsylvania disagreed and initially declared the settlers had no rights at all.

Pennsylvania’s Legislative “Fix”: The Confirming Act (1787)

To resolve the chaos, Pennsylvania passed the Confirming Act of March 28, 1787, formally titled “An act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed within the county of Luzerne.” It did two things: (1) confirmed Connecticut settlers’ titles (if they could prove pre-1782 occupancy and improvement); and (2) offered Pennsylvania titleholders compensation in the form of *other land* elsewhere in the state.

¹ This case and mock argument are based on *Vanhorne’s Lessee v. Dorrance*, 2 Dall. 304 (C.C.D. Pa. 1795), in which U.S. Supreme Court Justice William Paterson, riding circuit, delivered an extensive jury charge addressing the constitutionality of the Confirming Act of 1787. Several liberties have been taken for purposes of this mock argument. The case has been reframed as an appeal before the Pennsylvania Supreme Court rather than a proceeding in federal circuit court, and the issues have been narrowed to a single question: whether courts have the authority to invalidate an act of the legislature on the ground that it violates the 1776 Pennsylvania Declaration of Rights.

The problem: this statute took vested property from Pennsylvania patentees and handed it to Connecticut settlers, with “compensation” determined outside of a judicial process.

Pennsylvania’s Constitutional Framework: Transformation Between 1776–1790

To understand how that issue might be adjudicated in Pennsylvania, one must understand Pennsylvania’s unique constitutional landscape at the time the Confirming Act of 1787 was enacted.

Pennsylvania’s 1776 Constitution was the most radical of the revolutionary-era state constitutions. Shaped largely by Thomas Paine’s writings, it concentrated power in a single institution: the people’s elected assembly. There was no senate. There was no governor with veto power (only a multi-member executive council). And the judiciary was not independent. Judges served seven-year terms and could be removed for misbehavior at any time by the general assembly. This was all by design. The 1776 Constitution’s framers believed that the legislature, as the direct voice of the people, should be supreme. They rejected bicameralism as aristocratic, and an overly powerful judiciary as a potential rival to popular government. Not everyone was a fan: John Adams once called Thomas Paine’s ideas—which had a significant influence on the framers of the 1776 Constitution—so democratic that they “must produce confusion and every evil work.”

The 1776 Constitution opened with a Declaration of Rights consisting of sixteen articles that declare natural, inherent, and inalienable rights including property, jury trial, freedom of speech and press, and religious liberty. The Constitution also required every legislator to swear an oath not to “propose or assent to any bill, vote, or resolution” that would “lessen or abridge” the rights “as declared in the constitution.”

Section 47 of the 1776 Constitution established the Council of Censors, a body of elected citizens, chosen every seven years, whose duty was to “enquire whether the constitution has been preserved inviolate in every part” and “whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are intitled to by the constitution.” The Council could recommend the repeal of unconstitutional laws and, by a two-thirds vote, call a convention to amend the constitution.

The Council of Censors met once, in 1783–84, and it was a spectacular failure. The Republicans initially won a slim 13–12 majority, but the two-thirds requirement to call a convention meant they could not achieve their primary goal of constitutional revision. The situation worsened when one Republican member died, shifting the majority to the Constitutionists and effectively paralyzing the body. The two factions could not agree on whether constitutional violations had occurred, let alone recommend corrections. Gordon Wood later wrote that the Council’s creators had “pulled a monster out of Roman history,” while Angus Harwood Brown has more recently described the Council as an early, innovative attempt to enforce a written constitution. Whichever characterization is true, the Council never met again.

By the late 1780s, the failures of the 1776 Constitution had become undeniable. The legislature had overridden judicial decisions, confiscated property, set aside jury verdicts, and revoked the charter of the Bank of North America. The 1790 Constitution that replaced it established a bicameral legislature and a governor with veto power; it abolished the Council of Censors; and it gave judges good behavior tenure.

The Parties and Claim

Cornelius Van Horne (the lessor, with his lessee as nominal plaintiff) holds title to Lot No. 20—a little over 190 acres—under a patent from the Penn family, the original proprietors of Pennsylvania. John Dorrance, the defendant, is a Connecticut settler in actual possession of the same lot, claiming title under Connecticut grants and the Confirming Act.

Van Horne argues that he has valid title and moved to eject Dorrance from the property. Dorrance’s defense is that the Confirming Act of 1787 has legitimately taken Van Horne’s title away and vested it in Connecticut settlers like Dorrance.

Van Horne’s response sets up the constitutional issue: the Confirming Act is unconstitutional under the 1776 Pennsylvania Declaration of Rights because it takes his vested property and gives it to someone else without his consent and without compensation. And if it’s void, Dorrance has no title—because his only claim to the land is under a Pennsylvania statute that was never valid in the first place.

Critically, although the case is being argued *after* the 1790 Constitution came into effect, Van Horne’s challenge arises under the 1776 Constitution because the latter was operative when the Confirming Act was enacted.

The Pennsylvania Supreme Court recently agreed to have the case heard by a 3-judge panel.

Question Presented and Legal Issues

Question Presented: Whether courts have the authority to invalidate an act of the Pennsylvania legislature on the ground that it violates the 1776 Pennsylvania Declaration of Rights.

Subsidiary Issues

1. **The legal status of the Declaration of Rights.** Section 46 declares the Declaration of Rights “part of this constitution” and says it “ought never to be violated on any pretence whatever.” Is that language legally binding and judicially enforceable, or is it a solemn political commitment that the people enforce through political mechanisms? What work does “ought” do?
2. **The significance of the Council of Censors.** The 1776 Pennsylvania Constitution created a specific body—the Council of Censors—charged with determining “whether the constitution has been preserved inviolate in every part.” Does that authority foreclose judicial enforcement, or could both exist in parallel? Does the Council’s spectacular failure when it met in 1783-84—or its abolishment with the 1790 Constitution—demonstrate the need for judicial review?
3. **The nature of a written constitution.** Does the existence of a written constitution, with express limits on legislative and executive power, necessarily imply judicial enforcement of its protections?