[illegible]

THIS IS NOT AN OFFICIAL RECEIPT

CURRENT TAXES

[illegible]

* * * TAXPAYER - PLEASE READ THIS * * *

[illegible]

Exhibit No. 1

Recpt 1

CJ-2014-381

Make Checks Payable to:

CATHY PINKERTON BAKER
ROGERS COUNTY TREASURER

200 S LYNN RIGGS BLVD
CLAREMORE, OK 74017
PHONE 918-923-4797

Parcel ID Number
000000-00
COUNTRY B[illegible]

26-21N-14E

Owner

Taxpayer Copy

Breakdown	Mills	Amount
COUNTY GENERAL	10.01	
COUNTY HEALTH	1.54	
FREE FAIR	0.23	
VO-TECH GENERAL	10.27	
VO-TECH BUILDING	1.00	
COUNTY WIDE 4-MIL	4.10	
SCHOOL DIST GEN.	36.81	
SCHOOL DIST BLDG	5.26	
SCHOOL DIST SINK.	24.46	
TOTALS	93.66	

OWASSO RURAL

Real Estate

School Dist	Tax Year	Taxroll Item #
21R	2013	21958

Values

Gross Assessed
Exemptions
Net Assessed
Total Tax
Total Tax Payments 0.00

EAP

Legal Description:

LOT 11 BLOCK 5 COUNTRY

Retain this portion for your records or when paying in person bring entire statement

000000-00-0-00210-005-0011

CATHY PINKERTON BAKER
ROGERS COUNTY TREASURER

Real Estate

School Dist	Tax Year	Taxroll Item #
21R	2013	21958

[illegible]

Exhibit No. i

1 of 1

CJ-2014-381

000000-00-0-00210-005-0011

CATHY PINKERTON BAKER
ROGERS COUNTY TREASURER

200 S LYNN RIGGS BLVD
CLAREMORE, OK 74017
PHONE 918-923-4797

First or Full Payment

Real Estate

16902 E 80TH ST N (1 Lot)
COUNTRY BRIER 2

LOT 11 BLOCK 5 COUNTRY BRIER 2

Owner 129834

School Dist	Tax Year	Taxroll Item #

Payment Enclosed

Payments
Select Payment
Circle One Below
FULL PAYMENT

OR

[illegible]

Enter Address Changes Here

[illegible]

W M Deputy

Run:12/04/13 14:31:19

KEEP THIS PART OF STATEMENT FOR YOUR RECORDS. THIS PART AND YOUR CANCELLED CHECK(S) WILL BE YOUR RECEIPT.
THIS IS NOT AN OFFICIAL RECEIPT.

CURRENT TAXES

PAYING IN PERSON — Present entire statement with payment.

PAYING BY MAIL — To insure proper credit, include Tax Roll Item # on check, along with bottom portion of statement.

- TAX PAYMENTS -
YOU MAY PAY ALL OF TAX OR YOU MAY PAY IN TWO EQUAL PAYMENTS.

The **FIRST HALF** is due before January 1st. The **SECOND HALF** is due before April 1st. Half payments CANNOT be accepted on tax amount of $25.00 or less. If **FIRST HALF** is not received by December 31st, the total amount is delinquent as of January 1st and half payment cannot be accepted. Interest is charged at 1 1/2% per month on delinquent tax.

PAID BY Check ☐, Money Order ☐, Cash ☐, Credit Card ☐, Debit Card ☐

BUSINESS TAXES are assessed to the record owner(s) as of January 1st each year

VALUATION OF YOUR PROPERTY — The County Assessor is required by law to place a value upon all property, real and personal. If there are any questions concerning the valuation of your property contact the COUNTY ASSESSOR'S OFFICE — (918) 923-4795.

RATE OF TAX UPON YOUR PROPERTY is determined by the County Excise Board based upon the budgets submitted by the Schools, Cities and County, plus amounts necessary to pay the bonded indebtedness voted by the people. Under our American system, the people by their vote determine the amount of taxes they shall pay.

DISTRIBUTION OF YOUR TAXES — Instead of each taxpayer having to pay separate amount to the Schools, City and County, all of the tax is paid to the County Treasurer, who, in turn, distributes it to these entities.

★ ★ ★

VISIT www.rogerscountytreasurer.org
TO VIEW YOUR ACCOUNT INFORMATION

OFFICE HOURS M-F 8:00 to 4:30

★ ★ ★ TAXPAYER: PLEASE READ THIS ★ ★ ★

If your tax remains unpaid we are required to sell your property as provided for in 68 O.S. Section 3105 which provides that if any real estate or special assessments shall remain unpaid for a period of three (3) years or more as of the date such taxes first became due and payable, the County Treasurer shall advertise and sell such real estate for such taxes and all other delinquent taxes, special assessments and costs, at the tax resale, which shall be held on the second Monday of June each year.

The County Treasurer shall charge and collect in cash, cashiers check or money order, in addition to the taxes, interest, penalty and cost, the publication fees as provided by law. It is possible other taxes are due on this property in addition to the amount shown on this statement.

★ ★ ★ Payment without penalty, interest, advertising costs will not be accepted.

★ ★ ★ Please give this your immediate attention, so the above action will not be necessary.

★ ★ ★

METHOD OF PAYMENTS:

MAIL IN
WALK IN
PAYMENT BY PHONE CALL - **918-923-4797**

OTHER PAYMENT OPTIONS:
CREDIT CARDS - 2.95% service fee will be charged on all credit cards, with a minimum charge of $1.95
Visa Debit Cards - Service fee will be charged a flat fee of $3.95

To Pay By Internet:
www.rogerscountytreasurer.org

Cards Accepted:
Visa, Mastercard, Discover and American Express

FOR OFFICIAL RECEIPT, SEND SELF-ADDRESSED STAMPED ENVELOPE.
MOBILE HOME OWNERS: SEND SELF ADDRESSED STAMPED ENVELOPE TO RECEIVE YOUR MOBILE HOME DECAL WHEN ALL TAXES PAID.
Cathy Pinkerton Baker, Treasurer, Rogers County, P.O. Box 699, Claremore, OK 74018 TELEPHONE (918) 923-4797

Exhibit No. Z
1 of 3

Case No._____

of *Bissel* v. *Jeffersonville*,* where it was again held that it was too late to make such objections as against innocent holders, or even against the railroad, when it appeared that the bonds purporting on their face to have been executed by authority, had been issued and delivered. Very stringent application of the same rule was made in the case of *Mercer County* v. *Hacket*,† which is the last of the series to which reference will be made,—all of these cases, proceeding upon the ground that the construction of a railroad for travel and transportation was a public improvement, and that it was competent for the legislature to authorize municipal corporations to furnish material aid for such a work, and we have no doubt that the views of the court were entirely correct. Like the preceding, the present case has respect to a plank-road, but we repeat, that where such an improvement is authorized by the legislature and is connected with the municipality issuing the bonds, the case properly falls within the same rule. It follows that the declaration was sufficient, and that the demurrer should have been overruled.

The judgment of the Circuit Court is therefore reversed, with costs, and the cause remanded for further proceedings, in conformity with the opinion of this court.

JUDGMENT ACCORDINGLY.

CUMMINGS v. THE STATE OF MISSOURI.

1. Under the form of creating a qualification or attaching a condition, the States cannot in effect inflict a punishment for a past act which was not punishable at the time it was committed.
2. Deprivation or suspension of any civil rights for past conduct is punishment for such conduct.
3. A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death, the act is termed

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* 24 Howard, 299.

† 1 Wallace, 83.

Exhibit No. 2 Case No. _____

2 of 3

a bill of pains and penalties. Within the meaning of the Constitution bills of attainder include bills of pains and penalties.

4. These bills, though generally directed against individuals by name, may be directed against a whole class, and they may inflict punishment absolutely, or may inflict it conditionally.
5. The clauses of the second article of the constitution of Missouri (set forth at length in the statement of the case, *infra*, pp. 279–281), which require priests and clergymen, in order that they may continue in the exercise of their professions, and be allowed to preach and teach, to take and subscribe an oath that they have not committed certain designated acts, some of which were at the time offences with heavy penalties attached, and some of which were at the time acts innocent in themselves, constitute a bill of attainder within the meaning of the provision in the Federal Constitution prohibiting the States from passing bills of that character.
6. These clauses presume that the priests and clergymen are guilty of the acts specified, and adjudge the deprivation of their right to preach or teach unless the presumption be first removed by their expurgatory oath: they assume the guilt and adjudge the punishment conditionally.
7. There is no practical difference between assuming the guilt and declaring it. The deprivation is effected with equal certainty in the one case as in the other. The legal result is the same, on the principle that what cannot be done directly cannot be done indirectly.
8. The prohibition of the Constitution was intended to secure the rights of the citizen against deprivation for past conduct by legislative enactment, under any form, however disguised.
9. An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required.
10. The clauses of the second article of the constitution of Missouri, already referred to, in depriving priests and clergymen of the right to preach and teach, impose a penalty for some acts which were innocent at the time they were committed, and increase the penalty prescribed for such of the acts specified as at the time constituted public offences, and in both particulars violate the provision of the Federal Constitution prohibiting the passage by the States of an *ex post facto* law. They further violate that provision in altering the rules of evidence with respect to the proof of the acts specified—thus in assuming the guilt instead of the innocence of the parties; in requiring them to establish their innocence, instead of requiring the government to prove their guilt; and in declaring that their innocence can be shown only in one way, by an expurgatory oath.
11. Although the prohibition of the Constitution to pass an *ex post facto* law is aimed at criminal cases, it cannot be evaded by giving a civil form to that which is in substance criminal.

PROOF OF CHEATS AND SWINDLES
BY SCAM LEGAL PROCESS, BY IMPERSONATIONS
AND BY PRINTED INSTRUMENT
TITLE 21 OKLAHOMA STATUTES SECTIONS 1533, 1541.1

TAKE NOTICE: All legal process issued by any *State actor* which issues in the capitalized, corporate form of the name "Jerry Preston McNeil" appearing on the original certificate of live birth recorded on September 11, 1930, issues for the singular intended purpose of accomplishing the cheat or swindle of imposition of debt bondage upon an American by birth by scam legal process.

Attached hereto, and incorporated herein as if fully reproduced in this proof are two (2) copies of the Certificates of live birth issued contemporaneous with the events and conditions memorialized therein. These require ***mandatory*** judicial notice under terms of the Federal Rules of Evidence, Rule 902; SELF AUTHENTICATED documents issued under seal by a government.

The first of the two (2) certified records issued under State seal is an offer of proof that the separate legal entity named "JERRY PRESTON MCNEIL" was created on the 15th day of January, 1943, ***thirteen years and four months after*** the recorded date of the live birth of "Jerry Preston McNeil," a human child who was born in September of 1930 in Bowie County, Texas and recorded as birth record # 929 in Register # 208, on the *day after* his live delivery. The Register number whereupon the original date of live birth occurred appears twice on the original record which was revised in 1943 for the purpose of placing the *human child* named therein into debt bondage in violation of the thirteenth Article of Amendment.

The second of the two (2) certified records issued under State seal is an altered second copy of the Certified Record of the same birth event obtained for another purpose during August of 2012. Examination of the altered record produced under State seal shows a reference to Register # 209 not # 208. All evidence of the events recorded on the 15th day of January, 1943, and shown on the first record have been expunged from official State records in order to comply with requirement that the alteration directed to be made by federal statute be kept secret.

National registration of live births within the several States is not an enumerated power. Hence, in terms of jurisdiction ***State citizens are alien to the United States.*** In 1940 in preparation for the coming World War II, Congress enacted The Alien Registration Act of 1940, providing the means for a ***National*** registry of ***State*** issued Certificates of Live Birth; requiring such registration ***before the fourteenth birthday of the alien***, and for maintaining secrecy of the *fact* of the Registry. see United States Statues at Large, Chapter 438, H.R. 9139, June 28, 1940; 54 Stat. 667 – 676. See

also, United States Supreme Court holding in *Buckner v. Finley & Van Lear*, 27 U.S. 586 (1829):

> "*For all **national purposes embraced by the federal Constitution**, the states and the citizens thereof are one, united under the same sovereign authority and governed by the same laws. In all other respects, the states, **are necessarily foreign and independent of each other**.*" Emphasis added.

The Alien Registration Act of 1940 is one of a pair of statutes enacted under the War powers contained in Article I, Section 8. It was essential to full implementation of the Social Security Act of August 14, 1935, 49 Stat. 620 - 648. By operation of the laws of war, the SSA invoked the belligerent rights delegated as war powers of the United States and extended the same into the several States. See *War Powers Under the Constitution, Military Arrests Reconstruction, and Military Government,* William Whiting, Solicitor of the War Department during the Civil War, Lee and Shepard Publishers, 1871, Library of Congress control No. 09023595.

The Social Security Act had enrolled the same biological information of all those in the work forces after 1935, and for others who had enrolled voluntarily. The Alien Registration swept in most of the remainder of Americans born in one of the several states, and registered the birth of Jerry McNeil in particular just eight months prior to his fourteenth birthday.

VERIFICATION: Of age and competent to testify, I, Jerry Preston McNeil, do hereby declare and affirm under penalty of perjury that the foregoing statement is true and correct; was prepared by my own hand from information and laws in my possession so help me God.

Jerry McNeil
8/11/2014

STATE OF OKLAHOMA
COUNTY OF TULSA

Subscribed and sworn to before me on this 11 day of August, 2014

Signature of Notary Public

OFFICIAL SEAL
DONIELLE N. SANDERS
NOTARY PUBLIC OKLAHOMA
TULSA COUNTY
COMM. EXP. 05-12-2015
COMM. NO. 11004387

Exhibit No. 3 **Case No.**_____

2 of 6

1. PLACE OF BIRTH

STATE OF TEXAS

TEXAS DEPARTMENT OF HEALTH

BUREAU OF VITAL STATISTICS

STANDARD CERTIFICATE OF BIRTH

No. 929

COUNTY OF Bowie REG. DIST. NO. 1 REGISTER NO. 208

CITY OR PRECINCT NO. Texarkana, Texas — Texarkana Hospital (GIVE STREET AND NUMBER OR NAME OF INSTITUTION)

2. FULL NAME OF CHILD: Jerry Preston McNeil

RESIDENCE OF THE MOTHER — STREET AND NO. 918 Jeanette St. CITY Texarkana COUNTY Bowie STATE Texas

3. SEX: Male

FOR PLURAL BIRTHS ONLY: 4. TWIN, TRIPLET, OTHER: 5. NUMBER, IN ORDER OF BIRTH:

6. LEGITIMATE? Yes

7. DATE OF BIRTH: September 10, 19 30

FATHER	MOTHER
8. FULL NAME: D. G. McNeil	14. FULL MAIDEN NAME: Berta Irene Atkinson
SOCIAL SECURITY NUMBER:	SOCIAL SECURITY NUMBER:
9. POSTOFFICE ADDRESS: 918 Jeanette St. Texarkana, Texas	15. POSTOFFICE ADDRESS: 918 Jeanette St. Texarkana, Texas
10. COLOR OR RACE: White	16. COLOR OR RACE: White
11. AGE AT LAST BIRTHDAY: 27 (YEARS)	17. AGE AT LAST BIRTHDAY: 25 (YEARS)
12. BIRTHPLACE (STATE OR COUNTRY): Saline County Arkansas	18. BIRTHPLACE (STATE OR COUNTRY): Millard County Missouri
OCCUPATION: 13A. TRADE, PROFESSION OR KIND OF WORK DONE: Acetyline Welder	OCCUPATION: 19A. TRADE, PROFESSION OR KIND OF WORK DONE: Housewife
13B. INDUSTRY OR BUSINESS IN WHICH ENGAGED	19B. INDUSTRY OR BUSINESS IN WHICH ENGAGED
20. NUMBER OF CHILDREN BORN TO THIS MOTHER INCLUDING THIS BIRTH: 2	21. NUMBER OF CHILDREN BORN TO THIS MOTHER AND NOW LIVING: 2
SIGNATURE OF INFORMANT	ADDRESS OF INFORMANT , TEXAS

22. MEDICAL ATTENDANCE

I HEREBY CERTIFY THAT I ATTENDED THE BIRTH OF THIS CHILD WHO WAS BORN ALIVE AT 11:20 A. M. ON THE ABOVE DATE,

AND THE PROPHYLACTIC USED TO PREVENT OPHTHALMIA NEONATORUM WAS

, 19 — DATE — Preston Hunt — SIGNATURE — M. D. — Texarkana, TEXAS — POSTOFFICE ADDRESS

23. FILE NUMBER 208 — FILE DATE 9 - 11 - 30 — SIGNATURE OF LOCAL REGISTRAR: R. E. Floyd — POSTOFFICE ADDRESS: Texarkana, TEXAS

STATE OF TEXAS
County of Bowie
City of Texarkana

I hereby certify that the above certificate is a true and accurate copy of the record of Birth of JERRY PRESTON McNEIL filed in the office of the Bureau of Vital Statistics of the State of Texas, and that the said certificate is deposited in the said office and is a part of the permanent records of the said bureau, and a copy of said certificate is on file in the office of the Secretary of the City of Texarkana, Texas, and is a part of the permanent records of said City.

Witness my hand as Local Registrar of Vital Statistics this 10th day of JANUARY, 1943

G D Garrett
Local Registrar of Vital Statistics

I hereby affirm that this photocopy of the original and

Signature of Custodian

Subscribed and sworn to before me on this 8 day of October 2012

Jeanine Price
Signature of Notary Public

JEANINE PRICE
NOTARY PUBLIC OKLAHOMA
OSAGE COUNTY
COMM. EXP. 04-22-2013
COMM. NO. 09003570

Exhibit No. 3

Case No.

3 of 6

MILITARY EX SERVICE RECORD OF FATHER

(A) IS THE FATHER REPORTED TO HAVE BEEN IN SUCH SERVICE?

(B) NAME OF ORGANIZATION IN WHICH SERVICE WAS RENDERED

(C) SERIAL NUMBER OF DISCHARGE PAPERS OR ADJUSTED SERVICE CERTIFICATE

THIS INFORMATION FOR STATISTICAL PURPOSES ONLY

PLEASE ANSWER THESE QUESTIONS AS TO ALL BIRTHS

(D) WAS THIS CHILD PREMATURE? | PERIOD OF UTEROGESTATION?

(E) DESCRIBE CONGENITAL MALFORMATION OR DEFECTS

(F) DESCRIBE ANY BIRTH INJURY

(G) WAS PRENATAL CARE GIVEN? | APPROXIMATE DATE WHEN FIRST SEEN?

(H) WHAT ANESTHETIC WAS USED? | HOW ADMINISTERED?

(I) WHAT ANALGESIC | HOW ADMINISTERED?

(J) WAS FORCEPS USED? | PITUITRIN DURING LABOR

(K) COMPLICATIONS OF PREGNANCY

(L) COMPLICATIONS OF LABOR

(M) DID A MIDWIFE PRECEDE YOU IN THIS CASE? | NAME ADDRESS

(N) WAS THERE AN OPERATION FOR DELIVERY?

(O) DESCRIBE FULLY ALL OPERATIONS?

IN CASE OF STILLBIRTH FILL IN THE FOLLOWING:

(P) DID CHILD DIE BEFORE LABOR? | AFTER LABOR? | HOW MANY CHILDREN BORN DEAD TO THIS MOTHER?

(Q) DID CHILD DIE BEFORE OPERATION? | DURING OPERATION?

Exhibit No. 3 **Case No.**_____

4 of 6

CERTIFICATION OF VITAL RECORD

CITY OF TEXARKANA, TEXAS

When more than one child is born, file a certificate for each child and fill Items 4 and 5 carefully. For a stillbirth file both birth and death certificate.

(1) PLACE OF BIRTH

TEXAS STATE DEPARTMENT OF HEALTH
BUREAU OF VITAL STATISTICS
STANDARD CERTIFICATE OF BIRTH

4619 209 ~~208~~

County of Bowie District No. Register No.

City Texarkana, Texas No. St. Texarkana Hospital

(2) FULL NAME OF CHILD Jerry Preston McNeil — If child is not yet named, make supplemental report, as directed.

(3) SEX OF CHILD	(4) TWIN, TRIPLET, OR OTHER (To be answered in event of plural births)	(5) NUMBER IN ORDER OF BIRTH	(6) LEGITIMATE (Yes or No)	(7) DATE OF BIRTH (Month) (Day) (Year)
Male			Yes.	September 10, 1930

FATHER	MOTHER
(8) FULL NAME: D. C. McNeil	(14) FULL MAIDEN NAME: Berta Irene Atkinson
(9) RESIDENCE Post Office Address: 918 Jeanette Street	(15) RESIDENCE Post Office Address: 918 Jeanette Street
(10) COLOR: White	(16) COLOR: White
(11) AGE AT LAST BIRTHDAY: 27 YRS.	(17) AGE AT LAST BIRTHDAY: 25 YRS.
(12) BIRTHPLACE: Saline County Arkansas	(18) BIRTHPLACE: Millard County, Missouri
(13) OCCUPATION: Acetyline Welder	(19) OCCUPATION: Housewife
(20) NUMBER OF CHILDREN BORN TO THIS MOTHER, INCLUDING PRESENT BIRTH: 2	(21) NUMBER OF CHILDREN OF THIS MOTHER NOW LIVING: 2

(22) CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE*

I hereby certify that I attended the birth of this child, who was born alive at 11:20 a M. on the date stated above.

Born at Texarkana Hospital

*When there was no attending physician or midwife, then the father, householder, etc., should make this return. A stillborn child is one that neither breathes nor shows other evidence of life after birth.

(Signature) Preston Hunt M.D. (Physician or Midwife)

Address Texarkana

Give name added from a supplemental Report 19

REGISTRAR.

(23) FILED 9 - 11 , 1930 R.E.Floyd Registrar.

(24) Were prophylactic precautions taken at time of birth to prevent opthalmia neonatorium? Yes No

Exhibit No. 3 **Case No.**

Sofk

144868

STATE OF TEXAS
CITY OF TEXARKANA

I hereby certify this to be an exact copy of a certificate as filed in the Bureau of Vital Statistics, City of Texarkana, Texas and that I am the legal custodian of such records.

DATE ISSUED: 8-20-2015

Kerry Meredith
KERRY MEREDITH, LOCAL REGISTRAR

Do not accept unless prepared on security paper with engraved border displaying the official seal and signatures of the issuing agency. Not valid if photocopied. Lamination may void certificate.

Exhibit No. 3

6 of 6

Case No. CJ-2014-381

Form SS-5
TREASURY DEPARTMENT
Internal Revenue Service

APPLICATION FOR SOCIAL SECURITY ACCOUNT NUMBER

REQUIRED UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT

READ INSTRUCTIONS ON BACK BEFORE FILLING IN FORM

DO NOT WRITE IN THE ABOVE SPACE

1. Jerry (FIRST NAME) Brenton (MIDDLE NAME) McNeil (LAST NAME)

2. 2104 - New Boston Rd Texarkana Tex (PRESENT MAILING ADDRESS (NUMBER AND STREET) (CITY) (STATE))

4. 13 (AGE AT LAST BIRTHDAY) 5. 7 10 30 (DATE OF BIRTH (MONTH) (DAY) (YEAR)) 6. Texarkana Bowie Tex (PLACE OF BIRTH (CITY) (COUNTY) (STATE))

7. Densell Yarner McNeil (FATHER'S FULL NAME) 8. Bessie Irene Atkins (MOTHER'S FULL MAIDEN NAME)

9. SEX: MALE X FEMALE 10. COLOR OR RACE: WHITE X NEGRO OTHER

11. HAVE YOU EVER BEFORE APPLIED FOR OR HAD (MARK (X) WHICH) SOCIAL SECURITY OR RAILROAD RETIREMENT NUMBER? YES NO X

12. unemployed (BUSINESS NAME AND ADDRESS OF PRESENT EMPLOYER)

13. 6 1 3 45 (DATE SIGNED) 14. [illegible signature]

RETURN COMPLETED APPLICATION TO OR SECURE DUPLICATE FORM FROM NEAREST SOCIAL SECURITY BOARD FIELD OFFICE. THE ADDRESS CAN BE OBTAINED FROM LOCAL POST OFFICE.

Exhibit No. 4 **Case No.**_____

1 of 2

WILLIAM S. BUCKNER, A CITIZEN OF NEW YORK *vs.* FINLEY AND VAN LEAR, CITIZENS OF THE STATE OF MARYLAND.

Bills of exchange drawn in one state of the union, on persons living in another state, partake of the character of foreign bills, and ought to be so treated in the courts of the United States.

For all national purposes embraced by the federal constitution, the states and the citizens thereof are one, united under the same sovereign authority, and governed by the same laws. In all other respects, the states are necessarily foreign and independent of each other. [590]

THIS case came before the Court from the circuit court of the United States for the Maryland district. The action was instituted in the circuit court, on a bill of exchange, drawn on the 16th of March 1819, by the defendants, at *Baltimore*, on Stephen Dever at *New Orleans*, in favour of Rosewell L. Colt or order, of *Baltimore*, and by him indorsed, for value received, to the plaintiff, *a citizen of New York*.

A judgment was confessed by the defendants for $2,100, subject to the opinion of the court, upon a case stated; and which presented the question, whether the circuit court had jurisdiction in the case.

The defendants objected to the jurisdiction, on the ground that the bill was an *inland*, and not a *foreign bill of exchange*; and therefore, the defendants, and the drawee Rosewell L. Colt, being citizens of Maryland, although the bill was regularly in the hands of the plaintiff, as indorsee, who is a citizen of a different state, the circuit court had no cognizance of the claim.

The provision of the act of congress upon which the question arises, is in the 11th section of the "act to establish the judicial powers of the courts of the United States," passed September 24th, 1789. The words of the act are, "nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note, or other chose in action, in favour of an assignee; unless a suit might have been prosecuted in such court, to recover the said contents, if no assignment had been made; *except in cases of foreign bills of exchange.*"

Exhibit No. 5 **Case No.**_____

1 of 2

Court of Kentucky, have authority to take acknowledgments and privy examinations of *femes coverts*, in all cases of deeds made by them and their husbands. {339}

What the law requires to be done, and appear of record, can only be done, and made to appear by the record itself, or an exemplification of it. It is perfectly immaterial, whether there be an acknowledgment or privy examination in form, or not, if there be no record made of the privy examination; for, by the express provisions of the law, it is not the fact of privy examination only, but the recording of the fact, which makes the deed effectual to pass the estate of a *feme covert*. {340}.

A deed from *Baron* and *feme*, of lands in the state of Kentucky, executed to a third person, by which the land of the *feme* was intended to be conveyed for the purpose of a re-conveyance to the husband, and thus to vest in him the estate of the wife; was endorsed by the clerk of Woodford County Court, "acknowledged by James Elliott, and Sarah G. Elliott, September 11th 1816," and was certified as follows:—"Attest, J. M'Kenney, Jun. *Clerk*."

"*Woodford County, ss.* *September 11th* 1813.

"This deed from James Elliott, and Sarah G. Elliott his wife, to Benjamin Elliott, was this day produced before me, and acknowledged by said James and Sarah to be their act and deed, and the same is duly recorded.

John M'Kenney, Jun. C. C. C."

Held, that subsequent proceedings of the Court of Woodford County, by which the defects of the certificate of the clerk to state the privy examination of the *feme*, (which, by the laws of Kentucky, is necessary to make a conveyance of the estate of a *feme covert* legal,) were intended to be cured upon evidence that the privy examination was made by the clerk, will not supply the defect, or give validity to the deed. {340}

If the Court of a state had jurisdiction of a matter, its decision would be conclusive; but this Court cannot yield assent to the proposition, that the jurisdiction of a state Court cannot be questioned, where its proceedings were brought, collaterally, before the Circuit Court of the United States. {340}

Where a Court has jurisdiction, it has a right to decide any question which occurs in the cause; and, whether its decision be correct, or otherwise, its judgments, until reversed, are regarded as binding in every other Court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification; and all persons concerned in executing such judgments, or sentences, are considered, in law, as trespassers. {340}

The jurisdiction of any Court, exercising authority over a subject, may be inquired into in every other Court, when the proceedings of the former are relied on, and brought before the latter by a party claiming the benefit of such proceedings. {340}

The jurisdiction and authority of the Courts of Kentucky, are derived wholly from the statute law of the state. {341}

The clerk of Woodford County Court, has no authority to alter the record of the acknowledgment of a deed, at any time after the record is made. {341}

WRIT of error to the Circuit Court of Kentucky.

William Peirsol, and Lydia Peirsol, his wife, Ann North, Jane North, Sophia North, Elizabeth F. P. North, and Wil-

Exhibit No. 6

1 of 3

Case No._____

and attorney's fees, was by stipulation to abide the determination of the Supreme Court in the present case.

According to the decision of the court in the Santa Clara case, the assessment upon which the taxes were levied was illegal, as it embraced items not assessable by the Board of Equalization. Of course no penalties for not paying an illegal tax, and no attorney's fees charged for the attempt to collect them, could be recovered, and for a like reason the interest of two per cent. a month claimed could not be demanded. Besides, the statute allows no such interest on delinquent taxes where property is possessed by the delinquent upon which a levy could be made for them. The collector must, on the third Monday of March of each year, make an affidavit that the taxes not marked paid on the delinquent list have not been paid, and that he has been unable to discover any property belonging to, or in the possession of the persons liable to pay the same, from which to collect them. It is only on such delinquent taxes that the two per cent. a month interest is collectible. Since this case has been pending in this court a decision to that effect has been made by the Supreme Court of the State. *People* v. *North Pacific Coast R. R. Co.*, 9 West Coast Rep. 574.

NORTON v. SHELBY COUNTY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

Argued March 24, 25, 1886.—Decided May 10, 1886.

This court follows the decisions of the highest court of a State, in construing the Constitution and laws of the State, unless they conflict with or impair the efficacy of some principle of the Federal Constitution, or of a Federal statute, or a rule of commercial or general law.

The decisions of State courts on questions relating to the existence of its subordinate tribunals, and the eligibility and election or appointment of their officers, and the passage of its laws are conclusive upon Federal courts.

Statement of Facts.

Following the decision of the highest court of the State of Tennessee in *Pope* v. *Phifer*, 3 Heiskell, 691, and other cases, this court holds that the Board of Commissioners of Shelby County, organized under the Act of March 9, 1867, had no lawful existence; that it was an unauthorized and illegal body; that its members were usurpers of the functions and powers of the justices of peace of the county; that their action in holding a county court was void; and that their acts in subscribing to the stock of the Mississippi River Railroad Company and issuing bonds in payment therefor were void.

While acts of a *de facto* incumbent of an office lawfully created by law and existing are often held to be binding from reasons of public policy, the acts of a person assuming to fill and perform the duties of an office which does not exist *de jure* can have no validity whatever in law.

An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.

The action of a minority of the justices of the peace of the County Court of Shelby County, Tennessee, prior to May 5, 1870, did not operate as a ratification by the County Court of the previously invalid subscription of the county to stock in the Mississippi River Railroad Company: and on and after that day, on which the new constitution of Tennessee took effect, no ratification could be made without previous assent of three fourths of the voters of the county.

This suit was brought to enforce payment of twenty-nine bonds for $1000 each, issued by the Board of Commissioners of Shelby County, in payment of a subscription by the county to stock in the Mississippi River Railroad Company. The form of the bond appears in the opinion of the court, *post* p. 434.

On the 25th February, 1867, the County Court of any county through which that railroad might run, was authorized to subscribe to its capital stock. Laws of 1866–7, page 131, ch. 48, § 6; *

* Sec. 6. *Be it further enacted*, That the county court of any county through which the line of the Mississippi River Railroad is proposed to run, a majority of the justices in commission at the time concurring, may make a corporate or county subscription to the capital stock of said railroad company, of an amount not exceeding two thirds of the estimated cost of grading the road-bed through the county and preparing the same for the iron rails; the said cost to be verified by the sworn statement of the president or chief engineer of said company. And after said subscription shall have been entered upon the books of the railroad company, either by the chairman of the county court, or by any other member of the court appointed therefor, the court shall proceed without further reference or delay, to levy an assessment on all the taxable property within the county, sufficient to pay said subscription; and the same shall be payable in three equal annual instalments, commencing with the fiscal year in

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own estates; in the exercise of various powers, they have taken jurisdiction over crimes which the State laws took cognizance of; and all this, being within the range of their discretion, is aloof from *judicial* control, while unaffectedly exercised for the purposes of the constitution. Nor, indeed, is there much to be alarmed at in it, while the same people who govern the States, can, where they will, control the Legislature of the United States.

Yet, certainly, there is one limit to this chain of implied powers, which must lie beyond the reach of legislative discretion. No one branch of the general government can new model the constitutional structure of the other.

Much stress was laid, in the argument, upon the necessity of giving co-ordinate extent to the several departments of a government; but it was altogether unnecessary to bring this consideration into the present case. As a ground of policy, this is not its proper place; and as a ground of construction, it must be needless, when applied to a constitution in which the judicial power so very far transcends both the others, in its acknowledged limits.

The principle is, that every government should possess the means of protecting itself; that is, of construing and enforcing its own laws. But this is not the half of the extent of the judicial power of the Union. Its most interesting province, is to enforce the equal administration of laws, and systems of laws, over which the legislative power can exercise no control. And thus, the judicial power is distributed into the two

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classes: 1. That which is defined by the circumstances of the case; and, 2. That which depends upon the circumstances of the person. On the first, I have endeavoured to show, that the end is adequately effected by the provisions of the 25th section of the Judiciary Act, and, practically, can be exercised in no other way. But with regard to the second class, the argument turns against the United States; and every reason that may be urged in favour of eking out the jurisdiction in the first class of cases, reacts forcibly to confine the jurisdiction strictly within its constitutional limits, as to the second class. When the alien, or the citizen of another State, or the grants of another State, are implicated, the State Courts open their tribunals to the judiciary of the United States, and recognise their power as co-ordinate. Their citizens, their territory, their laws, all are subjected to a power quite foreign to the States, and judicial power is literally poured out upon the Courts of the Union, without stint.

How interesting, then, is it to the States, that the number of those *persons* who claim the privilege of coming into the Courts of the United States should be strictly limited! *Cases*, since they arise out of laws, &c. of the United States, must be very limited in number; but *persons* may bring into the Courts of the United States any question and every question, and, if this law be correctly construed, for any, the very smallest possible amount.

But if the plain dictates of our senses be relied on, what state of facts have we exhibited here?

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Making a person, makes a case; and thus, a government which cannot exercise jurisdiction unless an alien or citizen of another State be a party, makes a party which is neither alien nor citizen, and then claims jurisdiction because it has made a case. If this be true, why not make every citizen a corporation sole, and thus bring them all into the Courts of the United States *quo minus?* Nay, it is still worse, for there is not only an evasion of the constitution implied in this doctrine, but a positive power to violate it. Suppose every individual of this corporation were citizens of Ohio, or, as applicable to the other case, were citizens of Georgia, the United States could not give any one of them, individually, the right to sue a citizen of the same State in the Courts of the United States; then, on what principle could that right be communicated to them in a body? But the question is equally unanswerable, if any single member of the corporation is of the same State with the defendant, as has been repeatedly adjudged.

One of the counsel who argued this cause in behalf of the Bank, has denominated it a bundle of faculties. This is very true; but those faculties are substituted for the organization of a natural person; and it is perfectly certain, that when it comes into this Court, it must be treated as a person. It is altogether inadmissible, to refine away the principles of jurisprudence, so as to consider it in any other light than that of a person. As such, it sues out a writ, declares, pleads, takes judgment, and levies an execution. If it is not a

person, it has no standing in this Court; it must, therefore, abandon this suit, or be subjected to personal disabilities. Gentlemen have a right to take what ground here they please, to sustain this action; but it is perfectly clear to me, that the act of Congress was intended to vest this right as a personal right, or not at all. Let any one look through this act, and notice the unrestricted latitude that has been assumed in vesting the right to sue both by and against this Bank, and he will see, that either there is no general right to sue given in the seventh section, now relied on, or that it is given under the general power granted to pass all laws necessary to carry the powers of the general government into execution. The proviso to the 17th section is a remarkable proof of this. It puts the limits of judicial power altogether out of view. If Congress, in legislating on this subject, did intend such a grant as is here contended for, it must be presumed that they did not advert to the consideration, that granting to an individual a right to sue, was enlarging the jurisdiction of the Court. It never can be supposed, that they meant to assume the power of adding to the number of persons who might constitutionally become suitors in the Courts of the United States. But every difficulty vanishes, when we limit the meaning of the language of the act, by a reference to the context. In fact, a general power to bring actions in the Courts of the United States, is so peculiarly and explicitly personal on the face of the constitution, that it is hard to perceive how Congress could have for a moment lost sight of the restric-

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tions imposed, in this respect, upon the judicial power.

Nor had the Bank any idea that this power was vested in it, upon the ground that every possible case in which it might be involved in litigation, came within the constitutional definition of cases arising under laws, &c. of the United States. In its averments, those on which it claims jurisdiction, it simply takes two grounds: 1. That it was incorporated by an act of Congress; 2. That the right to sue was given it by an act of Congress. But there is no averment, that the cause of action was a case arising under a law of the United States. It well knew, that it was a case emphatically arising out of an act of the State of Ohio, operating upon the domicil of the Bank, which, although purchased in right of an existence metaphysically given it by Congress, was acquired and held according to the laws of Ohio, acting upon its own territory. Technically, these averments cover only two grounds; they affirm, 1. That the Bank, being incorporated by Congress, had, therefore, a right to sue; 2. That being incorporated, and having the right to sue conferred upon it by an act of Congress, therefore, it could maintain this action. But yet neither, nor both of these, could give the right, unless in one of the cases defined in the constitution, which case is not the subject of an averment. I would not willingly place the case on the ground of mere technicality; and, therefore, only make the observation to show, that the ground assumed in argument, is an afterthought. I believe that, until this argument, the

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ever, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation, that is, a power to levy an income tax which although direct should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it, as follows: (a) The Amendment authorizes only a particular character of direct tax without apportionment, and therefore if a tax is levied under its assumed authority which does not partake of the characteristics exacted by the Amendment, it is outside of the Amendment and is void as a direct tax in the general constitutional sense because not apportioned. (b) As the Amendment authorizes a tax only upon incomes "from whatever source derived," the exclusion from taxation of some income of designated persons and classes is not authorized and hence the constitutionality of the law must be tested by the general provisions of the Constitution as to taxation, and thus again the tax is void for want of apportionment. (c) As the right to tax "incomes from whatever source derived" for which the Amendment provides must be considered as exacting intrinsic uniformity, therefore no tax comes under the authority of the Amendment not conforming to such standard, and hence all the provisions of the assailed statute must once more be tested solely under the general and preëxisting provisions of the Constitution, causing the statute again to be void in the absence of apportionment. (d) As the power conferred by the Amendment is new and prospective, the attempt in the statute to make its provisions retroactively apply is void because so far as the retroactive period is concerned, it is governed by the preëxisting constitutional requirement as to apportionment.

But it clearly results that the proposition and the con-

tentions under it, if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one State or States than was levied in another State or States. This result instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion.

But let us by a demonstration of the error of the fundamental proposition as to the significance of the Amendment dispel the confusion necessarily arising from the arguments deduced from it. Before coming, however, to the text of the Amendment, to the end that its significance may be determined in the light of the previous legislative and judicial history of the subject with which the Amendment is concerned and with a knowledge of the conditions which presumptively led up to its adoption and hence of the purpose it was intended to accomplish, we make a brief statement on those subjects.

That the authority conferred upon Congress by § 8 of Article I "to lay and collect taxes, duties, imposts and excises" is exhaustive and embraces every conceivable power of taxation has never been questioned, or, if it has, has been so often authoritatively declared as to render it necessary only to state the doctrine. And it has also never

War powers under the Constitution of the United States

William Whiting

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J. H. Pomeroy

WAR POWERS

UNDER THE

CONSTITUTION OF THE UNITED STATES.

MILITARY ARRESTS,
RECONSTRUCTION, AND MILITARY GOVERNMENT.

ALSO, NOW FIRST PUBLISHED,

WAR CLAIMS OF ALIENS.

WITH NOTES

ON THE

ACTS OF THE EXECUTIVE AND LEGISLATIVE DEPARTMENTS

DURING OUR CIVIL WAR,

AND A COLLECTION OF

CASES DECIDED IN THE NATIONAL COURTS.

BY WILLIAM WHITING.

FORTY-THIRD EDITION.

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1871.

would not determine the question as to the right to emancipate, liberate, or to change the relation to their masters of slaves *now living;* nor the question as to the right of abolishing slavery, in the sense in which this expression is used when it signifies the liberation of persons now held as slaves, from the operation of slave laws; while these laws are still left to act on other persons who may be hereafter reduced to slavery under them.

It is not denied that the powers given to the various departments of government are in general *limited* and defined; nor is it to be forgotten 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." (Const. Amendment, Art. X.) But the powers claimed for the President and for Congress, in this essay, are believed to be delegated to them respectively under the constitution, expressly or by necessary implication.

The learned reader will also notice, that the positions taken in this pamphlet do not depend upon the adoption of the most liberal construction of the constitution, Art. I. Sect. 8, Cl. 1, which is deemed by eminent statesmen to contain a distinct, substantive power to pass all laws which Congress shall judge expedient "*to provide for the common defence and general welfare.*" This construction was held to be the true one by many of the original framers of the constitution and their associates; among them was George Mason of Virginia, who opposed the adoption of the constitution in the Virginia convention, because, among other reasons, he considered that the true construction. (See Elliott's Debates, vol. ii. 327, 328.) Thomas Jefferson says, (Jefferson's Correspondence, vol. iv. p. 306,) that this doctrine was maintained by the *Federalists as a party*, while the opposite doctrine was maintained by the Republicans as a party.* Yet it is true that several Federalists did not adopt

* Elbridge Gerry, of Massachusetts, founded his chief objections to the Constitution on the grounds, 1. That the legislature had power to make what laws they might please to call necessary and proper; 2. To raise armies and money without limit; 3. To establish tribunals without juries. Other objections he could waive. These he could not. Gerry, Gov. Mason and Edmund Randolph, Jr., of Virginia, did not vote for the adoption of the Constitution.

Suppose a bridge, owned by a private corporation, to be so located as to endanger our forts upon the banks of a river. To demolish that bridge for military purposes, would be to appropriate it to public use. To raze private buildings in a city, for the purpose of preventing a general conflagration, would be to apply them to public use. To destroy arms, or other munitions of war, belonging to private persons, in order to prevent their falling into possession of the enemy, would be to devote them to public use. Congress has power, within certain limits, to pass laws providing for the common defence and general welfare, under Art. I. Sect. 8 of the constitution; and whenever, in their judgment, the common defence or general welfare, in a case of public necessity, requires them to authorize the appropriation of private property to public use, whether that use be the employment or destruction of the property taken, they have the right to pass such laws for that purpose; and whatever is done with it is a public use thereof, and entitles the owner to just compensation.

ALL KINDS OF PROPERTY, INCLUDING SLAVES, MAY BE SO APPROPRIATED.*

There is no restriction as to the kind or character of private property which may be lawfully thus appropriated, whether it be real estate, personal estate, rights in action or in possession, claims for money, or for labor and service. Thus the obligations of minor children to their parents, of apprentices to their masters, and of other persons owing labor and service to their masters,

* See the resolutions and the amendments of the constitution proposed by Congress on the subject of slavery a short time before this essay was written. Note, p. 132. See also Note to the Forty-third Edition, on "Slavery," p. 393.

may lawfully be taken for public use, or discharged and destroyed, for public benefit, by authority of an act of Congress, with the proviso that just compensation shall be allowed to the parent or master. Our government, by treaty, discharged the claims of its own citizens against France, and thus applied their private property to public use. At a later date the United States discharged the claims of certain slave owners to labor and service, whose slaves had been carried away by the British, contrary to their treaty stipulations. In both cases indemnity was promised by our government to the owners; and in case of the slave masters it was actually paid. By abolishing slavery in the District of Columbia, that which was considered for the purposes of the act as private property was appropriated to public use, with just compensation to the owners; Congress, in this instance, having the right to pass the act as a local, municipal law; but the compensation was from the treasury of the United States.

During the present rebellion, many minors, apprentices, and slaves have been relieved from obligation to their parents and masters, the claim for their services having been appropriated to public use, by employing them in the military service of the country.

That Congress should have *power* to appropriate *every description* of private property for public benefit in time of war, results from the *duty* imposed on it by the constitution to pass laws "providing for the common defence and general welfare."

Suppose that a large number of apprentices desired to join the army as volunteers in time of sorest need, but were restrained from so doing only by reason of their owing labor and service to their employers, who

when in actual service in time of war, and is a branch of the power to erect and maintain military governments.

Military courts are a usual and essential part of the machinery of military government; the right to institute the one necessarily implies the right to organize the other. Courts martial have jurisdiction over offences not declared punishable by any law of Congress, and persons out of the reach of any but military process.

How far it may be within the province of Congress to control the operations of war courts instituted by the President, need not be here discussed.

As has been said, one class of courts of war may be instituted by laws of Congress, and another class may be created by the President. Both are under his control as military chief of the forces, while at the same time he is bound to execute the laws of the land. The right of the Commander-in-Chief, as well as that of Congress, to create military tribunals, has been sanctioned by many decisions of the Supreme Court of the United States.*

DO COURTS OF WAR EXERCISE JUDICIAL POWER?

As the proceedings of war courts in some respects resemble those of courts of law, it has been questioned whether they exercise any part of the judicial power of the United States which is vested by the Constitution (Art. III., Sect. 1) in "one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." It has been decided by the Supreme Court of the United States, that military tribunals exercise no part

* See authorities in the Appendix.

of the *judicial* power, but only a portion of the military power of the Executive. And it has also been determined that the sentences or other lawful proceedings of courts martial of the United States are not the subject of appeal or revision in any judicial courts of the States or of the United States.*

WOULD JUDICIAL COURTS BE USEFUL AS WAR COURTS?

If it be said that judicial courts ought to employed for the administration of the laws of war, in order thereby to preserve the safeguards of civil liberty, the answer is that the whole system of judicial courts would be worse than useless in armies moving from place to place. Their organization is incompatible with the administration of military rights and remedies, by reason of local jurisdiction, jury trials, territorial limitations of process, and slowness of procedure, to say nothing of the inexperience of learned jurists in military affairs.

* *Vallandigham's Case* (Appendix, 524); *Dynes* v. *Hoover*, 20 How. 81, 82 (Appendix, 520).

See Notes to Forty-third Edition. Opinion delivered by Mr. Justice Davis in *Ex parte Milligan*; and remarks on this decision, Appendix, 460, 536.

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cases before us in which the capture occurred before the 13th of July, 1861, for breach of blockade, or as enemies' property, are illegal and void, and that the decrees of condemnation should be reversed and the vessel and cargo restored.

Mr. Chief Justice TANEY, Mr. Justice CATRON, and Mr. Justice CLIFFORD, concurred in the Dissenting Opinion of Mr. Justice NELSON.

From the foregoing opinion of the judges who dissented from the opinion of the majority of the Court, it will be seen that the Court were *unanimous* on several great questions treated of in the preceding work. The judges all agree in considering *a civil war* (with all the *consequences* to *the residents of the seceding States* of a *public territorial war*) to have existed *since the act of July 13th*, 1861, and *still to exist*. The question on which the judges differed was, whether the rebellion was or was not a civil territorial war *prior to this Act of Congress*.

Among the points thus authoritatively settled by agreement of all the judges, are these : —

1. *Since* July 13th, 1861, there has existed between the United States and the Confederate States *a civil, territorial war*.

2. That the United States, since that time, have *full belligerent rights against all persons residing in the rebellious districts*.

3. That whether the inhabitants of the rebellious districts are guilty or innocent, loyal or disloyal, such persons are, in the eye of the law, *belligerent enemies*, and *they and their property are subject to the laws of war*. "The laws of war, whether the war be civil or *inter gentes*, converts *every citizen* of the hostile State into a *public enemy*, and treats him accordingly, whatever may have been his previous conduct."

4. All *the rights of war* now may be *lawfully* and *constitutionally* exercised against all the *inhabitants* of the seceded States.

The following extract from the same opinion shows what *some* of these *belligerent rights* are : —

"The legal consequences resulting from a state of war between two countries, at this day, are well understood, and will be found described in every approved work on the subject of international law. The people of the two countries immediately *become enemies* of each other; *all intercourse, commercial or otherwise*, between them *unlawful*; all contracts existing at the commencement of the war *suspended*, and all *made during its existence utterly void*. The insurance of enemies' property, the drawing of bills of exchange or purchase in the enemy's country, the remission of bills or money to it, are illegal and void. Existing partnerships between citizens or subjects of the two countries are dissolved, and in fine, *interdiction of trade and intercourse, direct or indirect*, is absolute *and complete* by the *mere force and effect of war itself*. *All the property of the people of the two countries, on land or sea, is subject to capture and confiscation by the adverse party*, as *enemies' property*, with certain qualifications as it respects property on land. (8 Cranch, 110, *Brown* vs. *United States*.) *All treaties between the belligerent parties are annulled*. The *ports* of the respective countaies may be blockaded, and *letters of marque* and reprisal granted as rights of war, and the *law of prize*, as defined by the law of nations, comes into full and complete operation, resulting from maritime captures *iure belli*. War also effects a change in the *mutual relations of all States or countries*, not directly, as in case of belligerents, but immediately and indirectly, though they take no part in the contest, but remain neutral.

"The great and pervading change in the condition of a country, *and in the relations of all her citizens and subjects, external and internal*, from a state of peace, is the immediate effect and result of a state of war."

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ther authority than that the existing government must necessarily continue until some other is organized to take its place, for I have been left without any definite instructions in reference to the existing state of affairs. But the calamities and disorders which would surely follow the absolute withdrawal of even a show of authority, impose on me, in my opinion, the imperative duty to pursue the course I have indicated, until the arrival of despatches from Washington (which I hope are already on their way) relative to the organization of a regular civil government. In the mean time, however, should the people refuse to obey the existing authorities, or the merchants refuse to pay any duties, my force is inadequate to compel obedience."

On the 3d of September, 1848, Governor Mason appointed Edward H. Harrison temporary collector of the port of San Francisco, with a salary of two thousand dollars per annum, provided that so much was collected over and above the expenses of the custom-house.

In order further to illustrate the view which was taken by the Executive branch of the government, of the existing condition of things in California, it is proper to insert an extract from a despatch written by Mr. Buchanan, Secretary of State, to Mr. Voorhees, on the 7th of October, 1848. It is as follows:

"The President, in his annual message, at the commencement of the next session, will recommend all these great measures to Congress in the strongest terms, and will use every effort, consistent with his duty, to insure their accomplishment.

"In the mean time, the condition of the people of California is anomalous, and will require, on their part, the exercise of great prudence and discretion. By the conclusion of the Treaty of Peace, the military government which was established over them under the laws of war, as recognized by the practice of all civilized nations, has ceased to derive its authority from this source of power. But is there, for this reason, no government in California? Are life, liberty, and property under the protection of no existing authorities? This would be a singular phenomenon in the face of the world, and especially among American citizens, distinguished as they are above all other people for their law-abiding character. Fortunately, they are not reduced to this sad condition. The termination of the war left an existing government, a government *de facto*, in full operation, and this will continue, with the presumed consent of the people, until Congress shall provide for them a territorial government. The great law of necessity justifies this conclusion. The consent of the people is irresistibly inferred from the fact that no civilized community could possibly desire to abrogate

an existing government, when the alternative presented would be to place themselves in a state of anarchy, beyond the protection of all laws, and reduce them to the unhappy necessity of submitting to the dominion of the strongest.

"This government *de facto* will, of course, exercise no power inconsistent with the provisions of the Constitution of the United States, which is the supreme law of the land. For this reason no import duties can be levied in California on articles the growth, produce, or manufacture of the United States, as no such duties can be imposed in any other part of our Union on the productions of California. Nor can new duties be charged in California upon such foreign productions as have already paid duties in any of our ports of entry, for the obvious reason that California is within the territory of the United States. I shall not enlarge upon this subject, however, as the Secretary of the Treasury will perform that duty"

At the same time, despatches were issued by the War and Treasury Departments to their respective officers, of similar import to the above. Mr. Walker, the Secretary of the Treasury, after providing for the reciprocal admission of goods which were the growth, &c., of California and the United States, free of duty, into the ports of each, thus provided for the case under consideration, so as to protect the revenue: "Third. Although the Constitution of the United States extends to California, and Congress have recognized it by law as a part of the Union, and legislated for it as such, yet it is not brought by law within the limits of any collection district, nor has Congress authorized the appointment of any officers to collect the revenue accruing on the import of foreign dutiable goods into that territory. Under these circumstances, although this department may be unable to collect the duties accruing on importations from foreign countries into California, yet, if foreign dutiable goods should be introduced there, and shipped thence to any port or place of the United States, they will be subject to duty, as also to all the penalties prescribed by law when such importation is attempted without the payment of duties. R. J. WALKER,

Secretary of the Treasury."

When these papers reached California, some doubt was entertained whether or not the revenue laws would be enforced, and application was made to Commodore Jones, then commanding the naval forces in the Pacific, to know whether he would use the forces under his command to aid the collector in seizing and confiscating goods, &c.; to which the commodore replied that he would so employ the force under his command.

On the 23d of February, 1849, Cross, Hobson, and Company.

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140 U. S. 545, 554; *Fertilizing Co.* v. *Hyde Park*, 97 U. S. 659, 667; *Matter of Heff*, 197 U. S. 488, 505; *Hammer* v. *Dagenhart*, 247 U. S. 251, 273–276; *Keller* v. *United States*, 213 U. S. 138, 144, 148.

In order to guard and promote the health, welfare and efficiency of the men composing the army and navy, and to increase the efficiency of the workers in the production of arms, munitions, ships, food and clothing for them, Congress has the right temporarily to regulate the sale of liquor, and, if reasonably necessary to accomplish such objects, to forbid its sale. *McKinley* v. *United States*, 249 U. S. 397, 399; *Selective Draft Law Cases*, 245 U. S. 366; *Schenck* v. *United States*, 249 U. S. 47, 52; *Grancourt* v. *United States*, 258 Fed. Rep. 25; *United States* v. *Casey*, 247 Fed. Rep. 362; *Pappens* v. *United States*, 252 Fed. Rep. 55. But the exercise of this power, like all others, is subject to the Fifth Amendment. *Ex parte Milligan*, 4 Wall. 2; *Johnson* v. *Jones*, 44 Illinois, 142; *Monongahela Nav. Co.* v. *United States*, 148 U. S. 312, 336; *McCray* v. *United States*, 195 U. S. 27, 61. It necessarily follows that if, in the exercise of the war power, private property is taken, the owner thereof is entitled to just compensation therefor.

Whisky is property and when taken for public use is entitled to the protection of the Fifth Amendment. *Leisy* v. *Hardin*, 135 U. S. 100, 110; *Wynehamer* v. *People*, 13 N. Y. 378, 383, 384; *Commonwealth* v. *Campbell*, 133 Kentucky, 50; *Barber* v. *Commonwealth*, 182 Kentucky, 200; *Commonwealth* v. *Kentucky Distilleries & Warehouse Co.*, 143 Kentucky, 314.

The War-Time Prohibition Act takes appellee's private property for public use, but makes no provision for just compensation to the owner. Therefore, the act is unconstitutional. The act prohibits appellee from either selling the whisky which it has in its own possession fully tax paid, or obtaining possession of its property which is in

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authorized by contract with the government." That case was a temporary occupation of real property by the Quartermaster's Department, under a lease which was held to be invalid.

Messrs. Weed, Cooley, Clarke, and Corwine, contra.

Mr. Justice CLIFFORD delivered the opinion of the court.*

Private property, the Constitution provides, shall not be taken for public use without just compensation, and it is clear that there are few safeguards ordained in the fundamental law against oppression and the exercise of arbitrary power of more ancient origin or of greater value to the citizen, as the provision for compensation, except in certain extreme cases, is a condition precedent annexed to the right of the government to deprive the owner of his property without his consent.† Extraordinary and unforeseen occasions arise, however, beyond all doubt, in cases of extreme necessity in time of war or of immediate and impending public danger, in which private property may be impressed into the public service, or may be seized and appropriated to the public use, or may even be destroyed without the consent of the owner. Unquestionably such extreme cases may arise, as where the property taken is imperatively necessary in time of war to construct defences for the preservation of a military post at the moment of an impending attack by the enemy, or for food or medicine for a sick and famishing army utterly destitute and without other means of such supplies, or to transport troops, munitions of war, or clothing to reinforce or supply an army in a distant field, where the necessity for such reinforcement or supplies is extreme and imperative, to enable those in command of the post to maintain their position or to repel an impending attack, provided it appears that other means of transportation could not be

* This case was decided at the close of the last term, December Term, 1870, No. 220.

† 2 Kent, 11th ed. 339; 2 Story on the Constitution, 3d ed. 596.

obtained, and that the transports impressed for the purpose were imperatively required for such immediate use. Where such an extraordinary and unforeseen emergency occurs in the public service in time of war no doubt is entertained that the power of the government is ample to supply for the moment the public wants in that way to the extent of the immediate public exigency, but the public danger must be immediate, imminent, and impending, and the emergency in the public service must be extreme and imperative, and such as will not admit of delay or a resort to any other source of supply, and the circumstances must be such as imperatively require the exercise of that extreme power in respect to the particular property so impressed, appropriated, or destroyed. Exigencies of the kind do arise in time of war or impending public danger, but it is the emergency, as was said by a great magistrate, that gives the right, and it is clear that the emergency must be shown to exist before the taking can be justified. Such a justification may be shown, and when shown the rule is well settled that the officer taking private property for such a purpose, if the emergency is fully proved, is not a trespasser, and that the government is bound to make full compensation to the owner.*

Three steamboats, owned by the appellee, during the rebellion, were employed as transports in the public service for the respective periods mentioned in the record, without any agreement fixing the compensation to which the owner should be entitled. Certain payments for the services were made in each case by the government to the owner, but he claimed a larger sum, and the demand being refused he instituted the present suit. Prior to the orders hereinafter mentioned the steamboats were employed by the owner in carrying private freights, and the findings of the court below show that he quit that employment in each case and went into the public service in obedience to the military order of an assistant quartermaster of the army. Reference to one of the orders will be sufficient, as the others are not

* Mitchell v. Harmony, 13 Howard, 134.

substantially different. Take the second, for example, which reads as follows, as reported in the transcript: "Imperative military necessity requires the services of your steamer for a brief period; your captain will report at this office at once in person, first stopping the receipt of freight, should the steamer be so doing." Pursuant to that order, or one of similar import in substance and effect, the respective steamboats were impressed into the public service and employed as transports for carrying government freight for the several periods of time set forth in the findings of the court. Throughout the whole time the steamboats were so employed in the military service they were in command of the owner as master, or of some one employed by him and under his pay and control, and the findings of the court show that he manned and victualled the steamboats and paid all the running expenses during the whole period they were so employed. Unexplained and uncontradicted the findings of the court show a state of facts which plainly lead to the conclusion that the emergency was such that it justified the officers in each case in ordering the steamboat into the service of the United States, as the orders purport to have been issued from an imperative military necessity, and if so they show beyond all doubt that the officers who issued them were not trespassers, and that the government of the United States is bound to make full compensation to the owner for the services rendered.

Such a taking of private property by the government, when the emergency of the public service in time of war or impending public danger is too urgent to admit of delay, is everywhere regarded as justified, if the necessity for the use of the property is imperative and immediate, and the danger, as heretofore described, is impending, and it is equally clear that the taking of such property under such circumstances creates an obligation on the part of the government to reimburse the owner to the full value of the service. Private rights, under such extreme and imperious circumstances, must give way for the time to the public good, but the government must make full restitution for the sacrifice.

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the Government has power to wage war and to carry out all the duties necessary and incident to the waging of such war. When it occupies foreign territory it is doing so in pursuance of a power delegated to it by the Constitution, and while the Constitution as such does not affect the territory or soil over which the United States troops exercise jurisdiction, it is by reason of the grant of power contained in the Constitution that the United States troops are there carrying on legitimate warfare, and are not mere adventurers or revolutionists.

What the learned judge means by bringing the territory within the sphere of the Constitution we do not exactly understand.

If he means that our jurisdiction there is not exercised in pursuance of the Constitution, we claim that he is incorrect in his postulate of constitutional law. If, however, he means that the jurisdiction is only temporary military jurisdiction, and that the clauses of the Constitution in regard to the bill of rights and uniformity of taxation do not and cannot apply, we accede to his view entirely.

The confusion in his reasoning seems to arise from want of appreciation of the fact that the Constitution applies both to peace and to war. That there is, so to speak, a Constitution for peace and one for war.

This is no new theory, but was clearly and ably expressed by John Quincy Adams in the House of Representatives in 1836. He said:

"There are, then, in the authority of Congress and in the Executive, two classes of powers altogether different in their nature and often incompatible with each other—war power and peace power. The peace power is limited by regulations and restricted by provisions in the Constitution itself. The war power is only limited by the usage of nations. This power is tremendous. It is strictly constitutional, but it breaks down every barrier so anxiously erected for the protection of liberty and of life."

This war power is, then, unlimited, except by the limitation which may fairly be implied from the Constitution that the war allowed to be waged shall be civilized warfare; that is to say, warfare according to the rules and regulations recognized

by civilized nations, not warfare as known to and practiced by the Apaches and Zulus. That in carrying on such warfare in accordance with the public law of the world the Government of the United States has the right to exercise a temporary jurisdiction over territory belonging to another nation is unquestioned. That jurisdiction, however, is and must remain temporary, until either the treaty-making or law-making power of the Government has acted.

The President, as Judge Taney said, cannot enlarge the territorial boundaries of the United States. The nation whose soil we are occupying and whose jurisdiction we have temporarily ousted has what might be termed in private law a right of reverter, and when the United States withdraws its troops the world recognizes that the sovereignty belongs to the nation temporarily dispossessed. The boundaries could not "be enlarged or diminished as the armies on either side advanced or retreated." *Fleming* v. *Page*, 9 How. 615.

But, and here we think the learned court in the *Goetze* case failed to appreciate the distinction, if the law or treaty-making power enacts that the territory over which the military arm of the Government has extended shall come under the permanent absolute sovereign jurisdiction of the United States, then, and then only, a new and different status arises. "The United States, it is true, may extend its boundaries by conquest or treaty . . . but that can be done only by the treaty-making power or the legislative authority, and is not a part of the power conferred upon the President by the declaration of war." *Fleming* v. *Page*, 9 How. 614. The former sovereign then loses all right of reverter and the territorial limits of the United States are in so far enlarged. See *Cross* v. *Harrison*, 19 How. It is, therefore, erroneous to say that "it is not acquisition of soil which extends our constitutional boundaries." What was meant is probably that occupation of soil did not extend our boundaries.

"Constitutional boundaries," we submit, is a misleading if not meaningless term. The Constitution is the life of the Government of the United States. Wherever that Government goes it goes by virtue of that Constitution or grant from the

Attorney General's Manual

on the

Administrative Procedure Act

WM. W. GAUNT & SONS, INC.
Holmes Beach, Florida 33510

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I

FUNDAMENTAL CONCEPTS

a. *Basic Purposes of the Administrative Procedure Act*

The Administrative Procedure Act may be said to have four basic purposes:

1. To require agencies to keep the public currently informed of their organization, procedures and rules (sec. 3).

2. To provide for public participation in the rule making process (sec. 4).

3. To prescribe uniform standards for the conduct of formal rule making (sec. 4(b) and adjudicatory proceedings (sec. 5), i.e., proceedings which are required by statute to be made on the record after opportunity for an agency hearing (secs. 7 and 8).

4. To restate the law of judicial review (sec. 10).

b. *Coverage of the Administrative Procedure Act*

The Administrative Procedure Act applies, with certain exceptions to be discussed, to every agency and authority of the Government. Section 2(a) of the Act reads, in part, as follows:

> "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law.

It will be seen from the above that agency is defined as each authority of the Government of the United States, whether or not within or subject to review by another agency. This definition was adopted in recognition of the fact that the Government is divided not only into departments, commissions, and offices, but that these agencies, in turn, are further subdivided into constituent units which may have all the attributes of an agency insofar as rule making and adjudication are concerned.[1] For example, the Federal Security Agency is composed of many

1 The legislative history of section 2(a) illustrates clearly the broad scope of the term "agency." In the Senate Comparative Print of June 1945, the term agency was explained as follows (p. 2): "It is necessary to define agency as 'authority' rather than by name or form, because of the present system of including one agency within another or of authorizing internal boards or 'divisions' to have final authority. 'Authority' means any officer or board, whether within another agency or not, which by law has authority to take final and binding action with or without appeal to some superior administrative authority. Thus, 'divisions' of the Interstate Commerce Commission and the judicial officers of the Department of Agriculture would be 'agencies' within this definition." (Sen. Doc. p. 181). And in the Senate Report the following appears at page 10: "The word 'authority' is advisedly used as meaning whatever persons are vested with powers to act (rather than the mere form of agency organization such as department, commission, board, or bureau) because the real authorities may be some subordinate or semidependent person or persons within such form of organization." (Sen. Doc. p. 196). See also H.R. Rep. p. 19 (Sen. Doc. p. 253).

authorities which, while subject to the overall supervision of that agency, are generally independent in the exercise of their functions. Thus, the Social Security Administration within the Federal Security Agency is in complete charge of the Unemployment Compensation provisions of the Social Security Act. By virtue of the definition contained in section 2(a) of the Administrative Procedure Act, the Social Security Administration is an agency, as is its parent organization, the Federal Security Agency.

The Administrative Procedure Act applies to every authority of the Government of the United States other than Congress, the courts, the governments of the possessions, Territories, and the District of Columbia (sec. 2(a)). The term "courts" is not limited to constitutional courts, but includes the Tax Court, the Court of Customs and Patent Appeals, the Court of Claims, and similar courts. Sen. Rep. p. 38 (Sen. Doc. p. 408).

While the Administrative Procedure Act covers generally all agencies of the United States, certain agencies and certain functions are specifically exempted from all the requirements of the Act with the exception of the public information requirements of section 3. Section 2(a) states, in part: "Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944; Sugar Control Extension Act of 1947;[2] Veterans' Emergency Housing Act[3] of 1946; and the Housing and Rent Act of 1947.[4]"

It will be helpful to consider each of these exceptions separately:

(1) "agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them." This definition is intended to embrace such agencies as the National Railroad Adjustment Board, composed

2 This exception was added by Public Law 30, 80th Cong., 1st sess.
3 This exception was added by Public Laws 663 and 719, 79th Cong., 2d sess.
4 This exception was added by Public Law 129, 80th Cong., 1st sess.

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