CHAPTER II.

THE CONSTITUTION OF THE UNITED STATES.

The government of the United States is the existing representative of the national government which has always in some form existed over the American States. Before the Revolution, the powers of government, which were exercised over all the colonies in common, were so exercised as pertaining either to the Crown of Great Britain or to the Parliament; but the extent of those powers, and how far vested in the Crown and how far in the Parliament, were questions never definitely settled, and which constituted subjects of dispute between the mother country and the people of the colonies, finally resulting in hostilities.\(^1\) That the power over peace and war, the general direction of commercial intercourse with other nations, and the general control of such subjects as fall within the province of international law, were vested in the home government, and that the colonies were not, therefore, sovereign States in the full and proper sense of that term, were propositions never seriously disputed in America, and indeed were often formally conceded; and the disputes related to questions as to what were or were not matters of internal regulation, the control of which the colonists insisted should be left exclusively to themselves.

Besides the tie uniting the several colonies through the Crown of Great Britain, there had always been a strong tendency to a more intimate and voluntary union, whenever circumstances of danger threatened them; and this tendency led to the New England Confederacy of 1643, to the temporary Congress of 1690, to the plan of union agreed upon in Convention of 1754, but rejected by the Colonies as well as the Crown, to the Stamp Act Congress of 1765, and finally to the Continental Congress of 1774. When the difficulties with Great Britain culminated in actual war, the Congress of 1775 assumed to itself those powers of external control which before had been conceded to the Crown.

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or to the Parliament, together with such other powers of sovereignty as it seemed essential a general government should exercise, and thus became the national government of the United Colonies. By this body, war was conducted, independence declared, treaties formed, and admiralty jurisdiction exercised. It is evident, therefore, that the States, though declared to be "sovereign and independent," were never strictly so in their individual character, but were always, in respect to the higher powers of sovereignty, subject to the control of a central authority, and were never separately known as members of the family of nations. The Declaration of Independence made them sovereign and independent States, by altogether abolishing the foreign jurisdiction, and substituting a national government of their own creation.

But while national powers were assumed by and conceded to the Congress of 1775–76, that body was nevertheless strictly revolutionary in its character, and, like all revolutionary bodies, its

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1 "All the country now possessed by the United States was [prior to the Revolution] a part of the dominions appertaining to the Crown of Great Britain. Every acre of land in this country was then held, mediately or immediately, by grants from that Crown. All the people of this country were then subjects of the King of Great Britain, and owed allegiance to him; and all the civil authority then existing or exercised here flowed from the head of the British empire. They were in a strict sense fellow-subjects, and in a variety of respects one people. When the Revolution commenced, the patriots did not assert that only the same affinity and social connection subsisted between the people of the colonies, which subsisted between the people of Gaul, Britain, and Spain, while Roman provinces, namely, only that affinity and social connection which result from the mere circumstance of being governed by one prince; different ideas prevailed, and gave occasion to the Congress of 1774 and 1775. "The Revolution, or rather the Declaration of Independence, found the people already united for general purposes, and at the same time providing for their more domestic concerns by State conventions and other temporary arrangements. From the Crown of Great Britain the sovereignty of their country passed to the people of it; and it was not then an uncommon opinion that the unappropriated lands which belonged to the Crown passed, not to the people of the colony or State within whose limits they were situated, but to the whole people. On whatever principles this opinion rested, it did not give way to the other, and thirteen sovereignties were considered as emerged from the principles of the Revolution, combined with local convenience and considerations; the people, nevertheless, continued to consider themselves, in a national point of view, as one people; and they continued without interruption to manage their national concerns accordingly. Afterwards, in the hurry of the war, and in the warmth of mutual confidence, they made a confederation of the States the basis of a general government. Experience disappointed the expectations they had formed from it: and then the people, in their collective capacity established the present Constitution." Per Hay, Ch. J., in Chisolm v. Georgia, 2 Dall. 410, 470. See this point forcibly put and elaborated by Mr. A. J. Dallas, in his Life and Writings by G. M. Dallas, 200–207. Also in Texas v. White, 7 Wall. 724. Professor Von Holst, in his Constitutional History of the United States, c. 1, presents the same view clearly and fully. Compare Hurd, Theory of National Existence, 125.
authority was undefined, and could be limited only, first, by instructions to individual delegates by the States choosing them; second, by the will of the Congress; and third, by the power to enforce that will. As in the latter particular it was essentially feeble, the necessity for a clear specification of powers which should be exercised by the national government became speedily apparent, and led to the adoption of the Articles of Confederation. But those articles did not concede the full measure of power essential to the efficiency of a national government at home, the enforcement of respect abroad, or the preservation of the public faith or public credit; and the difficulties experienced induced the election of delegates to the Constitutional Convention held in 1787, by which a constitution was formed which was put into operation in 1789. As much larger powers were vested by this instrument in the general government than had ever been exercised in this country by either the Crown, the Parliament, or the Revolutionary Congress, and larger than those conceded to the Congress under the Articles of Confederation, the assent of the people of the several States was essential to its acceptance, and a provision was inserted in the Constitution that the ratification of the conventions of nine States should be sufficient for the establishment of the Constitution between the States so ratifying the same. In fact, the Constitution was ratified by conventions of delegates chosen by the people in eleven of the States, before the new government was organized under it; and the remaining two, North Carolina and Rhode Island, by their refusal to accept, and by the action of the others in proceeding separately, were excluded altogether from that national jurisdiction which before had embraced them. This exclusion was not warranted by anything contained in the Articles of Confederation, which purported to be articles of "perpetual union;" and the action of the eleven States in making radical revision of the Constitution, and excluding their associates for refusal to assent, was really revolutionary in character, and only to be defended on the same ground of necessity on which all revolutionary action is justified, and which in this case was the absolute need, fully demonstrated by experience, of a more efficient general government.

1 See remarks of Iredell, J., in Penhallow v. Doane's Adm'r, 3 Dall. 54, 91, and of Blair, J., in the same case, p. 111. The true doctrine on this subject is very clearly explained by Chase, J., in Ware v. Hylton, 3 Dall. 199, 231.

2 Mr. Van Buren has said of it that it was "an heroic, though perhaps a lawless, act." Political Parties, p. 50.

3 "Two questions of a very delicate nature present themselves on this occasion: 1. On what principle the confederation, which stands in the form of a solemn compact among the States, can be superseded without the unanimous consent of the parties to it; 2. What relation is to subsist between the nine or more States, ratifying the Constitution, and the re-
Left at liberty now to assume complete powers of sovereignty as independent governments, these two States saw fit soon to resume their place in the American family, under a permission contained in the Constitution; and new States have since been added from time to time, all of them, with a single exception, organized by the consent of the general government, and embracing territory previously under its control. The exception was Texas, which had previously been an independent sovereign State, but which, by the conjoint action of its government and that of the United States, was received into the Union on an equal footing with the other States.

Without, therefore, discussing, or even designing to allude to any abstract theories as to the precise position and actual power of the several States at the time of forming the present Constitution,¹ it may be said of them generally that they have at all times been subject to some common national government, which has exercised control over the subjects of war and peace, and other

¹ See this subject discussed in Gibbons v. Ogden, 9 Wheat. 1.
matters pertaining to external sovereignty; and that when the only three States which ever exercised complete sovereignty accepted the Constitution and came into the Union, on an equal footing with all the other States, they thereby accepted the same relative position to the general government, and divested themselves permanently of those national powers which the others had never exercised. And the assent once given to the Union was irrevocable. "The Constitution in all its provisions looks to an indestructible Union composed of indestructible States."1

The government of the United States is one of enumerated powers; the national Constitution being the instrument which specifies them, and in which authority should be found for the exercise of any power which the national government assumes to possess.2 In this respect it differs from the constitutions of the several States, which are not grants of powers to the States, but which apportion and impose restrictions upon the powers which the States inherently possess. The general purpose of the Constitution of the United States is declared by its founders to be, "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." To accomplish these purposes, the Congress is empowered by the eighth section of article one:—

1 Chase, Ch. J., in Texas v. White, 7 Wall. 700, 725. See United States v. Cathecart, 1 Bond, 556.

2 "The government of the United States can claim no powers which are not granted to it by the Constitution; and the powers actually granted must be such as are expressly given, or given by necessary implication." Per Marshall, Ch. J., in Martin v. Hunter's Lessee, 1 Wheat. 304, 326. "This instrument contains an enumeration of the powers expressly granted by the people to their government." Marshall, Ch. J., in Gibbons v. Ogden, 9 Wheat. 1, 187. See Calder v. Bull, 3 Dall. 386; Briscoe v. Bank of Kentucky, 11 Pet. 257; Gilman v. Philadelphia, 3 Wall. 718; United States v. Cruikshank, 92 U. S. 542, 550, 551, per Waite, Ch. J.; United States v. Harris, 106 U. S. 620, 1 Sup. Ct. Rep. 601; Weis- ter v. Hade, 62 Pa. St. 474; Sporrrer v. Eiroller, 1 Heisk. 633. The tenth amendment to the Constitution provides 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." No power is conferred by the Constitution upon Congress to establish mere police regulations within the States. United States v. Dewitt, 9 Wall. 41. Nor is power conferred to provide for copyrighting trademarks. Trademark Cases, 100 U. S. 82. The fourteenth amendment does not take from the States police powers reserved to them at the time of the adoption of the Constitution. See Slaughter House Cases, 16 Wall. 36; Barbier v. Connolly, 113 U. S. 27, 6 Sup. Ct. Rep. 357; Mugler v. Kansas, 125 U. S. 629, 8 Sup. Ct. Rep. 273. [But it prevents their making, under the guise of police regulations, rules which abridge the liberty of the citizen to acquire contract rights outside his own State and to enjoy the same. Allgeyer v. Louisiana, 165 U. S. 573, 17 Sup. Ct. Rep. p. 427, rev. 48 La. Ann. 104, 18 S. W. 904. See note, infra, § 83.] As to the general division of powers between the Dominion of Canada and the provinces, see Citizens' Ins. Co. v. Parsons, 4 Can. Sup. Ct. 215.
1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States. But all duties, imposts, and excises shall be uniform throughout the United States. (a)

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign nations and among the several States, and with the Indian tribes.1

4. To establish a uniform rule of naturalization, (b) and uniform laws on the subject of bankruptcy, throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish post-offices and post-roads.2

8. To promote the progress of science and the useful arts, by securing for limited terms to authors and inventors the exclusive right to their respective writings and discoveries.3

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1 Commerce on the high seas, though between ports of the same State, is held to be under the controlling power of Congress. Lord v. Steamship Co., 102 U. S. 641. See cases infra, 688, 847. [Acts committed by Indians within the limits of their reservations are not subject to the criminal laws of the State wherein the reservation lies. State v. Campbell, 33 Minn. 354, 55 N. W. 553, 21 L. R. A. 169 and note on jurisdiction to punish crimes by or against Indians. As to what lands of tribal Indians cannot be taxed by State, see Allen Co. Commrs. v. Simons, 129 Ind. 103, 28 N. E. 420, 13 L. R. A. 612.]

2 As to the power to exclude matter from the mail, see Ex parte Jackson, 88 U. S. 727.


(b) [Naturalization may be by treaty, and also by organic act creating a State. Boyd v. Nebraska, 143 U. S. 135, 12 Sup. Ct. Rep. 375, and cases there cited. But such naturalization applies only to those who were citizens of the admitted territory or country at the time of such admission. Cooter v. United States, 179 U. S. 101, 21 Sup. Ct. Rep. 98.]
9. To constitute tribunals inferior to the Supreme Court; to define and punish piracies and felonies committed upon the high seas, and offences against the law of nations.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

12. To provide and maintain a navy.

13. To make rules for the government and regulation of the land and naval forces.

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.¹

16. To exercise exclusive legislation in all cases whatsoever, over such district not exceeding ten miles square as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. (a)

17. To make all laws which shall be necessary and proper


¹ Houston v. Moore, 5 Wheat. 1; Martin v. Mott, 12 Wheat. 19; Kuehler v. Lane, 45 Penn. St. 238; Dunne v. People, 94 Ill. 120, 34 Am. Rep. 213.

(a) [Perjury committed in a State court held by permission of State law and of federal officials in a federal building, is not outside the jurisdiction of the State to punish. Exum v. State, 90 Tenn. 601, 17 S. W. 107, 15 L. R. A. 381.]
for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof.\(^1\)

Congress is also empowered by the thirteenth, fourteenth, and fifteenth amendments to the Constitution to enforce the same by appropriate legislation. The thirteenth amendment abolishes slavery and involuntary servitude, \((a)\) except as a punishment for crime, throughout the United States and all places subject to their jurisdiction. The fourteenth amendment \((b)\) has several objects. 1. It declares all persons born or naturalized in the United States, and subject to the jurisdiction thereof, to be citizens of the United States and of the State wherein they reside; \((c)\) and it forbids any State to make or enforce any law

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1 Within the legitimate scope of this grant Congress can determine for itself what is necessary. *Ex parte Curtis*, 106 U. S. 371. "Congress as the legislature of a sovereign nation, being expressly empowered by the Constitution 'to lay and collect taxes, to pay the debts and provide for the common defence and general welfare of the United States,' and 'to borrow money on the credit of the United States,' and 'to coin money and regulate the value thereof and of foreign coin;' and being clearly authorized, as incidental to the exercise of those great powers, to emit bills of credit, to charter national banks, and to provide a national currency for the whole people, in the form of coin, treasury notes, and national bank bills; and the power to make the notes of the government a legal tender in payment of private debts being one of the powers belonging to sovereignty in other civilized nations, and not expressly withheld from Congress by the Constitution; we are irresistibly impelled to the conclusion that the impressing upon the treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the undoubted powers of Congress, consistent with the letter and spirit of the Constitution, and, therefore, within the meaning of that instrument, 'necessary and proper for carrying into execution the powers vested by this Constitution in the government of the United States.'" *Gray, J.*, in *Legal Tender Case*, 110 U. S. 421.

Congress has implied power to protect voters at federal elections from intimidation: *Ex parte Yarbrough*, 110 U. S. 651; to protect the right to make homestead entry upon public lands: *United States v. Waddell*, 113 U. S. 76.


which shall abridge the privileges or immunities of citizens of the United States,¹ or to deprive any person of life, liberty, or property, without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws. (a)

¹ As to this clause, see p. 687, note 4, infra.

(a) A discrimination between agricultural lands and other lands with regard to the right of a city to annex them by extension of its corporate limits so as to include them is no denial of the equal protection of the laws. A State may classify the objects of legislation so long as its attempted classification is not clearly arbitrary and unreasonable. Clark v. Kansas City, 176 U. S. 114, 20 Sup. Ct. Rep. 284, aff. 59 Kan. 427, 53 Pac. 468. Many cases upon the power of the legislature to annex rural lands to municipalities are collected in a note to this case in 44 L. ed. U. S. 392. Nor does a statute making a railroad company liable to an employee injured by the negligence of a fellow-servant deny to such company the equal protection of the laws, since there are peculiar hazards in the operation of a railroad which warrant the discrimination between railroad companies and ordinary employers in this regard. Tullis v. Lake Erie & Western R. Co., 175 U. S. 348, 20 Sup. Ct. Rep. 136. The act (Burns’s An. Stat. of Ind., Rev. of 1894, §§ 7083-7) applies in terms only to corporations. The point was raised in the defence that this discrimination between corporations operating railroads and other persons or associations operating railroads was unconstitutional, but it was not noticed by the court. That the exception of a dummy railroad operated by steam or of an electric railroad from an ordinance limiting the speed with which railroad trains may run within the city limits is not an arbitrary and unreasonable classification in denial of the equal protection of the laws, see Erb v. Morash, 177 U. S. 584, 20 Sup. Ct. Rep. 810, aff. 60 Kan. 251, 56 Pac. 133. On validity of ordinance requiring possession of good character and reputation in one seeking license to sell cigarettes and vesting mayor with power to determine whether or not applicant possesses such, see Gunning v. Chicago, 177 U. S. 183, 20 Sup. Ct. Rep. 633, aff. 170 Ill. 340, 52 N. E. 44.

A county board of education maintained primary schools for white children and for negro children. They also maintained a high school for white children, but had discontinued a high school for negro children for the reason that the funds were needed for primary schools for a much larger number of negro children than attended the negro high school. Such discontinuance of high school privileges for negroes while high school privileges are continued for white children cannot be corrected by injunction against maintenance of high school for white children, and refusal to grant such injunction is no denial of the equal protection of the laws nor of any privileges and immunities of citizens of the United States. Cumming v. Board of Education, 176 U. S. 528, 20 Sup. Ct. Rep. 197, aff. 193 Ga. 641, 20 S. E. 488.


State may provide that plaintiff in an action against a railroad company for loss by fire caused by operation of the road shall, if successful, recover a reasonable attorney’s fee in addition to damages, while, if unsuccessful, no attorney’s fee shall be assessed against him. Atchison, T. & S. F. Ry. Co. v. Matthews, 174 U. S. 96, 19 Sup. Ct. Rep. 609. See in this case a vigorous dissenting opinion of Harran, J., concurred in by Brown, Peckham, and McKenna, JJ. That state may require railroad companies to pay discharged employees at regular rate until time of full payment, not to exceed sixty days after discharge, see St. Louis, I. M. & S. R.
2. It provides that when the right to vote at any election for the choice of electors (a) for President or Vice-President of the


A State may abolish the fellow-servant rule with regard to a particular class of employers only, e.g. railroad companies. Chicago, K. & W. R. Co. v. Pontius, 167 U. S. 269, 15 Sup. Ct. Rep. 585. State may provide that coming into court to challenge the validity of an alleged service upon the defendant shall constitute a general appearance. York v. Texas, 137 U. S. 16, 11 Sup. Ct. Rep. 9; Kauffman v. Wooters, 138 U. S. 285, 11 Sup. Ct. Rep. 298. Exemption by statute of “planters and farmers grinding and refining their own sugar and molasses” from a license tax upon persons and corporations carrying on the business of refining sugar and molasses is not a denial of the equal protection of the laws to the persons taxed. Am Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 21 Sup. Ct. Rep. 43. State may levy a specific tax upon persons engaged in the business of hiring laborers to be employed beyond the limits of the State, while levying none upon those hiring laborers to be employed within the State. Williams v. Fears, 179 U. S. 270, 21 Sup. Ct. Rep. 128, aff. 110 Ga. 584, 35 S. E. 695. A person cannot complain that he is denied the equal protection of the laws when valid laws are fairly administered as to him, although there is maladministration as to his neighbors, as, e.g. by under-assessment of property for taxation, New York v. Barker, 179 U. S. 270, 21 Sup. Ct. Rep. 121. The levy of a tax upon owners of lands abutting on streets along which conduits for public water supply run, in excess of that levied upon owners of lands not so located, upon the theory that better fire protection is afforded is unconstitutional. Lemont v. Jenks, 197 Ill. 363, 64 N. E. 362. State may classify cities for regulation of registration of voters. Mason v. Missouri, 179 U. S. 328, 21 Sup. Ct. Rep. 125. In Cotting v. Kansas City Stock Yards Co. et al., 183 U. S. 79, 22 Sup. Ct. Rep. 30, a statute of Kansas defining what shall constitute public stock yards and regulating all charges thereof, is held to be in conflict with the fourteenth amendment for the reason that the definition of a “public stock yard” was made to depend upon the volume of business done and the facts showed that the Kansas City Stock Yards Co. was the only one within the definition, and the legislation was therefore a denial to the Kansas City Co. of the equal protection of the law.


(a) [The appointment and mode of appointment of electors from a State are within the power of the State acting in such manner as its legislature may direct;
United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or is in any way abridged, except for participation in rebellion or other crime, the basis of congressional representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. 3. It disqualifies from holding Federal or State offices certain persons who shall have engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof. 4. It declares the inviolability of the public debt of the United States, and forbids the United States or any State assuming or paying any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave. The fifteenth amendment declares that

1 "That amendment was undoubtedly proposed for the purpose of fully protecting the newly-made citizens of the African race in the enjoyment of their freedom, and to prevent discriminating State legislation against them. The generality of the language used necessarily extends its provisions to all persons, of every race and color. Previously to its adoption, the Civil Rights Act had been passed, which declared that citizens of the United States of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime, should have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, own, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and should be subject to like punishments, pains, and penalties, and to none other. The validity of this act was questioned in many quarters, and complaints were made that, notwithstanding the abolition of slavery and involuntary servitude, the freedmen were in some portions of the country subjected to disabilities from which others were exempt. There were also complaints of the existence in certain sections of the Southern States of a feeling of enmity, growing out of the collisions of the war, towards citizens of the North. Whether these complaints had any just foundation is immaterial; they were believed by many to be well founded, and to prevent any possible legislation hostile to any class from the causes mentioned, and to obviate objections to legislation similar to that embodied in the Civil Rights Act, the fourteenth amendment was adopted. This is manifest from the discussions in Congress with reference to it. There was no diversity of opinion as to its object between those who favored and those who opposed its adoption." Mr. Justice Field in San Mateo County v. Sou. Pac. R. R. Co., 13 Fed. Rep. 722.

"A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean and a law directing that one elector and one alternate shall be elected from each congressional district, and one elector and one alternate shall be elected at large in each of two districts into which the legislature divides the State for the purpose of electing the remaining two electors, is a valid exercise of the power of the legislature in this regard. McPherson v. Blacker, 140 U. S. 1, 13 Sup. Ct. Rep. 3, aff. 92 Mich. 377, 62 N. W. 409, 16 L. R. A. 475, 31 Am. St. 587.[}
the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude.  

that no agency of the State, or of the officers or agents by whom its powers are executed, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever by virtue of public position under a State government deprives another of property, life, or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's authority, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." Strong, J., in Ex part  

Virginia, 100 U. S. 330. Approved, Neal v. Delaware, 103 U. S. 370, 377. An act of Congress declaring that certain acts committed by individuals shall be deemed offences and punished in the United States courts is invalid. The fourteenth amendment does not "invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation or State action of the kinds referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws and the action of State officers, executive and judicial, when these are subversive of the fundamental rights specified in the amendment." Bradley, J., in Civil Rights Cases, 100 U. S. 3, 3 Sup. Ct. Rep. 18. See also United States v. Harris, 106 U. S. 629, 1 Sup. Ct. Rep. 601; Baldwin v. Francis, 120 U. S. 673, 7 Sup. Ct. Rep. 656. But Congress may punish the intimidation by individuals of voters at federal elections. Ex parte Yarbrough, 110 U. S. 651, 4 Sup. Ct. Rep. 152.  


The fourteenth amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities may and do exist in these respects in different States. One may have the common law and trial by jury; another the civil law and trial by the court. But like diversities may also exist in different parts of the same State. The States frame their laws and organize their courts with some regard to local peculiarities and special needs, and this violates no constitutional requirement. All that one can demand under the last clause of § 1 of the fourteenth amendment is, that he shall not be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances. Missouri v. Lewis, 101 U. S. 22; Hayes v. Missouri, 120 U. S. 68, 7 Sup. Ct. Rep. 350. So railroads, as a class, may be taxed differently from other property, and if the law provides for a hearing and judicial contest, it is due process of law. Kentucky R. R. Tax Cases, 115 U. S. 921, 6 Sup. Ct. Rep. 67.


Corporations are "persons" within the meaning of the amendment. Santa Clara Co. v. Southern Pac. R. R. Co., 118 U. S.
the several States when called into the service of the United States; and who has power, by and with the consent of the


The repeal of a limitation statute after a personal debt is barred by it, does not deprive the debtor of property without due process of law. Campbell v. Holt, 115 U. S. 620, 0 Sup. Ct. Rep. 206. See, further, Railroad Co. v. Brown, 17 Wall. 446; Kemmard v. Louisiana, 92 U. S. 480; Pennoyer v. Neff, 95 U. S. 714; Pearson v. Yewdall, 95 U. S. 294; McMillen v. Anderson, 95 U. S. 37; Davidson v. New Orleans, 96 U. S. 97; Kirkland v. Hotchkiss, 100 U. S. 491; Tennessee v. Davis, 100 U. S. 257; Louisiana v. New Orleans, 109 U. S. 285, 3 Sup. Ct. Rep. 211; President Inst. v. Jersey City, 113 U. S. 506, 5 Sup. Ct. Rep. 612; Robards v. Lamb, 127 U. S. 58, 8 Sup. Ct. Rep. 1031; Watson v. Nevin, 125 U. S. 578, 9 Sup. Ct. Rep. 102; Freeman v. Williams, 131 U. S. 405, 9 Sup. Ct. Rep. 794; Board of Comrs. v. Merchant, 103 N. Y. 143; State v. Ryan, 70 Wis. 676, 36 N. W. 822; Warren v. Sohn, 112 Ind. 213, 13 N. E. 863; State v. Dent, 25 W. Va. 1; Allen v. Wyckoff, 48 N. J. L. 90, 2 Atl. 651. Upon what constitutes "due process of law," see cases collected in valuable notes upon this topic appended to 42 L. ed. U. S. 855, and 24 L. ed. U. S. 436; see also latter part of note 1, page 506, and note 1, page 508, post. Personal service on non-residents outside the jurisdiction of the court may, if reasonable time is given in which to appear and answer, be due process of law in a suit for the foreclosure of a lien upon land within the jurisdiction of the court; but five days' notice, one of those days being a Sunday, is insuffi- cient when, with the utmost diligence and without any accident or delay whatever, the party notified could not reach the court with less than four days of constant travelling, and the fact that by the local practice there would be several days after return day before the case could be called for trial or default taken, or that the court would probably, in view of the circumstances, set aside any default that might have been entered, will not negative this conclusion of insufficiency, since non-residents are not presumed to know the law and practice of the State. Roller v. Holy, 176 U. S. 398, 20 Sup. Ct. Rep. 410, rev. 13 Tex. Civ. Ap. 630, 35 S. W. 1074. "It is no longer open to contention that the due process clause of the fourteenth amendment... does not control mere forms of procedure in State courts or regulate practice therein. All its requirements are complied with, provided, in the proceedings which are claimed not to have been due process of law, the person condemned has had sufficient notice, and adequate opportunity has been afforded him to defend. Iowa C. R. Co. v. Iowa, 169 U. S. 389, 16 Sup. Ct. Rep. 344; Wilson v. North Carolina, 169 U. S. 656, 18 Sup. Ct. Rep. 435," per Mr. Justice White in Louisville & N. R. Co. v. Schmidt, 177 U. S. 230, 220, 20 Sup. Ct. Rep. 620, aff. 90 Ky. 148, 35 S. W. 135, 36 S. W. 103. In this case the L. & N. R. Co. had been an actual defendant, although never served with notice and not a party to the record. After judgment it was brought in by rule to show cause and upon appearing and claiming a set-off it was condemned to pay the judgment. The garnishment of a resident debtor of a non-resident defendant to reach a debt due from the latter who has no other property within the jurisdiction of the court does not deprive him of his property without due process of law, the situs of debt being, for purposes of attachment, with the debtor. King v. Cross, 175 U. S. 396, 20 Sup. Ct. Rep. 101; Chicago, R. I. & P. R. Co. v. Sturm, 174 U. S. 706, 19 Sup. Ct. Rep. 197. Upon right to correct gross undervaluation of property assessed for taxation in prior years, even when ownership has since changed, see
Senate, to make treaties, provided two-thirds of the Senate concur, and, with the same advice and consent, to appoint

Weyerhaeuser v. Minnesota, 176 U. S. 550, 20 Sup. Ct. Rep. 483, aff. 72 Minn. 519, 75 N. W. 718, in which right of State so to do is sustained. Assessment and collection of taxes upon money loaned within the State is not a taking without due process merely because creditor resides without the State, and such taxes if unpaid may be made a lien enforceable against estate of decedent creditor except as limited by Statute of Limitations. Bristol v. Washington County, 177 U. S. 133, 20 Sup. Ct. Rep. 555.

ambassadors and other public ministers and consuls, judges of the Supreme Court, and other officers of the United States, whose appointments are not otherwise provided for. 1

The judicial power of the United States extends to all cases (a) in law and equity arising under the national Constitution, the


1 U. S. Const. art. 2.

(a) [Includes a proceeding for mandamus. Am. Express Co. v. Michigan, 177 U. S. 404, 29 Sup. Ct. Rep. 696, reversing 118 Mich. 692, 77 N. W. 317. "Judicial power of United States extends only to the trial and determination of 'cases' in courts of record, and . . . Congress is still at liberty to authorize the judicial officers of the several States to exercise such power as is ordinarily given to officers of courts, not of record; such, for instance, as the power to take affidavits, to arrest and commit for trial offenders against the laws of the United States, to naturalize aliens, and to per-
laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; (a) to all cases of admiralty and maritime jurisdiction; (b) to controversies to which the United States shall be a party; (c) to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or citizens thereof and foreign States, citizens or subjects. 1 But a State is not subject to be sued in the courts of the United States by citizens of another State, or by citizens or subjects of any foreign State. 2


2 U. S. Const. 11th Amendment. But a suit in a State court, to which a State is a party, may be removed to the Federal court for trial if a federal question is involved. Railroad Co. v. Mississippi, 102 form such other duties as may be regarded as incidental to the judicial power rather than a part of the judicial power itself." Robertson v. Baldwin, 105 U. S. 275, 17 Sup. Ct. Rep. 326, holding that Congress may authorize justices of the peace to arrest deserting seamen and return them to their ships.

(a) [If a consul wishes to enjoy his exemption from the jurisdiction of a State court, he must specially plead it, and must plead it at the proper time. Wilcox v. Luce, 118 Cal. 639, 45 Pac. 676, 50 Pac. 768, 45 L. R. A. 579, 62 Am. St. 365, upon privileges and exemptions of consuls, see note to this case in L. R. A. And upon jurisdiction of consuls over actions between citizens of their own nations, temporarily in a State, to the exclusion of the State courts, see Telefsen v. Fee, 168 Mass. 188, 46 N. E. 562, 46 L. R. A. 481 and note, 60 Am. St. 379.]

(b) [A bill to enforce a lien for towing by foreclosure of the lien on a raft of lumber in complainant's possession, the suit being brought against individual defendants and seeking a decree against them and in default of payment a sale of the lumber to satisfy it is not a proceeding in rem within exclusive admiralty jurisdiction, but is a suit in personal and may be brought in a State court. Knapp, Stout, &c. Co. v. McCaffrey, 177 U. S. 638, 20 Sup. Ct. Rep. 824, aff. 178 Ill. 107, 52 N. E. 998; 69 Am. St. 290.]

(c) [This includes a suit by the United States against a State. United States Texas, 143 U. S. 321, 12 Sup. Ct. Rep. 488.]
The Constitution and the laws of the United States, made in pursuance thereof, and all treaties made under the authority of the United States, are declared to be the supreme law of the land; and the judges of every State are to be bound thereby.


1 "The United States is a government with authority extending over the whole territory of the Union, acting upon the States and the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it for a moment the cognizance of any subject which that instrument has committed to it." Strong, J., in Tennessee v. Davis, 100 U. S. 257, 293. [Iowa statute excluding aliens from holding lands is overridden by treaty with Bavaria. Opel v. Shoup, 100 Iowa, 407, 69 N. W. 500, 37 L. R. A.
any thing in the constitution or laws of any State to the contrary notwithstanding. 1

It is essential to the protection of the national jurisdiction, and to prevent collision between State and national authority, (a) 538. And the Louisiana statute taxing inheritances and legacies received by foreigners is overruled by the treaty with Italy. Succession of Rixner, 48 La. Ann. 552, 19 So. 397, 32 L. R. A. 177; upon effect of treaties upon aliens' right to inherit, see note hereto in L. R. A.] 1 U. S. Const. art. 6; Owings v. Norwood's Lessee, 5 Cranch, 344; McCulloch v. Maryland, 4 Wheat. 316; Foster v. Neilson, 2 Pet. 263, 314; Cook v. Moffat, 5 How. 295; Dodge v. Woolsey, 18 How. 331. A State constitution cannot prohibit federal judges from charging juries as to matters of fact. St. Louis &c. Ry. Co. v. Vickers, 122 U. S. 360, 7 Sup. Ct. Rep. 1218. Congress may empower a corporation to take soil under navigable water between two States for the building of a bridge for use in interstate commerce, although the legislature of one of the States protests against it. Decker v. Baltimore, &c. R. R. Co., 30 Fed. Rep. 723. When a treaty has been ratified by the proper formalities, it is, by the Constitution, the supreme law of the land, and the courts have no power to inquire into the authority of the persons by whom it was entered into on behalf of the foreign nation. Doe v. Braiden, 16 How. 635, 657; or the powers or rights recognized by it in the nation with which it was made. Maiden v. Ingersoll, 6 Mich. 373. Its force is such that it may even take away private property without compensation. Cornet v. Winton, 2 Yerg. 143. It may operate retroactively. Hauenstein v. Lynham, 100 U. S. 483. A State law in conflict with it must give way to its superior authority. Ware v. Hylton, 3 Dall. 99; Yeaker v. Yeaker, 4 Met. (Ky.) 33; People v. Gerke, 6 Cal. 381. So, a provision in a State constitution, Parrott's Chinese Case, 6 Savy. 349. See, further, United States v. Arendondo, 6 Pet. 691; United States v. Percheman, 7 Pet. 61; Garcia v. Lee, 12 Pet. 511; Hauenstein v. Lynham, 100 U. S. 483; Rogers v. Clinch, 8 Blatch. 304; United States v. Tobacco Factory, 1 Dill. 264; The Cherokee Tobacco, 11 Wall. 610. In this last case it is decided, as before it had been at the Circuit, that a law of Congress repugnant to a treaty, to that extent abrogates it. To the same effect are Head Money Cases, 112 U. S. 580, 5 Sup. Ct. Rep. 247; Whitney v. Robertson, 124 U. S. 190, 8 Sup. Ct. Rep. 460; Chinese Exclusion Case, 130 U. S. 551, 9 Sup. Ct. Rep. 623. [A provision of a State constitution against limitation of liability for injuries resulting in death is overruled by an act of Congress permitting such limitation in maritime affairs. Loughlin v. McCaulley, 186 Pa. 517, 40 Atl. 1020, 48 L. R. A. 33, 65 Am. St. 872.] (a) "'The possession of the res viesthe court which has first acquired jurisdiction with the power to hear and determine all controversies relating thereto, and for the time being disables other courts of co-ordinate jurisdiction from exercising a like power. This rule is essential to the orderly administration of justice, and to prevent unseemly conflicts between courts whose jurisdiction embraces the same subjects and persons. Nor is this rule restricted in its application to cases where property has been actually seized under judicial process before a second suit is instituted in another court, but it often applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates, and in suits of a similar nature where, in the progress of the litigation, the court may be compelled to assume the possession and control of the property to be affected. The rule has been declared to be of especial importance in its application to Federal and State courts. Peck v. Jenness, 7 How. 612; Freeman v. Howe, 24 How. 460; Mormon v. Sturgess, 164 U. S. 260, 14 Sup. Ct. Rep. 1019; Central Nat'l Bank v. Stevens, 160 U. S. 432, 18 Sup. Ct. Rep. 403; Harkrader v. Wadeley, 172 U. S. 148, 19 Sup. Ct. Rep. 119." Per Shiras, J., in Farmers' Loan & T. Co. v. Lake St. Elevated R. Co., 177 U. S. 51, 20 Sup. Ct. Rep. 564, rev. 173 Ill. 430, 51 N. E. 55. Under U. S. Rev. Stat. § 720, a Federal court is precluded from granting an injunc-
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that the final decision upon all questions arising in regard thereto should rest with the courts of the Union; 1 and as such questions


...
must frequently arise first in the State courts, provision is made by the Judiciary Act for removing to the Supreme Court of the

court all respects except where the attempted exercise of such authority "expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were created." Davis v. Elmira Sav. Bk., 161 U. S. 283, 10 Sup. Ct. Rep. 502; and the power vested in a national bank by federal law to take property "such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings" is not

United States the final judgment or decree in any suit, rendered in the highest court of law or equity of a State in which a decision could be had, in which is drawn in question the validity of a treaty, or statute of, or authority exercised under the United States, and the decision is against its validity; (a) or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of its being repugnant without authority from the court appointing him, and defends upon the merits a suit brought against him in a Federal circuit court in another State, and the decree goes against him, and he later appears and files a bill of review in that court, the laws of the second State permitting administrators of other States to sue as such in its courts, the Federal court gets jurisdiction of the administrator and the decree in the suit for review is binding upon him and must be given full faith and credit in other States. Lawrence v. Nelson, 143 U. S. 215, 12 Sup. Ct. Rep. 440. "Judgments and decrees of a circuit court of the United States are to be accorded in the State courts the same effect as would be accorded to the judgments and decrees of a State tribunal of equal authority." Pendleton v. Russell, 141 U. S. 619, 12 Sup. Ct. Rep. 743. Federal Supreme Court will not issue mandamus to State Supreme Court to reinstate a disbarred attorney. Re Green, 141 U. S. 325, 11 Sup. Ct. Rep. 11. Federal practice not subject to State control. Fieldsburn v. Chicago, M. & St. P. R. Co., 137 U. S. 69, 11 Sup. Ct. Rep. 8. A State court will not be permitted to try a United States marshal, deputized to protect one of the Federal judges in the performance of his duties, for an alleged murder where the killing was done by the marshal in affording such protection and was necessary thereto. Cunningham v. Neagle, 135 U. S. 1, 10 Sup. Ct. Rep. 654. Receivers appointed by Federal court are, by act of Congress, suable in State courts. Gableman v. Peoria, D. & E. R. Co., 179 U. S. 335, 21 Sup. Ct. Rep. 171. Upon administration of federal laws in State courts, see valuable note in 48 L. R. A. 33. Except by permission of Congress a State cannot determine the territorial extent to which a judgment of a Federal court shall be a lien. Blair v. Ostrander, 109 Iowa, 201, 80 N. W. 330, 47 L. R. A. 469, 77 Am. St. 632; upon liens of judgments in Federal courts, see note to this case in L. R. A. That a State court will set aside a judgment obtained by fraud in a Federal court, see Wonderly v. La Fayette Co., 159 Mo. 635, 51 S. W. 743, 45 L. R. A. 386, 73 Am. St. 474. That Congress cannot compel State courts to entertain and act upon applications for naturalization, see State v. Judges of Inf. Ct. of Com. Pleas, 58 N. J. L. 97, 82 Atl. 748, 60 L. R. A. 701. Liens arising from federal decrees are not subject to State recording laws. Stewart v. W. & L. E. R. Co., 63 Ohio St. 151, 41 N. E. 247, 20 L. R. A. 498.]


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to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity; or where any title, right, privilege, or immunity is claimed under the Constitution or any treaty or statute of or commission held or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such Constitution, treaty, statute, commission, or authority.¹

But to authorize the removal under that act, it must appear by the record, either expressly or by clear and necessary intendment, that some one of the enumerated questions did arise in the State court, and was there passed upon. (a) It is not suffi-

¹ Acts 1789 and 1867; R. S. 1878, title 13, ch. 11.

"It is settled law, as established by well-considered decisions of this court, pronounced upon full argument, and after mature deliberation, notably in Coehns v. Virginia, 6 Wheat. 264; Osborn v. Bank of United States, 9 Wheat. 733; Mayor v. Cooper, 6 Wall. 247; Gold Water & Washing Co. v. Keyes, 99 U. S. 199; and Tennessee v. Davis, 100 U. S. 267:

"That while the eleventh amendment of the national Constitution excludes the judicial power of the United States from suits, in law or equity, commenced or prosecuted against one of the United States by citizens of another State, such power is extended by the Constitution to suits commenced or prosecuted by a State against an individual, in which the latter demands nothing from the former, but only seeks the protection of the Constitution and laws of the United States against the claim or demand of the State;

"That a case in law or equity consists of the right of one party, as well as of the other, and may properly be said to arise under the Constitution, or a law of the United States, whenever its correct decision depends upon a construction of either;

"That cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right, or privilege, or claim, or protection, or defence of the party, in whole or in part, by whom they are asserted;

"That except in the cases of which this court is given by the Constitution original jurisdiction, the judicial power of the United States is to be exercised in its original or appellate form, or both, as the wisdom of Congress may direct; and

"That it is not sufficient to exclude the judicial power of the United States from a particular case that it involves questions which do not at all depend on the Constitution or laws of the United States; but when a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is within the power of Congress to give the circuit courts jurisdiction of that cause, although other questions of fact or law may be involved in it." Harlan, J., in Railroad Co. v. Mississippi, 103 U. S. 135, 140. [Upon removal of causes to the Federal court, see note to 30 L. ed. U. S. 316, and another at page 528. The Federal Supreme Court may review the decision of a State court as to what property of a bankrupt passes to his assignee in bankruptcy; also as to when property arising under act of Congress begins. Williams v. Heard, 140 U. S. 529, 11 Sup. Ct. Rep. 885. For other cases upon power of review by the Supreme Court of the United States, see Metropolitan Nat'l Bk. v. Claggett, 141 U. S. 520, 12 Sup. Ct. Rep. 60; Etheridge v. Sperry, N. & G., 130 U. S. 260, 11 Sup. Ct. Rep. 565.]

(a) ["We have repeatedly decided that an appeal to the jurisdiction of the court must not be a mere afterthought, and that if any right, privilege, or immunity is
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cient that it might have arisen or been applicable. And if


the decision of the State court is in favor of the right, title, privilege, or exemption so claimed, the Judiciary Act does not authorize such removal.\(^1\) Neither does it where the validity of the State law is drawn in question, and the decision of the State court is against its validity.\(^2\)

But the same reasons which require that the final decision upon all questions of national jurisdiction should be left to the national courts will also hold the national courts bound to respect the decisions of the State courts upon all questions arising under the State constitutions and laws, where nothing is involved of national authority, or of right under the Constitution, laws, or treaties of the United States;\(^a\) and to accept

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\(^2\) Commonwealth Bank v. Griffith, 14 Pet. 56; Walker v. Taylor, 5 How. 64; [McNulty v. California, 140 U.S. 645, 13 Sup. Ct. Rep. 950.\(^\) We take no notice here of the statutes for the removal of causes from the State to the Federal courts for the purposes of original trial, as they are not important to any discussion we shall have occasion to enter upon in this work. See Rev. Stat. of U.S. 1878, title 13, ch. 7; Conley, Constitutional Principles, 122-128. Judge Dillon has published a convenient manual on this subject.


It does not apply to cases involving the validity of alleged contracts. Turner v. Com’rs of Wilkes Co., 173 U.S. 401, 19 Sup. Ct. Rep. 464. And see also the dissenting opinion of Peckham, J., in McCullough v. Virginia, above. Also Bacon v.
the State decisions as correct, (a) and to follow them whenever


So the construction put upon statutes by the courts of the State will usually be followed by the courts of other States. Kulp v. Fleming, 65 Ohio, 321, 62 N. E. 394, 87 Am. St. 611. See upon "rule of decision" in Federal courts, article in 60 Alb. L. Jour. 297.]
the same questions arise in the national courts. With the power to revise the decisions of the State courts in the cases

1 In Beauregard v. New Orleans, 18 How. 497, 502, Mr. Justice Campbell says: "The constitution of this court requires it to follow the laws of the several States as rules of decision wherever they apply. And the habit of the court has been to defer to the decisions of their judicial tribunals upon questions arising out of the common law of the State, especially when applied to the title of lands." In Bank of Hamilton v. Dudley's Lessee, 2 Pet. 492, 524, it was urged that the exclusive power of State courts to construe legislative acts did not extend to the paramount law, so as to enable them to give efficacy to an act which was contrary to the State constitution; but Marshall, Ch. J., said: "We cannot admit this distinction. The judicial department of every government is the rightful expositor of its laws, and emphatically of its supreme law." Again, in Elmendorf v. Tailor, 10 Wheat. 162, 169, the same eminent judge says: "The judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus no court in the universe which proposed to be governed by principle would, we presume, undertake to say that the courts of 'Great Britain or France, or of any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction than to depart from the words of the statute. On this principle, the construction given by this court to the Constitution and laws of the United States is received by all as the true construction; and on the same principle the construction given by the courts of the several States to the legislative acts of those States is received as true, unless they come in conflict with the Constitution, laws, or treaties of the United States." In Green v. Neal's Lessee, 6 Pet. 291, 298, it is said by McLean, J.: "The decision of the highest judicial tribunal of a State should be considered as final by this court, not because the State tri-
already pointed out, the due observance of this rule will prevent those collisions of judicial authority which would otherwise be.

v. Cheshire R. R. Co., id. 655, 8 Sup. Ct. Rep. 974; German Sav. Bank v. Franklin Co., 128 U. S. 626, 9 Sup. Ct. Rep. 159; Springer v. Foster, 2 Story C. C. 383; Neal v. Green, 1 McLean, 18; Taine v. Wright, 0 McLean, 305; Boyle v. Arledge, Hemp. 620; Griffling v. Gibb, McAll. 212; Bayerque v. Cohen, McAll. 113; Wick v. The Samuel Strong, Newb. 157; N. F. Screw Co. v. Bliven, 3 Blatch. 240; Bronson v. Wallace, 4 Blatch. 465; Van Boklen v. Brooklyn City R. R. Co., 5 Blatch. 379; United States v. Mann, 1 Gall. 3; Society, &c. v. Wheeler, 2 Gall. 105; Coates v. Muse, Brock. 529; Meade v. Besut, Tanev, 320; Loring v. Marsh, 2 Cliff. 311; Parker v. Phetsplace, 2 Cliff. 70; King v. Wilson, 1 Hill. 556; [New York Life Ins. Co. v. Cravens, 178 U. S. 369, 20 Sup. Ct. Rep. 992. See also note to 12 L. ed. U. S. 160, and to 6 L. R. A. 508. Upon when Federal courts do not follow State decisions, see note to 19 L. ed. U. S. 430. See also Missouri, K. & T. Ry. Co. v. McCann, 174 U. S. 580, 19 Sup. Ct. Rep. 755. The decision of the State court, that a State statute has been enacted in accordance with the State constitution, is binding on the Federal courts. Railroad Co. v. Georgia, 98 U. S. 359; [Brown v. New Jersey, 175 U. S. 172, 20 Sup. Ct. Rep. 77; Tullis v. Lake Erie & W. Ry. Co., 175 U. S. 348, 20 Sup. Ct. Rep. 136; Missouri, K. & T. Ry. Co. v. McCann, 174 U. S. 580, 586, 19 Sup. Ct. Rep. 755; M. & M. Nat'l Bk. v. Pennsylvania, 167 U. S. 461, 17 Sup. Ct. Rep. 829.] In Green v. Neal's Lessee, 6 Pet. 291, an important question was presented as to the proper course to be pursued by the Supreme Court of the United States, under somewhat embarrassing circumstances. That court had been called upon to put a construction upon a State statute of limitations, and had done so. Afterwards the same question had been before the Supreme Court of the State, and in repeated cases had been decided otherwise. The question now was whether the Supreme Court would follow its own decision, or reverse that, in order to put itself in harmony with the State decisions. The subject is considered at length by McLean, J., who justly concludes that "adherence by the Federal to the exposition of the local law, as given by the courts of the State, will greatly tend to preserve harmony in the exercise of the judicial power in the State and Federal tribunals. This rule is not only recommended by strong considerations of propriety, growing out of our system of jurisprudence, but it is sustained by principle and authority." The court, accordingly, reversed its rulings to make them conform to those of the State court. See also Snydam v. Williamson, 24 How. 427; Leffingwell v. Warren, 2 Bluch. 590; Blossburg, &c. v. R. R. Co. v. Tioga R. R. Co., 5 Blatch. 387; Smith v. Shriver, 3 Wall. Jr. 219. It is, of course, immaterial that the court may still be of opinion that the State court has erred, or that the decisions elsewhere are different. Bell v. Morrison, 1 Pet. 351. But where the Supreme Court had held that certain contracts for the price of slaves were not made void by the State constitution, and afterwards the State court held otherwise, the Supreme Court, regarding this decision wrong, declined to reverse their own ruling. Rowan v. Runnels, 5 How. 144. Compare this with Nesmith v. Sheldon, 7 How. 812, in which the court followed, without examination or question, the State decision that a State general banking law was in violation of the constitution of the State. The United States Circuit Court had held otherwise previous to the State decision. Falconer v. Campbell, 2 McLean, 155. Under like circumstances the State Supreme Court's ruling on a statute of limitations was followed, overruling the Federal circuit decision which followed that of a lower State court. Moore v. Nat. Bank, 104 U. S. 625. But the State court's construction of its constitution after the controversy arose, and in a suit between different parties as to the same subject-matter, is not binding on the Federal court. Carroll Co. v. Smith, 111 U. S. 566, 4 Sup. Ct. Rep. 539; Enfield v. Jordan, 119 U. S. 650, 7 Sup. Ct. Rep. 358. So, where after a ruling in the United States Circuit Court the State Supreme Court for the first time decides against such ruling, its decision will not
inevitable, and which, besides being unseemly, would be dangerous to the peace, harmony, and stability of the Union.

Besides conferring specified powers upon the national government, the Constitution contains also certain restrictions upon the action of the States, a portion of them designed to prevent encroachments upon the national authority, (a) and another portion to protect individual rights against possible abuse of State power. Of the first class are the following: No State shall enter into any treaty, alliance, or confederation, grant letters of marque or reprisal, coin money, emit bills of credit,¹


This doctrine does not apply to questions not at all dependent upon local statutes or usages; as, for instance, to contracts and other instruments of a commercial and general nature, like bills of exchange: Swift v. Tyson, 16 Pet. 1; Oates v. National Bank, 100 U. S. 239; Railroad Co. v. National Bank, 102 U. S. 14; and insurance contracts. Robinson v. Commonwealth Ins. Co., 3 Sum. 220. And see Reinagle v. Kane, 1 Gall. 376; Asten v. Miller, 5 McLean, 153; Gloucester Ins. Co. v. Younger, 2 Curt. C. C. 322; Bragg v. Meyer, McAll. 408.


¹ To constitute a bill of credit within the meaning of the Constitution, it must be issued by a State, involve the faith of the State, and be designed to circulate as money on the credit of the State, in the ordinary uses of business. Briance v. Bank of Kentucky, 11 Pet. 257; Woodruff v. Trappin, 10 How. 190. Treasury warrants designed so to circulate are bills of credit. Braggs v. Tufts, 49 Ark. 554, 6 S. W. 158. [But if they are to be retained, as soon as presented for payment at the State treasury, and paid, they are not bills of credit, even though the creditor to whom they are issued may demand at the time of receiving them that they be issued in denominations of one dollar each to the extent of the debt, the remainder being issued in denominations of not less than five dollars, and even though they may pass from hand to hand and are receivable from any person in payment of taxes. Houston & T. C. R. Co. v. Texas, 177 U. S. 66, 20 Sup. Ct. Rep. 446, rev. 41 S. W. 157.] The facts that a State owns the entire capital stock of a bank, elects the directors, makes its bills receivable for the public dues, and pledges its faith for their redemption, do not make the bills of such bank "bills of credit" in the constitutional sense. Darrington v. State Bank of Alabama, 13

(a) [Regulations of the U. S. Treasury Department which prohibit an internal revenue collector from producing records of his office or copies thereof in any State court are valid, and no State court has any authority to punish him for refusing to produce such records or copies before it. Boske v. Conmigore, 177 U. S. 460, 20 Sup. Ct. Rep. 701.]
or make anything but gold and silver coin a tender in payment of debts. No State shall, without the consent of Congress, lay any imposts or duties upon imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact (a) with another State or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. Of the second class are the following: No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, (b) or make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, (c) nor base discriminations in suffrage on race, color, or previous condition of servitude. (d)

Other provisions have for their object to prevent discriminations by the several States against the citizens and public authority and proceedings of other States. Of this class are the provisions that the citizens of each State shall be en-

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1 Const. of U. S. art. 1, § 10; Story on Const. c. 33, 34.
2 Const. of U. S. 14th Amendment; Story on Const. (4th ed.) c. 47.
3 Const. of U. S. 15th Amendment; Story on Const. (4th ed.) c. 48.


titled to all the privileges and immunities of citizens in the several States; that fugitives from justice shall be delivered

2 Const. of U. S. art. 4. "What are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What those fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of every kind in the courts of the State; to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the citizens of the other State, may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added the elective franchise as regulated and established by the laws or constitution of the State in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities; and the enjoyment of them by the citizens of each State in every other State was manifestly calculated (to use the expressions of the preamble of the corresponding provision in the old Articles of Confederation) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different States of the Union.'" Washington, J., in Corfield v. Coryell, 4 Wash. C. C. 350. The Supreme Court will not describe and define those privileges and immunities in a general classification; preferring to decide each case as it may come up. Conner v. Elliott, 18 How. 501; Ward v. Maryland, 12 Wall. 418; McCready v. Virginia, 94 U. S. 391. The question in this last case was whether the State of Virginia could prohibit citizens of other States from planting oysters in Ware River, a stream in that State where the tide ebbs and flows, and the right be granted by the State to its own citizens exclusively. Wait, Ch. J., in answering the question in the affirmative, said: "The right thus granted is not a privilege or immunity of general, but of special citizenship. It does not belong of right to the citizens of all free governments, but only to the citizens of Virginia, on account of the peculiar circumstances in which they are placed; they, and they alone, owned the property to be sold or used; and they alone had the power to dispose of it as they saw fit. They owned it, not by virtue of citizenship merely, but of citizenship and domicile united; that is to say, by virtue of a citizenship confined to that particular locality." See also Paul v. Hazeltine, 37 N. J. 106; [Comm. v. Hilton, 174 Mass. 29, 54 N. E. 302, 45 L. R. A. 475.] For other discussions upon this subject, see Murray v. McCarty, 2 Munf. 393; Lemmon v. People, 26 Barb. 270, and 20 N. Y. 502; Campbell v. Morris, 3 Har. & N'II. 551; Amy v. Smith, 1 Lit. 320; Cranford v. State, 10 Conn. 340; Butler v. Farmworth, 4 Wash. C. C. 101; Commonwealth v. Towles, 5 Leigh, 743; Hance v. Marshall, 9 Md. 194; Slaughter v. Commonwealth, 13 Gratt. 767; State v. Medbury, 3 R. I. 138; People v. Inlay, 20 Barb. 68; People v. Coleman, 4 Cal. 49; People v. Thurber, 13 Ill. 514; Pleimex Insurance Co. v. Commonwealth, 5 Bush, 68; DuCat v. Chicago, 48 Ill. 172; Fire Department v. Noble, 3 E. D. Smith, 441; Same v. Wright, 3 E. D. Smith, 453; Robinson v. Oceanic S. Co., 112 N. Y. 315, 19 N. E. 625; Bliss's Petition, 63 N. II. 735; State v. Lancaster, id. 207; People v. Philpin, 70 Mich. 6, 37 N. W. Rep. 88; State v. Gilman, 32 W. Va, 146, 10 S. E. Rep. 287; Fire Dep't v. Helfenstein, 16 Wis. 136; Sears v. Commis-
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up,¹ and that full faith and credit shall be given in each State

¹ Extradition as between the States.
to the public acts, (a) records, and judicial proceedings of every

The return by one State of fugitives from justice which have fled to it from another State is only made a matter of rightful demand by the provisions of the Federal Constitution. In the absence of such provisions, it might be provided for by State law; but the Constitution makes that obligatory which otherwise would rest in the imperfect and uncertain requirements of interstate comity. The subject has received much attention from the courts when having occasion to consider the nature and extent of the constitutional obligation. It has also been the subject of many executive papers; and several controversies between the executives of New York and those of more southern States, are referred to in the recent Life of William H. Seward, by his son. Upon extradition between States, see note to 30 L. ed. U. S. 934; upon extradition interstate and international, see note to 41 L. ed. U. S. 1064. See also Whitten v. Tomlinson, 160 U. S. 231, 16 Sup. Ct. Rep. 297, and note to 40 L. ed. U. S. 406.

The sufficiency of the proceedings upon which a governor bases his issue of a warrant for the arrest of an alleged fugitive may be inquired into on habeas corpus. Ex parte Tod, 12 S. D. 386, 81 N. W. 637, 47 L. R. A. 506. A governor may revoke his warrant at any time before the alleged fugitive has been removed from the State. State v. Toole, 60 Minn. 104, 72 N. W. 58, 38 L. R. A. 224. An escaped prisoner is a fugitive. Drinkall v. Spiegel, 68 Conn. 441, 36 Atl. 830, 36 L. R. A. 486. The following are among the judicial decisions: The offence for which extradition may be ordered need not have been an offence either at the common law or at the time the Constitution was adopted; it is sufficient that it was so at the time the act was committed, and when demand is made. Matter of Clark, 9 Wend. 212; People v. Donohue, 84 N. Y. 438; Johnston v. Riley, 13 Ga. 97; Matter of Fetter, 23 N. J. 311; Matter of Voorhees, 32 N. J. 141; Morton v. Skinner, 48 Ind. 123; Matter of Hughes, Phill. (N. C.) 57; Kentucky v. Dennison, 24 How. 60; Ex parte Reggel, 114 U. S. 642, 5 Sup. Ct. Rep. 748; In re Hooper, 52 Wis. 609, 58 N. W. 741. The offence must have been actually committed within the State making the demand, and the accused must have fled therefrom. Ex parte Smith, 3 McLean, 121; Jones v. Leonard, 60 Iowa, 106, 32 Am. Rep. 116; Hartman v. Aveline, 63 Ind. 344; Wilcox v. Noelze, 34 Ohio St. 520.

To be a fugitive it is not necessary that one should have left the State after indictment found, or to avoid prosecution; but simply that, having committed a crime within it, he is when sought found in another State. Roberts v. Reilly, 116 U. S. 80, 6 Sup. Ct. Rep. 291; State v. Richter, 37 Minn. 430, 35 N. W. 9. [A person standing in one State and shooting across the boundary line and injuring one in another State is not a fugitive from justice in the first State. State v. Hall, 115 W. C. 811, 20 S. E. 729, 44 Am. St. 501.] The accused may be arrested to await demand. State v. Duzine, 4 Harr. 572; Ex parte Cubreth, 49 Cal. 430; Ex parte Rosenblat, 51 Cal. 285. See Tullis v. Fleming, 69 Ind. 15. But one cannot lawfully be arrested on a telegram from officers in another State and without warrant. Malcolmson v. Scott, 56 Mich. 469, 23 N. W. 166. Nor can he be surrendered before formal demand is made, and parties who seize and deliver him up without demand will be liable for doing so. Botta v. Williams, 17 B. Monr. 677. Still if he is returned without proper papers to the State from whence he fled, this will be no sufficient ground for his discharge from custody. Dow's Case, 18 Penn. St. 37. Even forceable and unlawful abduction of a citizen gives a State no right to demand his release. Mahon v. Justice, 127 U. S. 700, 8 Sup. Ct. Rep. 1204; [Cook v. Hart, (a) A mistake in understanding the true meaning of the statute of a sister State as interpreted by the courts thereof, is not a refusal to give full faith and credit to such statute, and does not give jurisdiction to the Supreme Court of the United States on writ of error. Banholzer v. N. Y. Life Ins. Co., 178 U. S. 402, 20 Sup. Ct. Rep. 975; Glenn v. Garth, 147 U. S. 360, 13 Sup. Ct. Rep. 320. And such statute is a matter of fact and must be proved as such. Lloyd v. Matthews, 155 U. S. 222, 15 Sup. Ct. Rep. 70.]
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other State.\(^1(a)\) Many cases have been decided under these

146 U. S. 183, 13 Sup. Ct. Rep. 40.] The
question whether after such abduction in
another country a State court will try a
person, is not a federal question. Ker v.
225. The charge must be made before a
magistrate of the State where the offence
was committed. Smith v. State, 21 Neb.
552, 32 N. W. 694. The demand is to
be made by the executive of the State by
which is meant the governor: Commonwealth v.
Ill., 9 Gray, 262; and it is the
duty of the executive of the State to
which the offender has fled to comply:
Johnston v. Riley, 13 Ga. 97; Ex parte
Swearingen, 13 S. C. 74; People v. Pinkerton,
77 N. Y. 245; Work v. Corrington,
34 Ohio St. 64, 32 Am. Rep. 316; but
if he refuses to do so, the courts have
no power to compel him: Kentucky v.
Demison, 24 How. 60; Matter of Man-
chester, 5 Cal. 257. It is his duty to de-
determine in some legal way whether the
person is a fugitive from justice; the
mere requisition is not enough; but his
determination is prima facie sufficient.
Ex parte Reggel, 114 U. S. 642, 5 Sup.
Ct. Rep. 1148; Roberts v. Reilly, 116
U. S. 80, 6 Sup. Ct. Rep. 291. See In re
Jackson, 2 Flipp. 183. There must be a
showing of sufficient cause for the arrest
before the requisition can issue; but after
it is issued and complied with, it is com-
petent for the courts of either State on
habeas corpus to look into the papers, and
if they show no sufficient legal cause, to
order the prisoner's discharge. Ex parte
Smith, 3 McLean, 121; Matter of Clark,
9 Wend. 212; Matter of Manchester,
5 Cal. 237; Matter of Heyward, 1 Sandf.
701; Ex parte White, 40 Cal. 434; State
v. Hufford, 28 Iowa, 301; People v. Brady,
56 N. Y. 182; Kingsbury's Case, 100
Mass. 223; Ex parte McKeon, 3 Hughes,
23; Jones v. Leonard, 50 Iowa, 106, 52
Am. Rep. 116; Ex parte Powell, 20 Fla.
806; State v. Richardson, 34 Minn. 115,
24 N. W. 364; In re Mohr, 73 Ala. 603.
As to the showing required, see State v.
Swope, 72 Mo. 399; Ex parte Sheldon, 34
Ohio St. 819; Ham v. State, 4 Tex. App.
945. [A novel question was raised in
In re Maney, 20 Wash. 669, 53 Pac. 930,
72 Am. St. 130. A sheriff while conduct-
ing a prisoner from one part of Idaho to
another part of the same State, passed
through a portion of the State of Wash-
ington. His prisoner in this latter State
invoked the aid of the writ of habeas cor-
pus on the theory that he was unlaw-
fully detained. Writ denied.] If one is
brought under extradition proceedings
into the State where the crime was com-
mitted, he will not be discharged by it
for defects in proceedings, except on
application of officers of the State from
which he has been taken. Ex parte
Barker, 87 Ala. 4, 8 So. 7. The Federal
courts have no power to compel the State
authorities to fulfill their duties under

\(^1\) Const. of U. S. art. 4. This covers
territorial judgments. Suessenhach v.
Wagner, 41 Minn. 108, 42 N. W. Rep. 925.
This clause of the Constitution has been

(a) \[Upon conclusiveness and effect of judgments as between Federal and State
courts, see notes to 21 C. C. A. 478 and 5 L. R. A. 508. A Federal court has juris-
isdiction of a suit to set aside a judgment of a State court relating to title to land in that
State, when such judgment was obtained by fraud or without jurisdiction. Howard
791. In a suit to quiet title to land outside the State, service of process outside the
State upon a non-resident of the State gives no jurisdiction of him. Dull v. Black-

Upon the question of fraud as a defence to a judgment of another State, see note
18 L. ed. U. S. 475. An order of a court of a sister State is subject to the statute of
limitations of the State in which it is sought to be enforced. Great W. Tel. Co.
Federal court may inquire into the jurisdiction of a State court of another State to
render a decree sued upon in the Federal court. Heekin v. Pfaff, 91 Fed. 60, 43
L. R. A. 618.]
several provisions, the most important of which are collected in the marginal notes.


the subject of a good deal of discussion in the courts. [See notes to 8 L. ed. U. S. 411, 12 L. R. A. 574, 7 L. R. A. 578, 4 L. R. A. 131, 1 L. R. A. 79. See also Reynolds v. Stockton, 140 U. S. 254, 11 Sup. Ct. Rep. 773; Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. Rep. 279, aff. 142 Mass. 47, 0 N. E. 782. See note on this case, 4 Har. L. Rev. 93.] It is well settled that if the record of a judgment shows that it was rendered without service of process or appearance of the defendant, or if that fact can be shown without contradicting the recitals of the record, it will be treated as void in any other State, notwithstanding this constitutional provision. Kibbe v. Kibbe, Kirby, 119; Aldrich v. Kinney, 4 Conn. 380; Middlebrooks v. Ins. Co., 14 Conn. 301; Wood v. Watkinson, 17 Conn. 509; Bartlett v. Knight, 1 Mass. 401; Bissell v. Briggs, 9 Mass. 402; Hall v. Williams, 6 Pick. 282; Woodworth v. Tremere, 6 Pick. 554; Gleason v. Dodd, 4 Met. 333; Commonwealth v. Blood, 97 Mass. 588; Edson v. Edson, 103 Mass. 592; 11 Am. Rep. 392; Kilburn v. Woodworth, 5 Johns. 37; Robinson v. Ward's Execu-
The last provisions that we shall here notice are that the...
United States shall guarantee to every State a republican form


This provision of the Constitution of the United States does not require that disabilities imposed upon a person convicted of crime in one State should follow him and be enforced in other States. Sims v. Sims, 75 N. Y. 495, approving Commonwealth v. Green, 17 Mass. 515, and disapproving Chase v. Blodgett, 10 N. H. 22, and State v. Chandler, 3 Hawks, 393.

The courts of the United States cannot enforce the penal laws of a State, and where an action was brought in such court by a State upon a judgment recovered in its own court, the Federal court looked back of the judgment to the original demand, and refused to enforce the judgment. Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 8 Sup. Ct. Rep. 1370. [But in order that the law may be penal it must inflict the penalty as punishment for some offence against the State. It is not within the rule if the penalty is mere liquidated damages for a private wrong, still less if it is damages ascertained from the contract relations between the parties. Huntington v. Attrill, 146 U. S. 567, 13 Sup. Ct. Rep. 224, rev. 70 Md. 191, 16 Atl. 651, 2 L. R. A. 779, 14 Am. St. 344. See also upon "full faith and credit," note to this case in 36 L. ed. U. S. 1123.

Where a discontinuance of the suit is entered by consent of the parties, the entry reciting that it is upon a settlement of the suit, it may be shown in an action in another State upon the original cause that the settlement was by an executory agreement which has not been fulfilled. Jacobs v. Marks, 182 U. S. 583, 21 Sup. Ct. Rep. 866, aff. 183 Ill. 533, 56 N. E. 164. Execution cannot issue in one State upon a judgment rendered in another. The foreign judgment must first be reduced to a domestic judgment. Bennett v. Bennett, — N. J. App. —, 49 Atl. 601 (June 25, 1901).

The situs of a debt is with the debtor, so far at least as attachment and garnishment are concerned, and a judgment against a garnishee is not invalidated by the fact that his creditor, the principal defendant, resides outside the State and has been served only constructively by publication. If otherwise sufficient, the judgment must be given "full faith and credit" in every State. Chicago, R. I. & P. R. Co. v. Sturm, 174 U. S. 710, 19 Sup. Ct. Rep. 797, followed in King v. Cross, 175 U. S. 396, 20 Sup. Ct. Rep. 139, aff. 19 R. I. 220, 38 Atl. 147. The judgment of the court of one State that a certain will works an equitable conversion into personality of realty situated in another State is not binding upon the courts of the other State. Clarke v. Clarke, 175 U. S. 166, 20 Sup. Ct. Rep. 873, aff. 70 Conn. 195, 483, 55 Atl. 155, 40 Atl. 111. Upon effect of probate of will in another State, see Martin v.
of government,1 and that no State shall grant any title of
Stovell, 103 Tenn. 1, 62 S. W. 296, 48 L. R. A. 130, and note; upon equitable conversion of real property into personal
alty, see Cottman v. Grace, 112 N. Y. 299, 19 N. E. 839, 3 L. R. A. 145, and note; also Bullard v. Chandler, 149 Mass.
21, N. E. 561, 5 L. R. A. 104, and note. An ex parte adjudication upon the domici-
il of decedent, made in grant of letters of administration, has no probative force outside the State. Overby v. Gordon, 177
ian appointed in one State cannot exercise any authority in another except so far as permitted by the laws of that other. He cannot even sue in a Federal court held in that other. Morgan v. Potter, 157 U. S. 195, 15 Sup. Ct. Rep. 500. A voluntary assignment of his property made by an insolvent debtor for the payment of his debts and valid by the law of his residence covers his property in another State in which none of his creditors reside, provided the assignee takes possession before the levy of judicial process, even though the assignment contains provisions for the prefer-
ment of creditors which are prohibited by the law of the State where such property is situated. Burnett v. Kimney, 147
U. S. 476, 13 Sup. Ct. Rep. 408. But while the insolvency proceedings are involuntary and the assignee has not yet reduced the goods in the sister State to possession, the title does not pass to him. Reynolds v. Didden, 130 U. S. 348, 10 Sup. Ct. Rep. 843. A decree of a State court having jurisdiction of the parties that a conveyance of land outside the State was in fraud of the rights of the plaintiff, but not directing defendant to reconvey, is of no force outside the State in which the decree is rendered. But a decree that defendant is indebted to plaintiff and shall pay certain sums of money is binding upon the courts of other States. Carpenter v. Strange, 141
pointment of an administrator has no extra-territorial force, and a judgment in one State against the administrator of the estate of X. is a personal judgment, and therefore cannot be pleaded by the same plaintiff against the administrator
of the estate of X. in another State, because the defendants are neither the same person, nor are they in privity, and the matter is not therefore res judicata with respect to the defendant in the second action. Johnson v. Powers, 137 U. S. 156, 11 Sup. Ct. Rep. 525. A judgment cannot receive credit if it is not responsi-
ble to the issue presented by the pleadings. Reynolds v. Stockton, 140 U. S. 254, 11 Sup. Ct. Rep. 773. And the juris-
diction of the court is always open to inquiry. Guaranty Tr. & Sec. Dep. Co. v. Green Cove Springs & M. R. Co., 189
U. S. 137, 11 Sup. Ct. Rep. 512; Streit-
For validity of a consent decree, see Texas & P. Ry. Co. v. Southern P. Co., 137 U. S. 49, 11 Sup. Ct. Rep. 10. But where the plaintiff is duly domiciled in the State in which he sues for divorce, and such State is the duly established matrimonial domicil of the parties, if the defendant is without the State, reason-
able constructive service of notice if authorized by the laws of the State will give the court such jurisdiction that its decree of divorce will be valid throughout the United States. Atherton v. Atherton, 181 U. S. 155, 21 Sup. Ct. Rep. 544, rev. 155 N. Y. 129, 49 N. E. 933, 40 L. R. A. 291, 63 Am. St. 650. A decree of divorce granting alimony, the decree having been rendered by a court having jurisdiction, must be given full faith and credit in a sister State so far as the di-
vorce and the alimony due at the date of the decree are concerned, but is of no force outside the State in which it is granted so far as it relates to alimony subsequently to become due. Lynde v. Lynde, 162 N. Y. 405, 56 N. E. 970, 48 L. R. A. 679, 76 Am. St. 332, affd. in 181 U. S. 183, 21 Sup. Ct. Rep. 555. See also in this connection, Laing v. Rigney, 100 U. S. 531, 16 Sup. Ct. Rep. 396; Ar-
lington v. Arrington, 127 N. C. 190, 37
S. E. 212, 52 L. R. A. 201, 80 Am. St.
791; Towbridge v. Spinning, 23 Wash.
48, 69 Pac. 125, 54 L. R. A. 204, 83 Am.

1 Const. of U. S. art. 4, § 4.
nobility. The purpose of these is to protect a Union founded on republican principles, and composed entirely of republican members, against aristocratic and monarchical innovations.

So far as a particular consideration of the foregoing provisions falls within the plan of our present work, it will be more convenient to treat of them in another place, especially as all of them which have for their object the protection of person or property are usually repeated in the bills of rights contained in the State constitutions, and will require some notice at our hands as a part of State constitutional law.

Where powers are conferred upon the general government, the exercise of the same powers by the States is impliedly prohibited, wherever the intent of the grant to the national government would be defeated by such exercise. On this ground it is held that the States cannot tax the agencies or loans of the general government; since the power to tax, if possessed by the States in regard to these objects, might be so exercised as altogether to destroy such agencies, and impair or even destroy the national credit. And where by the national Constitution jurisdiction is given to the national courts with a view to the more efficient and harmonious working of the system organized under it, it is competent for Congress in its wisdom to make that jurisdiction exclusive of the State courts. On some other subjects State laws may be valid until the power of Congress is exercised, when they become superseded, either wholly, or so far as they are found inconsistent. The States may legislate on the subject of bankruptcy if there be no national bankrupt law.


1 Const. of U. S. art. 1, § 10.
2 Federalist, Nos. 43 and 44. It does not fall within our province to discuss these provisions. They have been much discussed in Congress within a few years, but in a party rather than a judicial spirit. See Story on Const. (4th ed.) c. 41; Luther v. Borden, 7 How. 1; Texas v. White, 7 Wall. 700; Cooley, Constitutional Principles, ch. xi.
plining the militia are valid, except as they may conflict with national legislation; and the States may constitutionally provide for punishing the counterfeiting of coin and the passing of counterfeit money, since these acts are offences against the State, notwithstanding they may be offences against the nation also.

The tenth amendment to the Constitution provides 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. And it is to be observed of this instrument, that being framed for the establishment of a national government, it is a settled rule of construction that the limitations it imposes upon the powers of government are in all cases to be understood as limitations upon the government of the Union only, except where the States are expressly mentioned. As illustrations, the sixth and seventh amendments to the Constitution may be mentioned. These constitute a guaranty of the right of trial by jury; but, as they do not mention the States, they are not to be understood as restricting their powers; and the States may, if they choose, provide for the trial of all offences against the States, as well as for the trial of civil cases in the State courts, without the intervention of a jury, or by some different jury from that known to the common law.

1 Houston v. Moore, 5 Wheat. 1, 51.
2 Harlan v. People, 1 Doug. (Mich.) 207.
3 Fox v. Ohio, 5 How. 410; United States v. Marigold, 9 How. 560. And see Hendrick's Case, 5 Leigh, 707; Jett v. Commonwealth, 18 Grat. 993; State v. Rankin, 4 Cold. 146; Moore v. People, 14 How. 13.
With other rules for the construction of the national Constitution we shall have little occasion to deal. They have been the subject of elaborate treatises, judicial opinions, and legislative debates, which are familiar alike to the legal profession and to the public at large. So far as that instrument apportions powers to the national judiciary, it must be understood, for the most part, as simply authorizing Congress to pass the necessary legislation for the exercise of those powers by the Federal courts, and not as directly, of its own force, vesting them with that authority. The Constitution does not, of its own force, give to national courts jurisdiction of the several cases which it enumerates, but an act of Congress is essential, first, to create courts, and afterwards to apportion the jurisdiction among them. The exceptions are of those few cases of which the Constitution confers jurisdiction upon the Supreme Court by name. And although the courts of the United States administer the common law in many cases, they can recognize as offences against the nation only those acts which are made criminal, and their punishment provided for, by acts of Congress. It is


2 Demurrer: to an indictment for a libel upon the President and Congress. By
otherwise in the States; for the State courts take notice of, and punish as crimes, those acts which were crimes at the common law, except in a few States where it is otherwise expressly provided by statute or Constitution.

to inquire whether the general government, in any and what extent, possesses the power of conferring on its courts a jurisdiction in cases similar to the present; it is enough that such jurisdiction has not been conferred by any legislative act, if it does not result to those courts as a consequence of their creation.” United States v. Hudson, 7 Cranch, 32. See United States v. Colridge, 1 Wheat. 416. “It is clear there can be no common law of the United States. The Federal government is composed of twenty-four sovereign and independent States, each of which may have its local usages, customs, and common law. There is no principle which pervades the Union, and has the authority of law, that is not embodied in the Constitution or laws of the Union. The common law could be made a part of our federal system only by legislative adoption.” Per McLean, J., Wheaton v. Peters, 8 Pet. 601. See also Kendall v. United States, 12 Pet. 524; Lorman v. Clarke, 2 McLean, 508; United States v. Lancaster, 2 McLean, 431; United States v. New Bedford Bridge, 1 Wood, & M. 403; United States v. Wilson, 3 Blatch. 435; United States v. Barney, 5 Blatch. 294. [Upon this ground it was held in Gatton v. Chicago, R. I. & P. R. Co., 25 Iowa, 112, 63 N. W. 589, 28 L. R. A. 556, that in the absence of congressional action, common carriers engaged in interstate commerce were not limited to reasonable charges. See also Forepaugh v. Delaware, L. & W. R. Co., 128 Pa. 217, 18 Atl. 503, 5 L. R. A. 608, and note, 15 Am. St. 672. These cases however are overruled in W. U. Tel. Co. v. Call Pub. Co., 181 U. S. 92, 21 Sup. Ct. Rep. 561, aff. 58 Neb. 192, 78 N. W. 519, holding that in the absence of congressional action, interstate telegraph companies are subject to the common-law rule of reasonable charges, and no unreasonable discrimination between patrons.] As to the adoption of the common law by the States, see Van Ness v. Pacard, 2 Pet. 137, 144, per Story, J.; and post, p. 51, and cases cited in notes.