suits against consuls or vice-consuls, except for offenses above the magnitude which has been mentioned. And by act of Congress of August 8th, 1846, they, in common with the Circuit Courts, have jurisdiction as justices of the peace against offenders against the United States. They have also cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of its coasts; and to repeal patents unduly obtained.

14. *What authority have the Superior Courts of the several Territories?*—305.

In those Territories in which there is no District Court established, they have the enlarged authority of the Circuit Courts, subject to revision by writ of error, and appeal to the Supreme Court. The district and territorial judges are required to reside within their respective jurisdictions, and no federal judge can act as counsel, or be engaged in the practice of the law.

LECTURE XV.

OF THE ORIGINAL AND APPELLATE JURISDICTION OF THE SUPREME COURT.

1. *Whence does the United States government derive its powers, and what is the degree of subordination under which the State governments are constitutionally placed?*—313, 314.

From the Constitution of the United States, which is an instrument containing the grant of specific powers; and the government of the Union can not claim any powers beyond those contained in the grant, and which have been given either expressly or by necessary implication. All the powers vested in the State governments, or remaining with the people of the several States, prior to the establishment of the Constitution of the United States, continue unaltered and unimpaired, except so far as they have been granted to the United States. Every act of Congress, and every act of the Legislatures of the States, and

every part of the Constitution of any State, which is repugnant to the Constitution of the United States, is necessarily void; and the determination of the Supreme Court of the United States, in every such case, is final and conclusive.

2. *To what cases does the original jurisdiction of the Supreme Court of the United States extend?*—314, 315.

It is confined to those cases which affect ambassadors, other public ministers and consuls, and to those in which a State is a party. Congress has no power to extend this jurisdiction, and it has been made a question whether it is exclusive as well as original.

3. *What is meant by final judgments or decrees of State Courts from which an appeal lies to the Supreme Court of the United States?*—316.

The word "final," in the judiciary act of 1789, is understood to apply to all judgments and decrees which determine the particular cause; and it is not to be confined to those judgments and decrees which are so final as to terminate all further or renewed litigation, in a new suit on the same right.

4. *Was the right of the Supreme Court of the United States to reverse a judgment of the highest court in a State, reversing the judgment of a subordinate State court, ever brought in question?*—316-321.

Yes: but the Supreme Court decided that the appellate power of the United States did extend to cases pending in the State courts, and that the section of the judiciary act, giving the appellate right in specified cases by writ of error, was supported by the letter and spirit of the Constitution.

5. *In what cases has the Supreme Court of the United States authority to issue a writ of mandamus to the State courts?*—321-323.

It seems to be the better opinion that it has power to issue a mandamus when necessary to enforce its appellate jurisdiction, but that it has no such power in cases not arising under such jurisdiction, and when not required in the exercise of its original jurisdiction.

6. *What is the rule laid down by the Supreme Court, on the sub-*

ject of jurisdiction on account of the interest a State has in the controversy?—323.

That it must be a case in which a State is either nominally or substantially the party; and that it is not sufficient that the State may be consequentially affected, as being bound to make retribution to her grantee upon the event of eviction.

7. *What is the rule as to the appellate jurisdiction of the Supreme Court?*—324.

That it exists only in cases in which it is affirmatively given. That court has decided* that its whole appellate jurisdiction depended upon the regulations of Congress, as that jurisdiction was given by the Constitution in a qualified manner.

8. *Does that jurisdiction exist if a State be a party, and if it extend to a final judgment in a State court, on a case arising under the authority of the Union?*—327.

Yes; the appellate jurisdiction of the court includes two classes of cases—the first, depending on the character of the cause, whoever be the parties; and the second, on the character of the parties, whatever be the subject of controversy.

LECTURE XVI.

OF THE JURISDICTION OF THE FEDERAL COURTS IN RESPECT TO THE COMMON LAW, AND IN RESPECT TO PARTIES.

1. *Have the federal courts a common law jurisdiction in criminal matters?*—331–338.

A majority of the Supreme Court has decided† that the Circuit Courts could not exercise a common law jurisdiction in criminal cases. And in a subsequent case,‡ though a difference

* *Wiscart* v. *Douchy*, 3 Dallas, 321.
† *United States* v. *Hudson & Goodwin*, 7 Cranch, 32.
‡ *United States* v. *Coolidge*, 1 Wheaton, 415.

of opinion continued to exist among the members of the court, it refused to review its former decision, or draw it in doubt.

2. *How about a common law jurisdiction in civil matters?*—341, *n.* (*d*).

The Supreme Court, at one time,* went far towards the admission and application of the common law to civil cases in the federal courts, but it has since declared† that there could not be a common law of the United States. Each of the States has its own local usages, customs, and common law. There was no principle which pervades the Union, and has the authority of law, that is not embodied in the Constitution and laws of the Union. The common law could be made a part of our federal system only by legislative adoption, and when a common law right is asserted, the courts look to the State in which the controversy originated.

3. *Has the common law then no influence on national jurisprudence?*—339.

Mr. Du Ponceau, in his "Dissertation on the nature and extent of the jurisdiction of the Courts of the United States," maintains that we have not, under our federal government, any common law, considered as a source of jurisdiction; but that the common law, considered merely as the means or instrument of exercising the jurisdiction conferred by the Constitution and laws of the Union, does exist, and forms a safe and beneficial system of national jurisprudence. When the jurisdiction is once granted, the rules of action under that jurisdiction, if not prescribed by statute, may and must be taken from the common law when they are applicable, because they are necessary to give effect to the jurisdiction.

4. *What is it necessary to set forth on the record in order to give jurisdiction where an alien is a party?*—343, 344.

The Supreme Court held‡ that it was necessary to set forth the citizenship of the respective parties, or the alienage, where

* *Robinson* v. *Campbell*, 3 Wheaton, 212; 10 *Ib.*, 159, S. P.
† *Wheaton* v. *Donaldson*, 8 Peters' R., 658.
‡ *Bingham* v. *Cabot*, 3 Dallas, 382.

a foreigner was concerned, by positive averments, in order to bring the case within the jurisdiction of the Circuit Court; and that if there was not a sufficient allegation for that purpose on the record, no jurisdiction of the suit would be sustained. It is necessary, therefore, where the defendant appears to be a citizen of one State, to show, by averment, that the plaintiff is a citizen of some other State, or an alien; or, if the suit be upon a promissory note, by the endorsee, to show that the original payee was so, for it is his description, as well as that of the endorsee, which gives the jurisdiction.

5. *What is the rule where a corporation is a party?*—346, 347.

It has been held* that a corporation created and doing business in a State was an inhabitant of the State, capable of being treated as a citizen, for all purposes of suing and being sued, although some of the members of the corporation were not citizens of the State in which the suit was brought, and although the State itself might be a member of the corporation.

6. *What is the rule in regard to trustees?*—349, 350.

That a trustee who holds the legal interest is competent to sue in right of his own character as a citizen or alien, as the case may be, in the federal courts, and without reference to the character of his *cestui que trust*, unless he was created trustee for the fraudulent purpose of giving jurisdiction. This rule applies to executors and administrators, who are considered as the real parties in interest; but it does not apply to the general assignee of an insolvent debtor, and he can not sue in the federal courts, if his assignor could not have sued there. The 11th section of the judiciary act will not permit jurisdiction to vest by the assignment of a *chose in action* (cases of foreign bills of exchange excepted), unless the original holder was entitled to sue; and whether the assignment was made by act of the party, or of law, makes no difference. An executor or administrator is not an assignee within the meaning of the 11th section of the judiciary act. A vested jurisdiction is not divested by a subsequent change of domicil of one of the parties, *pendente lite*.

* *Louisville R. R. Co.* v. *Letson*, 2 How. U. S. R., 497.

7. *What is the rule of proceeding where a State is interested, and not a party on record?*—350.

The Supreme Court decided,* that the Circuit Courts had lawful jurisdiction, under the act of Congress incorporating the National Bank, of a bill in equity brought by the bank for the purpose of protecting its franchises, which were threatened by the State of Ohio; and that, as the State itself could not be made a party defendant, the suit might be maintained against the officers and agents of the State who were intrusted with the execution of such laws.

LECTURE XVII.

OF THE DISTRICT AND TERRITORIAL COURTS OF THE UNITED STATES.

1. *What is the distinction in England between the* Instance *and the* Prize Court *of Admiralty?*—353, 354.

The Instance Court is the ordinary and appropriate court of admiralty, and takes cognizance of the general subjects of admiralty jurisdiction, and it proceeds according to the civil and maritime law. To constitute the Prize Court, or to call it into action in time of war, a special commission issues; it has exclusive cognizance of matters of prize and matters incidental thereto, and it proceeds to hear according to the general principles of the admiralty and the law of nations. The distinction between these two courts, or rather between these two departments of the same court, is kept up throughout all the proceedings; an appeal from the Instance Court lies to delegates—from the Prize Court, to commissioners specially appointed.

2. *Does this distinction exist in the jurisdiction of our District Courts?*—355, 356.

No; after considerable discussion on the point, the Supreme Court has decided that the District Courts of the United States

* *Osborn* v. *The Bank of the United States*, 9 Wheaton, 738.

possess all the powers of Courts of Admiralty, whether considered as Instance or as Prize Courts; and their prize jurisdiction is completely exclusive.

3. *Over what cases have the District Courts, as Prize Courts, jurisdiction?*—356, 357.

Their ordinary prize jurisdiction extends to all captures in war, made on the high seas. "I know of no other definition of prize goods," said Sir William Scott, in the case of the *Two Friends** "than that they are goods taken on the high seas, *jure belli*, out of the hands of the enemy." The prize jurisdiction also extends to captures in foreign ports and harbors, and to captures made on land by naval forces, and upon surrenders to naval forces, either solely, or by joint operation with land forces. It extends to captures made in rivers, ports, and harbors of the captor's own country. The Prize Court extends also to all ransom bills upon captures at sea, and to money received as a ransom or commutation, on a capitulation to naval forces alone, or jointly with land forces.

4. *How far does the criminal jurisdiction of the District Court, as an Admiralty Court, extend?*—360–364.

The District Courts have, exclusive of the State courts, and concurrently with the Circuit Courts, cognizance of all crimes and offenses cognizable under the authority of the United States, and committed within their districts, or upon the high seas, where only a moderate corporal punishment, or fine, or imprisonment is to be inflicted.

It has been argued that the federal courts have, without any statute, exclusive criminal jurisdiction over maritime crimes and offenses, but it is now settled that they are, as Courts of Admiralty, to exercise only such criminal jurisdiction as is conferred upon them by act of Congress; that the United States courts have no unwritten criminal code from which to claim jurisdiction, and this principle extends as well to admiralty and maritime, as to common law offenses.† This limitation, however,

* 1 Rob. R., 228.

† The act of Congress of March 3d, 1825, enlarged the jurisdiction of the federal courts over many crimes committed against the United States in foreign ports and

does not apply to private prosecutions in the District Court, as a Court of Admiralty or Prize Court, to recover damages for a marine tort.

5. *How are issues of fact tried in the District Courts?*—365, 372.

By a jury in all causes, except civil causes of admiralty and maritime jurisdiction, which are tried according to the course of the civil law, and without jury.

6. *What forms the dividing line between the admiralty and common law jurisdiction of the District Court?*—365–378.

The decisions and opinions on the point are so conflicting that it is impossible to define accurately the boundary line between the two jurisdictions. It seems, however, doubtful whether, by the words, "cases of admiralty and maritime jurisdiction," the Constitution meant more than that jurisdiction which was settled and in practice in this country under the English jurisprudence, when the Constitution was made.*

7. *How far does the jurisdiction of the District Courts, as Instance Courts, extend?*—378–380.

They possess a general jurisdiction in suits by seamen and salvors, and by material men, *in rem* and *in personam*. They have a general jurisdiction to enforce maritime liens, by process *in rem*, and there may be a maritime jurisdiction *in personam* where there is no lien, and consequently no jurisdiction *in rem*. The act of Congress of July 20th, 1790, section 6, has given a summary relief for seamen in the recovery of wages, by authorizing the district judge, or, in his absence, a magistrate, to summon the master before him, and to attach the vessel as security

on the high seas, and over certain specified offenses on board of American vessels by any of the American crew, in all places where the tide ebbs and flows; and the act of March 3d, 1835, extends the jurisdiction to offenses on any waters within the admiralty and maritime jurisdiction of the United States.

* A synopsis of the admiralty jurisdiction in this country is stated to contain, 1. Contracts between part owners, petitory and possessory suits; 2. Charter parties and affreightments; 3. Bottomry and hypothecation; 4. Contracts of material men; 5. Insurance; 6. Wages; 7. Salvage, civil and military; 8. Averages, contributions and jettisons; 9. Pilotage; 10. Ransom; 11. Surveys; 12. Maritime torts and trespasses.—*The Jurist*, January, 1841, page 408.

for wages. The admiralty has cognizance of maritime hypothecations of vessels and goods in foreign ports, for repairs done, or necessary supplies furnished. Suits for seamen's wages are cognizable in the admiralty, though the contract be made upon land, provided it be not a contract under seal.*

8. *What about the Territories of the United States?*—384.

Exclusive and unlimited power of legislation over the Territories has been given to Congress by the Constitution, and is sanctioned by judicial decisions. And this power extends to the District of Columbia. It has been decided† that the Circuit Court of the District of Columbia has power to call before it any person found in the District, from the highest to the lowest; that no government officer in the District is above being reached by the process of the court.

LECTURE XVIII.

OF THE CONCURRENT JURISDICTION OF THE STATE GOVERNMENTS.

1. *What rights of sovereignty did the State governments retain on the adoption of the Constitution of the United States?*—387.

It was observed in The Federalist, that the State governments would clearly retain all those rights of sovereignty which they had before the adoption of the Constitution of the United States, and which were not by that Constitution exclusively delegated to the Union. The alienation of State power or sovereignty would only exist in three cases: where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union, to which

* The principle which seems to be established is, that admiralty jurisdiction extends to all maritime causes and services, to be substantially performed on tide waters.

† 5 Cranch's C. C., 171; 12 Peters' S. C. R., 524.

a similar authority in the States would be absolutely and totally contradictory and repugnant. In the judicial construction given from time to time to the Constitution, there has been no very essential variation from the above principles.

2. *Is the power given to Congress to organize a militia, exclusive?*—390, 391.

No; a State may organize, arm and discipline its own militia, in the absence of, or in subordination to, the regulations of Congress; but once Congress has acted on the subject and carried this power into effect, its laws are supreme, and all interfering regulations of the State suspended.

3. *What would be the consequence if both the federal and State governments laid a tax on the same article?*—392-394.

The claim of the United States would be preferred, and must be first satisfied. It would seem, therefore, that the concurrent power of legislation in the States is not an independent, but a subordinate and dependent power, liable, in many cases, to be extinguished, and, in all cases, to be postponed to the paramount or supreme law of the Union, whenever the federal and the State regulations interfere with each other.

4. *Can the judicial process of the federal courts be controlled by State laws?*—394.

No: Congress has exclusive authority to regulate proceedings and executions in the federal courts, and the States have no authority to control such process.

5. *How about the concurrent jurisdiction of the several States in matters of judicial cognizance?*—395–400.

The concurrent jurisdiction of the State tribunals depends, in judicial matters, altogether upon the pleasure of Congress, and may be revoked and extinguished, whenever Congress thinks proper, in every case in which the subject-matter can constitutionally be made cognizable in the federal courts; but the State courts will retain a concurrent jurisdiction, without an express provision to the contrary, in all cases where they had jurisdiction originally over the subject-matter.

6. *Is the exercise of this concurrent jurisdiction obligatory on the State courts?*—400-405.

No: they have sometimes assumed, and sometimes declined jurisdiction, though expressly vested with it by act of Congress. The State authorities are left to infer their own duty from their own State authority and organization; but if they do voluntarily entertain jurisdiction of cases cognizable under the authority of the United States, they assume it upon the condition that the appellate jurisdiction of the federal courts shall apply.

7. *What effect has the sentence of either the federal or State court, in a matter where there is concurrent jurisdiction, on the jurisdiction of the other?*—399.

The sentence of either court, whether of conviction or acquittal, may be pleaded in bar of the prosecution before the other.

8. *Does the concurrent jurisdiction of State courts extend to criminal offenses?*—403.

No: their jurisdiction of federal causes is confined to civil actions, or to enforce penal statutes; they can not hold criminal jurisdiction over offenses exclusively existing as offenses against the United States. Every criminal prosecution must charge the offense to have been committed against the sovereign whose court sits in judgment upon the offender, and whose executive may pardon him.*

* It is considered that treason might be committed against a State, and be not a crime against the United States, but if the crime amount to treason against the United States, its cognizance belongs exclusively to the federal courts.

LECTURE XIX.

OF CONSTITUTIONAL RESTRICTIONS ON THE POWERS OF THE SEVERAL STATES.

1. *What restrictions has the United States Constitution placed on the authority of the separate States, in cases not consistent with the objects and policy of the powers vested in the Union?*—407.

No State can enter into any treaty, alliance or confederation; grant letters of marque and reprisal, coin money, emit bills of credit, make any thing but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, nor grant any title of nobility. No State can, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, nor lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, nor engage in war unless actually invaded, or in such imminent danger as will not admit of delay.*

2. *What are bills of credit, within the purview of the United States Constitution?*—407, 408.

Promissory notes, or bills issued by a State government, exclusively on the credit of the State, and intended to circulate through the community for its ordinary purposes as money redeemable at a future day, and for the payment of which the faith of the State is pledged.†

3. *What is meant by an* ex post facto *law?*—410.

A short definition of an *ex post facto* law is, any law which renders an act punishable in a manner in which it was not punishable when it was committed. This includes punishment

* Although no State can be permitted to establish a permanent military government, yet a State may use its military power to put down an armed insurrection too strong to be controlled by the civil authority.—*Luther* v. *Borden*, 7 How. U. S. R., 71.

† In *Briscoe* v. *The Bank of Kentucky*, 11 Peters, 257, bills of credit were defined to be paper issued by the authority of a State, on the faith of the State, and designed to circulate as money. See 4 Peters, 410; 13 How., 12.