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.

either in a man's person or estate. *Ex post facto* laws are to be distinguished from retrospective laws, divesting vested rights, which, unless *ex post facto*, or impairing the obligation of contracts, are not prohibited by the Constitution, however repugnant they may be to principles of sound legislation.

4. *Can a State control the exercise of any authority under the federal government?*—409–411.

No; a State court can not annul the judgments, nor determine the extent of the jurisdiction of the courts of the Union; neither can it enjoin a judgment, nor stay proceedings of the federal courts; nor can it interfere with seizures of property made by revenue officers, under the laws of the United States, nor interrupt, by process of replevin, injunction or otherwise, the exercise of the authority of the federal officers, provided they had jurisdiction of the subject-matter.

5. *Can the federal courts control the action of the State courts?*—412.

Not otherwise than by means of their established appellate jurisdiction.

6. *Which are some of the leading decisions on the rule forbidding a State from passing any law impairing the obligation of contracts?*—413–422.

It has been decided that a State can not declare null and void, on the ground of fraud and corruption, letters patent by which it had granted State lands that had passed into the hands of a *bona fide* purchaser for a valuable consideration. If the Legislature of a State declare that certain lands shall not be subject to taxation, such a legislative act amounts to a contract which can not be rescinded by subsequent legislation. A legislative grant, competently made, vests an indefeasible and irrevocable title. And in the Dartmouth College case* it was held, that the charter granted by the British crown to the trustees of the college in 1769 was a contract within the meaning of the Constitution and protected by it; that the college was a private charitable institution, free from legislative control; and that the

* 4 Wheaton, 518.

act of the Legislature of New Hampshire, altering the charter in a material respect without the consent of the corporation, impaired the obligation of the charter and was consequently void. A compact between two States has been held to be a contract within the constitutional prohibition. A discharge under a State insolvent law will not extinguish the remedy against the future property of the debtor, unless the debt has been contracted after the passing of the act, within the State which has passed the insolvent law and between citizens of the State.*

7. *What about the prohibition against State naturalization laws?*—423, 424.

The right to enact naturalization laws belongs exclusively to Congress.

8. *Can a State impose a tax on national stock?*—427, *n.* (*a*).

No; but a State tax on dividends arising from stock in the Bank of the United States, owned by a citizen of the State, has been held constitutional. As also a State tax on the stock itself, as individual property, when owned by residents; but not when owned by non-residents, for it must be a tax *in personam*.

9. *Within what jurisdiction are places ceded by any one of the several States to the United States?*—429–431.

Within that of the United States as to acts committed within those places. Such cessions are usually accompanied with a condition annexed, that all civil and criminal process issued under the authority of the State may be executed on the lands so ceded, in like manner as if the cession had not been made. And the acceptance of a cession, with such a reservation, is considered tantamount to an agreement by the federal government to permit the free exercise of such process, as being *quoad hoc* their own process, as to acts committed within the acknowledged jurisdiction of the State making the cession. But the inhabitants of such places can not exercise any civil or political privileges under the laws of the State.

* The prohibition against the impairing the obligation of contracts has been much modified by State laws and decisions (too numerous to be mentioned here), particularly the various exemption acts, which are considered to affect the remedy and not the contract.

10. *State some of the decisions on the power of Congress to regulate commerce among the several States.*—431–436.

It has been decided that Congress has power to lay a general embargo, without any limitation as to time. An act of the Legislature of the State of New York, granting exclusive navigation of the waters of the State, by vessels propelled by steam, was held by the United States court to be repugnant to the rights and privileges conferred upon a steamboat navigating under a coasting license.*

11. *Does this power extend to the internal commerce of a State?*—436–439, *n.* 2.

The United States Supreme Court admitted that this power does not extend to commerce which is completely internal and does not concern more States than one. But the Court of Errors in New York have held that the coasting trade included commercial intercourse carried on between different parts of the same State on the sea-coast, or on a navigable river. The constitutionality of the State license laws has been finally settled in the Supreme Court of the United States, and their validity established,† but the sale of imported liquors by the importer in the original casks was not affected by such decision.

12. *How about inspection, quarantine and health laws?*—439.

They, as well as laws for regulating the internal commerce of a State, are component parts of the immense mass of residuary State legislation, over which Congress has no direct power, though it may be controlled when it directly interferes with their acknowledged power. And it is admitted that the power of Congress to regulate commerce on the navigable waters of the several States implies no cession of territory, or of public or private property.

* *Gibbons* v. *Ogden*, 9 Wheaton, 1.
† 5 How. U. S. R., 504–609.

LECTURE XX.

OF STATUTE LAW.

1. *What is municipal law?*—447.

It is a rule of civil conduct, prescribed by the supreme power of a State. It is composed of written and unwritten, or statute and common law.

2. *What is statute law?*—447.

It is the express written will of the Legislature, rendered authentic by certain prescribed forms and solemnities.

3. *What authority has statute law in England, and to what extent does the English principle on that subject prevail with us?*—447, 448.

It is a principle of the English law, that an act of Parliament, delivered in clear and intelligible terms, can not be questioned in any court of justice. But this principle of the omnipotence of Parliament does not prevail in the United States; though, if there be no constitutional objection to a statute, it is with us as absolute and uncontrollable as are laws flowing from the sovereign power under any other form of government. But in this, and all other countries where there is a written Constitution, designating the powers and duties of the Legislature as well as of the other departments of the government, an act of the Legislature may be void as being against the Constitution. The law with us must conform, in the first place, to the Constitution of the United States, and then to the subordinate Constitution of its particular State; and if it infringes the provisions of either, it is so far void.

4. *By whom is the constitutionality of a law determined?*—449, 450.

By the judiciary. It is a settled principle in the legal polity of this country, that it belongs to the judicial power, as a matter of right and duty, to declare every act of the Legislature,

made in violation of the Constitution, or of any provision of it, null and void.

5. *From what time does a statute take effect?*—454, 455.

From its date, if no time be expressed. But remedial statutes may be of a retrospective nature, provided they do not impair contracts, partake of the character of *ex post facto* laws, or disturb absolute vested rights, and only go to confirm rights already existing, and in furtherance of the remedy, by curing defects, and adding to the means of enforcing existing obligations. And it seems to be settled, that the Legislature can not pass any declaratory law or act declaratory of what the law was before the passage of such act, so as to give it any binding weight with the courts: it is only evidence of the sense of the Legislature as to the preëxisting law.

6. *What is the distinction between public and private acts?*—459.

Public acts relate to the State or country at large, and private acts concern the particular interest or benefit of certain individuals, or of particular classes of men. A private act does not bind strangers in interest to its provisions, and they are not bound to take notice of it, even though there be no general saving clause of the rights of third persons.

7. *What are the rules for interpreting statutes?*—460–465.

The preamble of a statute may be resorted to in restraint of the generality of the enacting clause, when it would be inconvenient if not restrained, or it may be resorted to in explanation of the enacting clause, if it be doubtful. The Constitution of New Jersey declares that every law, and that of New York and some other States, that every private or local bill shall embrace but one subject, and that that shall be expressed in the title. The object of the requirement is, that neither the Legislature nor the public may be misled by the title of an act.

It is an established rule in interpreting statutes, that the intention of the lawgiver is to be deduced from a view of the whole, and of every part of the statute, taken and compared together. The real intention, when accurately ascertained, will always prevail over the literal sense of terms, and control the

strict letter of the law, when the latter would lead to palpable injustice, contradiction and absurdity. The words of a statute, if of common use, are to be taken in their natural, ordinary signification and import; and if technical words are used, they are to be taken in a technical sense, unless it clearly appears, from the context, or other parts of the instrument, that the words were intended to be applied differently from their ordinary or legal acceptation.

Several acts *in pari materia*, or relating to the same subject, are to be taken together and compared in the construction of them, because they are considered as having one object in view and as acting upon one system. Statutes are likewise to be construed in reference to the principles of the common law, and a good rule of interpretation of all statutes is to consider, what was the common law before the act? what was the mischief against which the common law did not provide? what remedy has the act provided to cure the defect? and what is the true reason of the remedy? Penal statutes are to be construed strictly; remedial ones liberally, and *ultra*, but not *contra*, the strict letter.

8. *What is the effect of temporary statutes?*—465.

If an act be penal and temporary by the terms or nature of it, the party offending must be prosecuted and punished before the act expires or is repealed. Though the offense be committed before the expiration of the act, the party can not be punished after it has expired, unless a particular provision be made by law for the purpose. If a statute be repealed, and afterward the repealing act be repealed, this revives the original act; and if a statute be temporary and limited to a given number of years, and expires by its own limitation, a statute which had been repealed and supplied by it is *ipso facto* revived. Where a temporary act is continued by another, all acts, civil and criminal, are to be charged under the authority of the first act.

9. *What is the effect of a penalty prescribed in a statute?*—467.

If a statute inflicts a penalty for doing an act, the penalty implies a prohibition, and the thing is unlawful though there be no prohibitory words in the statute. A contract has been held

void under a statute, though there was a penalty imposed for making it, and it is settled that the statutory prohibition is equally efficacious, and the illegality of a breach of the statute the same, whether a thing be prohibited absolutely or only under a penalty. But when the object of the law is merely to protect the revenue, the imposition of the penalty is not to be construed as a prohibition of the contract.

LECTURE XXI.

OF REPORTS OF JUDICIAL DECISIONS.

1. *What does the common law include?*—469.

The common law includes those principles, usages and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature. A great proportion of the rules and maxims, which constitute the immense code of the common law, grew into use by gradual adoption, and received, from time to time, the sanction of the courts of justice without any legislative act or interference. In the language of Sir Matthew Hale, the common law of England is "not the product of the wisdom of some one man, or society of men, in any one age; but of the wisdom, counsel, experience, and observation of many ages of wise and observing men."

2. *Has the English common law been adopted with us?*—472.

The common law, so far as it is applicable to our situation and government, has been recognized and adopted, as one entire system, by most of the State constitutions. And the English statutes passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constitute a part of the common law of this country.

3. *What is the force of adjudged cases?*—473–475.

The reports of judicial decisions contain the most certain

evidence, and the most authoritative and precise application of the rules of the common law. A solemn decision upon a point of law, arising in any given case, becomes an authority in a like case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood or misapplied in that particular case. The language of Sir William Jones is exceedingly forcible on this point. "No man," says he, "who is not a lawyer, would ever know how to act; and no man who is a lawyer would, in many instances, know what to advise, unless courts were bound by authority as firmly as the Pagan deities were supposed to be bound by the decrees of fate."

4. *Which are the principal of the old English reports?*—480–497.

The oldest reports extant on the English law are the Year Books, written in law French, and extending from the beginning of the reign of Edward II. to the latter end of the reign of Henry VIII., a period of about two hundred years. The reports of Dyer relate to the reigns of Henry VIII., Edward VI., Mary and Elizabeth. Plowden's Commentaries embrace the same period as Dyer's reports. Lord Coke's reports are confined to the reigns of Elizabeth and James, and those of Lord Hobart to the time of James. Croke's reports contain decisions in the reigns of Elizabeth, James, and Charles. Yelverton's reports are a small collection of select cases in parts of the reigns of Elizabeth and James. In the reign of Charles II., the most distinguished reports are those of Chief Justice Saunders, which have been frequently reëdited with copious notes of modern decisions. Of the same reign are the reports of the Chief Justice Vaughan, Sir Thomas Jones, Sir Creswell Levinz, and Sir Godfrey Palmer.

The principal English reports since the English revolution are those of Lord Raymond and Serjeant Salkeld, during the reigns of William and Mary, and Queen Anne; of Strange, Comyns, Willes, and Wilson, during the reigns of George I. and II. The reports of Burrow, Cowper, and Douglas, contain the substance of Lord Mansfield's decisions, which are amongst the most interesting reports in the English law.

The system of equity is equally to be found embodied in the reports of adjudged cases ; and the rules, usages, and precedents, in the Court of Chancery, are as fixed as those which govern other tribunals. The principal English Chancery reporters are Vernon, Peere Williams, Talbot, Vesey and Atkyns, Eden, Brown, Cox, and Vesey, Jr.

NOTE.—The decisions of Chancellors Kent and Walworth, of New York State, are to be found in Johnson's, Paige's, and Barbour's Chancery Reports. These decisions, from their more entire application to our circumstances, carry with them greater authority than those of English chancellors, and they confer equal lustre on the men who delivered them and on the State which produced such men. The New York Court of Chancery has been recently abolished, and its jurisdiction conferred on the Supreme Court of that State.

[LECTURE XXII, giving simply an account of the principal publications on the Common Law, is omitted.]

LECTURE XXIII.

OF THE CIVIL LAW.

1. *When was the civil law, as it has come down to us, digested?* —515.

The great body of the Roman or civil law was collected and digested by order of the Emperor Justinian, in the former part of the sixth century. With most of the European nations, and in the new States in Spanish America, in Lower Canada, and in one of the United States, Louisiana, it constitutes the principal basis of their unwritten or common law. It exerts a very considerable influence on our own municipal law, and particularly on those branches of it which are of equity and admiralty jurisdiction, or fall within the cognizance of the surrogate's or consistorial courts.

2. *Where is the existing body of the Roman or civil law principally to be found?*—538–548.

In the compilations made under Justinian, which consist of

the following works, 1. The Code, in twelve books, being a collection of all the imperial statutes that were thought worth preserving, from Hadrian to Justinian. 2. The Institutes, or Elements of the Roman Law, in four books, containing the fundamental principles of the ancient law in a small body for the use of students. 3. The Digest or Pandects, which is a vast abridgment, in fifty books, of the decisions of prætors, and the writings and opinions of the ancient sages of the law. This work is supposed to contain the embodied wisdom of the Roman people in civil jurisprudence for nearly twelve hundred years, and the European world has ever since had recourse to it for authority and direction upon public law, and for the exposition of the principles of natural justice. 4. The Novels of Justinian, a collection of new imperial statutes, passed subsequent to the Code, and made to supply the omissions and correct the errors of the preceding publications. The one hundred and eighteenth Novel is considered the groundwork of the English and American statutes of distribution of intestates' effects. The civil law followed the progress of Roman power into Britain, and was taught there for some time after the expulsion of the Romans ; but its influence was finally confined to the ecclesiastical courts, and the Courts of Chancery and of Admiralty.

3. *Which are some of its principal merits?*—547.

On subjects relating to private rights and personal contracts, and the duties which flow from them, there is no system of law in which principles are investigated with more good sense, or declared and enforced with more accurate and impartial justice. The rights and duties of tutors and guardians are regulated by wise and just principles. All the rights, duties, and incidents appertaining to property, trusts in all their modifications, and personal contracts of almost every kind, express and implied, are defined and illustrated with a clearness and brevity without example.