THE DISTINCTION BETWEEN LEGISLATIVE AND CONSTITUTIONAL COURTS

ARTICLE 3, Section 1 of the Constitution vests "the judicial power of the United States" in the Supreme Court and in such inferior courts as Congress may from time to time establish. In the same section these tribunals are made independent of Congress to the extent that their judges are to hold office during good behavior and to receive compensation which cannot be diminished. Section 2 defines the scope of "the judicial power," limiting it to stipulated cases and controversies; and pursuant to the doctrine of the separation of powers the Supreme Court early declared that such cases and controversies could not include matters wherein the legislative or executive departments had the power of ultimate determination.[1] In order to carry out functions reserved to the legislature by the Constitution, however, Congress found it necessary to establish tribunals to hear disputes and submit opinions as to their proper disposition. Power to do so was said to lie outside of Article 3, and it was consequently decided that such bodies need not be subject to the constitutional limitations imposed upon courts exercising "the judicial power."[2] It follows, moreover, in the words of Chief Justice Marshall, that these legislative courts "are incapable of receiving"[3] any part of "the judicial power of the United States."

One would expect to find, therefore, a simple, consistent doctrine of constitutional law to the effect that there are two sets of courts, "constitutional" and "legislative;" that the provisions of Article 3 apply to the former but not to the latter; that their functions are mutually exclusive; and, as was early declared, that the Supreme Court has appellate jurisdiction over the one set of courts and not over the other.[4] An examination of the cases reveals, however, that the same courts have been called constitutional in one case

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1. Hayburn's Case, 2 Dall. 409 (U. S. 1792); United States v. Yale Todd (U. S. 1794), reported in footnote to United States v. Ferreira, 13 How. 40, 52 (U. S. 1851). See United States v. Ferreira, *supra*, at 48.

2. American Insurance Co. v. Canter, 1 Pet. 511 (U. S. 1828), was probably the first recognition of this power by the Supreme Court. It was there applied to the Territorial Courts which have uniformly been regarded as legislative courts ever since. Benner v. Porter, 9 How. 235 (U. S. 1850); Hornbuckle v. Toombs, 18 Wall. 648, 655 (U. S. 1873); Reynolds v. United States, 98 U. S. 145, 154 (1878); McAllister v. United States, 141 U. S. 174, 180 *et seq.* (1891). The absence of restrictions on Congress's control in regard to the Court of Claims was similarly acknowledged. Gordon v. United States, 2 Wall. 561, 117 U. S. 697, 699 (1864). For an excellent article on the legislative courts, see Katz, *Federal Legislative Courts* (1930) 43 HARV. L. REV. 894.

3. American Insurance Co. v. Canter, *supra* note 2, at 546.

4. "The appellate power and jurisdiction are subject to such exceptions and regulations as Congress shall make. But appeal is given [by the Constitution] only from such inferior courts as Congress may ordain and establish to carry into effect the judicial power specifically granted to the United States. . . And Congress cannot extend the appellate power of this Court beyond the limits prescribed by the Constitution, and can neither confer nor impose on it the authority or duty of hearing and determining an appeal from a Commissioner or Auditor, or any other tribunal exercising only special powers under an act of Congress. . ." Gordon v. United States, *supra* note 2, at 702.

and legislative in another; that since a court may be both constitutional and legislative, it is not always possible to tell to which courts the provisions of Article 3 will apply; that some cases may be brought either in courts unequivocally called legislative or in the federal district courts; and that the Supreme Court freely reviews cases decided by courts performing a legislative function. The histories of the decisions upon the status of the Court of Claims and of the District of Columbia courts graphically portray the dialectical confusion.

Since "controversies to which the United States shall be a party" are included in the constitutional enumeration of the judicial powers, it might have been concluded, in accordance with the reasoning in *Chisholm v. Georgia*,[5] that claims against the United States were within the jurisdiction of the judiciary. Apparently, however, the principle that a sovereign cannot be sued without its consent[6] was thought to preclude this interpretation of the provisions of Article 3, for until 1855 creditors of the United States presented their demands directly to Congress. In that year the legislature, finding the burden too great, established a tribunal to investigate such claims and report its conclusions to Congress.[7] Subsequently this body was authorized to render final decisions from which an appeal was granted to the Supreme Court.[8] That Congress thought it was acting under the provisions of Article 3 is shown by the fact that the judges were granted unlimited tenure.[9] Moreover, the Court of Claims looked upon itself as a constitutional court,[10] scholars were of the

5. 2 Dall. 419 (U. S. 1793). In this case, the first to interpret Article 3, Section 2 in regard to suits against a state, the Supreme Court took jurisdiction of a suit against the state of Georgia by a citizen of another state even though the sovereign defendant had not given its consent. In spite of a vigorous dissent by Mr. Justice Iredell, the majority were persuaded that the express provisions of Article 3 not only provided a tribunal for the suit but also showed that the states had yielded their sovereign immunity for this purpose. The same reasoning would, of course, have applied to the United States. The immediate reaction to this decision was the adoption of the Eleventh Amendment, excluding from the judicial power of the United States suits against a state by citizens of another state. This Amendment overlooked the possibility of a suit against a state by one of its own citizens, but the sovereign immunity was held to include this situation also. Hans v. Louisiana, 134 U. S. 1 (1890). The latter case seriously questioned the conclusion of Chisholm v. Georgia.

6. The Supreme Court later definitely expressed the view that a sovereignty was immune from suit without its consent. Kawananakoa v. Polyblank, 205 U. S. 349, 353 (1907). Mr. Justice Holmes delivered the opinion. For a discussion of the development of this doctrine in England and the United States, see Borchard, *Government Liability in Tort* (1924) 34 YALE L. J. 1, 5 *et seq.*; (1926) 36 YALE L. J. 1, 38 *et seq.*

7. 10 STAT. 612 (1855).

8. 12 STAT. 765 (1863), 28 U. S. C. § 252 (1926).

9. Both acts (*supra* notes 7 and 8) granted the judges tenure during good behavior. The Act of 1863 increased the number of judges from 3 to 5. For a history of the Court of Claims, see RICHARDSON, HISTORY, JURISDICTION AND PRACTICE OF THE COURT OF CLAIMS (2d ed. 1885); Katz, *supra* note 2, at 904.

10. This is evident from the words of Chief Justice Richardson of the Court of Claims, explaining the jurisdiction of its judges over non-judicial matters not reviewable by the Supreme Court: "I am also aware that the Supreme Court held in an early decision, reported in a note to Ferreira's Case [United States v. Yale Todd, *supra* note 1] that a technically judicial court cannot constitutionally be authorized to perform extra-judicial services; but I can see no reason why judges acting collectively in the name of the court may not volun-

same opinion,[11] and although the Supreme Court at first gave some indication to the contrary,[12] several of its early opinions concurred in this view.[13] Even as recently as 1925, an act levying an income tax on the salaries of the judges of the Court of Claims was declared unconstitutional on the ground that it constituted a legislative encroachment upon the immunities of the judicial department.[14] The opinion did not directly discuss the question whether the court was legislative or constitutional, but the doctrine of the separation of powers, upon which the decision was based, would not have been applicable to a court not exercising "the judicial power of the United States."

In *Ex parte Bakelite Corporation,*[15] however, the premises, reasoning and dicta of these cases were swept aside. In upholding the jurisdiction of the Court of Customs Appeals[16] over a case not within "the judicial power," the Supreme Court analogized the status of that tribunal to the Court of Claims, which, it was now said, had "always" been considered a legislative court. Ample proof of this could, indeed, be found. The Court of Claims had been created to exercise the legislative function, previously performed by Congress itself, of investigating claims against the United States; in one early case the Supreme Court had refused to review the court's decisions because their determinations could not be final;[17] and it had been established that there was

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tarily perform services when designated to do so by act of Congress, as well as judges of the Supreme Court designated by their official position to sit in other extra judicial tribunals. Act of January 29, 1887, ch. 37, sec. 2; 19 STAT. L., 228." Sanborn v. United States, 27 Ct. Cl. 485, 490 (1892). See also Harriet T. James v. United States, 38 Ct. Cl. 615, 630 (1903).

11. BLACK, CONSTITUTIONAL LAW (4th ed. 1927) § 98; 2 WATSON, THE CONSTITUTION OF THE UNITED STATES (2d ed. 1929) § 789.

12. See Gordon v. United States, *supra* note 2, at 699.

13. In United States v. Union Pacific Rr. Co., 98 U. S. 569, 603 (1878), Mr. Justice Miller said: "We say therefore, that, with the exception of the Supreme Court the authority of Congress in creating courts and conferring on them all or little of the judicial power of the United States, is unlimited by the Constitution.

"Congress under this authority [referring to Article 3] created the district courts, the circuit courts and the Court of Claims and vested each of them with a defined portion of the judicial power found in the Constitution." And again in Minnesota v. Hitchcock, 185 U. S. 373 (1902), the Court said, at 386: "While the United States as a government may not be sued without its consent, yet with its consent it may be sued, and the judicial power of the United States extends to such a controversy. Indeed, the whole jurisdiction of the Court of Claims rests upon this proposition.' This language was quoted with approval in Kansas v. United States, 204 U. S. 331, 342 (1907).

14. Miles v. Graham, 268 U. S. 501 (1925).

15. 279 U. S. 438 (1929). Discussed in Katz, *supra* note 2; Comment (1930) 24 ILL. L. REV. 820; Comment (1930) 10 B. U. L. REV. 81; Shartel, *Federal Judges—Appointment, Supervision and Removal—Some Possibilities Under the Constitution* (1930) 28 MICH. L. REV. 485, 518, n. 87; Note (1933) 46 HARV. L. REV. 677, 678.

16. The Court of Customs Appeals was created by the Act of August 5, 1909, 36 STAT. 11, 105-108 (1909), 28 U. S. C. §§ 301, 308, 309 (1926), to hear appeals from the Board of General Appraisers. While the *Bakelite* case was pending, its name was changed to the Court of Customs and Patent Appeals and it was invested with jurisdiction to review decisions of the Commissioner of Patents. 45 STAT. 1475 (1929), 28 U. S. C. SUPP. III §§ 301a, 309a (1929). For a short history, see Katz, *supra* note 2, at 908 *et seq.*

17. Gordon v. United States, *supra* note 2.

no right to a jury trial in the Court of Claims since Congress had power to dictate the conditions upon which it would consent to be sued.[18] The reasoning of the *Bakelite* case could be considered mere dictum in the same manner as the earlier expressions it repudiated. But its conclusions have recently been confirmed by a square holding. In *Williams v. United States*,[19] it was decided that the salary of a judge of the Court of Claims could be reduced under the terms of the Legislative Appropriation Act of June 30, 1932.[20] Counsel and the Court directed all their attention to the question whether the Court of Claims was a legislative or constitutional court, and in an exhaustive opinion Mr. Justice Sutherland reaffirmed the position adopted in the *Bakelite* case. A dictum in an early case[21] to the effect that when the government consents to be sued "the judicial power of the United States" immediately attaches, was explained as a misinterpretation of the provisions of Article 3. For the judicial power, it was pointed out, is therein extended to *all* cases affecting ambassadors, other public ministers and consuls, and to *all* cases of admiralty and maritime jurisdiction; but in the subsequent clause, mentioning controversies to which the United States shall be a party, the comprehensive "all" is omitted. Consequently, it is possible to reason that claims *against* the United States are not comprehended within the judicial power and, therefore, that the Court of Claims is not a constitutional court. But this rationalization cannot be accepted without ignoring further logical difficulties. The Tucker Act of 1887[22] confers upon the federal district courts jurisdiction concurrent with the Court of Claims over all claims against the United States wherein the amount does not exceed $10,000. It was early declared, however, that the district courts can accept only cases within "the judicial power of the United States."[23] Thus, the above theory leads to the anomalous result that whether or not a particular case is one included within the provisions of Article 3 depends upon which court hears it.

Similarly, if the Court of Claims is a legislative court, the question arises how the Supreme Court can logically consent to review its decisions. When the issue was first presented, the Supreme Court, in *Gordon v. United States*,[24] denied that it had such power. The decision was placed upon the ground that by express provision of the act conferring upon it appellate power over the Court of Claims, no award was to be paid a claimant against the United States unless an appropriation was made by the Secretary of the Treasury.[25] But the opinion argued further that, even in the absence of this provision, payment would depend upon an appropriation by Congress and that therefore the judicial determination of any claim against the United States would be

18. McElrath v. United States, 102 U. S. 426 (1880).

19. 289 U. S. 553 (1933). Noted in (1933) 47 HARV. L. REV. 133; (1933) 22 GEO. L. J. 91.

20. 47 STAT. 382, 402 (1932), 5 U. S. C. SUPP. VI § 673 n. (1932).

21. Minnesota v. Hitchcock; *cf.* United States v. Union Pacific Rr. Co., both *supra* note 13.

22. 24 STAT. 505 (1887), 28 U. S. C. § 41 (20) (1926).

23. Hayburn's Case; United States v. Yale Todd, both *supra* note 1.

24. *Supra* note 2.

25. 12 STAT. 765, § 14 (1863).

subject to legislative approval.[26] Moreover, the Court, assuming that the Court of Claims was not created under Article 3, declared that the Supreme Court could not accept appeals from tribunals "exercising only special powers under an act of Congress."[27] Nevertheless, after the provision of the act which had been found particularly objectionable had been repealed, the Court ignored the language in the *Gordon* case and proceeded to review decisions of the Court of Claims.[28] Twenty years later, when the question was again directly presented, the Court expressly affirmed its power to do so.[29] Since that time appeals from the Court of Claims have been rejected only where Congress has expressly provided that the decision shall merely be advisory.[30]

It is of course unlikely that Congress will in any case overrule a decision of the Supreme Court by refusing to make an appropriation. However, the legislature has several times indicated that it considers the final settlement of claims against the United States within its own discretion. In one instance an act was passed denying the Court of Claims jurisdiction over suits by pardoned southerners after the Civil War and abrogating the Supreme Court's appellate power in such cases even after judgments had been obtained in the Court of Claims.[31] The Supreme Court declared this act unconstitutional.[32] But on another occasion the Supreme Court refused to interfere when similar action was taken as to certain claims and judgments against the District of Columbia.[33] Apparently the Court felt that other provisions would be made for these claimants. Recently, Congress has asserted its power over the disposition of claims against the United States in another way. A petitioner obtained a judgment in the Court of Claims and the government did not appeal.[34] Dis-

26. *Supra* note 2, at 699. ". . . and if he [the Secretary of the Treasury] should decide in favor of the claimant it will then rest with Congress to determine whether they will or will not make an appropriation for its payment. Neither court can by any process enforce its judgment; but whether it is paid or not, does not depend upon the decision of either court, but upon the future action of the Secretary of the Treasury and of Congress."

27. See note 4, *supra.*

28. *E.g.,* De Groot v. United States, 5 Wall. 419 (U. S. 1866).

29. United States v. Jones, 119 U. S. 477 (1886).

30. *E.g., In re* Sanborn, 148 U. S. 222 (1893. This case was taken to the Court of Claims by virtue of Section 12 of the Tucker Act, *supra* note 22, which provides that "when any claim or matter is pending in any of the executive departments which involves controverted questions of fact or law" such department may submit the matter to the Court of Claims for a finding of facts and conclusion of law and "the court shall report its findings to the department by which it was transmitted for its guidance and action."

31. 16 STAT. 235 (1870).

32. United States v. Klein, 13 Wall. 128 (U. S. 1871).

33. *In re* Hall, 167 U. S. 38 (1897). The claimant sued in the Court of Claims under jurisdiction provided by Act of Feb. 13, 1895, 28 STAT. 664 (1895). On appeal to the Supreme Court his judgment was reversed because of a mistake in the allowance of interest and remanded to the Court of Claims, where the claimant moved for an entry of judgment without interest. The Court of Claims adjourned with the motion pending and before reconvening the Act of Feb. 13, 1895 was repealed and all jurisdiction thereunder vacated by the Act of March 3, 1897, 29 STAT. 665, 669 (1897). In District of Columbia v. Eslin, 183 U. S. 62 (1901), the same act repealed the court's jurisdiction while a motion to set aside the claimant's judgment was pending.

34. Pocono Pines Assembly Hotels Co. v. United States, 69 Ct. Cl. 91 (1930).

satisfied with the result, Congress sent the case back to the Court of Claims to hear new evidence.[35] The court denied the claimant's motion to ignore the remanding order,[36] and the Supreme Court refused, without opinion, to issue mandamus to restrain further proceedings in the case.[37] The conceptual anomaly which arises when the Supreme Court accepts appeals from decisions thus subject to Congressional action is apparent. For such cases cannot be within "the judicial power of the United States"; yet if the Supreme Court grants certiorari in a controversy it must be one enumerated in Article 3. Mr. Justice Sutherland, in the *Williams* case, attempted to solve the dilemma by saying that the whole of the judicial power is not included within Article 3, and that when claims against the United States are heard, the Supreme Court exercises a judicial power, but not "the judicial power of the United States."[38] The solution merely begs the question. It assumes the conclusion that, consistently with the doctrine of the separation of powers, the same power can be exercised both by an arm of the legislature and by the judiciary.

The decisions upon the status of the courts of the District of Columbia are equally difficult to rationalize. Power was early given them to review the rulings of the Commissioner of Patents, but their determinations were subject to attack by any interested party in any federal court of appropriate jurisdiction.[39] The capacity of the District courts to entertain such administrative functions was upheld without expressly calling the courts legislative;[40] but when the Supreme Court refused to accept appeals in several patent cases it was pointed out that such controversies were not within "the judicial power of the United States."[41] When the District courts heard these cases, it was explained, they were exercising a function conferred upon them by the sovereign power of Congress to regulate patents.[42] Subsequently Congress provided for appeals to the Supreme Court from decisions of the District of Columbia Court of Appeals reviewing rates established by the District Public Utility

35. 46 STAT. 1622 (1931).

36. Pocono Pines Assembly Hotels Co. v. United States, 73 Ct. Cl. 447 (1932), noted in (1933) 46 HARV. L. REV. 677.

37. *Ex parte* Pocono Pines Assembly Hotels Co., 285 U. S. 526 (1932). Adversely criticized in Sloss, *Mandamus in the Supreme Court* (1932) 46 HARV. L. REV. 91, 114 *et seq.*

38. Williams v. United States, *supra* note 19, at 565, 566.

39. The first statute gave dissatisfied patent applicants an appeal from the Commissioner of Patents' decision to the Supreme Court of the District of Columbia, but even the latter court's decision did not preclude interested parties from further testing the validity of the patent by a bill in equity in any competent court. 16 STAT. 205 (1870). The appeal was later changed to the District of Columbia Court of Appeals when the latter tribunal was created. 27 STAT. 434, 436 (1893), 35 U. S. C. § 59 (1926).

40. See Butterworth v. Hoe, 112 U. S. 50, 60 (1884).

41. Frasch v. Moore, 211 U. S. 1 (1908); Atkins v. Moore, 212 U. S. 285 (1909); Baldwin Co. v. Howard Co., 256 U. S. 35 (1921). But a patent application case involving the validity of a rule of joinder of patents in the application may be such a final decision as will give the Supreme Court appellate jurisdiction. Steinmetz v. Allen, 192 U. S. 543 (1904). It is also interesting to note that as late as 1920 the Supreme Court inadvertently reviewed a trade-mark decision which was not final where the issue of its jurisdiction was not raised. Beckwith v. Commissioner of Patents, 252 U. S. 538 (1920). This was later acknowledged as an error in Baldwin Co. v. Howard Co., *supra*, at 40.

42. See Butterworth v. Hoe, *supra* note 40, at 59.

Commission.[43] The Supreme Court again denied itself jurisdiction on the ground that here also the District courts were exercising an administrative function.[44] The capacity of the District courts to act as an administrative body was now explained upon the theory that Congress had a dual authority over them. It could invest them not only with the powers exercised by the constitutional courts, but also with the powers any state could confer upon its courts. The patent cases were referred to as precedents for their "exceptional" and "advisory" duties. In the *Bakelite* case the District courts were used as an example of legislative courts along with the Court of Claims.[45] And when their jurisdiction to review decisions of the Radio Commission was upheld, the Supreme Court once more declared that they "are not created under the judiciary articles of the Constitution, but are legislative courts."[46]

But at the same time that the "legislative" concept was being used in order to explain the District courts' extra-judicial functions, it was also necessary for other purposes to analogize them to the constitutional courts. In one case it was said that the District of Columbia Supreme Court was "a court of the United States" within the terms of the statute providing for the apprehension and holding of persons for trial.[47] In this instance reliance was placed upon the fact that the District courts had always considered themselves constitutional courts and bound by the federal Judicial Code.[48] On another occasion the Supreme Court referred to the "parallelism" between the District courts and the other federal courts as "complete."[49]

In *O'Donoghue v. United States*,[50] heard and decided on the same days as the *Williams* case, the Supreme Court definitely declared that the District courts had been created under the terms of Article 3 and held that the salaries of their judges could not be reduced. In another long opinion, Mr. Justice Sutherland emphasized the constitutional right of the inhabitants of those

43. 37 STAT. 938, 974, 988 (1913).

44. Keller v. Potomac Electric Power Co., 261 U. S. 428 (1923).

45. *Supra* note 15, at 450: "A like view [meaning 'legislative' view] has been taken of the status and jurisdiction of the courts provided by Congress for the District of Columbia. These courts, this Court has held, are created in virtue of the power of Congress to 'exercise exclusive legislation,' over the district made the seat of the government of the United States, are legislative rather than constitutional courts, and may be clothed with the authority and charged with the duty of giving advisory decisions in proceedings which are not cases or controversies within the meaning of Article III, but are merely in aid of legislative or executive action, and therefore outside the admissible jurisdiction of courts established under that Article."

46. Radio Commission v. General Electric Co., 281 U. S. 464, 468 (1930): "In the cases just cited [referring, among others, to Keller v. Potomac, *supra* note 44, and Butterworth v. Hoe, *supra* note 40] as also in others, it is recognized that the courts of the District of Columbia are not created under the judiciary article of the Constitution but are legislative courts and therefore that Congress may invest them with jurisdiction of appeals and proceedings such as have been just described."

47. Benson v. Henkel, 198 U. S. 1 (1905). The statute applied to the United States district courts. 1 STAT. 91 (1789), 18 U. S. C. § 591 (1926).

48. Hyattsville Building Association v. Bouic, 44 D. C. App. 408 (1916); *cf.* United States v. Baltimore and Ohio Rr. Co., 26 D. C. App. 581 (1906).

49. See Federal Trade Commission v. Klesner, 274 U. S. 145, 156 (1927).

50. 289 U. S. 516 (1933).

portions of Virginia and Maryland out of which the District of Columbia had been carved, to have the judges who settled their disputes and interpreted their laws independent of legislative control. Precedent for the decision was found in the cases analogizing the District courts to the other federal courts; the fact that in the *Bakelite* case they were used as examples of legislative courts was dismissed as inadvertent dictum; and the even stronger language of the case upholding their power to review the rulings of the Radio Commission was not alluded to at all. But the major obstacle in the path to this conclusion was the difficulty of explaining how the District courts could exercise administrative functions consistently with the provisions of Article 3. A minority of the judges argued that on this account the District courts must be considered legislative. The majority replied that the status of those courts was peculiar; that they were inferior federal courts within the words of the Constitution; but that because of Congress's special powers over the District of Columbia, there could be conferred upon its courts other functions than those included within "the judicial power of the United States." In short, the decision is that the courts of the District of Columbia are both constitutional and legislative.

It remains to be considered whether there is any objection to such inconsistencies[51] and any merit in attempting logically to rationalize them.[52] The legal theorist would, of course, answer in the affirmative. However, the reduction of judges' salaries, the performance by courts of administrative functions, and the extent of the Supreme Court's appellate powers, are, in the last analysis, questions involving entirely different considerations. There is no practical reason why the solution of any one of them should control the determination of the others. Indeed, the very absence of a rigid, legal doctrine clearly stating each problem in terms of the others is a virtue. For where too much logic leads only to confusion of issues, it is better that the Court be entirely free to decide each case upon its individual merits.

DETERMINATION OF LAW GOVERNING POWER OF REDEMPTION IN CONDITIONAL SALES OF CHATTELS

IN the application of principles of conflicts of laws, American courts have given but slight recognition to the fact that a contract right which is also an interest in property may be subject to different sets of rules for deciding the law which governs it, according as it is considered a contract right or a property right. In cases involving contracts for the transfer of land courts have recognized the applicability of either set of rules, and have decided, upon considerations of expediency, which should prevail.[1] But in dealing with contracts involv-

51. See Note (1933) 47 HARV. L. REV. 133, discussing the *O'Donoghue* and *Williams* cases.

52. See Note (1933) 22 GEO. L. J. 91.

1. Platner v. Vincent, 187 Cal. 443, 451, 202 Pac. 655, 658 (1921) (property rules preferred); Bethell v. Bethell, 54 Ind. 428 (1876) *semble*; see Cook, *The Logical and Legal Bases of the Conflict of Laws* (1924) 33 YALE L. J. 457; Lorenzen, *Territoriality, Public Policy and the Conflict of Laws* (1924) 33 YALE L. J. 736; Cook, *The Jurisdiction of Sover-*