the United States to compel a citizen, absent abroad, to return to this country. Compare *Bartue and Duchess of Suffolk's Case* (1559) 72 Eng. Repr. 388; *Knowles v. Luce* (1579) 72 Eng. Repr, 473. Rather in contrast to the Appeals Court, the Supreme Court regarded as the important question the method of enforcing the obligation. It held that since Congress can define the obligation, it can prescribe the penalty and method of enforcing it. The proceeding of a seizure of property to secure payment of a penalty is a familiar practice where absence of the recalcitrant or other circumstances make it necessary. *Cooper v. Reynolds* (1870) 77 U. S. 308.

A contention that the offence was criminal in its nature and that it was unconstitutional to proceed to judgment in the absence of the defendant was held untenable in nature. Contempt proceedings are said to be *sui generis* and not criminal by nature. *Myers v. United States* (1923) 264 U. S. 95. The novel defense that the act was discriminatory since it would be ineffective against contumacious witnesses who owned no property to seize was also overriden. Liability under the act is placed on the disobedience of the witness and not ownership of property.

The decisions of the two courts emphasize the paramount duty of every citizen to aid in the administration of justice by appearing and testifying in court when wanted. *Blair v. United States* (1919) 250 U. S. 273. If a like conception were entertained by citizens greater efficacy would be given to our criminal administration. The Walsh Act should prove an invaluable aid to enforcement of Federal laws.

Similar state statutes have not as yet been tested.

V. P. K., '33.

INTERSTATE COMMERCE—LIMITATION OF RIGHT OF FOREIGN CORPORATIONS TO SUE—CONTRACTS CONTEMPLATING IMPORTATION.—Plaintiffs, doing business as partners in Illinois, contracted with a citizen of Arkansas to sell goods as ordered by him, to be delivered on board cars at Freeport, Illinois, or at their nearest branch warehouse. The contract referred to defendant as "the salesman" and specified that payment was to be made according to defendant's sales and collections, defendant having the right to return goods unsold upon the termination of the contract. Defendant placed an order, which was received by plaintiffs in Illinois, shipment being made from the Memphis, Tennessee, warehouse. The goods in question were manufactured and owned by an Illinois corporation for which plaintiffs were not only selling agents, but also in which they were officers and principal stockholders. The corporation was not qualified in Arkansas as required by statutes of that state providing that foreign corporations, as a prerequisite to doing business in the state, comply with certain conditions, failure to do so resulting in an incapacity to sue. Ark. Dig. Stat. (Crawford and Moses, 1921) secs. 1829, 1832. In an action on the contract in the Arkansas courts recovery was denied the plaintiffs on the ground that they were acting as agents of the corporation, and that the defendant was in turn acting as their agent, and hence the corporation through its agents, was doing business in Arkansas. But the Supreme Court of the United States *held*, that

as to the plaintiffs, the statute was void and unconstitutional, the transaction in question being interstate commerce within the meaning of the Constitution, Art. I, Sec. 8, the question of agency being wholly immaterial. *Furst v. Brewster* (1931) 282 U. S. 493, *rev'g* (1929) 180 Ark. 1167, 21 S. W. (2d) 863.

The proposition that a state may impose such restrictions as it sees fit as a prerequisite to foreign corporations coming into the state to do business, or that the state may even exclude foreign corporations entirely, is too well-settled a doctrine to admit of controversy. *Bank of Augusta v. Earle* (1839) 38 U. S. 588; *Lafayette Ins. Co. v. French* (1855) 59 U. S. 404, 407; *Paul v. Virginia* (1863) 75 U. S. 168; *Railway Express Co. v. Virginia* (1931) 282 U. S. 440; 3 Cook, CORPORATIONS (8 ed. 1923) secs. 696-700. But it is equally well settled that there is a limitation on the state's right to exclude foreign corporations, as laid down in the Constitution, Art. I, Sec. 8, which confers on Congress the power to regulate interstate commerce. The control of Congress over interstate business is exclusive. *Gibbons v. Ogden* (1824) 22 U. S. 186. Any attempt of the states to regulate or interfere with interstate business is void. *Crutcher v. Kentucky* (1890) 141 U. S. 47, 57; *Western Union v. Kansas* (1909) 216 U. S. 7, 27. Statutes similar to the one in Arkansas have usually been held to place an undue burden on interstate commerce, and hence to be unconstitutional as to foreign corporations engaged in interstate business. *Guerin v. Barrett* (N. Y. 1930) 173 N. E. 553; *Davis v. Farmers' Equity Co.* (1923) 262 U. S. 312; *Sioux Remedy Co. v. Cope* (1914) 235 U. S. 197; *Textbook Co. v. Tone* (1917) 220 N. Y. 313, 115 N. E. 914.

The conflict arises only on application of the rule, and on issues involving a definition of "interstate commerce." In determining the question of what is interstate business, the court in the principal case applied the rule that locality of the sale and of the property at the time of sale governs. *Butler v. U. S. Rubber Co.* (C. C. A. 8, 1907) 156 F. 1, 17. "Importation into one state from another is the indispensable element, the final test of interstate commerce, and every contract or negotiation which contemplates and causes such importation, whether of goods, persons, or information, is a transaction of interstate commerce." Sanborn, J., in *Butler v. U. S. Rubber Co.*, above. In the principal case, importation of goods into Arkansas was made the sole factor in determining the question of interstate commerce. The locality test has been followed in the Supreme Court of the United States and also in a large number of states. *International Textbook Co. v. Pigg* (1909) 217 U. S. 91; *Roselle v. Commonwealth* (1912) 223 U. S. 716; *Fidelity Co. v. Commonwealth* (1913) 231 U. S. 394; *United States v. Tucker* (D. C. S. D. Ohio 1911) 188 F. 741; *Holzman v. Canton* (1913) 180 Ill. App. 641. Where the goods were on hand in the state at the time of sale, it was intrastate business, the contract not contemplating and causing an importation. *Kebrer v. Stewart* (1905) 197 U. S. 60; *Armour v. Locy* (1906) 200 U. S. 226; *In re Pringle* (1909) 67 Kan. 364, 72 Pac. 864; *Chrystal v. Macon* (1899) 108 Ga. 27, 33 S. E. 810; *Canton v. McDaniel* (1905) 188 Mo.

207, 86 S. W. 1092. So where delivery is made in a state different from the *locus contractus* the transaction is an interstate one. *Williams v. American Chewing Gum Co.* (C. C. A. 5, 1911) 192 F. 917; *Julius Co. v. Perillorux* (D. C. E. D. La. 1902) 127 F. 1011; *Catlin v. Schuppert* (1907) 130 Wis. 642, 160 N. W. 818; *Milan Co. v. Garten* (1894) 93 Tenn. 590, 27 S. W. 971; *Gunn v. White* (1892) 57 Ark. 24, 203 S. W. 591. The last case involved substantially the same facts as did the principal case, although the matter of agency was not raised in the holding of majority opinion, and hence it would seem that the holding of the lower court in the principal case was a reversal of the former rule in Arkansas.

The rule has been extended in several cases, resulting in applications which on first sight appear to raise a different test, but which in reality are outgrowths of the general rule announced above. In *Miller v. Goodman* (1897) 91 Tex. 41, 40 S. W. 718, it was held that it was immaterial whether the sale took place before or after shipment into the state. If the sale took place after the shipment, such importation manifestly could not be caused and contemplated by the contract. In the later Texas decisions, however, the courts of that state seem to follow the general rule. *Moroney Hardware Co. v. Goodwin* (Tex. 1909) 120 S. W. 1088. Where a contract was made in Kentucky, to saw and deliver lumber in Alabama, the lumber being in Alabama at the time, it was held to constitute interstate commerce. *Parsons Lumber Co. v. Stuart* (C. C. A. 5, 1910) 182 F. 779. Clearly there was no importation of goods from one state into another. As has already been noted, however, subsequent Supreme Court rulings show the marked tendency not to extend the rule so as to include cases where delivery and performance take place in the same state.

It is generally held that where a foreign corporation solicits business and takes orders through salesmen in the state, delivery being made from without the state, it is still interstate business. *Herman v. Nasiacas* (1909) 46 Colo. 208; *Lehigh Cement Co. v. McLeon* (1910) 245 Ill. 326; *Smith v. Dickinson* (Wash. 1914) 142 Pac. 1133; *Kansas City v. McDonald* (Mo. 1915) 175 S. W. 917. But where title remains in the corporation until payment after delivery from without the state, a few courts hold such transactions are intrastate. *Medical Co. v. Brace* (1915) 186 Mich. 452, 152 N. W. 1026; *Elliott v. Parlin* (1905) 71 Kan. 665. In the same year, Minnesota has both applied and failed to apply the general rule as to salesmen of foreign corporations taking orders in the state. *Rock Island Co. v. Peterson* (1904) 93 Minn. 356, holding it is interstate; *Sherman Co. v. Aughenbrough* (1904) 93 Minn. 201, holding it is intrastate. In only one case is the contract in question considered part of interstate commerce because business of the corporation was nation-wide in scope. *United States v. American Tobacco Co.* (1911) 221 U. S. 106. In the latter case, however, the holding might just as well have been based on the importation test.

It is interesting to note that since 1910 practically all the decisions have been handed down by either the United States Supreme Court or some

inferior federal court, and that of the few state holdings, only one, *Medical Co. v. Brace*, above, has attempted to set up a test totally different from the one adopted in the principal case. Since the Michigan case was decided sixteen years ago, it is fairly safe to assume, in the light of the Supreme Court decisions, that the holding in the instant case represents the settled law today, founded as it is on a long line of cases, beginning with *Gibbons v. Ogden*, above, in 1824. D. Y. C., '32.

JURY TRIAL—RIGHT TO WAIVE IN CRIMINAL PROCEEDING OVER OBJECTION OF THE STATE.—On an indictment for murder the accused waived a jury and moved that the cause be submitted and heard without one. The state's attorney objected and moved that the cause be tried by a jury. *Held*, that the accused may waive his constitutional right to a jury trial but it is not absolute, and the right to require a jury trial is available to the prosecution as well as to the accused although it is not expressly conferred upon the state by the constitution. *People v. Scornavache* (Ill. 1932) 179 N. E. 909.

In the absence of specific statute one charged with the commission of a felony cannot waive the right to trial by jury. *Jackson v. Commonwealth* (1927) 221 Ky. 823, 299 S. W. 983; *Michaelson v. Beemer* (1904) 72 Neb. 761, 101 N. W. 1007. Among the reasons given by the courts denying the opportunity of waiver are, public policy, *State v. Smith* (1924) 184 Wis. 664, 200 N. W. 638; *State v. Thompson* (1900) 104 La. 167, 28 So. 882; statutory prohibition, *State v. Carman* (1884) 63 Iowa 130, 18 N. W. 691; *State v. Talken* (1927) 316 Mo. 596, 292 S. W. 32; imperative constitutional provision, *Coates v. United States* (C. C. A. 4, 1923) 290 F. 134; *McPerkin v. Commonwealth* (1930) 236 Ky. 528, 33 S. W. (2d) 622; absence of jurisdiction of court to try without a jury, *Wartner v. State* (1885) 102 Ind. 51, 1 N. E. 65; *Commonwealth v. Rowe* (1926) 257 Mass. 172, 153 N. E. 536. In some instances waiver is allowed in all criminal trials even in the absence of specific statute when the consent of the court and the prosecution is obtained. *People v. Fisher* (1930) 340 Ill. 250; *Patton v. United States* (1930) 281 U. S. 276. Statutes conferring jurisdiction upon the court to try without a jury have been declared constitutional and proceedings under them held valid. *Belt. v. United States* (1894) 4 App. D. C. 25; *State v. Worden* (1878) 46 Conn. 349; *Hallinger v. United States* (1892) 146 U. S. 314.

During the early centuries of its history the jury was apparently not of great popular favor, 2 Pollock and Maitland, HISTORY OF ENGLISH LAW (2nd ed. 1921) 631, one of the probable reasons being that jurors were not infrequently punished, even as late as the seventeenth century, for returning a verdict of acquittal. *Bushell's Case* (1670) Vaugh. 135, 124 Eng. Repr. 1006. By the time of Blackstone, however, the jury had become the "glory of the English law," 3 BL. COMM. *379, and in America it was a "privilege," a "fundamental right" and an instrument of individual protection against "oppression and tyranny." 2 Story, CONSTITUTION (5th ed. 1891) sec. 1779, 1780. This revolutionary conception has persisted in modern expressions