inal Judiciary Act of 1789. Sec. 29 deals, among other things, with the venue on removals and shows that the removal must be into the District court "in the district where such suit is pending." This requirement is emphasized by sec. 53 which provides that where the district is composed of two or more distinct divisions the removal shall be into the District Court "in the division in which the county is situated from which the removal is made." In the case of General Invest. Co. v. Lake Shore & M. S. R. Co., 43 Sup. Ct. Rep. 106, it was reasoned that sec. 51 did not withdraw any suit from those of which the District court was given original jurisdiction by sec. 24 but that sec. 51 merely regulates the place of suit, its purpose being to save defendants from inconveniences to which they might be subjected if they could be compelled to answer in any district, or wherever found. It affords defendants a privilege which they may, and not infrequently do, waive. Mr. Justice Van Devanter, in referring to the removal section, sec. 28, says that: "it applies to the jurisdiction conferred on the District courts in general, for it speaks of them in the plural. That it does not refer to the venue provision in sec. 51 is apparent because that provision does not except or take away any suit from the general jurisdiction conferred by sec. 24 and because there could be no purpose in extending to removals the personal privilege accorded to defendants by sec. 51, since removals are sought only by defendants, and lastly since the venue on removal is specially dealt with by sec. 29. From the above reasoning it would seem that the plaintiff's assent is not essential, in any sense, to the exercise of the right of removal, nor can he urge that the removal be into the District Court for some other district, for it is his act in bringing the suit in the State court within the particular district which fixes the venue on removal. It was on application of the above views to the case of Lee v. Chesapeake & Ohio Railway Company which caused the Supreme Court of the United States to hold that said case was duly removed into the District Court for the proper district, and that the motion to remand was rightly denied—briefly, that the District Court had jurisdiction to proceed to a determination of the cause.

MEANING OF "PROMISSORY NOTE" IN REVENUE ACT OF 1918—DOES STAMP TAX ON SUCH NOTES ALSO APPLY TO PURCHASE AGREEMENT CONTRACTS?—IT DOES NOT—IT APPLIES ONLY TO SUCH COMMERCIAL PAPER AS SHOWS UPON ITS FACE THE FORM OF A PROMISSORY NOTE.

In order to properly understand the case of Haverty Furniture Co. v. The United States (United States District Court, Northern District of Georgia, also found in Corporation Trust Company 1923 War Tax Service, paragraph 4028), it will be necessary to briefly summarize the facts as stated by Samuel H. Sibley, J., in delivering the opinion of the court.

This was an action by the plaintiff, the Haverty Furniture Company, to

recover of the United States the amount paid by it under the Revenue Act of 1918, Schedule A6, which lays a stamp tax of two cents per one hundred dollars on "drafts, checks * * * promissory notes, except bank notes issued for circulation, and for each renewal of the same." The instruments involved in this case were claimed to have been "promissory notes." They began with the words, "This agreement witnesseth that I * * * have this day purchased from the Haverty Furniture Company," and concluded with the following: "this writing is the whole contract and no verbal statements or representations are binding." This so-called agreement sets out at length the description of the property ment, also providing for the retention of title, and giving an option to the seller to rescind the contract if the purchaser should fail to pay as contracted bought, the various conditions of sale, including the terms and the time of payand to appropriate the payments which had already been made to the rent and depreciation in the value of the furniture. It was shown that some of these contracts, in stating the price to be paid, have the words, "for which I agree to pay (so much)" while others simply "for (so much)."

It seemed to have been the contention of the United States that the contract in this case was in substance a "promissory note" and that the plaintiff had used this form simply in an effort to evade the Stamp Tax on such instruments. However, the court in disposing of this contention said: "Where one form of instrument is taxed and another not, one may, if he can so satisfactorily transact his affairs, avoid the form that is taxed and use that which is not." This was held in United States v. Isham, 17 Wall. 496. * * * As again ruled in Isham's case, the taxability of such an instrument is to be determined by its face alone. Outside facts are of no importance.

The natural deduction from the above statement by the court is this, namely, that the court will look to the form of the instrument only and if it is not in form a promissory note, then it will go no farther and will not go behind the transaction to ascertain from the intention of the parties the latent effect of the instrument.

In construing this statute relating to the Stamp Tax it was said *per curiam*: "What did Congress mean by the term 'promissory notes'? It did not use such broad expressions as 'all written evidences of debt,' or 'all written obligations to pay money.' By 'promissory notes,' used in connection with drafts and checks, was intended commercial paper which generally throughout the United States would be so called and recognized." The court continued: "But there must be an instrument at least whose plain purport is an unconditional and absolute promise to pay a fixed sum to a named or certain person at a fixed time or at sight or on demanding, according to commercial usage." This statement further substantiates our conclusion that the instrument must be plainly and outwardly a promissory note, and that any falling short of such form will exempt the instrument from taxation under the provision of the statute imposing the Stamp Tax. The Court also states in substance that instruments such as memorandums of sale, although they evidence an obligation to pay money in the future or in installments, were not intended to fall within the provision of the statute rendering them taxable. And this is no more than reasonable. Were it not thus, commerce of the nation would be hindered and forced to bear a burden which, if

carried to any length, would ultimately lead to a stifling of trade and a superficial inflation of market prices of commodities.

Judgment was accordingly rendered for the plaintiff.

UNPAID TAXES—RECOVERY OF SIMPLE INTEREST ON SAME IN ABSENCE OF STATUTE—STATE RULE: EXCEPT AS TO CONTRACT, NO INTEREST WITHOUT STATUTE—FEDERAL RULE: INTEREST IN ALL CASES WHERE EQUITABLY DUE UNLESS FORBIDDEN BY STATUTE—MISSOURI RULE: SPECIAL STATUTE PROVIDES FOR INTEREST.

Can simple interest, in the absence of any statute, be recovered on a tax not paid when due? "No," say the State courts most unanimously. "Yes," says the United States District Court for the Southern District of Texas, March 8, 1923, in handing down a decision, reversing itself, in the rehearing in the case of United States v. Proctor, 286 Fed. 272.

This case arose on a suit by the United States against the defendant Proctor to recover the amount of an income tax due since 1914 and unpaid. The defendant bona fide failed to make a return of the part of his income on which the tax in question arose, believing the same to be untaxable. The United States had failed to comply with a section of the act providing as penalty interest for overdue taxes but the Government contended it was entitled to simple interest, as upon any debt, even if the penalty was not recoverable.

In allowing simple interest on the rehearing, the Court relied almost solely on the case of Billings v. United States, 232 U. S. 261, a suit to recover a tax with interest on a foreign built pleasure boat. In referring to the difference in the Federal and State rules, the Court there says: "The conflict between the systems is pronounced and fundamental. In the one the State rule, except as to contract, no interest without statute; in the United States rule, interest in all cases where equitably due unless forbidden by statute. In one, no suit for taxes as a debt without express statutory authority; in the other, the right to sue for taxes as for a debt in every case where not prohibited by statute."

Practically all the State decisions, texts, encyclopedias, etc., hold to the "State rule." The court, in Sargent v. Tuttle, 67 Conn. 162, 32 L. R. A. 822, says: "At best a tax is a burden, a necessary one it is true, but none the less a burden imposed on the taxpayer without his consent and it seems reasonable to hold that any increase in that burden by way of penalty or otherwise should be expressly made by the power which imposes it, and that, until the legislative will to increase the burden by the addition of interest, has been clearly expressed, interest should not be allowed." Among the hundreds of authorities in accord with this statement it is only necessary to mention a few such as 37 Cyc. 1165, 42 L. R. A. (N. S.) 266; State v. Mutual Life Assoc., 175 Ind. 59; Rochester v. Bloss, 185 N. Y. 42.