

# Tombstone Epitaph.

VOL. IX.

TOMBSTONE, ARIZONA, NOVEMBER 12, 1887.

NO. 15.

## AN ABLE OPINION.

### AN UNCONSTITUTIONAL LAW.

The Quarantine Law Declared to be of no Effect  
—The Commissioner of Agriculture  
The Proper Person to En-  
force Quarantine.

TOMBSTONE, Oct. 31, 1887.

C. M. Bruce Esq., Chairman Live Stock  
Sanitary Commission of Arizona:

Dear Sir:—The delay in completing the  
"opinion" requested, since my return from  
Sonora, has been owing to the time re-  
quired for a complete investigation of the  
statutes and authorities bearing upon the  
subject. The question is one of great  
importance, and I have felt it my duty to  
give it an exhaustive research. It will no  
doubt occur to the commissioners that in  
view of the very plain provisions of the  
United States Statutes, it was a piece of  
great carelessness on the part of the last  
legislature, that it did not place the Com-  
mission in a position to formulate a plan  
of action and receive the acceptance of  
the Department of Agriculture. I have  
no doubt, however, that the Governor  
may yet signify his willingness to co-  
operate with the Department upon a plan  
of operations which may be submitted by  
your Commission. Such plan once  
adopted by the Commissioner of Agricul-  
ture, would at once have the force of the  
law in this Territory, and the Territorial  
courts are clothed with jurisdiction ex-  
pressly to enforce its provisions.

Your Commission would necessarily  
be the constituted authority to see the  
regulations enforced.

The course which I suggest is free  
from all question, and would at once  
place your Commission in harmony with  
the Department of the Government spe-  
cially constituted to prevent the spread of  
infectious, contagious and communicable  
diseases among cattle.

I should gladly have come to the con-  
clusion that the acts of the Commissioners  
in respect to the question submitted,  
could be sustained under the law, but I  
am compelled to yield in the full light of  
the statutes and the authorities upon the  
subject.

The presentation of this subject to a  
Commission of laymen has required a  
more elaborate statement than would  
have been necessary to a court, but I am  
satisfied that the fulness of the opinion  
will not detract from its value in the es-  
timation of the Commission.

Yours very truly,

WILLIAM HERRING.

BABACOMORI RANCH, Nov. 3, 1887.

Col. William Herring, Tombstone A. T.

Dear Sir:—I thank you for your es-  
teemed favor of the 31st ultimo, and also  
for the opinion of Messrs. Herring &  
Herring (submitted by you by request, as  
assistant counsel in the case of the Ter-  
ritory of Arizona vs. A. Bauer for viola-  
tion of the Governor's Proclamation of  
Quarantine against Mexico) of the con-  
stitutionality of sections 16 and 17 of the  
Act of the Territorial Legislature, giving  
the Live Stock Sanitary Commission, the  
authority to impose certain restrictions on  
the importation of cattle into the Ter-  
ritory, from the States and Territories  
and from foreign countries whenever con-  
ditions are believed to exist, that make  
such cattle liable to convey disease. The  
opinion sets forth in clear language,  
with much learning and ability, the lim-  
ited powers of the Territory, and the  
nature of the supreme powers, which  
have been vested in Congress by the  
Constitution over international and  
inter-State commerce, and shows the  
extent to which both have been interfered  
with by the two sections named, in an  
endeavor on the part of the legislature  
to give the Commission an authority  
which being subordinate to Congress and  
to the United States Constitution, it had  
clearly, in the light of this opinion, no  
legal right to bestow. It is of vast im-  
portance to the cattle industry of Arizona,  
however, that there should be some  
authority under which proper restrictions  
may be exercised, to protect the Terri-  
tory from importations of diseased cattle  
from the States and Territories and from  
foreign countries, and I am glad to see  
by the opinion, since it seems that the  
powers granted the Commission by the  
legislature over such importation are  
null and void, that there exist Federal  
statutes establishing methods, in the  
person of the Commissioner of Agricul-  
ture, by which the proper protection may  
yet be secured in all such cases by the  
Territorial officials. I shall urge this  
Commission, as its chairman, therefore,  
after submitting this opinion to it, to seek  
the co-operation of the Federal authori-  
ties, after the manner which you have  
suggested, just as soon as it is practicable  
for it to do so, and I hope it may meet  
with success. Governor Zulick has  
always shown himself eager to advance  
the welfare of the cattle interest, as well  
as every other interest of the Territory,  
by every honorable means, and I feel  
sure that he will gladly aid the Commis-  
sion in acquiring such co operation of the  
National Government in this matter as  
may be necessary. He declared the  
quarantine against Mexico at the espec-  
ial request of the Commission, as re-  
quired by law, and I sincerely regret to  
know that the Territorial statutes, under

which his proclamation was issued, and  
under which the Commission was author-  
ized to act, cannot be sustained by the  
Courts. With repeated thanks to you  
for your letter, and to your law firm for  
the opinion, I remain, my dear sir,  
Your obedient servant,  
C. M. BRUCE,  
Chairman of the Live Stock Sanitary  
Commission of Arizona.

C. M. Bruce, Esq., Chairman Live Stock  
Sanitary Commission of Arizona.

Dear Sir: In reply to your request  
that we should examine certain provisions  
of the "Stock Laws," passed by the  
Territorial Legislature of 1887, and fur-  
nish the above named commission with  
our opinions in relation to the validity of  
the same, we beg to submit the follow-  
ing

### OPINION.

It is provided by section 16, Chapter  
III, Title LIX, Revised Statutes of Ari-  
zona, that

"Whenever the Governor of the Ter-  
ritory shall have reason to believe that  
any dangerous, contagious or infectious  
disease has become epidemic in certain  
localities in other States, territories or  
countries, or that there are conditions  
which render such domestic animals  
from such infected districts liable to con-  
vey such disease, he shall by proclama-  
tion, prohibit the importation of live  
stock of the kind diseased into the Ter-  
ritory, unless accompanied by a certifi-  
cate of health, given by a duly authorized  
veterinary inspector, and all such animals  
arriving in the Territory shall be exam-  
ined without delay, by the territorial  
veterinary surgeon, and if deemed neces-  
sary placed in close quarantine until all  
danger of infection is passed, when they  
shall be released by order of the veteri-  
nary surgeon or the stock commis-  
sioner."

It is further provided by Section 17,  
same chapter and title, that

"The commission shall have the  
power to call upon any sheriff, under  
sheriff, deputy sheriff, or constable to  
execute their orders, and said officers  
shall obey the order of said commis-  
sioners, and the officers performing such  
duties, shall receive compensation there-  
for, as is prescribed by law for like ser-  
vices, to be paid as other expenses of said  
commission as hereinbefore provided; and  
any officer may arrest on view, and take  
before any magistrate of the county any  
person found violating the provisions of  
this Act, and such officer shall immedi-  
ately notify the County Attorney of such  
arrest, and he shall prosecute the person  
so offending according to law."

The Organic Act under which the  
Territory of Arizona is constituted, pro-  
vides that

"The Legislative power of the Terri-  
tory shall extend to all rightful subjects  
of legislation consistent with the consti-  
tution of the United States and the pro-  
visions of the Act."

Under Section VIII, Art. I, of the Con-  
stitution of the United States, it is pro-  
vided that

"Congress shall have power to regu-  
late commerce with foreign nations and  
among the several States and with  
the Indian tribes."

The framers of the two sections of the  
Territorial Statute above quoted un-  
doubtedly believed that the powers  
sought to be expressed in relation to pro-  
hibiting "the importation of any live stock  
of the kind diseased into the Territory,"  
were within what are termed "the police  
powers" of the Territorial government.

While it must be admitted that the  
power to pass quarantine laws, laws for  
the protection of the public health and  
for the protection of persons and prop-  
erty, are necessary police powers of the  
State or Territory, yet there is another  
and highly important principle which  
arises in the consideration of the exercise  
of such powers, and that is, that such  
powers must be exercised in subordina-  
tion to the power vested in the general  
government.

The force of the proposition is best  
illustrated when an act passed by a State  
legislature is sought to be maintained as  
police regulation in cases where such  
branch of police power has been surren-  
dered to the government as a part of the  
power to regulate commerce, in which  
case its exercise by a State is incompat-  
ible with the authority vested in the  
Government.

As was said in Brown v. the State  
of Maryland, 12 Wheat., 419, by Chief  
Justice Marshall: "When this happens,  
that which is not supreme must yield to  
that which is supreme."

The application of the principle to  
State governments in restricting their  
legislative powers from an interference  
in the control of matters resting solely  
under the authority of the General Gov-  
ernment, and an authority formerly  
deemed inherent in, and individual to,  
the States, but now formally surrendered  
to the Government, shows the utter weak-  
ness and inability of a Territory in its  
claim to exercise any powers, other than  
those expressly derived under its organ-  
ic act or by subsequent Congressional  
legislation.

It may be regarded as the settled law  
of the land that the grant of power by the  
States to Government to regulate foreign  
commerce and commerce between the  
States has divested the States of all power  
to legislate upon such subjects "where  
the matters which are the subject of the  
power are in their nature national, or  
admit of one uniform system or plan of  
regulation."

In the case of Cooley v. Board of War-  
dens, 12 Howard, 299, which was present-

ed to the United States Supreme Court  
four years after the opinion of the Judges  
in the celebrated New York and Massa-  
chusetts Passenger cases (1849), a particu-  
lar section of the State law of Penn-  
sylvania regulating pilots and pilotage  
was drawn in question, and it was the  
opinion of a majority of the Court that  
"the mere grant to Congress of the power  
to regulate commerce did not de-  
prive the State of power to regulate  
pilots, and that although Congress has  
legislated upon this subject, its legislation  
manifests an intention, with a simple ex-  
ception, not to regulate this subject but to  
leave its regulation to the several  
States." It is expressly declared by the  
court that this opinion must be under-  
stood as confined to the precise question  
which the court was called upon to decide,  
and that it does not extend to the ques-  
tion, what other subjects under the com-  
mercial power are within the exclusive  
control of Congress or may be regulated  
by the States in the absence of all Con-  
gressional legislation. Mr. Justice Dan-  
iels, who writes a concurring opinion in  
this case, places his opinion expressly  
upon the ground that the power exercis-  
ed by the State, "although in some degree  
connected with commercial intercourse,  
does not come essentially and regularly  
within that power of commercial regula-  
tion vested by the Constitution in Con-  
gress, and which by the Constitution  
must, when exercised by Congress, be  
enforced with perfect equality and with-  
out any kind of discrimination, local or  
otherwise in its application."

In Crandall v. the State of Nevada, 6  
Wall, 35, the doctrine was reiterated,  
"That the power granted to Congress to  
regulate commerce with foreign nations  
and among the States includes subjects  
of legislation which are necessarily of a  
national character, and therefore exclu-  
sively within the control of Congress."

The doctrine enunciated in Cooley v.  
Board of Wardens was also re-affirmed  
in Gilman v. Philadelphia  
3 Wall, 173.

Investigation into this branch of the  
subject has thus far been made to ascer-  
tain what might be regarded as a rightful  
subject of legislation in regulating com-  
merce on the part of a State, as it must  
logically follow that that which is no  
longer a rightful subject of legislation by  
a State cannot be a rightful subject of  
legislation by a Territory.

The question therefore arises, to what  
extent do the sections of the act under  
consideration, under the guise of the  
"police regulations," operate as the exer-  
cise of a power which is vested exclu-  
sively in the Government, not only as to  
the States where the subject is of national  
character, or in relation to which a uni-  
form plan or system has already been  
provided, but especially as to the Terri-  
tories.

Section 16, Chapter 3, Stock Laws, ex-  
pressly authorizes the Governor of the  
Territory, under certain conditions, to  
prohibit the importation of live stock into  
the Territory from other States, Terri-  
tories, or countries. The reference is  
direct and specific to property which is  
the subject of trade, traffic and com-  
merce.

Power is reposed in the Commissioners  
under the succeeding section to cause the  
summary arrest of any person found  
violating the regulation imposed, and pro-  
vision is made for the immediate prose-  
cution of the offender.

As has been already stated these pro-  
visions were designed for the purpose  
of protecting the property of the citizens  
of the Territory from the disastrous results  
which so frequently flow from the spread  
of disease among live stock, and if the  
legislature had confined the law-making  
power to mere internal police regulations  
to prevent the spread of disease, the ques-  
tion would present no difficulties. Ari-  
zona is bordered on three sides by States  
and Territories of the Union and on the  
fourth side by Mexico, an independent  
nation. The statute authorizes a direct  
prohibition against a foreign nation, of  
the property of its citizens, and such pro-  
hibition is vested in the discretion of the  
Governor of the Territory. The statute  
is broad, comprehensive and sweeping.  
Under its provisions, if the Governor  
believes that any dangerous, contagious,  
or infectious disease has become epidem-  
ic in certain localities in Mexico, or  
that there are conditions existing in any  
localities which render such domestic  
animals liable to convey such disease, he  
may cause the importation of any cattle  
from the entire Republic of Mexico to be  
interrupted. It is idle to say that the  
statute is only aimed at diseased cattle,  
or those liable to convey disease. The  
machinery of the Territorial government  
once evoked under the Governor's pro-  
clamation amounts practically to an em-  
bargo upon all importation of cattle for  
the time being. "Legislative enactments,  
when the language is unambiguous, can-  
not be changed by construction nor can  
the language be divested of its plain and  
obvious meaning."

State Tonnage Tax Cases, 11 Wall,  
217.

The recent quarantine, by the Commis-  
sioner appointed under this act, of cattle  
imported into Cochise County from  
Sonora, where it was conceded that no

dangerous, contagious, or infectious dis-  
ease, among domestic animals had be-  
come epidemic, was a power claimed to  
have been exercised under the govern-  
or's recent proclamation in relation to the  
importation of cattle from Mexico, and  
apply illustrates the practical working  
under the sections of the act in question.

In the discussion of the question pre-  
sented it is not necessary, however, to en-  
quire whether the cattle are imported  
from an infected district or are liable to  
convey disease. The real question at  
issue is, whether the power exists to any  
extent, which permits the Territory to  
make any regulations upon the subject of  
importation.

In addressing ourselves to the discus-  
sion of this point, our first inquiry must  
necessarily be whether the act of impor-  
tation as referred to in the Arizona  
statute is within the meaning of the word  
commerce as contained in the Constitu-  
tion.

Upon this subject the Supreme Court  
of the United States has spoken in un-  
mistakable terms. In the language of  
Mr. Justice Clifford in the "State Ton-  
nage Cases:

"The word commerce as used in the  
Constitution comprehends and extends  
to every species of commercial inter-  
course between the United States and  
foreign nations, and to all commerce in  
the several States, except such as is  
completely internal and which does not  
extend to or affect other States."

12 Wall, 214.  
Gibbons v. Ogden, 9 Wheaton, 202.  
Sinnott v. Davenport, 22 Howard, 238.  
Foster v. Davenport, 22 Howard, 245.  
Perry v. Torrence, 8 Ohio, 524.

It may be claimed that the statute in  
question is only intended to operate upon  
property which has come within the Terri-  
torial jurisdiction, and that domestic  
animals once brought within the Terri-  
torial limits are made subject to the in-  
ternal police regulations in the same  
manner as any property already in the  
Territory. The question was set at rest  
in the case of Gibbons v. Ogden. The  
defendant had, under an act of the New  
York Legislature, secured the exclusive  
privilege of navigating the waters of the  
State of New York with boats moved by  
fire or steam for a term of years, and  
Gibbons the plaintiff in error, had two  
steamboats which were actually employed  
in running between New York and  
Elizabethtown in violation of the exclu-  
sive privilege conferred upon complain-  
ant Ogden.

Gibbons held a license under an Act  
of Congress allowing him to carry on the  
coasting trade, and insisted on his right  
in virtue of such license to navigate the  
waters between Elizabethtown and the  
City of New York, the said acts of the  
legislature of the State of New York to  
the contrary notwithstanding.

Gibbons was enjoined by the courts of  
New York from using his boats in nav-  
igating the waters of New York, and this  
decision was sustained by the highest  
tribunal in the State, on the ground that  
the State Legislature had the power to  
control the navigation of the waters  
within the State. The case was taken  
to the Supreme Court of the United  
States by a writ of error.

Chief Justice Marshall, in rendering  
the opinion of the Court, disposes of the  
question in relation to the power of Con-  
gress to regulate commerce, as follows:

"In regulating commerce with foreign  
nations, the power of Congress does not  
stop at the jurisdictional lines of the  
several States. It would be a very use-  
less power if it could not pass those lines.  
The commerce of the United States with  
foreign nations is that of the whole  
United States."

"If Congress has the power to regulate  
it, that power must be exercised where-  
ever the subject exists."  
"What is commerce among the States  
and how is it to be conducted?"  
"Can a trading expedition between two  
adjoining States commence and termi-  
nate outside of each?"

"Commerce among the States must, of  
necessity, be commerce with the States."  
"The power of Congress then, whatever  
it may be, must be exercised within the  
Territorial jurisdiction of the several  
States."

"It is the power to regulate, that is,  
to prescribe the rule by which commerce  
is to be governed. This power, like all  
others vested in Congress, is complete in  
itself, and acknowledges no limitations  
other than are prescribed in the Con-  
stitution."

Gibbons v. Ogden, 9 Wheaton, 183.

It is proper to remark here that Con-  
gress passed acts as early as 1796 and  
1799 conferring power upon and direct-  
ing the officers of the General Govern-  
ment to conform to and assist in the  
execution of the quarantine and health  
laws of a State.

It is conceded that such laws may be  
considered as "flowing from the acknowl-  
edged power of a State to provide for the  
health of its citizens." But in all the  
provisions made by Congress upon this  
subject there is unmistakable evidence  
that Congress regards its rights as re-  
served to control the State laws so far  
as it may be necessary to control them  
in regulating commerce.

Mr. Justice Johnson in his opinion  
concurring with Chief Justice Marshall  
in Gibbons v. Ogden, in referring to the  
distinct substantive powers of Congress  
and the States in relation to the same  
subject, uses the language:

"The same bale of goods, the same  
cask of provisions, or the same ship that  
may be the subject of commercial regula-  
tion may also be the vehicle of disease,  
and the health laws that require them to  
be stopped and ventilated are no more  
intended as regulations on commerce,  
than the laws which permit their impor-  
tation are intended to inoculate the  
community with disease."

But the learned Justice does not dis-  
miss the subject, without holding that:  
"An absolute control is given over  
State legislation upon the subject, as far  
as that legislation may be exercised, so  
as to affect the commerce of the  
country."

9 Wheaton, 236.

We have pursued this subject of the  
constitutional limitation upon the power  
of the States to regulate commerce with  
foreign nations or among themselves, at  
the risk of stating propositions which are  
axiomatic to every constitutional lawyer,  
in order that the gentlemen composing  
the Live Stock Sanitary Commission of  
Arizona may clearly apprehend the dis-  
tinctions which it is our duty to point out  
between the powers which a State may  
exercise in relation to its internal regula-  
tions and those which are necessarily de-  
nied to a Territory, owing to the pecu-  
liarity of its organization.

While a State has certain inherent  
powers, a Territory as a mere geographi-  
cal division of the body politic which  
constitutes the nation, has no inherent  
powers whatever. The area of the Terri-  
tory may be increased or diminished at  
the sovereign will of Congress. Appro-  
priations for carrying on the Territorial  
governments may be general or special  
in their character, and while certain gen-  
eral laws are equally applicable to the  
Territory as to the country at large, yet  
that which is recognized and ratified as a  
law in one Territory may be eschewed  
and annulled in another, and so long as  
the constitutional guaranty of a republi-  
can form of government is maintained  
and respected, Territories may be said to  
be at the sport or caprice of the dominant  
political majority of Congress.

If, therefore, Congress has adopted ex-  
press provisions of law in relation to the  
matters of quarantine against diseased  
domestic animals or in relation to any  
general police regulation to prevent the  
spread of disease and protect property,  
any action by the Territory which inter-  
feres with the same or provides another or  
different regulation upon the same, is  
null and void.

To go a step further. If Congress has  
spoken upon the subject of quarantine  
regulations in respect to the importation  
of domestic animals, by Acts applicable  
generally to the United States, then the  
Territorial Legislature becomes not only  
divested of power to act in the premises,  
but it is absolutely without any power  
over the subject matter thus legislated  
upon.

"It is not doubted that Congress has  
the power to go beyond the general regu-  
lations of commerce which it is accus-  
tomed to establish and to descend to the  
most minute directions if it shall be  
deemed advisable; and that to whatever  
extent ground shall be covered by those  
directions, the exercise of the State  
power is excluded."

Cooley's Constitutional Limitations, 724.  
Mobile v. Kimball, 102 U. S., 691.

We are thus brought directly to the in-  
quiry, what legislation has been adopted  
by Congress on the subject upon which  
the Legislative Assembly of the Terri-  
tory of Arizona has assumed to exercise  
its power by enacting the sections of the  
statute under consideration?

In 1866, Congress adopted the follow-  
ing provision:

"The importation of neat cattle and  
the hides of neat cattle from any foreign  
country into the United States, is pro-  
hibited: Provided, that the operation of  
this section shall be suspended as to any  
foreign country or countries, or any part  
of such country or countries, whenever  
the Secretary of the Treasury shall  
officially determine and give public  
notice thereof, that such importation will  
not tend to the introduction or spread of  
contagious or infectious diseases among  
the cattle of the United States; and the  
Secretary of the Treasury is hereby  
authorized and empowered, and it shall  
be his duty to make all necessary orders  
and regulations to carry this order into  
effect, or to suspend the same as therein  
provided, and to send copies thereof to  
the proper officers or agents in the  
United States, and to such officers or  
agents of the United States in foreign  
countries as he shall judge necessary."

Sec. 2493, R. S. U. S.

The President of the United States  
whenever in his judgment the importa-  
tion of neat cattle and the hides of neat  
cattle may be made without danger of  
the introduction or spread of contagious  
or infectious diseases among the cattle  
of the United States, may by proclamation  
declare the provisions of the preceding  
section to be inoperative, and the same  
shall be afterward inoperative and of no  
effect from and after thirty days from  
the date of said proclamation.

Sec. 2494, R. S. U. S.

Sec. 2495 provides for the conviction  
and punishment of any person convicted  
of a violation of any of the provisions of  
the two preceding sections.

In March, 1883, an Act of Congress  
entitled "An Act to Reduce Internal  
Revenue Taxation," and for other pur-  
poses, was passed, by which it was pro-  
vided, that on and after the first day of  
July, 1883, Sections 2494 and 2495 in  
said Act should be substituted in place  
of the three sections above quoted.

The change re-enacted the former pro-  
visions and repealed the power of the

President to declare any of the pro-  
visions of the Act inoperative.

United States Stat. at Large 1881,  
1883, Chap. 121, Secs. 2494 and 2495.

In the same year, under "Miscella-  
neous objects under the Treasury De-  
partment," Congress appropriated fifty  
thousand dollars to "enable the Sec-  
retary of the Treasury to prevent the  
spread of disease among neat cattle, to  
establish regulations for the safe con-  
veyance of cattle from the interior to the  
seaboard, and to establish quarantine  
stations and provide necessary shelter  
for neat cattle imported, at such ports  
as he may deem necessary."

U. S. Stat. at Large 1881-1883, Chap.  
143 (Sanitary Regulations.)

The rules and regulations of the De-  
partment of the United States Govern-  
ment entrusted with the duty of execut-  
ing the statutes above cited, have the  
force and effect of the laws themselves.  
The fact remains that the Secretary of  
the Treasury has prescribed minute and  
detailed regulations for the purpose of  
quarantining neat cattle when imported  
into the United States.

In the general regulations under the  
Customs and Navigation laws of the  
United States issued by the Treasury  
Department in 1884, the Secretary of the  
Treasury declares (Act 389) that:

Although Sections 2494 and 2495 of  
the Revised Statutes as incorporated in  
Act of March 3d, 1883, are not materially  
changed, they have the force of new laws  
and the Secretary of the Treasury by  
virtue thereof hereby gives public notice  
that he has officially determined that the  
importation of neat cattle, subject to the  
conditions hereinafter prescribed, will not  
lead to the introduction or spread of in-  
fectious or contagious diseases among  
the cattle of the United States. The  
operations of the sections of law prohib-  
iting the importation of neat cattle and  
the hides of neat cattle into the United  
States are therefore suspended, but upon  
the condition that importers and owners  
of neat cattle shall submit to and abide  
by such orders and regulations as the  
Secretary of the Treasury has prescribed  
or may from time to time prescribe, to  
carry the above laws into effect.

On the third of March, 1885, Congress  
passed an Act (Chap. 338) entitled "An  
Act making an appropriation for the  
Agricultural Department for the fiscal  
year ending June 30, 1886, and for other  
purposes." By this Act it is provided  
in relation to "Quarantine Stations for  
Neat Cattle," that this Department shall  
have power:

"To establish and maintain quaran-  
tine stations and to provide proper  
shelter for, and care of neat cattle, at  
such ports as may be deemed neces-  
sary."

The appropriation to render this  
provision operative was not applicable until  
the first day of July, 1885, since which  
time the Department of Agriculture has  
had jurisdiction in all matters concern-  
ing the quarantine of imported cattle.

This latter Act does not affect the  
power reposed by Congress in the Sec-  
retary of the Treasury to make rules and  
regulations concerning the importation  
of neat cattle from foreign countries, it  
simply transfers to the Department of  
Agriculture the duty of providing "proper  
shelter for, and care of," the cattle im-  
ported, which, under the regulations of  
the Treasury Department are subject to  
quarantine.

It will thus appear that the power of  
Congress in relation to the importation  
of cattle into the United States has been  
fully exercised. This excludes the right  
of the Territorial Legislature to exercise  
any power over the subject.

We are in full accord with the doctrine  
laid down by Mr. Cooley in his work  
upon "Constitutional Limitations," that  
in declaring a law unconstitutional, the  
task is a delicate one, and only to be  
entered upon with reluctance and hesita-  
tion, but we have endeavored strictly to  
follow his injunction "to proceed with  
due caution and circumspection, and  
under a proper sense as well of our own  
responsibility as of the respect due to the  
action and judgment of the law  
makers."

The grave duties imposed upon the  
Commission, by virtue of the provisions  
in question under the Governor's Procla-  
mation, are calculated to lead to conse-  
quences of a momentous character if  
performed without authority of law.

This has been an additional incentive  
to us, to examine the questions submitted  
with great care.

We pronounce the sections of the act  
in question repugnant to the Constitu-  
tion of the United States, and therefore  
void in conferring any authority upon the  
Live Stock Sanitary Commission of Ari-  
zona, in relation to the importation of  
cattle into the United States.

Having thus disposed of the question  
in relation to the importation of cattle  
from foreign countries, we shall proceed  
to the discussion of the remaining ques-  
tion, as to the validity of the sections  
under consideration, in relation to the  
transportation of cattle from the States  
and Territories into this Territory.

Chapter 60, U. S. Statutes of 1884,  
Sec. 1 provides that the Commis-  
sioner of Agriculture shall organize in  
his department a bureau of animal in-  
dustry whose duty it shall be to investi-  
gate and report upon the condition of  
the domestic animals of the United  
States, the causes of contagious, infec-  
tious and communicable diseases among  
them, and the means for the prevention  
and cure of the same.

Sec. 2 provides for the appointment  
of agents whose duty it shall be under  
the instructions of the Commissioner of  
Agriculture, to examine and report upon  
the best method of treating, transporting  
and caring for animals, and the means  
to be adopted for the suppression and  
extirpation of pleuro-pneumonia, and to  
provide against the spread of other dan-  
gerous, contagious, infectious and com-  
municable diseases.

Sec. 3 provides that it shall be the  
duty of the Commissioner of Agriculture  
to prepare such rules and regulations as  
he may deem necessary for the speedy  
and effectual suppression and extirpa-  
tion of said diseases, and to certify such  
rules and regulations to the executive  
authority of each State and Territory,  
and invite said authorities to co-operate  
in the execution and enforcement of this  
Act.

Whenever the plans and methods of

the Commissioner of Agriculture shall  
be accepted by any State or Territory in  
which pleuro-pneumonia or other con-  
tagious, infectious or communicable  
disease is declared to exist, or such State  
or Territory shall have adopted plans or  
methods for the suppression and extir-  
pation of said diseases, and such plans  
and methods shall be accepted by the  
Commissioner of Agriculture, and when-  
ever the Governor of a State or other  
properly constituted authorities signify  
their readiness to co-operate for the ex-  
tinction of any contagious, infectious or  
communicable disease in conformity with  
the provisions of this Act, the Commis-  
sioner of Agriculture is hereby author-  
ized to expend this Act, as may be nec-  
essary in such investigations and in such  
disinfection and quarantine measures as  
may be necessary to prevent the spread  
of the disease from one State or Terri-  
tory into another.

Sec. 4 relates to the transportation  
of live stock from all parts of the United  
States to ports from which live stock are  
exported, and clothes the Secretary of  
the Treasury with full power to regulate  
the same.

Sec. 5 provides for the prevention of  
the exportation of diseased cattle from  
any part of the United States, and con-  
fers the necessary power upon the Sec-  
retary of the Treasury in relation thereto.

Sec. 6 prohibits railroad companies  
and owners or masters of vessels from  
receiving for transportation, or trans-  
porting from one State or Territory to  
another, any live stock affected with con-  
tagious, infectious or communicable  
diseases, nor shall any