

These remarks require no addition. They exhibit the conditions which existed in the State, the cause and purpose of the statutes which are assailed, and vindicate them from the accusation of being an arbitrary and unreasonable discrimination against the sheep industry.

Judgment affirmed.

MR. JUSTICE BREWER and MR. JUSTICE PECKHAM dissent.

BOWN *v.* WALLING.

ERROR TO THE SUPREME COURT OF THE STATE OF IDAHO.

No. 81. Argued January 10, 1907.—Decided February 4, 1907.

Decided on authority of *Bacon v. Walker*, ante, p. 311.
9 Idaho, 740, affirmed.

THE facts are stated in the opinion.

Mr. S. M. Stockslager, with whom *Mr. W. E. Borah*, *Mr. Frank T. Wyman* and *Mr. John C. Rice* were on the brief, for plaintiff in error.¹

There was no appearance or brief filed for defendant in error.

MR. JUSTICE McKENNA delivered the opinion of the court.

This action was brought in the Probate Court in and for Elmore County, State of Idaho, for the sum of two hundred dollars' damages sustained by defendant in error by the violation by plaintiffs in error of sections 1210, 1211 of the Revised Statutes of Idaho. The amended complaint alleged that the offense was committed by plaintiffs in error by wrongfully and negligently permitting and allowing their sheep to graze

¹ For abstract of argument see ante, p. 312.

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within two miles of the dwelling house of defendant in error and upon the Government lands around his premises. The defense, set up by demurrer, was, as in *Bacon v. Walker*, ante, p. 311, that those sections were void under the due process and equality clauses of the Fourteenth Amendment of the Constitution of the United States. The trial court rendered judgment for the defendant in error, which was affirmed by the District Court for Elmore County and by the Supreme Court of the State. 9 Idaho, 740.

The case was argued with *Bacon v. Walker et al.*, and on the authority of that case the judgment is

Affirmed.

MR. JUSTICE BREWER and MR. JUSTICE PECKHAM dissent.

CITY OF CHICAGO v. MILLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 286. Submitted December 21, 1906.—Decided February 4, 1907.

Although the certificate of the Circuit Court may not state exactly how the jurisdictional question certified arose, this court can ascertain it from the record together with the opinion of the court below made a part thereof.

The jurisdiction of the Circuit Court must be determined with reference to the attitude of the case at the date of the filing of the bill.

When a citizen of one State has a cause of action against a citizen of another State which he may lawfully prosecute in a Federal court, his motive in preferring a Federal tribunal, in the absence of fraud and collusion, is immaterial.

If it does not appear that there was any collusion within the meaning of the ninety-fourth rule in equity for the purpose of conferring jurisdiction, not otherwise existing, on the Circuit Court of the United States, that court does not lose its jurisdiction of a suit brought by a non-resident stockholder, after request to and refusal by the corporation, to enjoin