tion of the State upon discriminatory action [2] and upon delegation of legislative power to an executive department.[3]

Reversed.

HUNT, GOVERNOR OF ARIZONA, ET AL. *v.* UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

No. 44. Argued October 23, 1928.—Decided November 19, 1928.

1. When the numbers of wild deer on a national forest and game preserve have increased to such excess that by over-browsing upon and killing young trees, bushes and forage plants they cause great injury to the land, it is within the power of the United States to cause their numbers to be reduced by killing and their carcasses to be shipped outside the limits of such reserves. P. 100.
2. This power springs from the federal ownership of the lands affected, and is independent of the game laws of the State in which they are situate. *Id.*
3. A direction for such killing and shipment, given by the Secretary of Agriculture, was within the authority conferred upon him by Act of Congress. *Id.*
4. Carcasses and parts of the deer so killed, should be marked before being taken from the reserves, to show that the deer were killed there under authority of the Secretary of Agriculture. P. 101.

19 F. (2d) 634, modified and affirmed.

APPEAL from a decree of permanent injunction granted by the District Court after a final hearing by three judges in a suit brought by the United States. The decree en-

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[2] See *State of Louisiana* v. *Mahner*, 43 La. Ann. 496; *Town of Crowley* v. *West*, 52 La. Ann. 526, 533; *Town of Mandeville* v. *Band*, 111 La. 806; *State ex rel. Galle* v. *New Orleans*, 113 La. 371; *New Orleans* v. *Palmisano*, 146 La. 518; *State ex rel. Dickson* v. *Harrison*, 161 La. 218.

[3] See *State* v. *Billot*, 154 La. 402; *State* v. *Thrift Oil & Gas Co.*, 162 La. 165.

joined the Governor, the Game Warden, a county attorney and a sheriff, of the State of Arizona, from arresting or prosecuting officers and agents of the United States under the state game laws, for or on account of the killing, possession and transportation of deer under an order made by the Secretary of Agriculture to protect a National Forest and Game Preserve from the destructive effects of over-browsing.

Mr. Earl Anderson, Assistant Attorney General of Arizona, with whom *Mr. John W. Murphy,* Attorney General, was on the brief, for appellants.

The bill is defective under the rule announced in *New Jersey* v. *Sargent,* 269 U. S. 328. See *Georgia* v. *Stanton,* 6 Wall. 50; *Marge* v. *Parsons,* 114 U. S. 325; *Muskrat* v. *United States,* 219 U. S. 346; *Texas* v. *Interstate Commerce Comm'n,* 258 U. S. 158; *Massachusetts* v. *Mellon,* 262 U. S. 447.

A court of equity will not grant an injunction to restrain state officers from prosecuting under a state statute, because there is an adequate remedy at law by presenting a defense in such prosecutions.

This Court has no jurisdiction to entertain the action because it is, in fact, a suit against the State. *Fitts* v. *McGee,* 172 U. S. 516; *Arbuckle* v. *Blackburn,* 113 Fed. 616; *Bisbee* v. *Insurance Agency,* 14 Ariz. 313; *Davis* v. *American Society,* 75 N. Y. 363.

The title to all wild deer on the Grand Canyon National Game Preserve is vested in the State of Arizona. *Ex parte Crosby,* 38 Nev. 389; *Ward* v. *Race Horse,* 163 U. S. 504; *New York* v. *Becker,* 241 U. S. 562; *Geer* v. *Connecticut,* 161 U. S. 519; *La Coste* v. *Department,* 263 U. S. 535; *Ex parte Maier,* 103 Cal. 476; *Harper* v. *Galloway,* 58 Fla. 255; *Lawton* v. *Steele,* 152 U. S. 133; *United States* v. *McCullough,* 221 Fed. 288; *United States* v. *Samples,* 259 Fed. 479; *United States* v. *Shauver,* 214

Fed. 154; *McCready* v. *Virginia,* 94 U. S. 391; 31 Stat. c. 553, p. 187; *Rupart* v. *United States,* 181 Fed. 87.

If the Government may kill deer on the game preserve, contrary to state game laws, the State would have a right to prosecute persons for possessing the deer and removing them from Arizona contrary to those laws. A State may prosecute a person for the possession of the carcasses of wild game contrary to the provisions of its laws, although such game was lawfully taken under the laws of another State. *Ex parte Maier,* 103 Cal. 476; *New York* v. *Hesterberg,* 211 U. S. 31; *State* v. *Shattuck,* 96 Minn. 45.

Even though the United States owns the lands upon which the deer range, it may not take or kill the deer in violation of the Arizona game laws. *State* v. *Gallop,* 126 N. C. 979; *Percy* v. *Astle,* 145 Fed. 53; *Smith* v. *Odell,* 185 N. Y. S. 647.

The Federal Government has no better rights in the game preserve than an ordinary citizen has on his private lands. *Light* v. *United States,* 220 U. S. 523; *United States* v. *Tulley,* 140 Fed. 899; *United States* v. *Pennsylvania,* 48 Fed. 669; *State* v. *Tulley,* 31 Mont. 365; *Gill* v. *State,* 141 Tenn. 379.

We concede that under certain conditions or circumstances a property owner may kill game at a time different from that prescribed by the state game laws. But he must show that, at the time of killing, the particular animals killed were injuring or about to injure his property.

Congress has set aside this preserve as a feeding ground and park for the particular deer which the Government now seeks to slaughter. Act of June 29, 1906, 34 Stat. 607.

Solicitor General Mitchell, with whom *Messrs. R. W. Williams,* Solicitor, Department of Agriculture, and *Robert P. Reeder* were on the brief, for the United States.

That Congress may legislate for the protection of the public domain, even though that legislation may involve an exercise of what is known as the police power, is established. *Camfield* v. *United States,* 167 U. S. 518; *Utah Light & Power Co.* v. *United States,* 243 U. S. 389; *McKelvey* v. *United States,* 260 U. S. 353; *United States* v. *Alford,* 274 U. S. 264.

The contention of the appellants that, because of the game laws of the State of Arizona restricting the killing of deer, the United States must remain inactive and allow the forests on its public domain to be seriously damaged, if not destroyed, is without any support in the decisions of this Court.

State courts have held that a private proprietor may kill wild game when necessary to protect his property, and that state game laws, if construed to prevent it, would be invalid. *Aldrich* v. *Wright,* 53 N. H. 398; *State* v. *Ward,* 170 Iowa 185; *State* v. *Burk,* 114 Wash. 370. *Cf. Barrett* v. *State,* 220 N. Y. 423.

Mr. Justice Sutherland delivered the opinion of the Court.

The Kaibab National Forest and the Grand Canyon National Game Preserve, covering practically the same area, are situated north of the Colorado River in Arizona. They were created by proclamations of the President under authority of Congress. During the last few years deer on these reserves have increased in such large numbers that the forage is insufficient for their subsistence. The result has been that these deer have greatly injured the lands in the reserves by over-browsing upon and killing valuable young trees, shrubs, bushes and forage plants. Thousands of deer have died because of insufficient forage. Attempts were made under the direction of the Secretary of Agriculture to remove some of the deer from

the reserves to other lands, but these entirely failed, as did other means. The district forester, acting under the direction of the Secretary of Agriculture, proceeded to kill large numbers of the deer and ship the carcasses outside the limits of the reserves. That this was necessary to protect the lands of the United States within the reserves from serious injury is made clear by the evidence. The direction given by the Secretary of Agriculture was within the authority conferred upon him by act of Congress. And the power of the United States to thus protect its lands and property does not admit of doubt, *Camfield* v. *United States,* 167 U. S. 518, 525–526; *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 404; *McKelvey* v. *United States,* 260 U. S. 353, 359; *United States* v. *Alford,* 274 U. S. 264, the game laws or any other statute of the state to the contrary notwithstanding.

Appellants interfered with these acts of the United States officials and threatened to arrest and prosecute any person or persons attempting to kill or possess or transport such deer, under the claim that such officials were proceeding in violation of the game laws of the State of Arizona, the observance of which would have so restricted the number of deer to be killed as to render futile the attempt to protect the reserves. Three persons who had killed deer under authority of United States officials were actually arrested. Thereupon suit was brought to enjoin appellants from continuing or threatening such interference, arrest or prosecution. The court below, after a trial, found for the United States and entered a decree in accordance with the prayer of the bill, with the limitation, however, that the decree should not be construed to permit the licensing of hunters to kill deer within said reserves in violation of the state game laws. 19 F. (2d) 634.

While the Solicitor General does not concede the authority of the court to make this limitation, he is content

to let the decree stand. We, therefore, pass the matter without consideration and accept the opinion and decree below, with the modification that all carcasses of deer and parts thereof shipped outside the boundaries of the reserves shall be plainly marked by tags or otherwise, in such manner as the Secretary of Agricuture may by regulations prescribe, to show that the deer were killed under his authority within the limits of the reserves.

Thus modified the decree is affirmed.

EX PARTE THE PUBLIC NATIONAL BANK OF NEW YORK.

ON PETITION FOR A WRIT OF MANDAMUS.

No. 16 Original. Argued October 29, 1928.—Decided November 19, 1928.

1. Section 266 of the Judicial Code, which provides that no injunction restraining the enforcement of any statute of a State by restraining the action "of any officer of such State" in the enforcement of such statute shall be granted upon the ground of unconstitutionality of such statute, except upon a hearing and determination by a court composed of three judges, does not apply where the action sought to be enjoined is that of a municipal officer in performance of local, as distinguished from state, functions. P. 103.
2. A case has not the force of a precedent on a question which, though existent in the record, was not raised or considered by the court. P. 105.

Rule discharged.

Upon Return to a rule issued by this Court to three judges who had convened as a district court under Jud. Code, § 266, in an injunction suit, but had dissolved of their own motion in the belief that the suit was not within that section. The rule called upon them to show cause why a writ of mandamus should not issue requiring them to reconvene and proceed with the suit.