

was that the domestic relations of husband and wife and parent and child were matters reserved to the States, there is no difficulty in construing the instrument accordingly and not much in dealing with the statutes. 'Suits against consuls and vice-consuls' must be taken to refer to ordinary civil proceedings and not to include what formerly would have belonged to the ecclesiastical Courts.

It is true that there may be objections of policy to one of our States intermeddling with the domestic relations of an official and subject of a foreign power that conceivably might regard jurisdiction as determined by nationality and not by domicil. But on the other hand if, as seems likely, the wife was an American citizen, probably she remained one notwithstanding her marriage. Act of September 22, 1922, c. 411, § 3; 42 Stat. 1021, 1022. Her position certainly is not less to be considered than her husband's, and at all events these considerations are not for us.

In the absence of any prohibition in the Constitution or laws of the United States it is for the State to decide how far it will go.

Judgment affirmed.

CLARKE, COLLECTOR OF INTERNAL REVENUE,
v. HABERLE CRYSTAL SPRINGS BREWING
COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 68. Argued January 9, 1930.—Decided January 27, 1930.

1. Under § 234 (a) (7) of the Revenue Act of 1918, which provides that in computing the net income of corporations there shall be allowed as a deduction "a reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence," a brewing company is not entitled to a deduction for the fiscal year ending May 31, 1919,

on account of "exhaustion" or "obsolescence" of its good will, although it became certain prior to that period that the good will of the company would be destroyed by January 16, 1920, because of prohibition legislation. P. 386.

2. When a business is extinguished as noxious under the Constitution, the Government incurs no liability for compensation to the owners. P. 386.
3. It will not be presumed that Congress intended to provide partial compensation to the owners of a business extinguished as noxious under the Constitution, by an allowance to them, under § 234 (a) (7) of the Revenue Act of 1918, of deductions on account of the "exhaustion" or "obsolescence" of the good will of the business. P. 386.

30 F. (2d) 219, reversed.

CERTIORARI, 279 U. S. 832, to review a judgment of the Circuit Court of Appeals, which reversed a judgment of the District Court, 20 F. (2d) 540, dismissing the complaint, in a suit to recover money exacted and paid as income taxes.

Assistant Attorney General Youngquist, with whom Solicitor General Hughes, Messrs. Sewall Key and Norman D. Keller, Special Assistants to the Attorney General, Clarence M. Charest, General Counsel, Bureau of Internal Revenue, and T. H. Lewis, Jr., were on the brief, for petitioner.

Mr. Arthur A. Ballantine, with whom Mr. George E. Cleary was on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

A writ of certiorari was granted in this case on May 13, 1929, on account of a conflict between the judgment below, 30 F. (2d) 219, (reversing 20 F. (2d) 540,) and *Red Wing Malting Co. v. Willcuts*, 15 F. (2d) 626, (certiorari denied, 273 U. S. 763,) the latter case having been followed by *Landsberger v. McLaughlin*, 26 F. (2d) 77, and *Renziehausen v. Commissioner of Internal Revenue*, 31 F. (2d) 675, now pending here.

This is a suit brought by the respondent to recover income and profits taxes paid under protest, on the ground, as stated by its counsel, that it was not allowed to deduct from gross income "a reasonable allowance for the exhaustion, including obsolescence, of its good will . . . it having become certain prior to that period that the useful life of the good will would be terminated by January 16, 1920 because of prohibition legislation." The question turns on the Revenue Act of 1918, (Act of February 24, 1919), c. 18, § 234 (a) (7); 40 Stat. 1057, 1078, allowing as deductions, *inter alia*, "A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence." The good will was that of a brewery and is found to have been destroyed by prohibition legislation. The deduction claimed is for the fiscal year ending May 31, 1919, it having been apparent early in 1918 that prohibition was imminent, and the officers having taken steps to prepare for the total or partial liquidation of the Company. The amount of the deduction to be made is agreed upon if any deduction is to be allowed.

We shall not follow counsel into the succession of regulations or the variations in the law before the date of the Act that we have to construe. In our opinion the words now used cannot be extended to cover the loss in this case and it is needless to speculate as to what other cases it might include. It seems to us plain without help from *Mugler v. Kansas*, 123 U. S. 623, that when a business is extinguished as noxious under the Constitution the owners cannot demand compensation from the Government, or a partial compensation in the form of an abatement of taxes otherwise due. It seems to us no less plain that Congress cannot be taken to have intended such a partial compensation to be provided for by the words 'exhaustion' or 'obsolescence.' Neither word is apt to describe

termination by law as an evil of a business otherwise flourishing, and neither becomes more applicable because the death is lingering rather than instantaneous. It is incredible that Congress by an Act approved on February 24, 1919, should have meant to enable parties to cut down their taxes on such grounds because of an amendment to the Constitution that it had submitted to the legislatures of the States in 1917 and that had been ratified by the legislatures of a sufficient number of States the month before the present Act was passed.

Judgment reversed.

MR. JUSTICE McREYNOLDS and MR. JUSTICE STONE concur in the result.

RENZIEHAUSEN v. LUCAS, COMMISSIONER OF
INTERNAL REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.

No. 114. Argued January 17, 1930.—Decided January 27, 1930.

1. Under § 214 (a) (8) of the Revenue Act of 1918 and § 214 (a) (8) of the Revenue Act of 1921, which provide that in computing net income there shall be allowed as deductions to individuals "a reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence," the owner of a distillery and wholesale liquor business is not entitled to a deduction for the "exhaustion" or "obsolescence" of good will—treated as embracing trade-marks, trade brands and trade names—during the years 1918, 1919, 1920, and 1922, because of federal legislation which proscribed the business. Following *Clarke v. Haberle Crystal Springs Brewing Co.*, ante, p. 384. P. 389.
2. Whether, under § 214 (a) (4) of the Revenue Act of 1918, which provides that in computing net income there shall be allowed as deductions "losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or