whose proprietors were developing the new scheme. To pay for these the charter of the Temple Iron Company was purchased and its capital stock increased. The company issued a large amount of stock and bonds, and the contracting railroad companies agreed among themselves and with the Guaranty Trustee Company of New York, as trustee, to guarantee a 6 per cent dividend upon the Temple Iron Company stock and the payment of principal and interest of the bonds. This ended the building of an independent line, and the transportation of coal from the collieries is distributed among the carriers interested.

It is argued that these contracts, if given in evidence, will tend to show a pooling of freights, in violation of the 5th section of the commerce act. While this testimony may not establish such an arrangement as is suggested, it has, in our opinion, a legitimate bearing upon the question. There is a division of freight among several railroads, where, by agreement or otherwise, the companies have a common interest in the source from which it is obtained. Furthermore, we think the testimony competent as bearing upon the manner in which transportation rates are fixed, in view of determining the question of reasonableness of rates, into which the Commission has a right to inquire. To unreasonably hamper the Commission by narrowing its field of inquiry beyond the requirements of the due protection of rights of citizens will be to seriously impair its usefulness and prevent a realization of the salutary purposes for which it was established by Congress.

An appeal is also prosecuted from the refusal of the circuit court to order the witnesses Eben B. Thomas and William H. Truesdale to answer certain questions respecting the prices and sale of coal. Upon the principles already discussed we think these questions had legitimate bearing upon the matters into which the Commission was making inquiry.

We are of the opinion that the circuit court erred in holding the contracts for the purchase of coal by the companies or directly by the railroad, where a percentage of the price was agreed to be paid for the coal, to be irrelevant, and in refusing to order their production as evidence by the witnesses who are parties to the appeal, and likewise erred as to the Temple Iron Company contracts, and in refusing to require the witnesses aforesaid to answer the questions stated in the petition, and *the order appealed from is reversed*, and the cause is remanded to the Circuit Court for further proceedings in accordance with this opinion.

Mr. Justice Brewer dissents.

(193 U. S. 614)

JOHN M. SLOAN *et al., Appts.*,
v.
UNITED STATES *et al.*

Direct appeal from circuit court—when construction of treaty not drawn in question.

The construction of an Indian treaty is not drawn in question in a suit in a Federal circuit court, so as to justify a direct appeal to the Supreme Court under the act of March 3, 1891 (26 Stat. at L. 827, chap. 517, U. S. Comp. Stat. 1901, p. 549), § 5, where the contentions with reference to the proper construction of such treaty are only made by way of founding an argument as to the proper construction of the act of August 7, 1882 (22 Stat. at L. 342, chap. 434), providing for allotments in an Indian reservation, which is the issue directly in question.

[Nos. 453–475.]

Argued March 16, 17, 1904. Decided April 4, 1904.

APPEALS from the Circuit Court of the United States for the District of Nebraska to review a judgment dismissing bills in actions brought for the purpose of maintaining rights to allotments in the reservation of the Omaha Indians. *Dismissed* for want of jurisdiction.

See same case below, 118 Fed. 283.

The facts are stated in the opinion.

Messrs. **Thomas L. Sloan, H. C. Brome,** *Charles E. Clapp*, and *Anderson & Keefe* for appellants.

Mr. **John L. Webster** for appellees.

Mr. Justice **Peckham** delivered the opinion of the court:

These are appeals by the complainants below directly to this court from the circuit court of the United States for the district of Nebraska. They were taken under the provisions of the 5th section of the act of March 3, 1891 (26 Stat. at L. 827, chap. 517, U. S. Comp. Stat. 1901, p. 549), on the ground that the construction of a treaty or treaties of the United States with the Omaha Indians is drawn in question. The actions were brought some time in April, 1901, under the authority of the acts of Congress approved respectively August 15, 1894, and February 6, 1901, permitting persons in whole or in part of Indian blood, and claiming to be entitled to an allotment of land under an act of Congress, to commence an action in the proper circuit court of the United States for the purpose of maintaining their right to such allotment. 28 Stat. at L. 286, 305, chap. 290; amended, 31 Stat. at L. 760, chap. 217.

Under the authority of these statutes the

complainants have brought these actions to obtain allotments in the reservation of the Omaha Indians. Their right thereto is based upon the act of Congress, chapter 434, approved August 7, 1882 (22 Stat. at L. 342, chap. 434), the 5th section of which is set forth in the margin.†

*616 *By the act approved March 3, 1893, chapter 209 (27 Stat. at L. 612, 630), the act was amended so as to enlarge somewhat the right to allotments with the consent of the Indians, but the material portion of the act is the original § 5, above quoted.

All of the complainants are of mixed blood, and in their various bills of complaint they insist that they are entitled to allotments under and by virtue of the correct construction of the above act of 1882 and its amendments, and they set up the facts upon which they base their contentions, which included references to the treaties above mentioned. After having stated them, the complainants aver that the defendant, the United States, had theretofore contended that the 4th article of the treaty of March 6, 1865, between the United States and the Indians, confined the right of allotment to the members of the tribe, including their half-breed and mixed blood relatives who were residing with them at the time of the ratification of the treaty, and that neither the complainants nor their ancestors were residing on the reservation at the time, and were therefore not entitled to the land.

Complainants further stated that the United States had also contended that some of the complainants or their ancestors had received allotments of land under and by virtue of the treaty of July 15, 1830, article 10 thereof, and that, by the acceptance of such allotments, the complainants were not entitled under the statute of 1882 to a second allotment or further participation in the tribal rights of the Omaha tribe of Indians. To these matters of defense the complainants then set up certain facts which they insisted were answers thereto, and that the complainants were therefore entitled under the statute to the allotments claimed by them.

The United States in its answer did make reference to certain *treaties it had made with the Omaha Indians. The reference was for the purpose of founding an argument for the construction of the act of 1882, in the manner contended for by it. It urged that the complainants were not entitled to allotments because, among other reasons, they did not reside with the Omaha Indians on their reservation at the time of the ratification of the treaty of 1865; and also that those who had received, or whose ancestors had received, allotments under the treaty of 1830, were not entitled to any further allotment under the act of 1882. The treaties referred to in the answer are the treaty of 1830 (7 Stat. at L. 328, 330, art. 10), and the treaty of 1865 (14 Stat. at L. 667, art. 4). The 10th article of the treaty of 1830 is set forth in the margin.‡ *617

†Act of 1882.

Sec. 5. That with the consent of said Indians, as aforesaid, the Secretary of the Interior be, and he is hereby, authorized, either through the agent of said tribe or such other person as he may designate, to allot the lands lying east of the right of way granted to the Sioux City & Nebraska Railroad Company, under the agreement of April nineteenth, eighteen hundred and eighty, approved by the Acting Secretary of the Interior, July twenty-seventh, eighteen hundred and eighty, in severalty to the Indians of said tribe, in quantity as follows: To each head of a family, one-quarter of a section; to each single person over eighteen years of age, one-eighth of a section; to each orphan child under eighteen years of age, one-eighth of a section; and to each other person under eighteen years of age, one-sixteenth of a section; which allotments shall be deemed and held to be in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March sixth, eighteen hundred and sixty-five, and for which, for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided: *Provided*, That any Indian to whom a tract of land has been assigned and certificate issued, or who was entitled to receive the same, under the provisions of said fourth article, and who has made valuable improvements thereon, and any Indian who, being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract, shall have a preference right to select the tract upon which his improvements are situated, for allotment under the provisions of this section: *Provided further*, That all allotments made under the provisions of this section shall be selected by the Indians, heads of families selecting for their minor children, and the agent shall select for each orphan child; after which the certificates issued by the Commissioner of Indian Affairs as aforesaid shall be deemed and held to be null and void.

‡Treaty of 1830.

Article 10. The Omahas, Ioways, and Ottoes, for themselves, and in behalf of the Yanckton and Santie bands of Sioux, having earnestly requested that they might be permitted to make some provisions for their half-breeds, and particularly that they might bestow upon them the tract of country within the following limits, to wit: Beginning at the mouth of the Little Ne-mohaw river, and running up the main channel of said river to a point which will be ten miles from its mouth in a direct line; from thence in a direct line to strike the Grand Ne-mohaw ten miles above its mouth, in a direct line (the distance between the two Ne-mohaws being about twenty miles); thence down said

So much of article 4 of the treaty of 1865 as is material upon the question now under consideration is also set forth in the margin.§

*618 *It will be observed that this article of the treaty of 1865 provides for assigning the lands therein mentioned, in severalty, to the members of the tribe, including their half or mixed blood relatives, *now residing with them*. That is, at the date of the treaty.

There is another treaty, that of 1854 [10 Stat. at L. 1043], between the United States and the Omaha Indians, which it is not necessary to refer to at length. In it the Indians cede to the United States certain lands therein described, and they reserve certain other lands to themselves. The 6th article permits the President to assign at his discretion the whole or such portion of the lands reserved to the Indians as he may think proper, to be surveyed into lots, and to be assigned by the President to such Indians as were willing to avail themselves of the privilege and would locate on the same as a permanent home, subject to the conditions named in the article. The treaty is not material upon the question of the right to appeal directly to this court, hereinafter discussed.

Stipulations in regard to the facts in each case were entered into between the parties and testimony also was given upon the various issues between them. The trial court held that the act of 1882 took the place of all previous acts and treaties providing for allotments of land to the Omaha tribe of Indians, including the half or mixed breeds; that the fundamental question was who, under the terms of the act of 1882, were entitled to allotments; that the rights of the *619 complainants must be adjudged according to the intent of the act of 1882, and that if a person had a right, within the terms of that act, to an allotment, it could not be denied him simply because he could not be brought within the terms of the treaty of 1865; that the act of 1882 did not restrict the persons to whom allotments were to be made under its provisions to those who resided on the reservation in 1865, but it included all who were in fact members of the tribe, whether of mixed blood or not, residing on the reservation in the tribal relation when the act of 1882 was passed; but such right was not possessed by the mixed bloods who were not living on the reservation as members of the tribe in 1882; that those of mixed blood who had received allotments under the treaty of 1830 were not entitled to any allotments under the provisions of the act of 1882. 118 Fed. 283, 95 Fed. 193.

The bills were dismissed on the merits in twenty-three out of the twenty-five actions brought in the court below, while the complainants in two of them recovered judgment for an allotment to each. They were Thomas L. Sloan and Garry P. Myers. Sloan was held entitled to an allotment in his own right as an Indian of mixed blood, living on the Omaha reservation at the time of the passage of the act of 1882, although his grandmother, a daughter of a full blood Indian mother, had received an allotment of 320 acres in the Nemaha reservation in 1857, under the treaty of 1830. Myers was held entitled as an Indian of mixed blood and a resident of the Omaha reservation in 1882, the contested question being as to the amount of his allotment,—whether it should be 80 or 160 acres,—and he was held entitled to the latter quantity.

The appellee has made a motion to dismiss these appeals on the ground that the court has no jurisdiction to hear them, as they do not fall within any of the provisions of § 5 of the act of March 3, 1891, and because the respective complainants neither assert nor claim any right to an allotment under or by virtue of any treaty, and the

river to its mouth; thence up, and with the meanders of the Missouri river to the point of beginning, it is agreed that the half-breeds of said tribes and bands may be suffered to occupy said tract of land; holding it in the same manner and by the same title that other Indian titles are held; but the President of the United States may hereafter assign to any of the said half-breeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section, of six hundred and forty acres to each individual. And this provision shall extend to the cession made by the Sioux in the preceding article.

§ Treaty of 1865.

Article 4. The Omaha Indians, being desirous of promoting settled habits of industry and enterprise amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, including their half or mixed blood relatives now residing with them, to be cultivated and improved for their own individual use and benefit, it is hereby agreed and stipulated that the remaining portion of their present reservation shall be set apart for said purposes; and that out of the same there shall be assigned to each head of a family not exceeding one hundred and sixty acres, and to each male person, eighteen years of age and upwards, without family, not exceeding forty acres of land—to include in every case, as far as practicable, a reasonable proportion of timber; six hundred and forty acres of said lands, embracing and surrounding the present agency improvements, shall also be set apart and appropriated to the occupancy and use of the agency for said Indians.

*620 validity or construction of a treaty is not drawn in question in these cases. We think the motion should be granted.

The actions do not, in our judgment, involve the construction of any treaty within the meaning of § 5 of the statute of 1891. The complainants in their several bills have based their claims to an allotment upon the act of 1882 and upon the proper construction to be given to its language, which construction, they aver, would recognize their rights to an allotment under the treaties referred to. The United States, in defending against the claims made by the complainants, also relies entirely upon the proper construction of the act of 1882. The construction of a treaty is used only as an argument upon the issue directly in question, *viz.*, the construction of the statute. The alleged right to an allotment being based upon the act of 1882, and the defense being also based upon the proper construction of that act, we cannot but regard the case as one simply resting on such act. The construction of these various treaties was not substantially, or in any other than a merely incidental or remote manner, drawn in question, and therefore a direct appeal to this court cannot be sustained.

We think the appeals come within the principle of *Muse* v. *Arlington Hotel Co.* 168 U. S. 430, 42 L. ed. 531, 18 Sup. Ct. Rep. 109; *Western U. Teleg. Co.* v. *Ann Arbor R. Co.* 178 U. S. 239, 44 L. ed. 1052, 20 Sup. Ct. Rep. 867, and *Lampasas* v. *Bell*, 180 U. S. 276, 45 L. ed. 527, 21 Sup. Ct. Rep. 368, which hold that where the suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit under the Constitution or laws, and that jurisdiction cannot, under such circumstances, be maintained of a direct appeal to this court from the circuit court.

In *Muse* v. *Arlington Hotel Co.*, it was held that some right, title, privilege, or immunity dependent upon a treaty must be so set up or claimed as to require the circuit court to pass upon the question of the validity or construction of the treaty in disposing of the right asserted. In order to come *621 within the act of 1891 the treaty must be directly involved, and upon its construction the rights of the parties must rest. Within these cases it cannot be said that the construction of any treaty is drawn in question herein when the rights of neither party are necessarily dependent upon such construction, but are dependent upon that which may be given the statute of 1882, and when the construction of that statute is independent of that which may be given any of the treaties mentioned, although weight may be given to the treaties in determining the question of the construction of the statute. See also *Starin* v. *New York*, 115 U. S. 248, 29 L. ed. 388, 6 Sup. Ct. Rep. 28.

The motion is granted and the appeals dismissed.

(193 U. S. 621)

WILLIAM H. POPE, *Plff. in Err.*,

v.

JOHN M. C. WILLIAMS and John W. Harper, Officers of Registration, Constituting the Board of Registry for Election District No. 7 of Montgomery County, Maryland.

Constitutional law—validity of registration law requiring declaration of intent from persons moving into state.

The Federal Constitution is not violated by the provision of Md. Laws 1902, chap. 133, requiring persons coming into the state to reside to make a declaration of their intention of becoming citizens and residents of the state before they can claim the right to be registered as voters, as applied to persons who have moved into the state since the act went into effect.

[No. 503.]

Argued March 8, 9, 1904. Decided April 4, 1904.

IN ERROR to the Court of Appeals of the State of Maryland to review a judgment affirming a judgment of the Circuit Court for Montgomery County in that state, which had affirmed the proceedings of a board of registry, refusing to register as a legal voter a person moving into the state who had not made a declaration of his intention to become a citizen and resident of the state. *Affirmed.*

See same case below, (Md.) 56 Atl. 543.

Statement by Mr. Justice **Peckham**:

This is a writ of error to the court of appeals of the state of Maryland, to review its judgment affirming that of the circuit court for Montgomery county, which affirmed the proceedings of the board of registry of election district No. 7 of that county, *refusing* *622 to register petitioner as a legal voter on the ground of his noncompliance with the Maryland law making it necessary for a person coming into the state, with the intention of residing therein, to register his name with the clerk of the circuit court of the proper county, and thereby to indicate the intent of such person to become a citizen and resident of the state.

The act in question was passed March 29, 1902, as chapter 133 of the laws of that