

foreclosure of a mortgage was unavailing to defeat a plan for reorganization of a debtor corporation where the trial court found that the claims of junior lienholders had no value.⁵⁷⁰

Right to Sue the Government.—A right to sue the government on a contract is a privilege, not a property right protected by the Constitution.⁵⁷¹ The right to sue for recovery of taxes paid may be conditioned upon an appeal to the Commissioner and his refusal to refund.⁵⁷² There was no denial of due process when Congress took away the right to sue for recovery of taxes, where the claim for recovery was without substantial equity, having arisen from the mistake of administrative officials in allowing the statute of limitations to run before collecting a tax.⁵⁷³ The denial to taxpayers of the right to sue for refund of processing and floor stock taxes collected under a law subsequently held unconstitutional, and the substitution of a new administrative procedure for the recovery of such sums, was held valid.⁵⁷⁴ Congress may cut off the right to recover taxes illegally collected by ratifying their imposition and collection, where it could lawfully have authorized such exactions prior to their collection.⁵⁷⁵

Congressional Power to Abolish Common Law Judicial Actions.—Similarly, it is clearly settled that “[a] person has no property, no vested interest, in any rule of the common law.”⁵⁷⁶ It follows, therefore, that Congress in its discretion may abolish common-law actions, replacing them with other judicial actions or with administrative remedies at its discretion. There is slight intimation in some of the cases that if Congress does abolish a common law action it *must* either duplicate the recovery or provide a reasonable substitute remedy.⁵⁷⁷ Such a holding seems only remotely likely,⁵⁷⁸ but some difficulties may be experienced with respect to legislation

⁵⁷⁰ *In re 620 Church Street Corp.*, 299 U.S. 24 (1936). In the context of Congress’s plan to save major railroad systems, see *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974).

⁵⁷¹ *Lynch v. United States*, 292 U.S. 571, 581 (1934).

⁵⁷² *Dodge v. Osborn*, 240 U.S. 118 (1916).

⁵⁷³ *Graham & Foster v. Goodcell*, 282 U.S. 409 (1931).

⁵⁷⁴ *Anniston Mfg. Co. v. Davis*, 301 U.S. 337 (1937).

⁵⁷⁵ *United States v. Heinszen & Co.*, 206 U.S. 370, 386 (1907).

⁵⁷⁶ *Second Employers’ Liability Cases*, 223 U.S. 1, 50 (1912). See also *Silver v. Silver*, 280 U.S. 117, 122 (1929) (a state case).

⁵⁷⁷ The intimation stems from *New York Cent. R.R. v. White*, 243 U.S. 188 (1917) (a state case, involving the constitutionality of a workmen’s compensation law). While denying any person’s vested interest in the continuation of any particular right to sue, *id.* at 198, the Court did seem twice to suggest that abolition without a reasonable substitute would raise due process problems. *Id.* at 201. In *Duke Power Co. v. Carolina Envtl. Study Group*, 438 U.S. 59, 87–92 (1978), it noticed the contention but passed it by because the law at issue was a reasonable substitute.

⁵⁷⁸ It is more likely with respect to congressional provision of a statutory substitute for a cause of action arising directly out of a constitutional guarantee. *E.g.*, *Carlson v. Green*, 446 U.S. 14, 18–23 (1980).