

or by scouring with acid and sand, would be an undue expansion of the original patent.

In 1876 Thomas James obtained a patent for an improvement in the manufacture of tinned sheet copper, under which the defendants now make the article which is said to be an infringement. After the sheet is tinned, the discoloration is removed by the use of diluted acid, or by scrubbing with acid and sand. The sheet is then washed in pure water, and after it is dry is cold rolled between bright chilled rolls, two sheets having been placed together, with their tinned surfaces in contact. By this process the discoloration is removed by the application of acid, and then the surface is polished by the chilled rolls. By the O'Neil process the surface is polished and made glossy by the rolls, and the discoloration is removed by the buffer, or other approved polishing method.

The defendant's process is not the patented process. It omits a patented step, and in its stead includes one which the patentee intended to avoid. There is no infringement, and the bill is dismissed.

Execution—Property in Public Use Exempt.

CITY OF NEW ORLEANS v. MORRIS and others, U. S. Sup. Ct., Oct. Term, 1881. Appeal from the circuit court of the United States for the district of Louisiana. The substance of the bill is that defendants, having several judgments on the law side of the circuit court, had caused executions, issued on these judgments, to be levied upon shares of the stock of the New Orleans Water-works Company, and the marshal had advertised them for sale and was about to sell them to the highest bidder; that prior to March 31, 1877, the city was the sole and absolute owner of the water-works now owned and held by the corporation known as the New Orleans Water-works Company; that on that day the legislature enacted a law creating that corporation with a capital of \$2,000,000. Of this sum the corporation, as soon as organized, was to "issue to the city of New Orleans stock to the amount of \$606,600, full paid and not subject to assessments, and in addition thereto one similar share for every \$100 dollars of water-works bonds the city had taken up heretofore and extinguished by payment, exchange, or otherwise; and that the residue of said capital stock shall be reserved for the benefit of all holders of water-works bonds, to the extent of the amount now outstanding, who may elect to avail themselves of the provisions of this act." The bonds here referred to were those issued by the city, while sole owner of the water-works, in aid of their construction and extension. The seventh section of this act reads as follows: "Be it further enacted, that the stock owned by the city of New Orleans in said water-works company shall not be liable to seizure for the debts of said city." Under the statute, and especially under the seventh section, the city

invoked the restraining power of the court to prevent the sale of its stock in the company. To this bill defendants interposed a plea to the effect that, so far as the provision of the statute exempting the company's stock from sale under execution relates to their judgments, it is void by the provisions of the constitution of Louisiana and of the United States, which forbid the enactment of laws which impair the obligation of contracts; and in their plea they show that the obligations on which their judgments were obtained against the city were existing contracts before the passage of the act of 1877. The court held this plea good, refused the injunction, and dismissed the bill. The case was decided in the supreme court of the United States on May 8, 1882. Mr. Justice *Miller* delivered the opinion of the court reversing the decree of the circuit court, with directions to overrule the plea, and for such further proceedings as are not inconsistent with the opinion of the supreme court.

Where one of the defendants filed in the court below a general demurrer to the bill on the ground that there is ample remedy at law by motion to compel the marshal to release his levy on the stock because not liable to be sold on the execution, and afterwards withdrew his demurrer and joined in the plea on which the cause was decided, we should, under such circumstances, have great hesitation in permitting the party who had, by tendering this issue, waived the question of the special jurisdiction of the court in equity, to raise that point for the first time in this court on appeal. But the bill does show on its face a sufficient ground of equitable jurisdiction, sustained by the provisions of the statute which creates a trust in favor of the holders of old water-works bonds of the city, and of other creditors of the city, which is not shown in any way to have been released or discharged. Although in the ordinary case of a wrongful levy on property not subject to seizure the proper remedy is by motion to have the levy discharged, there are in this bill other sufficient grounds for the equitable jurisdiction of the court. A state statute which authorizes a city to convert its ownership of property, held for the public use, into the shares of a corporation, and which provides that these shares shall be exempt from sale under execution for its debts, is not in violation of the constitutional provisions against impairing the obligations of contracts, as the city was using no property in acquiring this stock which could have been appropriated under any circumstances to the payment of its debts.

E. Howard McCaleb, for appellants.

John A. Campbell, W. W. Howe, and Albert Voorhies, for appellees.

Statute of State—Validity of.

THE AMOSKEAG NAT. BANK v. TOWN OF OTTAWA. In error to the circuit court of the United States for the northern district of Illinois. The decision in this case was rendered by the supreme court of the United States in May, 1882. Mr. Justice *Gray* delivered the opinion of the court, affirming the judgment.

The constitution of the state of Illinois, requiring each house of the legislature to keep and publish a journal of its proceedings, and on the final passage of all bills to take the vote by ayes and noes, and ordaining that no bill shall become a law without the concurrence of a majority of all the members

elect at each house, is not merely directory. Whether a seeming act of the legislature is or is not a law, is a judicial question, to be determined by the court, and not to be tried by the jury. The construction uniformly given to the constitution of a state by its highest court is binding on the courts of the United States as a rule of decision. An act of the legislature of a state, which has been held by its highest court not to be a statute, because never passed as required by its constitution, cannot upon the same evidence be held a law of the state, and that which is not a law can give no validity to bonds purporting to be issued under it, even in the hands of those who take them for full value, and in the belief that they have been lawfully issued. The copies of the journals certified by the secretary of state, and the printed journals published in obedience to law, are both competent evidence of the proceedings of the legislature; and by virtue of statute the copies of the daily journals kept by the clerks of the two houses, and made by persons employed for the purpose, though not sworn public officers, in well-bound books, furnished by the secretary of state, and afterwards deposited and kept in his office, are official records in his custody, copies of which, certified by him, are admissible upon settled rules of evidence, and neither the competency nor the effect of such copies is impaired by the loss or destruction of the daily journals or minutes. Where there is nothing in the record to show that either of the statutes under which the municipal bonds in the action were issued, was ever complied with in issuing the bonds, or relied on by the plaintiff in purchasing them; no action can be maintained on them.

Cases cited in the opinion: *South Ottawa v. Perkins*, 94 U. S. 260; *Sup'rs of Kendall v. Post*, 94 U. S. 260; *Ryan v. Lynch*, 68 Ill. 160; *Müller v. Goodwin*, 70 Ill. 659; *Elmwood v. Marcy*, 92 U. S. 289; *East Oakland v. Skinner*, 94 U. S. 255; *Dunnovan v. Green*, 57 Ill. 63; *Force v. Batavia*, 61 Ill. 99; *Ill. Cent. R. Co. v. Wren*, 43 Ill. 77; *Bedard v. Hall*, 44 Ill. 91; *Grob v. Cushman*, 45 Ill. 119; *People v. Dewolf*, 62 Ill. 253; *Binz v. Weber*, 81 Ill. 288; *Happel v. Brethauer*, 70 Ill. 166; *Watkins v. Holman*, 16 Pet. 25; *Ryan v. Forsythe*, 19 How. 834; *Gregg v. Forsyth*, 24 How. 179.

Evidence—Treasury Transcripts.

UNITED STATES v. HUNT and others, U. S. Sup. Ct., Oct. Term, 1881. Error to the circuit court of the United States for the southern district of Mississippi. This was an action brought by the United States upon the official bond of a collector of taxes under the internal revenue act. He was sued as principal, and having died pending the suit, it was renewed against his executrix. The other defendants were sureties. The sureties filed joint pleas, and the executrix pleaded separately. The pleas were alike, and amounted to a general denial of every allegation necessary to constitute a liability. There was a verdict and judgment for defendants. The errors assigned arise upon the rulings of the court, upon the trial, upon questions of evidence presented by a bill of exceptions. The plaintiff offered in evidence the certified transcript of the account of deceased, to the introduction of which objection was made on the part of the defendants, and the objection sustained. This ruling was excepted to, and is assigned for error by the plaintiff in error. The decision was rendered in the supreme court of the United States on April