

3, 1882. Mr. Justice *Matthews* delivered the opinion of the court reversing the judgment.

The certificate of the treasury department declaring an account contained in a treasury transcript to be an account between the United States and the collector of internal revenue, has the legal effect of making the treasury transcript *prima facie* evidence of the fact of indebtedness which it certifies, unless upon the face of the account it necessarily appears to be otherwise. Excluding a treasury transcript, when offered in evidence, is error, even if collections embodied therein were made at a preceding term, if containing charges admittedly collected during the term. Collector's receipts are admissible in evidence to prove the debit side of his account, and, being part of his official transactions, forming the basis of the account against him upon the books of the treasury department, their exclusion is erroneous.

S. F. Phillips, Solicitor General, for plaintiff in error.

W. L. Nugent, for defendants in error.

#### County Bonds—Negotiability.

*LEWIS v. COUNTY COMMISSIONERS*, U. S. Sup. Ct., Oct. Term, 1881. Error to the circuit court of the United States for the district of Kansas. This case was determined in the supreme court of the United States on March 13, 1882. Mr. Justice *Harlan* delivered the opinion of the court reversing the judgment of the circuit court.

The act of Kansas of March 2, 1872, did not require as a necessary prerequisite to the negotiability of certain county bonds, unconditional on their face, that they should in all cases pass through the hands of the treasurer before reaching the auditor. The action and certificate of the auditor are conclusive evidence, as between the county and a *bona fide* holder, that bonds unconditional upon their face were regularly and legally issued, and therefore negotiable.

James Grant, for plaintiff in error.

Edward Spellings, Thomas B. Fenlon, and A. M. F. Randolph, for defendant in error.

#### Practice—Setting Aside Default.

*JAMES v. MCCORMACK*, U. S. Sup. Ct., Oct. Term, 1881. Appeal from the circuit court of the United States for the western district of Virginia. The motion to reinstate this cause was denied after hearing on April 8, 1882. Mr. Chief Justice *Waite* delivered the opinion of the court. When the appellant was called and his appeal dismissed the case had been nearly three years on the docket. He had no brief on file, and was not present, either in person or by counsel. He has not excused himself for his default, and the rule will be rigidly enforced, not to set aside defaults growing out of the neglect of counsel or parties, except for very good cause.

## CONNELL, Adm'r, etc., v. UTICA, U. &amp; E. R. Co. and others.

(Circuit Court, N. D. New York. July 28, 1882.)

## 1. REMOVAL OF CAUSE—ON GROUND OF CITIZENSHIP.

A cause is not removable under the first clause of section 2 of the act of March 3, 1875, unless all the parties on one side are citizens of different states from those on the other, and all the defendants must join in the petition.

## 2. SAME—SEPARATE CONTROVERSY.

A suit is not removable under the second clause of that section unless it is a separate controversy, wholly between citizens of different states.

## 3. REPEAL OF ACT OF 1866.

The second clause of section 639 of the Revised Statutes is repealed by the act of March 3, 1875.

*S. H. Wilcox*, for plaintiff.

*J. H. Choate*, for defendant King.

BLATCHFORD, Justice. This suit was not removable under the first clause of section 2 of the act of March 3, 1875, because all the parties on one side of the controversy were not citizens of different states from those on the other, and also because all the defendants did not petition for removal. Nor was the suit removable under the second clause of that section, because there was not in the suit a separate controversy wholly between citizens of different states. To entitle a party to a removal under the second clause there must exist in the suit a separate and distinct cause of action, in respect to which all the necessary parties on one side are citizens of different states from those on the other. *Hyde v. Ruble*, 3 Morr. Trans. 516. The present case does not fall within that of *Barney v. Latham*, 103 U. S. 205. The decision of the state court, at the special and general terms, that the cause of action is entire, is a decision which it is proper for this court to follow, and it leads to the conclusion that there is but a single controversy in the suit, and that parties to the suit who are citizens of the same state with the plaintiff, are necessary parties to the controversy to which the plaintiff and the defendant King are parties.

The case of *Hyde v. Ruble*, *supra*, decides that the second clause of section 639 of the Revised Statutes is repealed by the act of March 3, 1875.

The motion to remand is granted, with costs, to be taxed.