Equity—Remedies—Conversion of Public Property into Corporate Stock.

NEW ORLEANS *v.* MORRIS, U. S. Sup. Ct., Oct. Term, 1882. Appeal from the circuit court of the United States for the district of Louisiana. The opinion of the supreme court was delivered by Mr. Justice *Miller*, reversing the decree of the circuit court, with directions to overrule the plea and for further proceedings:

The first point raised in argument here which requires our attention is that, whether the court below was right or wrong in its decision of the case on its merits, the bill must still be dismissed for want of equity, on the ground that there is ample remedy at law by a motion to the court to compel the marshal to release his levy on the stock, because not liable to be sold on the execution. It will be observed that no such objection was made to the bill in the court below, and although one of the defendants filed a general demurrer to the bill which might have raised it, he afterwards withdrew his demurrer, and joined in the plea on which the case was decided. This plea was a defense on the merits of the case, and was to be held good or bad on precisely the same principles whether pleaded to a declaration at law or a bill in chancery. We should under such circumstances have great hesitation to permit 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 on appeal. Notwithstanding, that in the ordinary case of a wrongful levy of an execution on property not subject to be seized under it, the proper remedy is by motion to the court to have the levy discharged, we think that this bill shows other sufficient grounds for the equitable jurisdiction of the court. A statute of a state legislature which, in the act authorizing a city to convert its ownership of a large and valuable property, held for the use of the public, into the shares of a joint-stock corporation, declares that these shares shall be exempt from judicial sale for the debts of the city, is an impairment of the obligation of existing contracts within the meaning of the constitution. City water-works are held for public use, and are not liable to execution for judgments against the city.

Cases cited in the opinion: Van Norden v. Morton, 99 U. S. 378; Green v. Biddle, 8 Wheat. 1; Bronson v. Kinzie, 1 How. 311; McCracken v. Hayward, 2 How. 608.

Legislation—State Statute—Judicial Question.

AMOSKEAG NAT. BANK *v.* TOWN OF OTTAWA; POST *v.* KENDALL CO.; U. S. Sup. Ct., Oct. Term, 1881. In error to the circuit court of the United States for the northern district of Illinois. The decision of the supreme court was rendered on May 8, 1882. Mr. Justice *Gray* delivered the opinion of the court affirming the judgment.

Where the facts of the case do not essentially differ from a case which was before this court at a prior term, the principles therein affirmed must control the decision: *First.* By the law of the state of Illinois, as often declared by the supreme court of that state, before as well as after the execution of the bonds in suit, the provisions of the constitution of 1848, 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 of each house, are not merely directory; but if the journals, being produced or proved, fail to show that an act has been passed in the mode prescribed by the constitution, the presumption of its validity, arising from the signatures of the presiding officer and of the executive, is overthrown, and the act is void. *Second.* 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 a question of fact to be tried by a jury. *Third.* The construction uniformly given by the constitution of a state by its highest court is binding on the courts of the United States as a rule of decision. *Fourth.* An act of the legislature of a state, which has been held by its highest court not to be a statute of the state, because never passed as its constitution requires, cannot be held by the courts of the United States, upon the same evidence, to be a law of the state. *Fifth.* 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 value, and in the belief that they have been lawfully issued.

It was accordingly held that the act of the general assembly of Illinois, under which the bonds in suit were issued, having been adjudged by the supreme court of that state, upon proof that the journal did not show it to have been enacted in conformity with the requirements of the constitution, to have never become a law, and to have conferred no power, although referred to in later statutes as an existing law, those decisions must govern the action of the courts of the United States. 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 in the legislature. For these reasons the act of February, 1857, under which all the bonds in suit purport to have been issued, must be held to be of no force or effect, and the plaintiffs can maintain no action on the bonds.

Cases cited in the opinion: Ryan v. Lynch, 68 Ill. 160; Miller v. Goodwin, 70 Ill. 659; Elmwood v. Marcy, 92 U. S. 283; East Oakland v. Skinner, 94 U. S. 255; Dunnovan v. Green, 57 Ill. 63; Force v. Batavia, 61 Ill. 99; Illinois Cent. R. Co. v. Wren, 43 Ill. 77; Bedard v. Hall, 44 Ill. 91; Grob v. Cushman, 45 Ill. 119; People v. De Wolf, 62 Ill. 253; Benz v. Weber, 81 Ill. 288; People v. Cambell, 3 Gilman, 466; Prescott v. Trustees, etc., 19 Ill. 324; Happel v. Brethauer, 70 Ill. 166; Watkins v. Holman, 16 Pet. 25; Bryan v. Forsyth, 19 How. 334; Gregg v. Forsyth, 24 How. 179.

DARST v. CITY OF PEORIA and another.

CLARK v. CITY OF PEORIA and another.

(Circuit Court, N. D. Illinois. 1882.)

1. REMOVAL OF CAUSE—PREJUDICE AND LOCAL INFLUENCE—TIME OF APPLICATION.

   An application for the removal of a cause under the act of 1867, (Rev. St. § 639, subd. 3,) made after appeal to the state supreme court, where the decree of the lower court is affirmed, and the cause remanded with instructions to enter a final decree of conformity with the judgment of the supreme court, is too late.

2. SAME—WHO MAY REMOVE—CITIZENSHIP.

   A citizen of an Indian territory, not being a citizen of a state, cannot remove a cause into the circuit court from a state court under the act of 1867, (Rev. St. § 639, subd. 3.)

Bill for Partition. Cross-bill.

BLODGETT, D. J. This case was originally commenced in the Peoria circuit court, and on the twenty-first day of June, 1882, Ben Clark, one of the defendants in the original bill and complainant in the cross-bill, filed his petition in the Peoria circuit court for the removal of the cause to this court upon the ground that he, Clark, is, as stated in the petition, a citizen and resident of the Indian Territory, and that he has good reason to believe, and does believe, that from prejudice and local influence he will not be able to obtain justice in said state court. The state court refused to make the order of removal, whereupon Clark brought a transcript of the record here and asked this court to take jurisdiction, and for leave to docket the cause. This application was resisted by the city of Peoria, the principal defendant. From the record which Clark asks leave to file in the case of some exhibits read on the part of the city of Peoria, the facts appear that the original bill was filed in the state court on the twentieth of August, 1880, for the purpose of obtaining a partition of a tract of land in the city of Peoria, one-fourth of which is claimed by Darst, one-fourth by Clark, and one-half by the city of Peoria. On the seventh of October, 1880, the defendant Ben Clark appeared and answered the original bill, setting up title in fee to an undivided one-fourth of the land, and filed his cross-bill; and on the eighth of December, 1880, the city of Peoria made answers to the original bill and cross-bill, claiming to own the entire estate, and denying that Clark or Darst had any interest in the premises. Replications were filed