

on their title to the lands;" that a threat by the collector to sell without lawful authority was idle, and did not constitute coercion. 46 Cal. 556. Mr. Cooley states the same rule with respect to clouds upon titles. Cooley, Taxation, 542. The same principle, as we have already seen, was adopted in *Detroit v. Martin*, before cited.

We are of opinion that no cause of action is shown by the complaint, for the reasons stated and upon the authorities cited, and that the demurrer must be sustained, and it is so ordered.

Let final judgment be entered for defendants on the demurrer.

TAXES PAID UNDER PROTEST—RECOVERY BACK. Taxes assessed without authority of law are void. *Stephens v. Daniels*, 27 Ohio St. 527; *Welker v. Potter*, 18 Ohio St. 85; *Hersey v. Sup'rs*, 37 Wis. 75; *Marsh v. Sup'rs*, 42 Wis. 502; *Schettler v. Fort Howard*, 43 Wis. 48; *Plumer v. Marathon Co.* 46 Wis. 163; *North Carolina R. Co. v. Alamance*, 77 N. C. 4. Taxes illegally assessed, if paid under protest, may be recovered back. *Id.* So of a railroad tax. *Cade v. Perrin*, 14 S. C. 1. So of express and telegraph companies. *West. U. Tel. Co. v. Mayer*, 28 Ohio St. 521. A suit to recover back a portion of a tax illegally assessed, must be brought in time, the money must not have been voluntarily paid, and the taxing officers must have acted with turpitude. Where both parties are innocent and both in fault the payment cannot be recovered back. *Galveston Co. v. Gorham*, 49 Tex. 279. When there is no legal duress the payment will be deemed voluntary and it cannot be recovered back. *Wills v. Austin*, 53 Cal. 152. So, where there was no process or compulsory proceedings, the payment will be deemed voluntary, and it cannot be recovered back. *Com'rs v. Norris*, 62 Ga. 538.—[ED.]

MISSOURI, K. & T. R. Co. v. SCOTT and others.

(Circuit Court, N. D. Texas. October 19, 1882.)

PRACTICE—INJUNCTION TO STAY SUITS IN STATE COURTS, REV. ST. § 720.

Where the United States court acquires jurisdiction of a case by removal or otherwise, and afterwards parties institute proceedings in state courts that will, if successful, defeat the jurisdiction of the United States court or deprive plaintiffs therein of all benefit of any decree or judgment rendered in their favor, the United States courts may by injunction lay hands on the parties and control their proceedings, although proceedings in a state court may be thus indirectly stayed or ended; yet section 720 of the United States Revised Statutes prohibits the granting of injunctions except in bankruptcy cases when the state court has first regularly acquired jurisdiction of the case.

In Equity. Hearing on application for injunction *pendente lite*.

The hearing is on the bill and exhibits; so that all the matters of fact well pleaded may be taken as true. The bill makes a

case showing that a proceeding or controversy was instituted in the county court of Tarrant county, under the laws of Texas, for the condemnation in favor of complainant of certain lands of the defendant Scott for right of way of complainant's railroad; that under the laws of Texas the preliminary proceedings had been had up to the report of the commissioners as to the amount of damages the defendant Scott was entitled to, and including the filing of objections to the report by the dissatisfied parties; that thereupon the complainant filed in said county court its petition and bond for removal of said cause to this court; that the defendant Scott, and defendants Henry Furman and J. Y. Hogsett, attorneys for Scott, and J. F. Swayne, clerk of the county court of Tarrant county, also made defendant, are proceeding with said cause in said county court, in defiance of the said petition and bond for removal of the cause to this court, and will continue to so proceed; that their said proceedings in said cause in said county court will annoy, harass, and damage complainant, compelling it to litigate in two different jurisdictions, and, by causing delays, deprive complainant of certain rights and remedies it has against the International Improvement Railway Company under certain contracts made with that company. Further, that there is now pending in this court a suit brought by defendant Scott against complainant for title to the lands in controversy and for damages, and involving the same issues as the case sought to be removed from the county courts of Tarrant county.

Complainant asks for an injunction in the premises to restrain all of the defendants, Scott, the party to the suit, Furman and Hogsett, attorneys, and Swayne, clerk of the county court, "from taking any further proceedings in said county court, or filing or issuing any further papers, writs, precepts, or litigating, or forcing or compelling any litigation, or taking any further action of any kind or nature in said county or any other court in the state of Texas," etc.

H. M. Herman, for complainant.

S. P. Greene, for defendants.

PARDEE, C. J. Several grounds have been argued as conclusive against the right of complainant to an injunction as asked for, such as, whether the cause was removable at all from the county court of Tarrant county, whether the removal was asked for in time, and whether complainant's bill shows any equity entitling the complainant to an injunction. The conclusion we have reached renders it unnecessary to pass on these questions at this time. The injunction asked for is clearly and in terms one to restrain or stay proceedings

in a state court. The federal courts are prohibited from granting such injunctions except in certain specified cases.

Section 720, Rev. St., provides: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." This statute prevents this court from granting the injunction asked for, even if complainant has otherwise a proper case for such relief. See *Haines v. Carpenter*, 91 U. S. 254. In so holding, it is not intended to decide that in proper cases, where the United States court is first seized of jurisdiction, and parties are instituting thereafter such proceedings in state or other courts as will, if successful, defeat the jurisdiction of the United States court or deprive complainant therein of all benefit of any decree or judgment rendered in his favor, the United States court cannot by injunction lay its hands on parties, and control their proceedings, although thereby proceedings in a state court may be indirectly stayed or ended.

Such a case is that of *French v. Hay*, 22 Wall. 231. In that case the United States court had prior jurisdiction, and the enjoined party was seeking to execute, in a state court, a decree which to all intents and purposes had become the decree of the United States court, and had been annulled and vacated by the court. The case here, where we are asked to enjoin all further proceedings, etc., is one where the state court undoubtedly had prior jurisdiction, and the question as to whether that jurisdiction is ended is in dispute between the parties; the state court undoubtedly still claiming jurisdiction, notwithstanding the petition and bond filed therein to remove the case to this court.

The injunction asked for must be refused, and such order will be entered in the case.

McCORMICK, D. J., concurring.

UNITED STATES *v.* ONE RAFT OF TIMBER.

(*Circuit Court, D. South Carolina. May 6, 1882.*)

1. ADMIRALTY—REV. ST. §§ 4233, 4234—RAFTS.

Sections 4233 and 4234 of the Revised Statutes were intended to embrace all classes of vessels, including rafts; and a raft that fails to carry proper torch-lights violates the statute, and is liable to the penalty imposed by section 4234, although rafts are not specially named in said section.

2. SAME—SEIZURE—JURISDICTION—LIBEL.

As in cases of seizure the jurisdiction depends upon the fact and place of seizure, these must be averred in the libel; and if not, the libel may be objected to and dismissed at any stage of the proceedings.

BOND, C. J. This case comes up on an appeal from the district court sitting in admiralty. The libel alleges that under the Revised Statutes of the United States rafts and other water-craft, when anchored in or near the channel of any river or bay, shall carry one or more good white lights, in such manner as the board of supervisors might prescribe, and that upon a failure so to do they are liable to pay to the United States the sum of \$200, for the payment of which such crafts may be seized and proceeded against summarily by way of libel. It further alleges that the raft in question, on the night of the twenty-seventh day of January, 1880, while navigating Wappoo Cut, a bay or river of the United States in the district of South Carolina, by hand-power and sail, and by the current of the river, and being anchored or moored in the channel of said bay or river, failed to carry such lights as above provided. The libel, therefore, prays the ordinary process, and that the raft be decreed liable to the said penalty, and be sold to pay the same. The answer, which is in the nature of a demurrer, raises the legal objection that there is no provision of law subjecting rafts to the penalty claimed.

The district court sustained the demurrer, and rendered a decree dismissing the libel on this ground, holding that although there is statutory requisition that rafts must carry lights, yet congress has not provided any penalty now existing which can be enforced against a raft by reason of not carrying lights. The question now before the court is therefore purely one of law.

Section 4233 of the Revised Statutes of the United States prescribes certain rules for the navigation of vessels of the navy and mercantile marine of the United States.

Rule 12 of this section requires that "coal boats, trading boats,
* * * rafts, or other water-craft navigating any bay, harbor, or