a debtor, being insolvent, conveys all his property to a third party to pay one or more creditors, to the exclusion of others, such a conveyance will be construed to be an assignment for the benefit of all the creditors; the preference being in contravention of the assignment laws of this state. Demurrer overruled.

PRICE, Receiver, *v.* COLEMAN and others.

(*Circuit Court, D. Massachusetts.* January 6, 1885.)

EQUITY PRACTICE—DOCKET FEE—HEARING ON DEMURRER.

A hearing on demurrer is a final hearing, and a docket fee of $20 may be taxed. Rev. St. § 824.

In Equity. Appeal from the clerk's taxation of costs in favor of George N. March, one of the defendants.

A. A. Ranney, for Price, receiver.

Jesse M. Wheeler, for defendants.

COLT, J. We approve of the clerk's taxation of costs. The taxation is not contrary to equity rule 62, because the defendant filed his separate demurrer, and appeared by separate counsel. We also think the hearing on demurrer a final hearing within the meaning of section 824, Rev. St., and that therefore a docket fee of $20 was properly taxable. A demurrer raises an issue which, when tried, will finally dispose of the case, unless leave to amend or plead over is granted. There can be no other trial, except at the discretion of the court, and if final judgment is entered on the demurrer it will be a final determination of the rights of the parties, which can be pleaded in bar to any other suit for the same cause of action. This is the view expressed by the supreme court in *Alley* v. *Nott*, 111 U. S. 472, 475; S. C. 4 Sup. Ct. Rep. 495.

Appeal dismissed.

PRICE, Receiver, *v.* COLEMAN and others.

(*Circuit Court, D. Massachusetts.* January 6, 1885.)

NATIONAL BANKS—REV. ST. § 5242—INSOLVENCY—TRANSFER OF PROPERTY TO INDEMNIFY SURETIES.

The Pacific National Bank, of Boston, suspended November 18, 1881, but after examination resumed March 18, 1882, with the consent of the comptroller of the currency, and continued to transact business until May 22, 1882, when it again failed. Between March 24, 1882, and April 28, 1882, certain creditors, whose claims had been disputed and placed in a suspense account, attached the property of the bank, whereupon the bank gave bond with the president and

a director as sureties, and the attachments were dissolved. The bank transferred to the sureties, March 22, 1882, a certificate of deposit for $100,000 on another bank, which, on April 13, 1882, was exchanged for other property. *Held*, that such transfer was not made after the commission of an act of insolvency by the bank, or in contemplation thereof, and with a view to a preference or to prevent the application of the assets as prescribed by the banking act.

In Equity.

A. A. Ranney, for complainant.

J. D. Ball, R. Stone, A. D. Foster, E. W. Hutchins, and *Henry Wheeler*, for defendants.

COLT, J. This bill in equity is brought by the receiver of the Pacific National Bank, of Boston, against Lewis Coleman and John Shepherd, sureties on certain bonds of the bank, given to dissolve attachments, and against the creditors of the bank who made the attachments, praying that the property transferred by the bank to the sureties to indemnify them be given up, the bonds declared void, the attaching creditors enjoined from enforcing the bonds, and from prosecuting their suits against the bank. The bank suspended November 18, 1881, and was put in charge of Mr. Needham, bank-examiner. On March 18, 1882, it resumed business with the consent of the comptroller of the currency. At the time of its failure, the paid-up capital of the bank was $961,300. An assessment of 100 per cent. was voted in January, 1882, of which $643,700 was paid in before the bank reopened. At the date of reopening, its condition was as follows:

Assets, - - - - - - - - -	$5,829,904 69
Liabilities, except capital stock and assessments, -	4,868,604 69
Surplus, - - - - - - - -	$961,300 00

The evidence shows that after the failure of the bank, there was a thorough and exhaustive examination of its condition, extending over a period of several months; and that, on March 18, 1882, when it reopened, the directors, examiner, and comptroller believed it to be solvent. From this time until May 20, 1882, the bank went on conducting its business in the ordinary way, receiving deposits to an amount exceeding two millions of dollars, and paying on presentation all undisputed claims. A large amount of paper, about half a million, coming due May 20, 1882, and which was not paid as expected, the bank was again forced to suspend, and on May 22, 1882, the present receiver was appointed. At the time the bank reopened, there were certain disputed claims which it refused to recognize. These were placed, with the approvol of the comptroller, in a suspense account. Among these were those of the defendants Mixter, Whitney, Demmon, and Prescott. Finding their claims were contested, these defendants, between March 24, 1882, and April 28, 1882, brought suits against the bank, and attached its property. These attachments were dissolved by giving bonds. The sureties on these

bonds were the defendants Coleman and Shepard. Mr. Coleman was president of the bank, and Mr. Shepard a director. For their protection, as sureties on bonds given to dissolve attachments, the bank transferred to them, on March 22, 1882, a certificate of deposit for $100,000 on the Maverick National Bank, which was subsequently, on April 13, 1882, exchanged for other security.

The receiver contends that the transfer by the bank of its property to indemnify the sureties, and the attachments made by the defendant creditors, were void under the provisions of the national banking act. Section 5242, Rev. St., makes null and void any transfer of property by a national bank, made after the commission of an act of insolvency, or in contemplation thereof, and with a view to the preference of one creditor to another, or with a view to prevent the application of the assets of the bank as provided by law, except in payment of its circulatiug notes.

The first inquiry is, was the transfer by the bank to the sureties void under this section? Was it made after the commission of an act of insolvency by the bank, or in contemplation thereof, and with a view to a preference, or to prevent the application of the assets, as prescribed by the banking act? The bank had just resumed after a searching examination. The government officials charged with the duty of investigating its affairs pronounced it solvent. It was conducting its business in the ordinary way and paying all undisputed claims on presentation. It appeared able to meet all demands in the regular course of business. To hold this transfer void under these circumstances would seem to establish the principle that after the comptroller, examiner, and directors, upon a thorough investigation, have found a bank solvent, it is still to be deemed insolvent, and its payments and transfers to be held void, because it happens that assets considered good, turn out to be bad. Again, if this transfer is invalid, it is difficult to see why all payments made by the bank, from the day it resumed down to the time it finally closed its doors, are not equally so. Our conclusion is that the transfer by the bank was not made after an act of insolvency, or in contemplation thereof. Nor was it made with a view of giving a preference, or of preventing the distribution of the assets, as provided by law. The very object of the action taken by the bank was to resist the payment of what it considered illegal claims. Its purpose was not to prefer these creditors to others, but to prevent them, if possible, from recovering any part of their demands.

The next question is, were the attachments by the defendant creditors void under the law? The receiver here relies mainly on the case of *National Bank* v. *Colby*, 21 Wall. 609. In that case the attachment was made after the bank had closed, and was in possession of the military authorities of the United States. The supreme court held that the property of a national bank, attached at the suit of an individual creditor *after the bank has become insolvent*, cannot be subjected

to sale for the payment of his demands, against the claim for the property by a receiver of the bank subsequently appointed. The court go on to say, after referring to the various provisions of the banking act, that it was the manifest design of congress, *first*, to protect the government against loss, and, *second*, to secure the assets of the bank for ratable distribution among its general creditors. This decision clearly refers to attachments upon the property of insolvent banks,—banks which have committed acts of insolvency, or are in contemplation of insolvency, which is the language used in section 5242.

For the reasons already given, we do not think the Pacific Bank, at the time these attachments were made, was insolvent within the meaning of *National Bank* v. *Colby*. There the bank had closed its doors, and had committed acts of insolvency. At the time these attachments were made, there was nothing to indicate the insolvency of the bank, or that it contemplated becoming insolvent. That case, therefore, is not applicable here. In view of the conclusions we have reached, it becomes unnecessary to consider the question whether the bonds given to dissolve the attachments stand upon a different footing from the attachments themselves. The bill should be dismissed; and it is so ordered.

NATIONAL SECURITY BANK *v.* PRICE, Receiver.

(Circuit Court, D. Massachusetts. January 6, 1885.)

NATIONAL BANKS—FAILURE OF BANKS—FRAUDULENT PREFERENCE.

After a vote of the directors to close their bank and go into liquidation, any transfer of the assets of the bank to a creditor, whereby that creditor secures a preference, will be presumed to be made with a fraudulent intent.

On Exceptions to Rulings of District Court.

Russell Gray, for appellant.

Ranney & Clark, for appellee.

COLT, J. This case comes here upon exceptions to the rulings of the district court. The directors of the Pacific National Bank, of Boston, at a meeting held after business hours, on the afternoon of Saturday, May 20, 1882, voted to close the bank and to go into liquidation. A committee was also appointed to proceed to Washington and confer with the comptroller of the currency. The comptroller, on Monday, May 22d, appointed the plaintiff receiver. He arrived in Boston the following day and took possession of the bank. The first failure of the bank was in November, 1881. It afterwards resumed, in March, 1882, but not being a member of the clearing-house, it was its custom daily to deposit with the defendant bank, to be collected through the clearing-house, all checks received. It was cred-

ited with the checks so deposited, and drew against them. On Monday morning, May 22d, and before the appointment of the receiver, the cashier of the Pacific Bank deposited with the defendant bank the checks and drafts received by mail, and took in return a negotiable certificate of deposit, payable on demand, for $11,008.20, covering the amount of the deposit just made, and a small sum due on current deposit account. At this time the defendant held a certificate of deposit of the Pacific Bank for the sum of $10,000. The receiver now seeks to recover back the money so deposited by the cashier, on the ground that the transaction was void. The defendant claims the right of set-off to the extent of its claim against the Pacific Bank. At the trial the defendant requested the court to submit to the jury the following question, among others:

"Whether or not there was in fact any view or intent on the part of the Pacific Bank, or any of its officers, to give a preference to the defendant over other creditors, or to prevent the application of the assets of the Pacific Bank in the manner prescribed in the bank act."

The court refused to submit this or any question whatever to the jury, and directed a verdict for the plaintiff, holding that, as a matter of law on the undisputed facts in the case, the plaintiff was entitled to recover the amount of the checks and drafts deposited by the Pacific Bank in the defendant bank on Monday. It cannot be doubted that on Saturday, May 20th, in voting to close its doors and go into liquidation, the Pacific Bank committed an act of insolvency within the meaning of section 5242, Rev. St. Admitting this, the defendant contends that under section 5242 it should further appear that the deposit on Monday was made with a view to give a preference to the defendant over other creditors, or to prevent the application of the assets of the bank in the manner prescribed in the act, and that this was a question of fact for the jury. We agree with the defendant that under section 5242 the transfer or payment by a bank, to be void, must be made after the commission of an act of insolvency, or in contemplation thereof, and with a view of giving a preference to one creditor over another, or with a view to prevent the application of its assets as provided by law. *Case* v. *Citizens' Bank*, 2 Woods, 23. But the undisputed facts here show that the act of the cashier, under the circumstances, could have no other result, if allowed to stand, than to operate as a preference in favor of the defendant bank. The Pacific Bank had decided to close its doors and go into liquidation, and after this the necessary consequence of the transfer was to create a preference. It cannot be said that the transfer was made with the intention of going on in business. *Jones* v. *Howland*, 8 Metc. 377. Nor can it be contended that it was made to save the credit of the bank, as was claimed in *Case* v. *Citizens' Bank*. A person is presumed to intend the necessary consequences of his own acts, and after the vote of the directors to close the bank and go into liquidation, any transfer of the assets of the bank to a creditor, whereby that

creditor secures a preference, must be presumed to be made with an intent to prefer. *In re Silverman*, 4 N. B. R. 523; 1 Sawy. 410; *Sawyer* v. *Turpin*, 2 Low. 29, 33.

Exceptions overruled.

In re BEHRENDT.

(*Circuit Court*, *S. D. New York*. December 29, 1884.)

1. EXTRADITION—AUTHENTICATION OF DOCUMENTS—REV. ST. § 5271—ACT OF AUGUST 3, 1882.
   Section 5 of the act of August 3, 1882, restores in substance the provisions of the act of June 22, 1860, as respects the mode of authentication of documentary evidence in extradition proceedings, and supersedes also the provisions on that subject of section 5271 of the Revised Statutes.
2. SAME—FORGERY—AFFIDAVITS.
   Where the evidence of criminality consisted of affidavits, appearing to be taken in a criminal court upon a charge of forgery, authenticated by the royal judge of Prussia to be valid evidence according to the laws existing in Prussia, *held*, equivalent to a statement that such documents were valid evidence there of the crime of forgery charged.
3. SAME—CERTIFICATE OF DIPLOMATIC OFFICER.
   The certificate of the principal diplomatic officer of the United States, in the language of the statute, *held* also sufficient.

Extradition and *Certiorari*.

A. L. Sanger, for petitioner.

Edward Salomon, for the Prussian government.

BROWN, J. The petitioner, Behrendt, having been held by the United States commissioner for extradition to Prussia, on a charge of forgery, under the treaty of June 16, 1852, has been brought before me upon *habeas corpus*, together with a record of the proceedings under a writ of *certiorari*. The discharge of the prisoner is sought upon two grounds: that the evidence of forgery is insufficient to hold him; and that the documentary proof received by the commissioner is not properly authenticated. The evidence of criminality is drawn wholly from the documentary proofs, consisting of depositions taken in Prussia. These depositions purport to be taken in penal or criminal proceedings against the petitioner there; and in some of the papers it is expressly stated that they are taken in a criminal court, and on the charge of forgery. These proceedings are certified by the royal Prussian judge of the court at Marienburg, who certifies that "this judicial proceeding, with respect to its form, is valid evidence, according to the laws existing in Prussia." The signatures are certified, as required by the act of August 3, 1882, § 5, and the whole is finally authenticated by the United States minister at Berlin, who certifies that the signatures are genuine; that the documents are entitled to full faith and credit; and that the said "documents, which are in-

tended to be offered in evidence upon the hearing within the United States of an application for the extradition of Joseph Moses Behrendt under title 66 of the Revised Statutes of the said United States, and for all the purposes of such hearing, are properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of Prussia."

Section 5 of the act of August 3, 1882, restores in substance the provisions of the act of June 22, 1860, (12 St. at Large, 84,) as respects the mode of authentication, and supersedes the provisions on that subject of section 5271 of the Revised Statutes, as well as those of the act of June 19, 1876, (19 St. at Large, 59.) The certificate of the royal judge that the judicial proceeding certified to "is valid evidence according to the laws existing in Prussia," reasonably interpreted, can mean nothing less than that, according to the law of Prussia, such documents are valid evidence of criminality as regards the crime charged in the proceedings specified in the court where the proceeding purports to be had. This is all the evidence that is required under the first branch of the statute; since the proceeding appears upon its face to be a criminal one, and in a criminal court, upon a charge of forgery.

The final authentication by the United States minister is in the exact language of the statute. Whatever ambiguity there may be in the statutes, from the use of the words "similar purposes," there is no greater ambiguity in the certificate itself; and, as it exactly conforms to the statute, it must be held to mean whatever the statute means, and cannot, therefore, be held defective. *In re Farez*, 7 Blatchf. 345, 353; *In re Wadge*, 15 FED. REP. 864; 16 FED. REP. 332.

In the *Case of George Fowler*, 18 Blatchf. 430, S. C. 4 FED. REP. 303, BLATCHFORD, J., says, in reference to the final certificate of the principal diplomatic officer of the United States: "Such certificate, if in proper form, is absolute proof, whatever may be the tenor of the certificates of foreign officials to the same documents." Page 437. By this rule, even if the previous authentication were defective, the final certificate of the United States minister would supply the defects; but for the reasons above stated there are no substantial defects in the certificates of the Prussian authorities. The documentary evidence, therefore, being competent evidence, the decision of the commissioner upon the weight of proof would not be interfered with on *habeas corpus*, unless there be clear insufficiency in the evidence to afford a *prima facie* case against the petitioner. The evidence in this case, though circumstantial, bears so strongly against him that I am not authorized to interfere with the commissioner's conclusion in this respect. The application for the release of the prisoner must therefore be denied, and the prisoner remanded to the custody of the marshal.

THE LAUNDRY LICENSE CASE.

In re WAN YIN.

(*District Court, D. Oregon.* January 29, 1885.)

1. CITY OF PORTLAND—POWER TO REGULATE.
   The power granted to the city of Portland "to regulate" wash-houses includes the power "to license" as a means to that end; but it does not include the power to tax the business.
2. SAME—LICENSE FEE.
   The power "to license" as a means of regulating a business implies the power to charge a fee therefor sufficient to defray the expense of issuing the license, and to compensate the city for any expense incurred in maintaining such regulation
3. SAME—WHEN DEEMED A TAX.
   Whenever it is manifest that the fee for the license is substantially in excess of what it should be, it will be considered a tax, and the ordinance imposing it held void.
4. SAME—CASE IN JUDGMENT.
   The council of Portland was authorized "to regulate" wash-houses, and thereupon ordained that the proprietor of such a house should take out a license quarterly, and pay therefor the sum of five dollars, or twenty dollars a year, and in default thereof should be liable to fine and imprisonment. *Held*, that, while the council had power to require the license as a means of regulating the business, the sum charged therefor was manifestly so far in excess of what was necessary or proper for that purpose that it must be considered a tax, and the ordinance imposing it is therefore so far void.
5. JURISDICTION OF NATIONAL COURTS IN CASE OF IMPRISONMENT BY A STATE WITHOUT DUE PROCESS OF LAW.
   Grounds of it stated, and reflections thereon.

On *Habeas Corpus*.

W. Scott Beebe, for petitioner.

A. H. Tanner, for respondent.

DEADY, J. The act incorporating the city of Portland, approved October 24, 1882, provides that the council has power and authority "to control and regulate slaughter-houses, wash-houses, and public laundries, and provide for their exclusion from the city limits or from any part thereof." On December 4, 1884, the council passed an ordinance, No. 4,448, "to license and regulate wash-houses and public laundries." This ordinance declares every "house, building, or place which is open to the public as a laundry or wash-house," to be "a public laundry or wash-house;" and requires the "proprietor or manager" thereof, (1) to keep a written register of the receipt and return of clothes washed therein; (2) to keep the premises in a good sanitary condition, and connected with a sewer or cess-pool for the purpose of drainage; and (3) to pay "a quarterly license of $5." Any person convicted of a violation of the ordinance shall be punished by a fine of from $5 to $50, or be imprisoned from 2 to 25 days; and the chief of police is required "to supervise and control the due and proper administration and enforcement" of the ordinance. On January 16th,