

ation for county purposes shall not apply to taxes levied to pay valid bonded indebtedness; and from this it is argued that the taxation authorized by the act of 1879 had no reference to taxes levied to pay county bonds. The point made is without merit, for the following reason: It is well known that, when the constitution of 1875 was adopted, many, or at least some, counties, had issued bonds under laws which permitted taxation to any amount for their payment. Other counties, like the respondent, had issued bonds under laws permitting the levy of a limited special tax for their payment. The proviso obviously had reference to such counties. It permitted counties of the first class to levy taxes to any amount to pay valid bonded indebtedness, and counties of the second class to levy one half of 1 per cent. in addition to whatever special tax was authorized to meet bonded indebtedness by laws enacted prior to the constitution of 1875. But it does not authorize counties which have issued bonds under the Missouri & Mississippi Railroad charter to levy taxes *ad libitum*. Such counties may levy a special tax of one twentieth of 1 per cent. When that is exhausted, recourse must be had by the bondholder to the "general fund," and the tax to create such general fund is limited both by the constitution and statute to one half of 1 per cent. annually. The counties have no power to overstep that limit; and, as a matter of course, no court, state or federal, can compel them to do so.

It follows from the views heretofore expressed that the respondents' return must be adjudged sufficient, and the motion to quash be overruled. The return shows that Knox county has levied a special tax of one twentieth of 1 per cent., and in addition a tax of one half of 1 per cent. for general purposes. More than that it cannot be compelled to assess.

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UNITED STATES *ex rel.* HUIDEKOPER v. MACON COUNTY COURT.

(Circuit Court, E. D. Missouri, N. D. September 13, 1892.)

No. 120.

Application by the United States, on the relation of Arthur C. HuidEKoper, for a writ of *mandamus* against the county court of Macon county. Denied.

*Phillips, Stewart, Cunningham & Elliot*, for relator.

*W. H. Sears and R. G. Mitchell*, for respondents.

THAYER, District Judge. As the questions which arise in this case are the same which the court had occasion to consider and determine on the 29th of June, 1891, in the eastern division of this district, in the case of *U. S. v. Knox Co.*, 51 Fed. Rep. 880, (No. 1,188,) a copy of the opinion in that case is herewith appended, to be filed in the suit at bar. It expresses substantially the reasons which have influenced the court to enter a judgment in favor of the respondents, and to overrule the motion for a new trial. It may not be out of place to add that the views urged by the relator's attorneys in this case, as well as in the *Davis Case*, were urged before the supreme court

by Messrs. T. K. Skinker and Joseph Shippen in the briefs filed by them in the case of *U. S. v. County Court*, 144 U. S. 568, 12 Sup. Ct. Rep. 921. Although no mention is made in the opinion of the supreme court of the questions thus presented and discussed, yet it must be presumed that they were considered and determined adversely to the relator.

CONTINENTAL INS. CO. OF CITY OF NEW YORK *v.* INSURANCE CO. OF STATE OF PENNSYLVANIA.

(Circuit Court of Appeals, Second Circuit. March 15, 1892.)

1. FRAUD—EVIDENCE—ADMISSIBILITY.

In an action by one insurance company against another, plaintiff alleged that, through the fraud of an agent employed by both companies, it had paid large amounts on marine losses which defendant ought to have paid; that the fraud was effected by shifting the risks after knowledge of disaster,—in some cases by reinsuring with plaintiff risks originally insured by defendant, in others by substituting plaintiff for defendant as the original insurer, and in still others by concealing reinsurance effected by defendant upon risks originally insured by plaintiff, thus throwing the whole burden of the loss upon plaintiff. *Held*, that in proving the frauds it was competent to show that during the same period the agent was committing a series of similar frauds upon other companies, for which he was agent, for the benefit of defendant; and that all the entries made in his books by his clerks pursuant to his instructions, in effecting the frauds, as well as the instructions themselves, both general and special, were admissible as part of the *res gesta*.

2. SAME—ACCOUNT BOOKS.

It was proper to mark as exhibits the pages containing the false entries, and the fact that such pages, as they stood and as they went to the jury, contained other entries in no wise concerned with the case, was immaterial when the plaintiff only proved and read the fraudulent entries, and the objections taken were to these only.

3. SAME—EVIDENCE OF PERJURED WITNESS—CORROBORATION.

It was immaterial whether certain entries, testified to by a witness whose former perjury was conceded, did or did not corroborate his testimony, such evidence being offered and received, not as independent evidence, but as part of the testimony of the witness himself,—as memoranda made by him at the time, and sworn to be correct, of dates, names, figures, and values, which no witness could be expected to carry in mind.

4. SAME—INSTRUCTIONS.

Certain evidence was introduced which would tend to show knowledge by defendant of the frauds practiced in its favor, if supplemented by other proof. But plaintiff failed to so supplement it. The court charged that no knowledge was proved. *Held* that, in the absence of a motion to strike out, this charge was all that was required.

5. SAME—EVIDENCE OF DATES.

The dates when reinsurance was effected nowhere appeared on the books, and could only be fixed by the position of the reinsurance entries, with relation to other entries which were dated. *Held*, that it was competent, for this purpose, for a witness to testify from entries made by himself, although such entries disclosed other fraudulent reinsurances.

6. SAME—COURSE OF BUSINESS.

Evidence showing the line of insurance and reinsurance carried by defendant company during the year was admissible as disclosing a general course of business, whereby defendant was found to be reinsured when there was a loss to be paid, and not to be reinsured, however large its risk, when there was none; for from this fact, in connection with others, it might fairly be inferred that the results were secured, not by sound judgment or good chance, but by fraudulent practices.

7. SAME.

That defendant received the fruits of the agent's frauds sufficiently appeared from the fact that in each case of loss upon a risk insured by defendant, and ostensibly reinsured in part by plaintiff, the agent adjusted the loss, paid it out of funds of defendant in his hands, charged the whole amount to defendant, drew a draft on