cannot, under cover of this, distrain upon $10,000 for $1,215.04. Nor under any circumstances can he distrain the property of persons other than the taxpayer. We cannot escape the conclusion that the purpose of the sheriff was not to follow the law, and that his action was the result of predetermination and intention to coerce the receiver and this court into the payment of the excessive tax, notwithstanding and despite of the claim that it was illegal and void.

But the case will not be rested on this ground. There can be no doubt that property in the hands of a receiver of any court, either of a state or of the United States, is as much bound for the payment of taxes, state, county, and municipal, as any other property. Persons cannot, by coming into this court, and, for the promotion of their interests, applying for and obtaining the appointment of receivers, obtain exemption from the paramount duty of a citizen. For this reason receivers in this district pay all just and lawful taxes without asking or needing the sanction of the court, and in their accounts such payments are passed without question. But, on the other hand, receivers are not bound to pay a tax in their judgment unlawful, without the order of the court; and when they consider the legality of the tax questionable it is their right—their manifest duty—to apply to the court either for instruction or protection. Especially is this the case when the question arises between the receiver and persons in the state, county, and municipal government as to the proper construction to be given to the law, upon which individuals may well differ, and it is his right and manifest duty to go to the court, whose creature he is, for instruction. He therefore pursued the proper course when he came in by this petition.

The research of counsel on both sides of this case has succeeded in finding five cases in which a receiver was driven to seek the protection of the court in the matter of taxation,—all of them of persuasive authority; none of them of conclusive authority. A petition was filed by a receiver before Judge Brewer in Central Trust Co. v. Wabash, St. L. & P. Ry. Co., 26 Fed. Rep. 11, praying protection from the payment of a tax. It appeared that the only reason for the application was that it was inconvenient to the receiver to pay the tax, and that its validity was in no way questioned. The petition was rejected. But the learned judge shows distinctly his opinion that upon proper showing he would have entertained the petition. This is his language:

"In levying and collecting taxes the state is exercising its sovereign power. There should be no interference with its collection of these taxes in its prescribed and regular methods, even by a court having property in the possession of its receiver, unless it is first charged that the taxes are in some way illegal or excessive.

A bill was filed in Hewitt v. Railroad Co., 12 Blatchf. 452, by receivers, to test the legality of a tax. It was heard by Mr. Justice Blatchford, who entertained the question, discussed it in a long and elaborate opinion, and sustained the legality of the tax. The same receivers came before him again in Stevens v. Railroad Co., 13

Blatchf. 104, and asked relief from the same tax, because of some irregularity. Naturally and properly, it having been decided that the tax was legal, he dismissed the petition. As we have said, a receiver must pay all legal taxes, and the court will not interfere to protect him if he attempt to escape from such payment. In Georgia v. Atlantic & G. R. Co., 3 Woods, 437, Mr. Justice Bradley did interfere with the summary process of collecting taxes by the state, and in his well-considered and able opinion established the right of interference upon the highest grounds of public policy.

Two cases were found by state courts: County of Yuba v. Adams, 7 Cal. 35, and Prince George's Co. v. Clarke, 36 Md. 206. The first case distinctly shows that the court entertained jurisdiction of a claim of a county for taxes. The second annuls a sale made of property for taxes because the property was in the hands of the court. The decisions of all of the states of the Union and of the supreme court of the United States are full of cases determining the validity of a state tax, or of municipal taxes imposed under the authority of the state legislature. The supreme court of the United States has not only declared a state tax so imposed invalid; it has also reversed the decision of the court of last resort of the state sustaining the tax. Hoge v. Railroad Co., 99 U. S. 349; Tomlinson v. Branch, 15 Wall. 460; Tomlinson v. Jessup, Id. 454,—are cases carried up from this court, each of them seeking injunction against the state auditor in the matter of taxation. In Savannah v. Jesup, 103 U. S. 563, the court decided a tax of the city of Savannah invalid. At the April term of this court, 1892, the case of Richmond & D. R. Co. v. Blake, 49 Fed. Rep. 904, (county treasurers and sheriffs,) involving the identical questions raised in this case, was heard by a full bench, and decided. The case came up on pleadings selected by the defendants themselves. Every question made as to legality of the valuation made in this case, and the discrimination and the right and duty of the court to interfere therein, was heard. The excess was pronounced void. This decision has not been reversed. It has not been appealed from. It is an authority of great weight with us. Indeed, as there is yet an opportunity of reviewing it in the supreme court, we would at all events await the result of such an appeal. When, therefore, the receiver comes into this court and asks instructions, predicating his action on the decision in this case, we grant him relief by suspending the collection of the tax until the presumption of the soundness of this decision has been overcome. Besides this, we would not in this collateral way on a rule pass upon the question either of the validity or of the invalidity of this tax.

The only remaining question is as to the jurisdiction of the court and its right to protect the property. By the case of Bound against the railway company, as we have seen, all the property of the South Carolina Railway within this state came under the jurisdiction of this court. It acquired possession of this property, and it thus has jurisdiction over the entire subject-matter, every part and parcel thereof. All property in the hands of a receiver is in the custody of the court. No one, whoever he may be, can interfere with it

without the sanction or permission of the court. Wiswall v. Sampson, 14 How. 52.

The learned counsel who replied for the sheriff with a frankness which does him great credit, admitted the general rule as to the sanctity of property in the hands of a court; and that, when jurisdiction has once attached in this circuit court in the original case, it can extend its protection to property, even if its value be less than $2,000. He contends that to this general proposition there is one exception,—when the officers of a state come in and take the property for taxation. He argues that the taxing power is a high exercise of sovereignty, and that to permit a court to interfere with the collection of a tax is to invade the sovereign right, and to embarrass the government. But we have seen that courts all over this country have entertained cases involving the validity of a state tax, in many cases imposed by the legislature, and in very many instances have declared the tax invalid, even a tax imposed by a state legislature, in which is vested more of the attributes of sovereignty than any other department of the state governments. There are many cases of this kind in the reports of the courts of South Carolina. In Hand v. Railroad Co., 17 S. C. 221, upon a claim made by the state for taxes upon property in the hands of a receiver, the court examined into the validity of the claim, and rejected it. In the very recent cases of State v. Cromer, 35 S. C. 230, 14 S. E. Rep. 493; State v. Boyd, 35 S. C. 233, 14 S. E. Rep. 496,—the supreme court of South Carolina examined into the validity of the action of the comptroller general in a matter of the assessment of property for taxation, and, after examination, set it aside. The court quotes with approval the language of Moses, C. J., in State v. County Treasurers, 4 S. C. 520:

"The power to tax is the most extensive and unlimited of all the powers which a legislative body can exert. It is without restraint, except by constitutional restrictions. To tie up the hand [of the court] that can alone resist its unlawful encroachment would not only render uncertain the tenure by which the citizen holds his property, but make it tributary to the unrestrained demands of the legislature."

The language of Miller, J., in U. S. v. Lee, 106 U. S. 220, 1 Sup. Ct. Rep. 240, is not inappropriate:

"The defense stands here solely upon the absolute immunity from judicial inquiry of everyone who asserts authority from the executive branch of the government, however clear it may be made that the executive possessed no such power. Not only no such power is given, but it is absolutely prohibited, both to the executive and the legislative."

It is not claimed that the state, in order to obtain payment of its taxes, must come into court by petition, and get an order for their payment. On the contrary, as has been said, the paramount right of the state has always been and is acknowledged, recognized, and faithfully preserved. Without any interference whatever on her part, her priority is maintained and observed. But when persons assuming to act in the name of the state seize upon, without notice, and assert exclusive possession of, property in the hands of the receiver and under the protection of this court, and, while so assuming

to act, take property greatly in excess of the sum claimed, the court must and will interfere.

At the hearing a number of affidavits were read going to the issue, was this a legal tax? Upon a rule of this kind it is not competent for us to go into this question. It must be made in a direct proceeding. Such proceedings are already on file in this court. We recognize that the question has not been finally decided, and for this reason our injunction goes only until a further order. If testimony be offered in the orderly way, and if the fact be established that the assessment and the taxes levied thereunder are just and lawful, it will afford the court pleasure, and it will be its duty, to order the taxes paid forthwith, as a paramount lien on all the property and funds in the hands of the receiver.

The Injunction.

This cause came on to be heard on petition, rules to show cause, return thereto, and affidavits. Hearing the same, and upon due consideration thereof, it is ordered, adjudged, and decreed that an injunction do issue to M. V. Tyler, sheriff of Aiken county, his deputies and agents, enjoining and restraining them from further intermeddling, interfering with, keeping and holding the personal property distrained upon by him, belonging to the petitioner as receiver of the South Carolina Railway Company, or in his care and custody as receiver and common carrier, and that this injunction remain of force until the further order of this court. It is further ordered that the said property be restored to the custody of the receiver of this court, and that the marshal put him in possession thereof.

Ex parte HUIDEKOPER et al.

(Circuit Court, D. South Carolina. February 16, 1893,)

INJUNCTIONS—VIOLATION—CONTEMPT—PUNISHMENT.

Where a sheriff, in order to collect a tax, distrains property in the hands of a receiver of a federal court, and thereafter refuses to comply with an order of such court requiring him to restore the property to the receiver, he is guilty of a high contempt, and will be punished by fine and imprisonment. In re Chiles, 22 Wall. 168, followed.

Rule against M. V. Tyler and others, sheriffs and treasurer, to show cause why they should not be attached for contempt in violating an injunction.

I. S. Cothran, Hugh L. Bond, and Mr. Crawford, for the receivers.

D. A. Townsend, Atty. Gen., (Samuel Lord and Ira B. Jones, of counsel,) for the sheriffs, Nance and others.

Before GOFF, Circuit Judge, and SIMONTON, District Judge.

PER CURIAM. It appears that certain personal property in the hands of receivers of this court was distrained for an excess of tax; that the receivers had actually paid all of the admitted tax, and had not paid the excess, because it is alleged that it is not authorized

by law. The warrants or executions were issued by the county treasurers in each instance, and were executed by the respective sheriffs. Upon petitions filed in this court by the receivers it was alleged that an amount of property in each instance had been distrained greatly exceeding the amount of tax demands, and that in many instances property in the care of the receivers, belonging to other parties, had been included. At the hearing of the petitions, rules to show cause were issued to each county treasurer and sheriff complained of, and at the same time a restraining order was issued, forbidding them and each of them from disposing of or interfering with the property distrained. These orders were all personally served on the persons to whom they were directed. No attention to or obedience of any of the said restraining orders was paid by any one of the sheriffs served. On the contrary, they retained possession of the property in defiance of the orders, and still retain it. In their returns to the rules to show cause they justify their act, profess no desire to submit to the ruling of the court, and accompany this with a formal disclaimer of any contempt. It must be borne in mind, also, that the property distrained was not of a fugitive character, and that, as it always remains in this state, and is easily reached, there never could arise any difficulty in making a levy when such levy was adjudged to be lawful. In despite of this fact, and of the restraining order of this court, the property was detained. It was said at the bar that the sheriffs acted under the orders of the comptroller general in making the levy under statute of 1888, (20 St. S. C. p. 54.) If this be so, and if, after making the levy and having been served with the order of this court, the sheriffs had obeyed it, we could perhaps have treated this as a technical contempt, and have graduated the punishment accordingly. But, although the comptroller general is the person charged by law with the duty of directing sheriffs in collection of taxes, neither he, nor any one else, can direct or authorize the sheriffs, in the execution of the precept, to violate the rights of third parties, or to conduct themselves illegally. The sheriff is an independent officer, holding under a tenure created by the constitution, with a recognized right in this same statute to differ from the comptroller general, and to have such difference settled in a court of law. Whenever he acts, he acts on his own responsibility, and cannot shield himself by any instructions of the plaintiff in execution. We can deal with him only. In these cases we are of the opinion that there has been open and flagrant—perhaps, we fear, determined—disregard of the process of this court, and that the sheriffs are justly chargeable with high contempt. They cannot escape unpunished. Were this course to be followed, the dignity of the court would be impaired, and its usefulness in great measure destroyed. In our action in this case we will follow the precedent of the supreme court in Re Chiles, 22 Wall. 168. Under section 725, Rev. St., the courts of the United States have power to punish for contempt of their authority. Among the cases specifically enumerated are "disobedience or resistance of an officer of the court or by any party, juror, witness,

or other person to any lawful writ, process, order, rule, decree, or command of the said courts." Such has always been the power of the courts, both of common law and equity. The exercise of this power has a twofold aspect, namely, first, the proper punishment of the guilty party for his disrespect to the court or its order; the second, to compel his performance of some act or duty required of him by the court, which he refuses to perform.

With regard to the county treasurers, as it does not appear that any act was done by them after the service of the orders of this court upon them, the rules against them are dismissed.

The Sentence.

M. V. Tyler, sheriff of Aiken county, having been served with two rules to show cause why he be not attached for contempt for the matters set forth in copy of petition to each rule attached, and sufficient cause having not been shown, and it further appearing that he notwithstanding continues to hold and detain said property, we adopt the precedent set in Re Chiles, 22 Wall. 157, by the supreme court of the United States: It is ordered, adjudged, and decreed that he is in contempt of this court, and of its orders and process. It is further ordered that he do pay a fine of $500, and that the clerk of this court shall enter judgment thereon, and issue execution therefor, and also stand committed to the custody of the marshal of this court until he has paid said fine, or purged himself of his contempt herein.

NOTE. This case has been affirmed by the supreme court, so far as the imprisonment is concerned. 13 Sup. Ct. Rep. 785.

UNITED STATES v. WILLAMETTE VAL. & C. M. WAGON ROAD CO. et al.

(Circuit Court, D. Oregon. December 16, 1892.)

No. 1,611.

1. PUBLIC LANDS—GRANTS FOR WAGON ROADS—PERFORMANCE OF CONDITION.
The company to which the state of Oregon transferred the grant made to it in aid of a certain wagon road by the act of July 5, 1866, (14 St. p. 89, c. 174,) constructed a road which was regularly used as such, though the grades were heavy and the bridges few. It crossed the S. river by fords which were dangerous when the snows were melting in the spring, but at such times the snow itself in the mountains prevented through travel on the road. *Held*, that in view of the nature of the country, the needs of the time, the modes of travel then in use, and the value of the grant, the road was such as to satisfy the requirements of the granting act.

2. SAME—GOVERNOR'S CERTIFICATE—PERSONAL INSPECTION.
The provision of the act that the lands might be disposed of from time to time upon the certificate of the governor of Oregon that 10 continuous miles of the road were completed, did not require or contemplate that he should make a personal inspection of the road to determine the fact.

3. SAME—FRAUDULENT PROCUREMENT—EVIDENCE.
It was shown that the persons appointed by the governor to inspect the road were paid by the road company, and there was testimony that one