also, was an action in the United States court against a state by a citizen of another state. Nevertheless, I take it as a sufficient statement of the general law for the purpose of this case.

I come, then, to the question whether the grant in the act of congress of 1890 be a grant to the state, or a grant to the treasurer of the state, or to the college through him as a mere channel of payment. It is worth while to observe that the original grant made in the act of 1862, for the purpose of founding these colleges, was a grant to the state, and the control of the fund, and probably, also, of the colleges established thereby, was committed to the state. This is not denied here; and, while it is by no means decisive, it seems to me at least to suggest that, if the supplementary funds granted in 1890 are to be otherwise administered, there should appear at least an undoubted inference to that effect from the later act of congress. The second act must doubtless be taken to have been passed in view of the particular, as well as the general, provisions of the first act.

Coming, then, to a consideration of the verbal provisions of the act of 1890, I find that it first provides "that there shall be, and hereby is, annually appropriated, * * * to be paid, as hereinafter provided, to each state and territory for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, now established, or which may hereafter be established," in accordance with the act of 1862, certain sums of money to be applied to certain purposes; that "the annual amount to be paid," after 10 years, "to each state and territory, shall be twenty-five thousand dollars;" "that no money shall be paid out under this act to any state or territory for the support and maintenance of a college when a distinction of race or color is made in the admission of students," and that the money appropriated shall in such cases be divided according to a prescribed method. The second section of the act is as follows:

"Sec. 2. That the sums hereby appropriated to the states and territories for the further endowment and support of colleges shall be annually paid on or before the thirty-first day of July of each year, by the secretary of the treasury, upon the warrant of the secretary of the interior, out of the treasury of the United States, to the state or territorial treasurer, or to such officer as shall be designated by the laws of such state or territory to receive the same, who shall, upon the order of the trustees of the college, or the institution for colored students, immediately pay over said sums to the treasurers of the respective colleges or other institutions entitled to receive the same; and such treasurers shall be required to report to the secretary of agriculture and to the secretary of the interior, on or before the first day of September of each year, a detailed statement of the amount so received and of its disbursement. The grants of money authorized by this act are made subject to the legislative assent of the several states and territories for the purpose of said grants: provided, that payments of such installments of the appropriation herein made as shall become due to any state before the adjournment of the regular session of legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof, duly certified to the secretary of the treasury."

The act then goes on to provide that—

"If any portion of the moneys received by the designated officer of the state or territory for the further or more complete endowment, support, and

maintenance of colleges, or of institutions for colored students, as provided in this act, shall by any action or contingency be diminished or lost or be misapplied, it shall be replaced by the state or territory to which it belongs; and, until so replaced, no subsequent appropriation shall be apportioned or paid to such state or territory; * * *" and, further, that "the secretary of the interior shall ascertain and certify to the secretary of the treasury, as to each state and territory, whether it is entitled to receive its share of the annual appropriation for colleges, or of institutions for colored students, under this act, and the amount which thereupon each is entitled, respectively, to receive;" and that, "if the secretary of the interior shall withhold a certificate from any state or territory of its appropriation, the facts and reasons therefor shall be reported to the president, and the amount involved shall be kept separate in the treasury until the close of the next congress, in order that the state or territory may, if it shall so desire, appeal to congress from the determination of the secretary of the interior;" and "that the secretary of the interior shall annually report to congress the disbursements which have been made in all the states and territories, and also whether the appropriation of any state or territory has been withheld, and, if so, the reasons therefor."

These, I believe, are all the words in the act important to be considered, unless it be the provision that the presidents of the colleges shall make annual report to the secretary of agriculture and the secretary of the interior as to the work, condition, and progress, receipts and expenditures, of the colleges. It seems to me very plain that these words import, on their face, a grant to the state, and, by consequence, a duty in the state to administer the grant for the prescribed purpose; and I am unable to see any consideration, arising from the nature of the case, which should modify this plain import. The provisions as to payment to the treasurer and payment by him do not necessarily exclude the controlling action of the state. It is convenient that a particular person be designated as the agent for the receipt and disbursement; and these words make this designation without stating, in terms, at least, whether he acts as agent for the state or for the government. But the general scope of the act is clearly consonant only with a grant to the state. The money is to be "paid to each state;" the amount to be "paid to each state" is to be so much; no money shall be "paid to any state" in certain contingencies; the money is spoken of as "appropriated to the states," and the installments as becoming "due to any state;" that the fund, if lost, shall be replaced "by the state or territory to which it belongs;" that the secretary shall report, "as to each state and territory, whether it is entitled to receive its share;" and that the secretary, in certain cases, "shall withhold a certificate from any state or territory of its appropriation." It is also provided that the secretary shall report "the disbursements which have been made in all the states and territories, and also whether the appropriation of any state or territory has been withheld." These latter words do, indeed, give color to the suggestion that the references to a grant to the states imply, not a grant to the states as political bodies, but, rather, grants to persons or corporations within the limits of these states. But all the other phrases of the act look the other way. The act, verbally read, leaves no ground for the interpretation urged by the complainant. And a consideration of the purpose and scope of the act seems to me still more persuasive. Under the act of

1862 the state controls at least the fund which supports the college, and is liable to make good any loss or misapplication of the principal. Under the act of 1890 the state is equally liable, and ought to have at least an equal control. The very questions which will arise if this bill be retained suggest that they are fit to be determined by the state only, under whatever supervision the congress may see fit to exercise. The complainant contends that the treasurer, under the act of congress, has the simple ministerial duty to pay over the fund to the treasurer of the agricultural college. But here, it appears, are two corporations, each claiming to be the beneficiary. In order to determine between these conflicting claims, he must decide what action is necessary to constitute a beneficiary, and also whether such action has been had in favor of each of the claimants. This decision seems to me appropriate for the state by legislative act, and not for an officer controlled by judicial mandate. The state is to establish the beneficiary, to control its funds, to be responsible for its misdeeds and for its errors, if any there be, as to the application of funds; and I find myself unable to resist the conclusion that, unless restrained by clear words or certain implication, the state has the sole right to ascertain in the beginning, and at each successive step, the identity of the corporation which it has so designated, and for which it is so responsible. The demurrer must therefore be sustained.

HARTUPEE v. CRAWFORD.

(Circuit Court, S. D. Ohio, W. D. June 1, 1893.)

No. 4,529.

1. CONTRACTS—CONSTRUCTION—PROFESSIONAL SERVICES.
   Defendant contracted to pay to plaintiff's intestate, in consideration of professional services to be rendered by him in the common pleas, probate, circuit, and supreme courts of Ohio in and about a certain partition suit, one-third of all the fees that defendant should receive as counsel for certain of the parties. Defendant's fees, under the agreement between him and his clients, were contingent upon their success in the suit. The suit was tried in the common pleas, resulting in a judgment for a few of defendant's clients. The intestate then died, and the case was appealed to the circuit court. *Held*, that the contract is an entirety, and there could be no recovery thereunder, as the intestate did not complete the services to be rendered.

2. SAME—EQUITY JURISDICTION—QUANTUM MERUIT.
   It follows that a bill in equity, founded upon the contract for an accounting, must be dismissed without regard to plaintiff's right to recover on a quantum meruit for his intestate's services, for the only ground of equitable jurisdiction in the case is the lien which was claimed for defendant's fees, and which must fail if the recovery is not to be under the contract itself.

3. SAME—BENEFITS—REMOTENESS.
   Where the bill fails to show that defendant had received any fees in the partition suit, and hence was benefited by the services rendered by intestate, the claim that he was benefited by the use of the points and arguments therein in another suit involving the same land, in which his clients were successful, is a consideration altogether too remote.