

pated and denied. But in passing upon the demurrer the court is bound to treat the bill as being true; and the matter in avoidance, to merit attention, needs to be set forth in an answer.

The decisions of the supreme court of the United States, which are cited as sustaining the validity of the tax, are distinguishable from this case, in its present state, by the fact that in each the merits were fully presented by the pleadings of both sides, and testimony, or by agreed statements of the facts. It is true that the bill in this case does not particularize the discriminations complained of, or specify instances with any greater minuteness than the bill in the case of *First Nat. Bank v. County of Chehalis*, 32 Pac. Rep. 1051, in which the supreme court of this state affirmed a judgment in favor of the defendant upon a demurrer to the bill. But it is also true that the bill before me is fully as definite and specific in its statements of the facts constituting discrimination as the bill in the case of *Boyer v. Boyer*, supra, in which the supreme court of the United States held that an answer should have been required, and reversed the decision of the supreme court of Pennsylvania, sustaining a demurrer to the bill. Demurrer overruled.

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CORLISS et al. v. E. W. WALKER CO. et al.

(Circuit Court, D. Massachusetts. August 1, 1893.)

No. 3,152.

1. INJUNCTION—PUBLICATION OF BIOGRAPHY—PUBLIC CHARACTERS.

A person who holds himself out as an inventor, and whose reputation as such becomes world-wide, is a public character, and the publication of his biography cannot be restrained by injunction. *Schuyler v. Curtis*, (Sup.) 15 N. Y. Supp. 787, distinguished.

2. SAME—PUBLICATION OF BIOGRAPHY.

A court of equity has no jurisdiction of a suit to restrain respondents from publishing a biography of complainant, or of a member of complainant's family.

3. SAME—PUBLICATION OF PICTURE—BREACH OF CONDITIONS.

A court of equity should restrain by injunction the publication of a picture of a deceased member of complainant's family, taken from a photograph and portrait of deceased, where respondent has not observed the conditions on which the portrait and photograph were obtained.

In Equity. Bill by Emily A. Corliss and others against the E. W. Walker Company and others to restrain respondents from publishing a biography and selling a picture of George H. Corliss.

Henry Marsh, Jr., and James M. Ripley, for complainants.

Henry W. Fales, for defendants.

COLT, Circuit Judge. This suit is brought by the widow and children of George H. Corliss to enjoin the defendants from publishing and selling a biographical sketch of Mr. Corliss, and from printing and selling his picture in connection therewith. The bill does not allege that the publication contains anything scandalous, libelous, or false, or that it affects any right of property, but the relief prayed

for is put upon the novel ground that such publication is an injury to the feelings of the plaintiffs, and against their express prohibition.

The counsel for plaintiffs, in argument, put the case upon the ground that Mr. Corliss was a private character, and that the publication of his life is an invasion of the right of privacy, which a court of equity should protect. In the first place, I cannot assent to the proposition that Mr. Corliss was a private character. He held himself out to the public as an inventor, and his reputation became world-wide. He was a public man, in the same sense as authors or artists are public men. It would be a remarkable exception to the liberty of the press if the lives of great inventors could not be given to the public without their own consent while living, or the approval of their family when dead. But whether Mr. Corliss is to be regarded as a private or public character (a distinction often difficult to define) is not important in this case. Freedom of speech and of the press is secured by the constitution of the United States and the constitutions of most of the states. This constitutional privilege implies a right to freely utter and publish whatever the citizen may please, and to be protected from any responsibility for so doing, except so far as such publication, by reason of its blasphemy, obscenity, or scandalous character, may be a public offense, or, by its falsehood and malice, may injuriously affect the standing, reputation, or pecuniary interests of individuals. Cooley, *Const. Lim.* (6th Ed.) 518. In other words, under our laws, one can speak and publish what he desires, provided he commits no offense against public morals or private reputation. *Schuyler v. Curtis*, 15 N. Y. Supp. 787, recently decided by the New York supreme court, and upon which the plaintiffs rely, is not in point. In that case the court enjoined the defendants from erecting a statue of Mrs. Schuyler. The right of publication was not in issue in that case.

There is another objection which meets us at the threshold of this case. The subject-matter of the jurisdiction of a court of equity is civil property, and injury to property, whether actual or prospective, is the foundation on which its jurisdiction rests. In *re Sawyer*, 124 U. S. 200, 210, 8 Sup. Ct. Rep. 482; *Kerr, Inj.* (2d Ed.) 1. It follows from this principle that a court of equity has no power to restrain a libelous publication. *Boston Diatite Co. v. Florence Manuf'g Co.*, 114 Mass. 69; *Brandreth v. Lance*, 8 Paige, 24. The opinion of Vice Chancellor Malins in *Dixon v. Holden*, L. R. 7 Eq. 488, to the contrary, is disapproved by Lord Chancellor Cairns in *Assurance Co. v. Knott*, 10 Ch. App. 142. In *Kidd v. Horry*, 28 Fed. Rep. 773, Mr. Justice Bradley, in speaking of *Dixon v. Holden*, and several recent English cases, declares that they depend on certain acts of parliament, and not on the general principle of equity jurisprudence. But in the present bill it is not pretended that the publication is libelous, and therefore there can be no question as to the want of jurisdiction in this case.

As to the picture which accompanies the published sketch, the case stands on a different footing. The defendants obtained

from the plaintiffs a copy of a portrait and a photograph of Mr. Corliss, from which they have made two plates, one of which they propose to insert in the publication. But it appears from the evidence that these pictures were obtained on certain conditions, which the defendants have not complied with. This matter directly concerns the exclusive right of property which the plaintiffs have in the painting and photograph, and it would be a violation of confidence, or a breach of contract between the parties, to permit the defendants, under these circumstances, to use either of the plates. *Pollard v. Photographic Co.*, 40 Ch. Div. 345; *Prince Albert v. Strange*, 1 Macn. & G. 25. The injunction is denied as to the publication, and granted as to the use of the plates.

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CLYDE et al. v. RICHMOND & D. R. CO. et al.

HUIDEKOPER et al. v. DUNCAN et al.

(Circuit Court, D. South Carolina. September 15, 1893.)

1. FEDERAL COURTS—JURISDICTION—ACTION AGAINST RAILROAD COMMISSIONERS.

A proceeding by receivers of a railroad against state railroad commissioners for relief against alleged unjust and unreasonable rates for freight transportation established by such commissioners, is not a proceeding against the state, within Const. U. S. Amend. 11, inhibiting the exercise of jurisdiction by federal courts in suits brought against one of the United States by citizens of another state.

2. SAME—WHEN STATE A PARTY.

As such a proceeding presents no question of penalties, the fact that the act authorizing the commissioners to fix rates requires actions to recover penalties for disregarding them to be brought in the name of the state, and for its benefit, does not make the state in any sense a party or privy to the record.

3. SAME—SOUTH CAROLINA DISPENSARY ACT.

That the state, under the operation of the "dispensary act," approved December 24, 1892, has a material interest in such a proceeding, as a large, and perhaps the only, shipper of liquors, does not make it a party to the proceedings, so as to preclude the federal court from exercising jurisdiction.

4. RAILROAD COMMISSIONERS—ESTABLISHMENT OF RATES—DUE PROCESS OF LAW.

Railroad companies have the right to require that state railroad commissions fix just and reasonable freight transportation rates, and the changing or lowering of such rates so as to injure the railroad company in its property rights is a deprivation of property without due process of law, within the inhibition of the state and federal constitutions, and justifies the interposition of the courts to inquire into the reasonableness or justness of the rates, and a court, to that end, may appoint a special master to take testimony in relation thereto, and to report thereon.

In Equity. Petition by Frederick W. Huidekoper and Reuben Foster, receivers of the Richmond & Danville Railroad Company, appointed in the suit of William P. Clyde and others against said company and others, for relief against the action of D'Arcy P. Duncan, Henry R. Thomas, and Jefferson A. Sligh, railroad commissioners for the state of South Carolina, in changing freight