HANFORD, District Judge. The land in controversy is not within the limits of an Indian reservation. The complainant in good faith settled upon it, and filed in the proper United States district land office an application to enter said land under the homestead law, and has since resided upon and cultivated the same, and made valuable improvements thereon, and is now prepared to make proof of full compliance with the requirements of said law, so as to become entitled to a patent. The government, however, after receiving said homestead application, has included said land in allotments made to the Indian defendants herein, in fulfillment of a treaty stipulation made with Chief Moses and other Indians of the Colville and Columbia Indian reservations, and canceled the homestead filing made by the complainant; and the defendant Bubb, as Indian agent, now proposes and intends to eject the plaintiff from said premises by force, and has given notice to that effect. The rights of the complainant and of the Indian defendants, respectively, to the land described in the complaint, have been the subject of a contest in the land department; and, upon a final hearing of that matter, the secretary of the interior has made a decision adverse to the plaintiff, pursuant to which his homestead filing was canceled, as aforesaid. The complainant contends that said decision is erroneous, by reason of unfairness in the proceedings and of misconstruction of the law.

Manifestly, the plaintiff's contention is in good faith. Until a judicial determination of the questions of law affecting the same, his claim to the land in controversy cannot be extinguished. If he has a superior right in law, irreparable injury will be done by dispossessing him. It is no part of the function pertaining to the office of an Indian agent to forcibly eject persons from premises not within the boundaries of an Indian reservation. If the Indians are entitled to possession, they should make application for judicial process to enforce their rights according to the laws of the land. This court will not, at the present stage of the case, express any opinion as to the validity of the plaintiff's claim to the land. Being the owner and in possession of valuable improvements which he has placed upon the land, it is the duty of the court to protect his possession until the final hearing upon the merits.

Injunction granted.

PUGET SOUND NAT. BANK OF SEATTLE v. KING COUNTY et al.

(Circuit Court, D. Washington, N. D. June 18, 1894.)

No. 141.

COLLECTION OF TAXES—REPEAL OF STATUTE—SAVING CLAUSE.

The repeal, by Laws Wash. 1893, pp. 323–385, of all previous acts providing for assessment and collection of taxes, did not affect pending proceedings for collection of personal property taxes by a county treasurer under a warrant annexed to an assessment roll, issued to him pursuant to statute in force at the date thereof, as section 75 of the act continues in force such warrants, previously issued, as to taxes due and unpaid.

This was a suit by the Puget Sound National Bank of Seattle against King county and others for an injunction to restrain the col-

lection of taxes upon the stock of the complainant under an assessment against the bank, as agent for its shareholders, for the year 1891. A demurrer to the bill was overruled (57 Fed. 433), and an answer was filed. Complainant filed exceptions to the answer.

Carr & Preston and J. B. Howe, for complainant.
John F. Miller and S. H. Piles, for defendants.

HANFORD, District Judge. A demurrer to the complainant's bill having been overruled in accordance with the opinion heretofore rendered in this case (57 Fed. 433), the defendant has answered, denying the equities of the bill, and also setting forth in detail the assessment and levy of the taxes sought to be collected, and the issuance of a warrant to the county treasurer, annexed to the assessment roll, in which the complainant is assessed upon its stock as agent for its several shareholders. To said answer the complainant has filed exceptions for alleged insufficiency.

Since the commencement of this suit the legislature of the state has enacted an entirely new revenue law, covering the entire subject of assessments and procedure for the collection of taxes for state and county purposes, which enactment contains a section repealing all previous acts of the legislature of the territory or state of Washington providing for the assessment and collection of taxes. Laws Wash. 1893, pp. 323-385. In the argument upon the exceptions the sole contention has been that by the repeal of the law under which the tax was levied all authority to enforce payment has been withdrawn, and in proof of the complete annihilation of the former revenue laws and of all proceedings dependent thereon counsel have cited Thurston Co. v. Scammell, 7 Wash. 94, 34 Pac. 470, in which decision the supreme court of this state declares that the repeal of an act upon which a pending action is founded is a complete bar to all further proceedings. Said decision was made in a suit for the collection of taxes upon real estate, which suit was authorized by a statute. The supreme court was not called upon to consider the effect of said act of 1893 upon pending proceedings for the collection of personal property taxes by a county treasurer under a warrant annexed to an assessment roll requiring him to collect the personal property taxes by distraint. It is true, as contended by counsel, that the repeal of a tax law would affect proceedings for the collection of taxes by seizure and sale of property in the same manner as pending suits authorized by the statute if the repeal were unconditional and without a saving clause; and in their argument counsel for the complainant have assumed that the act of 1893 is without a saving clause. This I find to be erroneous.

At the time this statute was enacted the treasurer of King county had in his possession, annexed to an assessment roll for the year 1891, an unexecuted warrant directed to him as such county treasurer, directing the collection from the complainant of the taxes which are the subject-matter of this suit, which warrant was issued pursuant to statutes in force at the date thereof. 1 Hill's Code, §§ 1038-1040, 1092-1096. All the vitality and force of said warrant is

preserved and continued by the seventy-fifth section of the act of 1893, which reads as follows:

"Sec. 75. The power and duty to levy and collect any tax due and unpaid shall continue in and devolve upon the county treasurer and his successors in office after his return to the county auditor, and until the tax is paid; and the warrant attached to the assessment roll shall continue in force and confer authority upon the treasurer to whom the same was issued, and upon his successors in office, to collect any tax due and uncollected thereon. This section shall apply to all assessment rolls and the warrants thereto attached, which have been heretofore issued upon which taxes may be due and unpaid, as well as those hereafter issued."

Exceptions overruled.

FIRST NAT. BANK OF WALLA WALLA v. HUNGATE.

(Circuit Court, D. Washington, S. D. June 18, 1894.)

1. TAXATION OF NATIONAL BANK STOCK—COLLECTION FROM BANK.
   On an assessment of bank stock under 1 Hill's Code Wash. §§ 1038–1040, making banks agents for their respective shareholders, and authorizing the collection from each bank of taxes on its stock assessed against it as such agent, if the statute is not complied with by charging the bank on the assessment roll, and it is not even referred to by its proper corporate name in the assessments against its shareholders, the warrant to the collector confers no authority to seize the property of the bank for the purpose of enforcing payment of taxes charged against shareholders.
2. SAME—UNJUST DISCRIMINATION—RELIEF IN EQUITY.
   Failure to exhaust the means of redress afforded by the laws of Washington for equalization of assessments does not preclude a national bank from obtaining relief, in a federal court in the state, against the collection from it of taxes on its stock, on the ground of unjust discrimination in the valuation of such stock. Andrews v. King Co., 23 Pac. 409, 1 Wash. St. 46, followed.
3. SAME—TENDER OF TAX.
   Failure of such bank to make and keep good a tender of so much of the tax as was justly due does not bar such relief, where nothing is due from the bank, there being no assessment against it, and where the county officers have declared that they will not accept less than the whole amount levied.

This was a suit by the First National Bank of Walla Walla against H. H. Hungate, as treasurer of Walla Walla county, for an injunction to restrain the collection from complainant of taxes, for the year 1892, upon bank stock assessed against the individual shareholders of the complainant. Defendant demurred to complainant's amended bill.

B. L. & J. L. Sharpstein, for complainant.
Miles Poindexter, for defendant.

HANFORD, District Judge. The amended bill of complaint shows that for the year 1892 the assessor of Walla Walla county assessed the individual shareholders of the complaining bank separately for a certain number of shares of First National Bank stock, and unjustly discriminated against said shareholders by valuing their shares at 300 per cent. of the face value, which is considerably