

ing in the matter of fuel, was satisfactory to the Bass Foundry & Machine Works, and was apparently satisfactory to the Louisiana Electric Light & Power Company. Immediately upon the success of this test, and apparently with the consent of all concerned, the Louisiana Electric Light & Power Company took full possession of the engines and machinery appertaining which before had been in the possession of the makers, Allis & Co., and thereafter said Louisiana Electric Light & Power Company and its assigns have run and operated the same without complaint of any kind, and without suggesting, much less demanding, any further test. The evidence in the case shows that, under the circumstances, a continuous test of four days was impracticable, because the Louisiana Electric Light & Power Company was supplying light mainly about eight hours in the nighttime, during which time only the expense of running with 1,000 lights, as specified in the contract, could be ascertained. The evidence further shows that one test of eight hours was just as good, and bound to be as satisfactory as if the same had been repeated any number of nights; and that, in the matter of oil and labor, there was, of necessity, a decided saving in operating the two Corliss engines over the fifteen or sixteen high-pressure engines with which the comparison was to be made. As the test was to be made for the sole purpose of ascertaining the delays to be accorded the electric light and power company for the payment of the \$24,000, and as the evidence shows that the said company has already had more delay than it would have been entitled to by the results of any test, and yet has paid nothing on account, and still owes for the engines and machinery which it has been using with satisfaction for over eight years, it seems clear to us that the decree of the lower court, which is for the amount of \$24,000, with 5 per cent. interest from the 24th day of January, 1891, is in all respects equitable and just.

The decree appealed from is affirmed, with costs.

PORTER et al. v. MAYFIELD.

(Circuit Court of Appeals, Fifth Circuit. June 25, 1895.)

No. 359.

In Error to the Circuit Court of the United States for the Western District of Texas.

This was an action of trespass to try title under the Texas statute of July 12, 1891, and was brought by Theophilus Porter, Nancy A. Porter, and Cornelia Porter, citizens of Michigan, against Charles H. Mayfield, Henry Hoecke, W. P. Finley, George C. Shoaf, and Mrs. F. R. Noble. Additional parties were brought in as defendants by amendment. At the trial the circuit court directed a verdict for defendants, and judgment was entered accordingly. The plaintiffs bring error.

J. A. Buckler, for plaintiffs in error.

Wm. Aubrey, for defendant in error.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

PER CURIAM. The majority of the judges being of opinion that the record shows no reversible error, the judgment of the circuit court is affirmed.

LEAK GLOVE MANUF'G CO. v. NEEDLES et al.

(Circuit Court of Appeals, Eighth Circuit. June 4, 1895.)

No. 573.

INDIAN TERRITORY—LAWS IN FORCE—PENALTY FOR NOT EXECUTING PROCESS.

Under the act of congress of May 2, 1890, c. 182, § 31 (26 Stat. 81, 93), adopting for the Indian Territory certain statutes of Arkansas, including chapter 60 of the statutes of that state, relating to executions, section 3061, part of said chapter 60, and providing a penalty for the failure of an officer to whom an execution is delivered to execute or to return the writ, is an act of congress within the territory, of the same force and effect as if adopted by congress, without any reference to the Arkansas statutes, and is to be enforced by the United States court, as such.

In Error to the United States Court in the Indian Territory.

This was an action by the Leak Glove Manufacturing Company, for the use of J. P. Baden, and J. P. Baden, against Thomas B. Needles, United States marshal for the Indian Territory, and others, for a failure to execute process. Judgment was rendered for the defendants in the United States court in the Indian Territory. Plaintiffs bring error. Reversed.

Jo Johnson filed brief for plaintiffs in error.

William T. Hutchings, for defendants in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. The Indian Territory was without a government, except such as obtained among the several Indian tribes and nations occupying the country. The jurisdiction of the Indian courts was restricted to Indians. There was no court which could exercise civil jurisdiction over white men or their property. Out of deference to treaty obligations, probably, congress forebore to give that territory the customary territorial government. It is still without an executive or legislative department. The act of congress of March 1, 1889, c. 333 (25 Stat. 783), provided for the appointment of a judge, attorney, marshal, and clerk for the territory. The marshal was required to give bond "in the sum of ten thousand dollars conditioned as by law required in regard to the bonds of other United States marshals." It was further provided:

"That the practice, pleadings and forms and modes of proceeding in civil causes shall conform, as near as may be, to the practice, pleadings and forms of proceeding existing at the time in like causes in the courts of record in the state of Arkansas, any rule of the court to the contrary notwithstanding."

It will be observed that this act created a court and adopted a code of procedure, but did not adopt any substantive laws for the court to enforce, or by which the rights and obligations of the citizens in the territory, subject to the jurisdiction of the court, should be regulated and determined. In the exercise of its exclusive powers of legislation for the territory, congress, by the act of May 2, 1890, c. 182, § 29 et seq. (26 Stat. 81, 93), for the purpose of remedying the defects in the first act, enacted a complete code of substantive laws for the