of legislation is a law for the formation of corporations within section 13 of article 11. This latter section is itself an express declaration by the people of Indiana in their organic law that "corporations, other than banking, may be formed under general laws"; and there is no discretion on the subject, either in the legislature or the court. To hold that the legislature may—as under section 23 of article 4—declare that "corporations, other than banking," cannot "be formed under general laws," would be to annul section 13 of article 11 of the constitution of Indiana. The members of the legislature themselves in the amendment of 1897 evidently did not deem it in their power to make a special law. By obvious inadvertence the attempted classification was wrongly worded. If it be the law of Indiana that the legislature has this power, then individual charters to individual corporations may once more be granted at pleasure by that body. But this is what section 13 of article 11 was meant more especially to prevent. The language is that "corporations [in the plural] shall not be created by special act," meaning, when read in the light of the antithesis shown in the remainder of the sentence, to prevent any special act, though any combination of persons to the statutory number might become incorporated thereunder. The inhibition is not merely against individual charters to individual corporations, but against any act which is special as distinguished from one which, with reference to the business to be done by corporate organization, is general, and of uniform operation, under like conditions throughout the state. The prevention of possible legislative discrimination or favoritism in business enterprises, and the permanency of property rights secured by the requirement of generality and uniformity in the law of corporate organization, was apparently the intent of the people of Indiana in making their constitution.

It is argued with much insistence that, as respects the legislative power to amend by special enactment, a distinction exists between an amendment which embodies the grant of a new and additional power to a corporation already extant and one which restricts a power previously given; and it is said in this connection on the one side that the amendment of 1897 is, in effect, a restriction on the powers previously vested in the defendant railroad company, and, on the other, that the amendment is rather the extinguishment of all right to make the five-cent charge as provided in the contract between the company and the city of Indianapolis, and the substitution therefor of a grant to the company allowing it to fix a three-cent rate. But, however this may be, the reservation by section 11 of the act of 1861 is of power to amend "this act." The old statute, with the amendment, must, if the amendment be valid, be now read as a whole. So understood, and on the assumption of validity, it constitutes the law of Indiana for the incorporation of street-railroad companies. But, so understood, the entire law would be special and local. As concerns cities other than Indianapolis, it would be special and local, because it could not apply to the city of Indianapolis. As concerns Indianapolis, it would be special and local, because it could have no operation upon street-

railroad business by corporations in any other city in the state at any time. If such a statute had been originally enacted as a whole, it would have been in conflict with the constitution. The legislature cannot first make a law which is in reality general and of uniform operation, and afterwards amend it so that by force of the amendment it ceases to be general and of uniform operation. The legislature can make no amendment which, if put into the statute originally, would have invalidated the whole. Following the pronouncement of the supreme court of Indiana in Mode v. Beasley, my opinion is that the amendment of 1897 is unconstitutional and void. It is not an amendment within the reservation of the eleventh section of the act of 1861.

I may here add that the words of classification in section 5454 of the Revision of 1894 are not the same as the words used in the amendment here in question, nor as the words used in the statute commented on in the quotation from Mode v. Beasley; while sections 5477–5479 are restrictions on the powers of municipal corporations. It occurs to me to suggest also that, while the words which follow the last semicolon in section 9 as amended in 1897 seem to imply a grant to the city of Indianapolis, yet, since the national as well as the state constitutions provide against any law impairing the obligation of contracts, the legislature could hardly authorize the city, by either a general or special law, to break its contract with the railroad company.

Counsel urge that this bill does not show a cause of action cognizable in chancery against Mr. Wiltsie, the district attorney, since its purpose is to restrain him from instituting criminal prosecutions under color of the amendment of 1897. But this complainant is seeking to protect a property right, and it seems to be law that, when such prosecutions are threatened under color of an invalid statute for the purpose of compelling the relinquishment of a property right, the remedy in chancery is available. Reagan v. Trust Co., 154 U. S. 362, 14 Sup. Ct. 1047, and Lottery Co. v. Fitzpatrick, 3 Woods, 222, Fed. Cas. No. 8,541, in each of which apprehended criminal prosecutions were enjoined, are to the point. Even in the Case of Sawyer, 124 U. S. 200, 8 Sup. Ct. 482, cited by the attorney general, the rule as here stated is plainly recognized; nor do I find it disputed in any case.

It is also contended that this suit cannot be maintained because the state is, in effect, a party defendant, and under the eleventh amendment to the national constitution a state cannot be sued; and, further, that section 720 of the Revised Statutes of the United States inhibits the relief prayed for in this bill as against defendants Wiltsie and the city of Indianapolis. But under the ruling of the supreme court of the United States in Pennoyer v. McConnaughy, 140 U. S. 1, 11 Sup. Ct. 699, and Reagan v. Trust Co., supra, this is not a suit against the state of Indiana, within the sense of the eleventh amendment, nor does it fall within the terms of section 720. It seems to me, on principle, as well as on the very distinct authority of Reagan v. Trust Co. (a case which parallels this in nearly every aspect) and Lottery Co. v. Fitzpatrick, the

present controversy falls within the judicial power of the United States vested in this court. But counsel for defendants insist that, at all events, a preliminary injunction ought not to issue. They say, if the defendant railroad company will obey the law, and reduce its fares to three cents, the damage prior to final hearing will be inconsiderable or nothing. But, suppose the alleged law to be invalid, and suppose the defendant railroad company declines to obey it. In the Reagan Case, above cited, the same argument could have been used, yet there the preliminary injunction was issued. So, also, in Lottery Co. v. Fitzpatrick, wherein is discussed at length the question whether or not the preliminary injunction should issue. How can the point as to the validity of the amendment of 1897 be presented on any subsequent hearing more distinctly than on this? My opinion is that, where proceedings in effect destructive of a vested property right are threatened by a defendant in official position under color of a void statute, the preliminary injunction ought to issue.

The suggestion by the learned attorney general that, in any event, this court ought not to consider the case made by this bill until the supreme court of Indiana has pronounced upon the specific enactment in contention, is one which I have no right to entertain. It is ordered that the injunction issue as prayed.

LONDON & S. F. BANK v. WILLAMETTE STEAM-MILL, LUMBERING & MANUFACTURING CO.

(Circuit Court, S. D. California. March 29, 1897.)

No. 703.

1. RECEIVERS—DIVIDENDS—DELAY OF CREDITOR.
   Delay of a creditor, resulting from proceedings taken at the receiver's request, to reduce his claim to judgment, is not negligence, and will not prevent the creditor from receiving dividends in proportion to those already paid to others, before further dividends are declared.
2. SAME—SECURED CLAIMS—SURRENDER OF SECURITIES.
   In the federal courts, a creditor holding collateral securities cannot be compelled to surrender them before participating in dividends declared by the receiver.
3. FEDERAL COURTS—STATE LAWS.
   State laws relating to insolvency and assignments for creditors do not control the federal courts, in receivership cases, in respect to the right of a creditor holding collateral security to receive dividends without first surrendering the collateral.

This was a suit in equity by the London & San Francisco Bank against the Willamette Steam-Mill, Lumbering & Manufacturing Company, in which a receiver has been appointed for the defendant corporation. The cause is now heard on the motion of a creditor to require the receiver to pay it dividends in proportion to those already paid to others.

Frank W. Burnett, for complainant.
H. C. Dillon, for defendant.
Sheldon Borden, for receiver.