

"A state enactment, or regulations made under the authority of a state enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as, under all the circumstances, is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would, therefore, be repugnant to the fourteenth amendment of the constitution of the United States. While rates for the transportation of persons and property within the limits of a state are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the constitution secures, and therefore without due process of law, cannot be so conclusively determined by the legislature of the state, or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry."

With respect to the merits of the question presented by the bill, it is obvious that the court cannot, at this stage of the proceedings, determine that controversy. Whether or not the complainant can justly complain of the rates fixed by the order of the board of supervisors of Stanislaus county, and whether or not the same are unreasonably low, must depend upon the evidence to be adduced upon the hearing. The court cannot now say to what extent they are unreasonable, if, indeed, they be determined to be unreasonable at all. It is sufficient, for the purposes of the demurrer, that the bill presents a federal question. It therefore follows, from the views stated, that the demurrer should be overruled; and it is so ordered.

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UNITED STATES v. REID et al.

(Circuit Court, D. Nevada. November 14, 1898.)

No. 659.

JURISDICTION OF FEDERAL COURTS—SUITS BY UNITED STATES.

Under the judiciary acts of 1887-88, the federal courts have jurisdiction of a civil action at law in which the United States is plaintiff, without regard to the amount in dispute.

This is an action by the United States against John T. Reid and others on a postmaster's bond. Heard on demurrer to complaint.

Sardis Summerfield, U. S. Atty.

Robert M. Clarke, for defendants.

HAWLEY, District Judge (orally). This is an action upon a postmaster's bond to recover the sum of \$667.38. Defendants demur to the complaint upon the ground that this court has no jurisdiction; the action being one of a civil nature at common law, and the matter in dispute being less than \$2,000. If the question of jurisdiction rested solely on the provisions of the act of March 3, 1887 (24 Stat. 552), and of August 13, 1888 (25 Stat. 433), it might be said that it was not entirely free from doubt. But it has been ably discussed and reviewed at length by Speer, J., in *U. S. v. Shaw*, 39 Fed. 433, and by Barr, J., in *U. S. v. Kentucky River Mills*, 45 Fed. 273, and by the supreme court in *U. S. v. Sayward*, 160 U. S. 493, 16 Sup. Ct. 371. In each of these cases the judiciary act of 1789, the act of March 3, 1875, and sections 563 and 629 of the Revised Statutes, are referred to, and

numerous authorities bearing more or less upon the question are cited; and particular attention is called to the act of March 3, 1875, of which the act of March 3, 1887, is an amendment, and to the fact that in the act of 1875 the limitation as to amount precedes the clauses conferring jurisdiction over the special subjects therein enumerated, and that in the act as amended in 1887-88 the limitation as to amount follows after the enumeration of the subjects wherever mentioned, but does not repeat the limitation after the clause, "or in which the United States are plaintiffs or petitioners"; and they came to the conclusion that by repeating the limitation clause as to the amount necessary to confer jurisdiction in several classes, and omitting it after the clause conferring jurisdiction over government suits, like the present one, it must have been the intention of congress that the United States should be allowed to bring suits of this character in the circuit court, without regard to the amount in controversy. See, also, *Fales v. Railway Co.*, 32 Fed. 673; *U. S. v. Belknap*, 73 Fed. 19, 21. My attention has not been called to any case holding the contrary view. Demurrer overruled.

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KEENE FIVE-CENT SAV. BANK V. LYON COUNTY OF STATE OF IOWA.

FAULKNER v. SAME.

(Circuit Court, N. D. Iowa, W. D. November 26, 1898.)

1. JURISDICTION OF FEDERAL COURTS—ASSIGNEE OF MUNICIPAL BONDS—INSTRUMENTS PAYABLE TO BEARER.

County bonds issued with the space for the name of the payee left blank are, in legal effect, instruments payable to bearer, within the meaning of the act of August 13, 1888 (25 Stat. 434); and a transferee having the requisite citizenship, to whom they were transferred in the same condition by delivery, may sue thereon in the federal court, though the original holder could not.

2. MUNICIPAL CORPORATIONS—FIXING LIMIT OF INDEBTEDNESS—STATUTE GRANTING EXEMPTION FROM TAXATION.

The constitution of Iowa limits the aggregate legal indebtedness of any county or other political or municipal corporation to 5 per cent. on the value of the taxable property therein, to be ascertained by the last preceding state and county tax lists. McClain's Code 1888, § 1272, provides that for each acre of forest or fruit trees planted a fixed sum shall be exempted from taxation upon the owner's assessment for a certain number of years,—the amount to be deducted by the assessor from the valuation of his property,—provided such amount shall not exceed one-half the valuation of the realty on which the exemption is claimed. Section 1271 declares that certain classes of property shall not be taxed, and authorizes their omission from assessments. In practice, all the land of an owner is listed and assessed, without regard to a claim for exemption on account of tree planting, the number of acres of trees planted is entered upon the assessment book, and the statutory exemption thereon is deducted from the total assessment. *Held*, that such exemption is in the nature of a bounty, and does not affect the "value of the taxable property" in a county, within the constitutional provision, which, for the purpose of fixing the limit of the county's indebtedness, is the total valuation placed upon such property, without deducting the amount of the exemption.

3. SAME—COMPUTING OUTSTANDING INDEBTEDNESS—EXCESSIVE ISSUE OF BONDS.

Where an issue of bonds by a county was in excess of the constitutional limit of its indebtedness, such bonds did not constitute a valid and en-