

included in the petition in this case which was not mentioned specifically in the account presented to the Secretary of the Navy and passed on by him in the adjustment he made.

*Judgment affirmed.*

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### LAMAR *v.* MICOU.

A defendant, who made no defence except to reduce the amount of the recovery, cannot appeal from a decree against him for less than \$5,000.

MOTION to dismiss an appeal from the Circuit Court of the United States for the Southern District of New York.

*Mr. S. P. Nash* in support of the motion.

*Mr. Edward N. Dickerson* and *Mr. Charles J. Beaman, Jr.*, *contra.*

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This is an appeal by the defendant below from a decree against him for less than \$5,000. There is no claim of set-off or counter-claim, except to reduce the amount of the recovery. In no event can he get any money decree in his favor. All he seeks to do is to defeat the claim of the appellee. Consequently the amount in controversy, so far as this appeal is concerned, is fixed by the decree. *Thompson v. Butler*, 95 U. S. 694; *Sampson v. Welsh*, 24 How. 207. In effect he insists that, under the rule of liability established against him in the court below, the decree should have been for more than \$5,000, and that for this reason he is entitled to an appeal, so that he may show he is not liable at all. This, we think it clear, is not the law.

The case is not changed by the fact that if, under an appeal which is pending in another suit, it shall be found the appellant was credited in this suit with an amount which properly belonged to that, the decree in that suit will be reduced, while the one in this cannot be correspondingly increased. The appellee is satisfied with this decree, and has not appealed. The appellant cannot complain if it turns out in the end that, but

for a mistake which was made in his favor, the appellee might have recovered a larger amount.

*Appeal dismissed.*

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PEOPLE *v.* COMMISSIONERS.

1. *Quære*, Are the statutes of a State in violation of the Constitution of the United States if they subject to taxation the capital of her citizens, although, on the day to which the assessment of it relates, it is invested in products on shipboard in the course of exportation to foreign countries, or in transit from one State to another for purposes of exportation.
2. If on that day it consisted of money, subsequent assessments including it cannot be set aside on the ground that, when they were made, it was employed in the purchase of products for exportation.

ERROR to the Supreme Court of the State of New York.  
The facts are stated in the opinion of the court.

*Mr. H. Charles Ulman* for the plaintiff in error.

*Mr. J. A. Beall, contra.*

MR. JUSTICE HARLAN delivered the opinion of the court.

The only question presented upon the writ of error is, whether an assessment made by the board of tax commissioners for the city and county of New York, of the personal estate of Hanemann, the relator of the plaintiff in error, was in violation of the Constitution of the United States. The statute, under the authority of which it was made, provides that "all lands and all personal estate within this [that] State, whether owned by individuals or by corporations, shall be liable to taxation," subject to certain exemptions thereafter specified. 1 Rev. Stat. N. Y., c. 13, tit. 1, sect. 1. It also declares that "the terms 'personal estate' and 'personal property,' whenever they occur in this chapter, shall be construed to include all household furniture; moneys; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond, or mortgage; public stocks; and stocks in moneyed corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate." Id., sect. 3.

Hanemann, being a resident of the city, county, and State