

Opinion of the Court.

which the county can escape liability upon them to the plaintiffs, who are *bona fide* holders for value. Indeed, there is nothing of substance in the defence made by the county beyond the question of legislative authority for the subscriptions, in payment of which the bonds in suit were issued, and passed to the plaintiffs for iron used on one of the proposed roads.

Other questions of minor importance are discussed in the very able brief of counsel for the county. But they do not, in our opinion, affect the right of plaintiffs to judgment, and need not be noticed.

We perceive no error in the record, and the judgment is

*Affirmed.*



GRAMÉ, Executor, v. MUTUAL ASSURANCE COMPANY  
OF VIRGINIA.

GODDIN, Executor, v. SAME.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF  
VIRGINIA.

Argued November 18, 1884.—Decided November 19, 1884.

Whether the destruction of a building by fire, communicated from buildings burned by the Confederate forces on leaving Richmond, was covered by a policy which excepted losses resulting from riots, civil commotions, insurrections, or invasions of a foreign enemy, is not a Federal question but one of general law, the decision of which by a State court is not reviewable here.

This was a motion to dismiss the writs of error on the ground that no federal question was presented, and that the court was without jurisdiction.

*Mr. Assistant Attorney-General Maury and Mr. George F. Edmunds* for the motion.

*Mr. Enoch Totten, Mr. William B. Webb, and Mr. John Howard,* opposing.

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

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We have no jurisdiction in these cases. The suits were brought on policies issued by the Mutual Assurance Society of Virginia, one to John Grame, and the other to Seymour P. Vial, insuring certain buildings of the respective parties against such losses or damages as might be occasioned by accidental fire or lightning, but expressly excepting from the risks losses which resulted from riots, civil commotions, insurrections, or from the invasion of a foreign enemy. The defence was that the loss was not occasioned by an accidental fire, but that it resulted from a fire purposely set by the Confederate authorities on the evacuation of Richmond in April, 1865, as a war measure, for the destruction of tobacco and military stores which were liable to capture by the forces of the United States. Neither party set up or claimed in the pleadings "any title, right, privilege or immunity . . . under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

On the trial it was conceded that the buildings were destroyed in the progress of a fire purposely set by the order of the Confederate States Government on the evacuation of Richmond "in pursuance of its laws and policy to destroy military stores and tobacco which were liable to capture by the forces of the United States." The buildings insured were not actually set on fire by the Confederate authorities, but they caught from a fire that was so set. On these facts the Supreme Court of Appeals of Virginia decided that the society was not liable under its policies. In the opinion filed the court said: "It is plain that this fire, from which the appellants' buildings were burned, resulted from the act of these military officers, acting under express orders and by virtue of an act of Congress of the Confederate States of America. Certainly it cannot be said that the fire which consumed the buildings of the appellants was an accidental fire or a fire by lightning. The question is, how did such fire result, and how was it occasioned? If it was occasioned by accident or by lightning, the company is responsible. It is not responsible if occasioned by or resulted from riots, insurrection, civil commotion, or the invasion of a foreign enemy." Then, after considering the facts, it is further said: "I suppose

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that 'civil commotion' must necessarily arise where there is civil war. It is true there may be civil commotion without civil war, but certainly there cannot be civil war without civil commotion, and I think no man who lived in the late decade would say that there was no civil commotion between 1861 and 1865. But the company not only protected itself against liability for loss occasioned by riots, insurrection, and civil commotions, but against the 'invasion of a foreign enemy.' In the light of history and of facts, familiar to every man who opens his eyes and sees material facts before him, is it not plain that the late war was a war of invasion, and that it was the invasion of an enemy, and that it was the invasion of 'a foreign enemy'?" And again: "Now, many authorities and opinions might be quoted to the same effect, but, I think, those already referred to are sufficient to show that the Confederate States of America were, certainly as long as the war lasted, a separate and independent government and foreign to the United States of America."

It is upon these expressions in the opinion of the court, and others like them, that our jurisdiction is supposed to rest, but it must be borne in mind that the only question for decision was whether the society was liable on its policies for losses which resulted from such a fire as that in which the insured buildings were destroyed. The inquiry was not as to the rights of the respective parties under the Constitution and laws of the United States, but as to what was meant by certain words used in the contracts they had entered into; not whether secession was constitutional, and the Confederate Government, which grew out of it, a lawful government, having authority to order the fire to be set; but whether that government did so order, and, if it did, whether the fire which followed was a fire which resulted from civil commotion, insurrections, or the invasion of a foreign enemy, within the meaning of those terms as used in the policies sued on; not whether the entry of the forces of the United States into Richmond was in fact the invasion of a foreign enemy, but only whether it was so in its legal effect upon the rights of the parties under their contracts. These are clearly questions of general, not Federal law, and such being

## Statement of Facts.

the case, the decision of them by the Court of Appeals is not reviewable here.

*The motions to dismiss are granted.*

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EXCHANGE NATIONAL BANK OF PITTSBURGH *v.*  
THIRD NATIONAL BANK OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY.

Argued November 6, 1884.—Decided November 24, 1884.

A bank in Pittsburgh sent to a bank in New York, for collection, eleven unaccepted drafts, dated at various times through a period of over three months, and payable four months after date. They were drawn on "Walter M. Conger, Sec'y Newark Tea Tray Co., Newark, N. J.," and were sent to the New York bank as drafts on the Tea Tray Company. The New York bank sent them for collection to a bank in Newark, and, in its letters of transmission, recognized them as drafts on the company. The Newark bank took acceptances from Conger individually, on his refusal to accept as secretary, but no notice of that fact was given to the Pittsburgh bank, until after the first one of the drafts had matured. At that time the drawers and an indorser had become insolvent, the drawers having been in good credit when the Pittsburgh bank discounted the drafts: *Held*, That the New York bank was liable to the Pittsburgh bank for such damages as it had sustained by the negligence of the Newark bank.

The Circuit Court having, on a trial before it without a jury, made a finding of facts which did not cover the issue as to damages, and given a judgment for the defendant, this court, on reversing that judgment, remanded the case for a new trial, being unable to render a judgment for the plaintiff for any specific amount of damages.

The Exchange National Bank of Pittsburgh, Pennsylvania, brought this suit against the Third National Bank of the City of New York, in the Circuit Court of the United States for the District of New Jersey, to recover damages for the alleged negligence of the defendant in regard to eleven drafts or bills of exchange indorsed by the plaintiff to the defendant for collection. The suit was tried before the court without a jury. It made a special finding of facts and rendered a judgment for