

Syllabus.

passenger was bound from seaboard to seaboard, and in others the requisition furnished no information on the subject.

“How much of the sum disallowed was for one and how much for the other kind of requisition is not shown, but the company concedes the reduction in the former cases.”

The contention on the part of the United States is, that local passengers carried on its account between Council Bluffs and Ogden, shall be carried at the same rates as are charged for through passengers passing between those points, as part of a journey over the whole line, although a difference is made in respect to all other persons. But the Court of Claims has found as a fact that the amount found by it is based on rates between those points which are fair and reasonable, and not in excess of those charged to private persons for the same service. We cannot review this finding of fact, and no question of law arises upon it, unless it be one, whether the service rendered in transporting a local passenger between the two points is in law identical with that rendered in transporting a through passenger between the same points as part of the transit over the distance of the whole line. This we cannot affirm.

As the United States did not appeal from that part of the judgment of the Court of Claims finding the amount due on account of the counter claim, no question arises thereon.

We find no error in the judgment, and it is accordingly

Affirmed.

STURGES & Another, Executors *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Argued March 24, 1886.—Decided March 29, 1886.

A testator died July 17, 1870, leaving by his will a legacy to his son payable “within three months after he shall arrive at the age of 21 years.” The legatee arrived at the age of 21 on the 21st day of February, 1872. *Held*, That the legacy was not subject to a legacy tax.

Mason v. Sargent, 104 U. S. 689, applied.

Statement of Facts.

This was a suit against the executors of the will of Thomas T. Sturges to recover a legacy tax. The allegations in the complaint were:

“That heretofore, to wit, on the 17th day of July, 1870, in the district aforesaid, Thomas T. Sturges died possessed of certain personal property of the value of one hundred thousand dollars, and then and there, by his last will and testament, appointed the defendants respectively, his executor and executrix; that said will was then and there duly proved, and said defendants then and there received and had in charge or trust in the fiduciary capacity aforesaid a certain legacy or interest arising from personal property, which then and there passed by the terms of said last will and testament, which were as follows:

“‘I give and bequeath to my son, George W. M. Sturges, the sum of one hundred thousand dollars, to his own use forever, to be paid to him within three months after he shall arrive at the age of twenty-one years, and which legacy or interest then and there amounted to and was of the clear value of one hundred thousand dollars.’

“That said George W. M. Sturges was then and there the son of said Thomas T. Sturges.

“That thereafter, to wit, on the twenty-first day of February, in the year one thousand eight hundred and seventy-two, said George W. M. Sturges arrived at the age of twenty-one years, and then and there became entitled to the possession and enjoyment of said legacy or interest, which was then and there of the value aforesaid, and to the beneficial interest in the profits accruing therefrom, and thereupon and by force of the statutes of the United States of America, in such case provided, there accrued and became due upon the 17th day of July, 1870, aforesaid, and payable on said 21st day of February, 1872, from the defendants to the plaintiffs, and the defendants became liable to pay then and there to the plaintiffs a duty or tax upon said clear value of said legacy or interest in the excess of the sum of one thousand dollars, at the rate of one dollar for each and every hundred dollars of excess of said value, to wit, the sum of nine hundred and ninety dollars, with

Statement of Facts.

interest thereon from the day last aforesaid, which, although then and there demanded, remains due and unpaid.”

The defendants demurred to the declaration. The demurrer was overruled and judgment entered for the amount claimed and costs, which judgment was affirmed by the Circuit Court on appeal. This writ of error was brought to review the latter judgment.

Mr. J. Hubley Ashton for plaintiff in error. *Mr. Thomas Harland* filed a brief for same.

Mr. Assistant Attorney General Maury for defendant in error, submitted on the brief of *Mr. Solicitor General*.

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

This judgment is reversed on the authority of *Mason v. Sargent*, 104 U. S. 689, and the cause remanded, with instructions to reverse the judgment of the District Court and to send the case back to that court for further proceedings according to law.

Reversed.

◆◆◆

PHOENIX LIFE INSURANCE COMPANY v.
WALRATH.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF WISCONSIN.

Submitted March 25, 1886.—Decided March 29, 1886.

The right to remove a suit from a State court to a Circuit Court of the United States, being once lost by reason of non-user “before or at the term at which said cause could be first tried and before the trial thereof,” is not revived by a subsequent amendment of the pleadings which creates new and different issues.

This suit was commenced July 19, 1880, in the Circuit Court for Milwaukee County, Wisconsin, by the plaintiff in error against the defendant in error to recover sums of money