

Statement of Facts.

398; *Brown v. Colorado*, 106 U. S. 95, 97; *Chouteau v. Gibson*, 111 U. S. 200; *Detroit Railway Company v. Guthard*, 114 U. S. 133. Here there is nothing of the kind, and in the assignment of errors on the petition in error to the Supreme Court of the state no reference was made to any constitutional question whatever, except inferentially under that which relates to overruling the motion for a new trial. Certainly it does not appear unmistakably on the face of the record that the Supreme Court of the state either knew or ought to have known that the validity of the statute in question was challenged on account of its repugnancy to the Constitution or laws of the United States. *Brown v. Colorado*, supra, p. 97. Indeed, we know of no provision of the Constitution which renders such a statute invalid as a whole, and there is nowhere in the record any claim that in the charter of the corporation there was a contract by the state the obligation of which had been impaired by the legislation. If there had been, the validity of the statute could not have been challenged except in its application to this charter, and that was not the objection made either in the motion for a new trial or anywhere else that we can discover.

The writ of error is dismissed for want of jurisdiction.

GIBBS v. CRANDALL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF LOUISIANA.

Submitted January 7, 1887. — Decided January 24, 1887.

The parties in this case on both sides being all citizens of Louisiana, it is held that the facts as stated in the opinion of the court show no real and substantial dispute or controversy arising under the Constitution or laws of the United States, so as to authorize the removal of the case from the state court of Louisiana, to the Circuit Court of the United States.

This was an appeal from a judgment of the Circuit Court of the United States for the Western District of Louisiana re-

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manding to a court of the state a cause which had been removed from it. The case is stated in the opinion of the court.

Mr. S. Prentiss Nutt and *Mr. Wade R. Young* for appellants.

Mr. Thomas C. Catchings and *Mr. James T. Coleman* for appellee.

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

This is an appeal under § 5 of the act of March 3, 1875, c. 137, 18 Stat. 470, from an order of the Circuit Court remanding a case which had been removed from a state court, on the ground that the suit was one "arising under the Constitution and laws of the United States." All the parties, both plaintiffs and defendants, are citizens of Louisiana, and the right of removal depends entirely on the question whether it appears on the face of the record that there is in the case a real and substantial dispute or controversy arising under the Constitution or laws of the United States; that is to say, whether "some title, right, privilege, or immunity, on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction." *Starin v. New York*, 115 U. S. 248, 257; *Southern Pacific Railroad v. California*, 118 U. S. 109.

The facts are these: At some time prior to September, 1878, Thomas J. Martin brought suit in the Eighth District Court of the parish of Madison, Louisiana, against Thomas W. Watts, as principal, and Phillip Hoggatt, then in life, as surety, "on a contract of rent." Pending this suit Hoggatt died, and Mrs. Martha A. Gibbs was appointed and qualified as administratrix of his succession. The suit was then revived and afterwards conducted contradictorily with the administratrix. At November term, 1880, a judgment was rendered in favor of the administratrix, rejecting the demand against the succes-

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sion of Hoggatt. By agreement of Martin and Watts a new trial was awarded, but it is claimed that the administratrix of Hoggatt was not a party to this agreement, and that no new trial was ever ordered as to her. At November term, 1881, a second trial was had and judgment rendered. On appeal to the Supreme Court of the state this judgment was reversed and a new judgment given against Watts and the succession of Hoggatt *in solido*. At May term, 1882, of the District Court a rule was taken on the administratrix of Hoggatt to show cause why the property of the succession should not be sold to pay this judgment. To this rule the administratrix made answer, setting up the original judgment in her favor rejecting the claim, and averring that the subsequent proceedings were null and void as to the succession for lack of jurisdiction. The defence was sustained in the District Court, but on appeal to the Supreme Court this was reversed, and the District Court afterwards, in obedience to the mandate of the Supreme Court, made the rule absolute and directed the administratrix to cause the property to be sold to pay the judgment.

In this condition of things the heirs of Hoggatt, on the 1st of August, 1885, filed their petition in the District Court against the administrator of the estate of Martin, who had died pending the original proceedings, and the administratrix of Hoggatt, to restrain the sale which had been ordered and to annul the judgment of the Supreme Court against the estate, on the ground that after the original judgment in her favor the administratrix was no longer a party to the suit, and that the estate was not bound by the subsequent proceedings therein. In the petition it is averred, in various forms, that the judgment against the administratrix, when she was not a party to the suit, was "absolutely null and void, as being repugnant to and in conflict with the provisions of the Fourteenth Amendment to the Constitution of the United States, and an attempt to deprive these petitioners of their property without due process of law." On the 3d of August a writ of injunction, as prayed for, was issued on the allowance of the judge of the District Court, and the next day this writ and a citation in the suit

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were served on the administrator of Martin. On the 23d of October, 1885, the heirs of Hoggatt filed in the state court their petition for the removal of the suit to the Circuit Court of the United States, as "a suit of a civil nature, in equity . . . arising under the Constitution and laws of the United States, the said suit being a bill in equity to avoid the mandate, judgments and decrees of the honorable the Supreme Court of Louisiana and of your honorable court, for the reason that said mandate, judgments and decrees are repugnant to and in conflict with the provisions of the Fourteenth Amendment to the Constitution of the United States." After the case was entered in the Circuit Court, Crandall moved that it be remanded, and this motion was granted July 20, 1886, the court "being of opinion that the record does not disclose a case within the jurisdiction of the court."

This order was clearly right. The case as made by the plaintiffs presents no disputed question of Federal law. If the administratrix of the estate of Hoggatt was not a party to the proceedings after the first judgment in her favor, no one can claim that the succession she represented was bound by what was afterwards done in the suit. All depends on whether she continued to be in law and in fact a party; and this is to be determined by the effect of the original judgment in her favor, and the form of the proceedings thereafter. This may involve a consideration of the law and practice in Louisiana; but it is not, so far as anything now appears on the record, at all dependent for its solution on any construction of the Constitution or laws of the United States. As was said in *Gold-Washing & Water Co. v. Keyes*, 96 U. S. 199, 203: "Before [therefore] a Circuit Court can be required to retain a cause under this jurisdiction it must in some form appear upon the record, by a statement of facts 'in legal and logical form,' such as is required in good pleading, (1 Chit. Pl. 213,) that the suit is one which 'really and substantially involves a dispute or controversy' as to a right which depends upon the construction or effect of the Constitution or some law or treaty of the United States." It is not enough for the party who seeks a removal of his cause to say that the suit is one arising under the Constitution.

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He must state the facts so as to enable the court to see whether the right he claims does really and substantially depend on a construction of that instrument. That has not been done in this case, and the order remanding the suit is consequently

Affirmed.

UNITED STATES v. SCHLESINGER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF MASSACHUSETTS.

Argued January 13, 1887. — Decided January 24, 1887.

Construing together §§ 2931 and 3011 of the Revised Statutes, the decision of the Secretary of the Treasury, on an appeal from a collector of customs, as to the rate and amount of duties, is not final and conclusive, except in a case where, after a protest and appeal, a payment of duties is made in order to obtain possession of goods, and then a suit is not brought to recover back the duties within the times and under the limitations prescribed by § 2931.

Such decision is not final, in a suit brought by the United States against an importer, where, on entering goods, he paid the estimated duties, and the goods were delivered to him, and on a reliquidation of the entry further duties were assessed, and he duly protested, and appealed to the Secretary, who sustained the action of the collector, the suit being brought to recover such further duties.

In such suit the defendant may show, as a defence, that the further duties were illegally assessed.

This was an action at law to recover a sum alleged to be due the United States on imported merchandise. Judgment for defendant. Plaintiff below sued out this writ of error. The case is stated in the opinion of the the court.

Mr. Solicitor General for plaintiff in error.

Mr. L. S. Dabney and *Mr. William S. Hall* for defendants in error.

MR. JUSTICE BLATCHFORD delivered the opinion of the court.

This is an action at law brought by the United States against the members of the firm of Naylor & Co., in the Circuit Court