

Counsel for Parties.

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

This judgment is affirmed on the authority of *Vicksburg and Meridian Railroad Co. v. Putnam*, 118 U. S. 545; *Nudd v. Burrows*, 91 U. S. 426, 441; *Indianapolis, &c., Railroad v. Horst*, 93 U. S. 291, 299. A state constitution cannot, any more than a state statute, prohibit the judges of the courts of the United States from charging juries with regard to matters of fact.

Affirmed.

WHITSITT v. UNION DEPOT AND RAILROAD
COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLORADO.

Submitted May 11, 1887.—Decided May 27, 1887.

On the 6th of October, 1880, a decree was entered in a Circuit Court of the United States dismissing a bill brought to quiet title. Complainant appealed, and the appeal was dismissed at October Term, 1880, it not appearing that the matter in dispute exceeded \$5000. In the Circuit Court W. then suggested the complainant's death, appeared as sole heir and devisee, filed affidavits to show that the amount in dispute exceeded \$5000, and took another appeal August 30, 1881, which appeal was docketed here September 24, 1881, and was dismissed April 5, 1884, for want of prosecution. Another appeal was allowed by the Circuit Court in September, 1884, and citation was issued and served, and the case was docketed here again. *Held*: That the decree appealed from being rendered in 1880, an appeal from it taken in 1884 was too late.

BILL in equity. Decree dismissing the bill. Complainant appealed. The case is stated in the opinion of the court.

Mr. E. T. Wells for appellant.

No appearance for appellee.

Opinion of the Court.

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

This was a suit in equity begun by Richard E. Whitsitt, then in life, and James Meskew, to quiet their possession of certain lots in Denver, Colorado. A decree was entered October 6, 1880, dismissing the bill. From that decree the complainants took an appeal to this court, which was dismissed at October Term, 1880, because it did not appear that the value of the matter in dispute exceeded \$5000. *Whitsitt v. Railroad Company*, 103 U. S. 770. On the 20th of July, 1881, Emma C. Whitsitt appeared in the Circuit Court, and, suggesting the death of Richard E. Whitsitt, asked to be made a party to the suit in his stead, as sole heir and devisee. An order to this effect was made, and she, on the 30th of August, 1881, filed in the Circuit Court an affidavit showing that the value of the matter in dispute did exceed \$5000. On the same day, she took another appeal, which was docketed in this court September 24, 1881, and dismissed, under Rule 16, April 5, 1884, for want of prosecution. The mandate from this court under this appeal was filed in the Circuit Court September 9, 1884, and the next day, September 10, Mrs. Whitsitt presented to the district judge for the District of Colorado another appeal bond in the suit, which he accepted, and he also signed a citation that was duly served on the same day. This last appeal was docketed in this court September 22, 1884. When the case was reached in its regular order on the docket at the present term, it was submitted by the appellant on printed brief, no one appearing for the appellee.

Section 1008 of the Revised Statutes provides that "no judgment, decree, or order of a circuit or district court, in any civil action, at law or in equity, shall be reviewed in the Supreme Court on writ of error or appeal, unless the writ of error is brought, or the appeal is taken, within two years after the entry of such judgment, decree, or order: *Provided*, That where a party entitled to prosecute a writ of error or take an appeal is an infant, insane person, or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within two years after the judgment, decree, or order, exclusive of the term of such disability."

Syllabus.

This decree was rendered October 6, 1880, and the present appeal was not taken until September 24, 1884, nearly four years afterwards. There is no suggestion of disability such as would bring the appellant within the proviso. The appeal should, therefore, be dismissed, *Scarborough v. Pargoud*, 108 U. S. 567, and it is so ordered.

Appeal dismissed.

MAXWELL LAND-GRANT CASE.APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLORADO.

Submitted May 12, 1887. — Decided May 27, 1887.

The court rested its judgment in this case, 121 U. S. 325, not upon the fact of the grant to Beaubien and Miranda being an *empresario* grant, but upon the fact that Congress, having confirmed it as made to Beaubien and Miranda, and as reported for confirmation by the Surveyor General of New Mexico to Congress, without qualification as to its extent, acted in that respect entirely within its power, and that its action was conclusive upon the court.

The court stated in its former opinion, and repeats now, its conviction that the grant by Armijo to Beaubien and Miranda described the boundaries in such a manner that Congress must have known that the grant so largely exceeded twenty-two leagues that there could be no question upon that subject, and it must have decided that the grant should not be limited by the eleven leagues of the Mexican law.

The court repeats the conviction expressed in its former opinion, with further reasons in support of it, that Beaubien, in the petition which he presented against the intrusion of Martinez, did not refer to his own grant as being only fifteen or eighteen leagues, but to the grant under which Martinez was claiming.

The court assumes that references in the petition to newly discovered and material evidence touching the fraudulent character of the grant are addressed to the Secretary of the Interior and the Attorney General, as the rehearing in this court can be had only on the record before the court, as it came from the Circuit Court.

The court remains entirely satisfied that the grant, as confirmed by Congress, is a valid grant; that the survey and the patent issued upon it, as well as the original grant by Armijo, are free from fraud on the part of the grantees or those claiming under them; and that the decision could be no other than that made in the Circuit Court, and affirmed by this court.