

Cases Omitted in the Reports.

NONCONNNAH TURNPIKE *v.* TENNESSEE *ex rel.* TALLEY.
SAME *v.* SAME. SAME *v.* SAME.

ERROR TO THE SUPREME COURT OF TENNESSEE.

Nos. 639, 640, 641. October Term, 1877.—Decided November 5, 1877.

No Federal question is presented by the record, in these cases, the question respecting the forfeiture of the charter of the turnpike company being a question of state law only, as to which the judgment of the state court is final.

THE case is stated in the opinion.

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

No Federal question is presented in either of these records. Even if the point urged here in support of our jurisdiction was one involving Federal rights, which we are by no means prepared to admit, it does not appear in the cases as they come to us. Under a statute passed January 8, 1846, (Acts of Tenn., 1845-6, 107,) authorizing judicial enquiry "to ascertain whether any corporation by non-user or abuse of its franchises has incurred a forfeiture of its charter or has been disabled by a surrender of its franchises," it seems to have been held by the courts of Tennessee, that to justify a decree of forfeiture there must have been wilful abuse or improper neglect in the exercise of the powers conferred. *State v. Merchants' Ins. and Trust Co.*, 8 Humphreys, 235, 284; *State v. Columbia and Hampshire Turnpike Co.*, 2 Sneed. (Tenn.), 254. But in 1857-8, by the code then adopted, provision was made for a like proceeding against corporations that "do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation," and for a decree of forfeiture "if it be adjudged that a defendant corporation has by neglect, non-user, abuse, or surrender, forfeited its corporate rights." Tenn. Code, 1857-8, §§ 3409, 3425. This law was in force when the charter of the Nonconnah Turnpike Company was granted, and the Supreme Court in these cases decided that under its provisions the failure of the company to complete its road within the time limited was such a substantial non-compliance with the requirements and conditions of the charter as to subject the company to a decree of forfeiture. This is a question of state law alone, as to which the judgment of the state court is final.

The cases are dismissed for want of jurisdiction.

Mr. Albert Pike, Mr. L. H. Pike and Mr. Robert W. Johnson for the motion. Mr. Samuel Shellabarger, Mr. J. M. Wilson and Mr. D. K. McRae opposing.