

## Opinion of the Court.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COM-  
PANY *v.* ADAMS.  
SAME *v.* SAME.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

Nos. 355, 356. Argued October 22, 23, 1900.—Decided January 7, 1901.

These cases do not differ materially from the one just decided, (*ante* page 1), except as to the year for which the taxes were assessed.

THIS was an action against the Yazoo Company and the Illinois Central Company for state, county, municipal and privilege taxes for the year 1898, upon the property of the Louisville, New Orleans and Texas Company, which became the property of the Yazoo Company by virtue of the consolidation of October 24, 1892, and has since been operated by the defendants.

*Mr. William D. Guthrie* and *Mr. Edward Mayes* for plaintiffs in error. *Mr. Noel Gale* was on their brief.

*Mr. F. A. Critz* and *Mr. Marcellus Green* for defendant in error.

MR. JUSTICE BROWN delivered the opinion of the court.

This case does not differ materially from the one just decided except as to the year for which the taxes were assessed. A joint plea was filed by the defendants setting up a claim to exemption under the charter of the former Louisville Company, which for twenty-five years from March 3, 1882, appropriated all taxes to its construction debts, with a proviso that this appropriation should cease when the profits were sufficient to enable it to declare and pay an annual dividend of eight per cent upon the capital stock over and above the payment of its debts and liabilities. But this plea did not allege that the railroad was built under this charter, nor that the profits had not been

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sufficient to pay the dividends, and a demurrer was interposed for these reasons, which was sustained by the court.

Defendants then, under leave to answer over, filed two pleas, of which the first, called the amended or second plea, rectified the two foregoing omissions, and set up that this exemption was an irrevocable contract of appropriation of the taxes, and protected by the contract clause and the Fourteenth Amendment.

The third plea set up the record and decision in *Railroad Co. v. Lambert*, 70 Miss. 799, as *res adjudicata*, and alleged that the contrary decision of June 20, 1898, in the case of *Adams v. Yazoo Company* was violative of the contract clause. Then followed a maze of replications, rejoinders and demurrers, into which it would be wholly unprofitable to enter. Suffice it to say that from this "labyrinth of special pleadings," as it was termed by the Supreme Court, (77 Miss. 780,) three questions were evolved:

First. Whether the provisions of section 21 of the charter of the Mobile and Northwestern Company constituted a valid and irrevocable contract between the state and the railroad company under the Mississippi constitution of 1869.

Second. Whether, conceding its validity, the consolidation of 1892 operated to terminate this contract.

Third. Whether the decision in the *Lambert* case operated as an estoppel against the prosecution of this action.

It is sufficient to say of the third question that it is not Federal in its character. What weight shall be given as an estoppel to a prior judgment of the same court is not a matter which can be reviewed here. We do not understand this point to be pressed.

The second question we have already disposed of in the main case. The immunity from taxation, contained in the charters of the constituent companies, did not enure to the new company formed by the consolidation of 1892.

In the view we have taken of the second question, the first becomes immaterial, as we have held in the prior case.

It is stipulated that another case (No. 356) brought against these companies for the taxes of 1898 upon the property of the Natchez, Jackson and Columbus division of the Louisville Com-

## Syllabus.

pany, now owned and operated by the Yazoo Company, shall abide the result of this.

The judgment of the Supreme Court of Mississippi in these cases is therefore

*Affirmed.*

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ILLINOIS CENTRAL RAILROAD COMPANY *v.* ADAMS.  
 ILLINOIS CENTRAL RAILROAD COMPANY *v.* ADAMS.  
 YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY *v.* ADAMS.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
 SOUTHERN DISTRICT OF MISSISSIPPI.

Nos. 77, 78, 79. Argued October 24, 1900. — Decided January 7, 1901

An appeal to this court from a Circuit Court will not be dismissed upon the ground that, after an injunction against the collection of certain taxes was refused by the Circuit Court, and while the suit was still pending in that court, defendant brought suit in the state court and recovered the taxes in question. The defence of *res adjudicata* cannot be made available upon motion to dismiss an appeal.

Jurisdiction is the right to put the wheels of justice in motion, and to proceed to the final determination of the cause upon the pleadings and evidence. It exists in the Circuit Courts, if the plaintiff be a citizen of one State, the defendant a citizen of another, if the amount in controversy exceed \$2000, and if the defendant be properly served with process within the district.

A failure to allege a compliance with the Ninety-fourth rule in equity concerning bills brought by stockholders of corporations against the corporation and other parties, does not raise a question of jurisdiction but of the authority of the plaintiff to maintain his bill.

As the bill set up a contract with the State in a railway charter, and also averred that such contract had been impaired by subsequent legislation, it was *held* that the bill presented a case under the Constitution of the United States, and that jurisdiction might be sustained upon that ground alone.

The question whether a suit, nominally against an individual by name, is in reality a suit against the State within the Eleventh Amendment to the