

to direct the imposition of the penalty if the result of our conclusion that the Federal ground was frivolous be followed by an affirmance instead of an order of dismissal. Because of the absolute coincidence between a dismissal on account of the frivolous and unsubstantial character of the Federal question relied upon and an affirmance upon the same ground, we are of opinion that the statutory authority to impose the penalty obtains in either case. In stating the reasoning which has led us to this conclusion we have not been unmindful of, although we have not reviewed, a line of cases concerning the nature and extent of the power to impose costs in the case of a dismissal for want of jurisdiction. See *Citizens' Bank v. Cannon*, 164 U. S. 319, 323, and cases cited. We have not deemed it necessary to do so because nothing in the reasoning of those cases tends to affect the substantial identity which exists between a decree of dismissal and one of affirmance where the ground upon which one is placed equally justifies either form of decree.

In consequence of the conclusion which we have reached as above stated we direct the imposition of a penalty, in addition to interest, of five per cent. on the amount of the judgment recovered below and the taxation of costs as upon an affirmance.

*Writ of error dismissed with damages, etc.*

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FIRST NATIONAL BANK OF PRINCETON,  
ILLINOIS *v.* LITTLEFIELD, TRUSTEE.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 572. Submitted November 4, 1912.—Decided December 2, 1912.

The settled rule is that the concurrent action of two courts below upon questions of fact will not be disturbed except in case of manifest error.

226 U. S.

Opinion of the Court.

In this case appellant being claimant below had the burden of proof, and this court will not reverse the finding of both courts that the burden was not sustained.

193 Fed. Rep. 24, affirmed.

THE facts are stated in the opinion.

*Mr. Thorndike Saunders* for appellants.

*Mr. Daniel P. Hays* for appellee.

Memorandum opinion, by direction of the court, by  
MR. CHIEF JUSTICE WHITE.

Albert O. Brown and others, members of a firm known as A. O. Brown & Company, stock brokers in New York City, were adjudicated bankrupts. The First National Bank of Princeton and four other claimants petitioned to have the receiver in bankruptcy return certain sums of money to which they asserted ownership, because the amounts claimed had been sent to the firm to buy shares of stock for account of the claimants and the stock had never been delivered to them. The special master to whom the matter was referred reported in favor of the claimants. The District Court, however, disapproved the conclusion of the master and rejected the claims. The Circuit Court of Appeals reversed. 175 Fed. Rep. 769. It was held that as the stock bought with the moneys of the claimants and for their account belonged to them they were entitled as owners, the stock having been wrongfully converted by the bankrupts, to take out of the bankrupt estate so much of the avails of their wrongfully converted stock as they might be able to trace into the hands of the receiver. Upon amended pleadings a further hearing was had before the special master, who reported against the claimants because it was found as a matter of fact that there was a failure to trace any of the proceeds of the converted

stock into the hands of the receiver. The report of the master was confirmed by the District Court (189 Fed. Rep. 432, 437), and the action of that court was in all respects affirmed by the Circuit Court of Appeals (193 Fed. Rep. 24). This appeal was then taken, and the claim of the Princeton Bank has been specially presented, under an agreement that the decision as to that claim will govern as to the others.

All the contentions relied upon in various forms simply assert that the master and the two courts erred in their appreciation of the facts. But the burden of proof was upon the claimant to establish its ownership of the fund, a burden which it cannot in reason be said was sustained in view of the concurrent adverse action of the master and the courts below. Indeed as the settled rule is that the concurrent action of two courts upon questions of fact will not be disturbed except in a case of manifest error, a condition which we are of the opinion after an examination of the record does not here obtain, it follows that the judgment below must be and it is

*Affirmed.*

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SELOVER, BATES AND COMPANY *v.* WALSH.

ERROR TO THE SUPREME COURT OF THE STATE OF  
MINNESOTA.

No. 22. Submitted October 29, 1912.—Decided December 2, 1912.

With the ruling of the state court as to the applicability of a state statute to a particular contract this court has nothing to do. It is concerned only with the question of whether as so applied the law violates the Federal Constitution.

The court may, through action upon, or constraint of, the person within its jurisdiction, affect property in other States.

The obligation of a contract is the law under which it was made, even though it may affect lands in another State; and in an action which