

is a sense, doubtless, in which it may be said that the State is interested in the question, but only a governmental sense. It is interested in the well-being of its citizens, in the just and equal enforcement of all its laws; but such governmental interest is not the pecuniary interest which causes it to bear the burden of an adverse judgment. Not a dollar will be taken from the treasury of the State, no pecuniary obligation of it will be enforced, none of its property affected by any decree which may be rendered."

Finally, this is an equitable action brought to establish and enforce a trust in favor of plaintiff, with only an incidental prayer for a mandatory decree. It is not an original proceeding by mandamus, of which the Federal courts have no jurisdiction. *Bath County v. Amy*, 13 Wall. 244; *Jordan v. Cass County*, 3 Dill. 185; Fed. Cas. No. 7517; *County of Cass v. Johnston*, 95 U. S. 360, 370; *County of Greene v. Daniel*, 102 U. S. 187, 195; *Davenport v. County of Dodge*, 105 U. S. 237, 242.

It seems to me that the decree should be affirmed.

AMERICAN WATER SOFTENER COMPANY *v.*
LANKFORD AND OTHERS, COMPOSING THE
STATE BANKING BOARD OF THE STATE OF
OKLAHOMA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF OKLAHOMA.

No. 418. Argued October 14, 15, 1914.—Decided January 5, 1915.

Decided on authority of *Lankford v. Platte Iron Works, ante*, p. 461.

THE facts are stated in the opinion.

235 U. S.

Opinion of the Court.

Mr. C. Wilfred Conard, with whom *Mr. L. J. Roach* was on the brief, for appellant.

Mr. Charles West, Attorney General of the State of Oklahoma, for appellees.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Appellant, on June 8, 1912, deposited with the Farmers' and Merchants' Bank of Sapulpa the sum of \$3,337.50. The bank issued to appellant a certificate of deposit for the sum in the usual form.

The bank, which, it is alleged, was entitled to the benefits of the Oklahoma bank guaranty law, subsequently failed and was closed and taken possession of by appellees, composing the State Banking Board. The certificate of deposit was presented to the Banking Board and payment demanded out of the Depositors' Guaranty Fund or, if that fund should be insufficient, that there be issued to appellant a certificate of deposit. Both demands were refused and this suit was instituted to enjoin compliance with one or the other of the demands.

Motion was made by appellees to dismiss the bill on the ground that the court had no jurisdiction of the subject-matter of the action or of the persons of the defendants (appellees), the suit being one against the State of Oklahoma without its consent in violation of the provisions of the Eleventh Amendment to the Constitution of the United States.

The motion was granted on the authority of the court's opinion in *Farish v. State Banking Board*.

This appeal was then prosecuted.

The questions in this case are the same as those discussed and decided this day in *Lankford, et al., Composing the State Banking Board, v. Platte Iron Works Company*,

ante, p. 461, and on the authority of that case the decree in this is

Affirmed.

MR. JUSTICE PITNEY, with whom concurred MR. JUSTICE DAY, MR. JUSTICE VAN DEVANTER, and MR. JUSTICE LAMAR, dissenting.

For reasons expressed in the dissenting opinion in *Lankford v. Platte Iron Works Company*, this day decided, *ante*, p. 461, I am unable to concur in the opinion and judgment of the court in this case.

FARISH *v.* STATE BANKING BOARD OF THE STATE OF OKLAHOMA.

STATE BANKING BOARD OF THE STATE OF OKLAHOMA *v.* FARISH.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

Nos. 446, 447. Argued October 14, 15, 1914.—Decided January 5, 1915.

Lankford v. Platte Iron Works, *ante*, p. 461, followed to the effect that under the Eleventh Amendment the State Banking Board and Bank Commissioner of Oklahoma are not subject to suit by depositors of insolvent banks.

Although one may become subrogated to all the rights of a depositor in an insolvent bank in Oklahoma, that does not give him the right of suit against the state officers administering the Depositors' Guaranty Fund.

As the statute creating the State Banking Board of Oklahoma does not give the Board power to waive the State's exemption from suit, an